

All at Sea:
An Accusation of Piracy Against William Herle in 1565

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I com frelye in uppon your honors assurance, to justeffye my doings, & to difface my accusers, aswell to acqwite your honor to the Qwenes majestie, being that waye allwayes mi prefferer, as to discharge my pore honestye everye waye. Consydering whatt a reproche it is to th'entretye of the traffyck, yf I justlye might be charged with this. Requireng therfore most humblye to plede my case in lybertye (accordyng to promys) & if I may be justlye towched, I require no favor but extreme deth, for my emprisonment shold be my undoing, where otherwise mi frynds mene well unto me, but I know your honors word to be suffycient to me, & hitherto to hathe byn allwayes invyolate.¹

Elizabethan privateering is typically associated with the notorious figures of Sir Francis Drake, Sir Walter Raleigh, and Sir Martin Frobisher. Endorsed and celebrated by Elizabeth I and her council, the aggressive policy against Spanish shipping contributed to the legend of English sea power at the end

1. William Herle to Sir William Cecil, 3 August 1565, The National Archives, Kew (TNA): Public Record Office (PRO) SP 15/12/76, fol. 221v.

of the sixteenth century, increasing in frequency after the “victory” over the Armada in 1588, and later connected to colonial enterprise. In the middle years of the century, piracy and privateering were also widespread, although on a much smaller scale and mostly restricted to local waters. Throughout her reign, the queen and her ministers understood the importance of policing England’s coastal waters, carefully monitoring local coastal commerce and small-scale maritime maneuvers for illegal and unauthorized activity against neutral shipping that could harm economic interests and potentially create awkward diplomatic conflict. From prominent landowners to lower-status communities, the majority of local inhabitants had links to both licit and illicit marine commerce.

This article will concentrate—in case-study form—on a body of little-studied and unpublished archival documents in the High Court of Admiralty (HCA) papers at the National Archives in London relating to the Elizabethan intelligencer William Herle (d. 1588). The HCA papers reveal the day-to-day workings of the administrative body responsible for the surveillance and legal process of England’s substantial coastline and home waters. Documents for the sixteenth century are patchy, but there is enough surviving evidence to reveal the abundance of piratical and criminal activity along the coast. While there has been a recent revival of critical interest in piracy and privateering in relation to state power and global expansion (alongside a healthy output of non-academic studies of pirates and privateers fuelled by a durable interest in hair-raising tales of derring-do), the records of the HCA are an underexploited resource for understanding the complexity and extent of the jurisprudence and administrative framework of this legal body. The records offer specific glimpses and cases of individuals and places implicated in criminal activity on shore and at sea.² I contend that it is Herle’s marginal and flexible status that is the key to this episode of suspected piracy. Located on the nebulous fringes of the political landscape, Herle inhabits an uncertain, shifting position. Possessing the skills to transmit knowledge in a variety of languages and a semi-licensed mobility deriving from his frequent trips as an emissary and on mercantile business, Herle’s faculties had equal potential to be directed toward state matters or treasonous and criminal means. Coupled with persistent insolvency, these features of Herle’s life render unsurprising the discovery of documents purporting to locate Herle aboard a ship accused of piracy.

2. For a valuable collection of interdisciplinary essays on piracy, see *Pirates? The Politics of Plunder, 1550–1650*, ed. Claire Jowitt (Basingstoke: Palgrave, 2006).

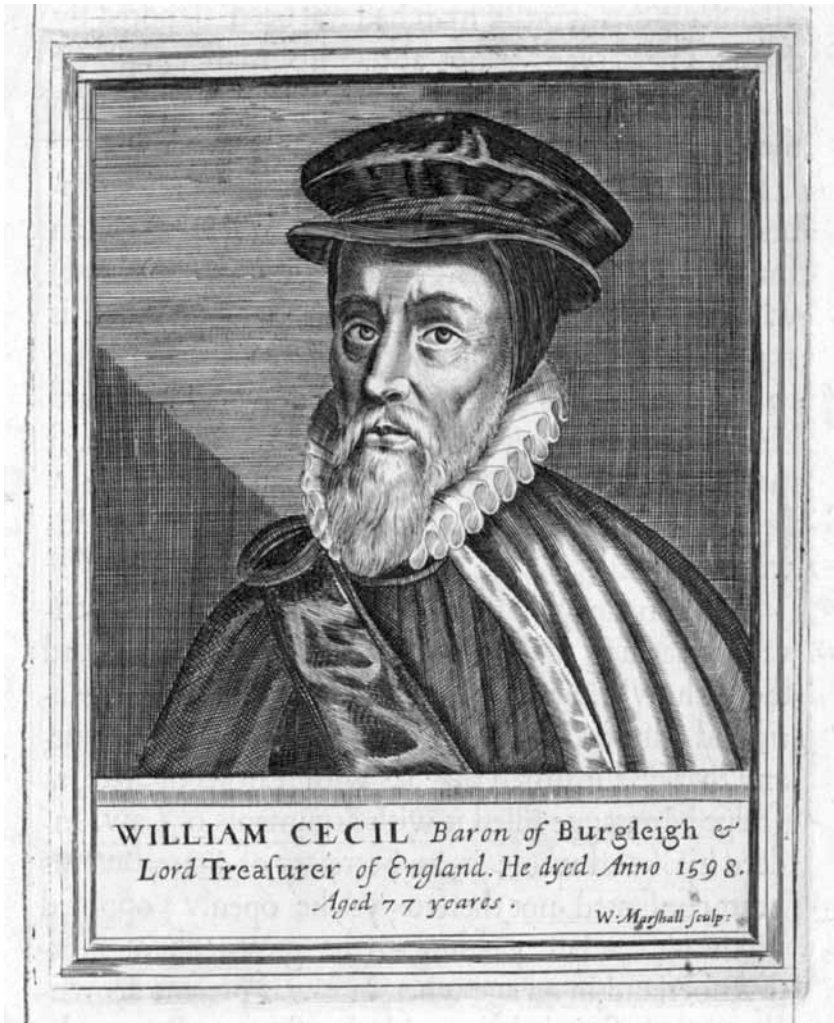
In 1565, William Herle was no stranger to the sea. A household member of the London mercer Sir William Garrard and a minor gentry figure, it is likely that Herle was involved in Garrard's extensive mercantile enterprise, possibly as an apprentice or a factor. Garrard, Lord Mayor of London in 1555, had strong links with the northern European cloth trade.³ Herle travelled between London and the continent as part of his work for Garrard, his travels building a portfolio of linguistic skills, commercial acumen, and information-gathering skills that would prove valuable in later years. It is likely that Herle's activities as Garrard's agent brought him to the attention of Elizabeth's ministers. His capacity for commercial mobility alongside his linguistic expertise made him an ideal recruit for the performance of arcane assignments and the transmission of intelligence letters: in 1561, Secretary of State Sir William Cecil dispatched him on secret business to act as his agent in a contract between Elizabeth and the Senate of Hamburg.⁴ Herle's services were in demand in the early to mid-1560s for negotiating between England and her continental neighbors on a variety of matters, including sourcing and transporting "material of war" from various German city-states.⁵ In the early years at least, this government work was conducted without the knowledge of Garrard. Herle's linguistic talent, along with his capacity for observing and recording information in scrupulous detail, earned him a cliental position with Cecil, a patronage relationship that branched later in Elizabeth's reign to include Sir Francis Walsingham and Robert Dudley, Earl of Leicester.

The corpus of Herle's intelligence letters, which spans the years 1559 to 1588, contains copious sensitive information and reveals the breadth of his surveillance, ranging from collating a wide range of reports he was receiving from London and the continent to empirical observation: intelligence about movements of prominent or suspicious figures around the city of London and other provincial areas. Herle's talents lay in exchanging information,

3. Herle is described as a "servant" and "skilled businessman" of Garrard. See Oskar de Smedt, *De Engelse natie te antwerpen in de 16e eeuw, 1496–1582* (Antwerp: de Sikkels, 1954), 213, and Richard Ehrenberg, *Hamburg und England im Zeitalter der Königin Elisabeth* (Jena: G. Fischer, 1896), 61.

4. Instructions for William Herle to negotiate a loan from Hamburg, 2 January 1561, MS Cotton Titus B V, fols. 171r–173v, British Library.

5. Instructions to William Herle regarding the recovery of material of war and the negotiation of a loan in Hamburg, 16 August 1563 (copy), MS Add. 5935, fols. 189r–v, British Library. From his letters, there is evidence that Herle had Latin, French, Italian, High-Dutch (German), and Flemish to at least proficient reading and writing level.



Sir William Cecil (1st Baron Burghley after 1571), Secretary of State, 1558–72. Engraving by William Marshall after de Passe, 1642. © Trustees of the British Museum.

spending a considerable period of time (often without official authorization and in order to avoid his persistent debt problems) in the Low Countries and northern Europe until his death in 1588. For his substantial “service” to the crown—a “service” based on this regular exchange of valuable political information—he was rewarded with a couple of official posts, such as sheriff of Cardiganshire (1574) and member of Parliament for Callington, Cornwall (1586). Despite his concerted efforts to secure an office related to central government activity or obtain lucrative monopolies on goods such as alum or sulfur, Herle was consistently located in the cohort of second-rank figures in the political landscape.⁶

It is worth pausing a moment to define *privateering* in relation to *piracy*, especially at this period in Elizabeth’s reign. Privateering—the term that came into use in the seventeenth century—was distinct from piracy by the issue of *letters of marque* from a sovereign.⁷ These letters authorized the strategic attacking of designated enemy shipping, which were usually independent ventures undertaken by individuals. The sack and spoil of enemy shipping by privately owned vessels greatly contributed to and extended the naval potential of the state. Earlier letters of marque for English seamen authorized the attack of enemy shipping, especially during the conflict with France in the mid-1560s. Later, in the time of Drake and Frobisher, the crown took an economic interest in privateering, investing resources and vessels in exchange for a share in the spoils of the returning expeditions. In the first decades of Elizabeth’s reign, numerous proclamations were issued in order to suppress illicit privateering along English coastal waters between France and the Low Countries, suggesting that the authorities considered the problem of illegal sack and spoil to be escalating—or at least that they were keen to be visibly pursuing these offences.⁸

At the beginning of August 1565, Margaret, Duchess of Parma, King Philip of Spain’s regent in the Netherlands, wrote to Elizabeth to protest the spoils being committed at the mouth of the Thames against Spanish

6. For more on informers like Herle as satellites to the centers of political power, see Robyn Adams, “A Spy on the Payroll? William Herle and the mid-Elizabethan polity,” *Historical Research* 83 (2010): 266–80, and Patrick Collinson, “Puritans, men of business, and Elizabethan parliaments,” *Parliamentary History* 7, no. 2 (1988): 192.

7. See Kenneth R. Andrews, *Elizabethan Privateering* (Cambridge: Cambridge University Press, 1964), 5–22, and Jowitt. These licenses were also known as *letters of reprisal* or *letters of commission*.

8. These proclamations were issued by the queen’s printers and include *A proclamation agaynst the maintenaunce of pirates* (London, 1569).



Margaretha van Parma (Margaret of Austria, Duchess of Parma and Plaisance), governor of the Netherlands, 1559–67 and 1578–82. Image courtesy of the New York Public Library Digital Gallery.

subjects, naming “Willem Earle” as the chief perpetrator of the piracy. She demanded restitution of the goods seized by the pirates and the assurance that Elizabeth would take action.⁹ Margaret’s letter arrived at a critical time: delicate trade negotiations were in progress at Bruges, attempting to restore the ancient commercial relations between England and the Netherlands.¹⁰ The trade dispute was not helped by the frequent seizing of Flemish and French ships, complained Margaret, and could substantially endanger the ancient amity between the two nations.¹¹ Significantly—in archival terms—this letter is contained within a volume of papers in the British Library’s Cotton collection that almost exclusively concerns the diplomatic negotiations at Bruges, suggesting that the collators of the manuscripts collected by Sir Robert Cotton recognized the connection between Margaret of Parma’s explicit accusation of William Herle and the trade arrangements being ratified across the Narrow Sea.

On 12 August 1565, a few days after the receipt of the Duchess of Parma’s letter, the Privy Council met in Windsor and noted the recent increase of robberies occurring in English waters. They instructed that a letter be written to one of the Judges of the Admiralty—probably Valentine Dale—directing him to investigate a claim by the Spanish ambassador (Guzman de Silva) that English sailors were routinely committing “sundry spoyles and piracies” on Spanish shipping at the mouth of the Thames and around the east coast. With the full, explicit support of the Privy Council, Dale was required to make enquiries about local communities’ aiding and abetting the pirate economy.¹² In the same order, the Council required the Admiralty to “have speciall consideracion to the matter wherewith Hearle, now in prison, standeth charged.”

This directive and the series of documents within the High Court of Admiralty papers in the National Archives reveal that the authorities took these accusations by the Spanish seriously. Herle was accused of associating with privateers carrying letters of marque from the King of Sweden, whose primary targets were Danish and Norwegian ships but who were accused of

9. Margaret, Duchess of Parma, to Elizabeth I, 2 August 1565 (in French), MS Cotton Galba C II, fol. 166r, British Library.

10. See chapter 14 of Conyers Read, *Mr Secretary Cecil and Queen Elizabeth* (London: Jonathan Cape, 1965).

11. Margaret, Duchess of Parma, to Elizabeth I.

12. *Acts of the Privy Council of England*, ed. John R. Dasent (London: Eyre & Spottiswoode, 1890), 217–18.

seizing goods from ships of other neutral nations off the North Foreland in Kent.¹³ Within the Oyer and Terminer records of the Admiralty commissions are found the division of papers relating to the “Examinations of pirates and other criminals” between 1565 and 1570. Four manuscript documents within this section relate to Herle: Herle’s own “declaration,” giving an explanation of his movements—maritime and otherwise—over the previous few weeks, two further notes by Herle adding details to this former examination, and a deposition dated 25 July by the Searcher of Margate, Luke Sprackling. In addition to these documents in the Admiralty records, two documents sent from Herle to Cecil are located in the Additional State Papers at the National Archives: another “declaration” and a diary detailing his movements for the month of July.

These extant documents recording the investigation into Herle’s alleged offence suggest that the “spoyles” seized from the ships in the Thames mouth were principally fish and salt, small-scale booty characteristic of the types of commodities robbed by opportunistic privateers and pirates. As K. R. Andrews notes, open or disguised piracy was often undertaken by English owners of small vessels who ventured just offshore, taking “usually modest prizes (wines, salt, fish, etc., rarely worth more than £200), selling the plunder cheap in minor seaports or plunder marts.”¹⁴

The permeability and complicity of local port authorities was such that there was an established and accepted culture where an ordinary seafaring vessel might opportunistically “recover” goods from a insufficiently guarded craft and not be punished for piracy if a sufficient premium was paid to the local Recorder or Searcher.

Herle’s alleged misdemeanor was being on a ship when such a deed was committed—a fact he hotly contested. He confessed that he had been aboard the *Tiger*, owned by William Wilson and captained by Charles Morehouse, in order to recover a debt owed him by Wilson and that Wilson intended to repay in plunder acquired under his Swedish letter of marque, but Herle insisted that he had disembarked before any piracy had taken place. He compiled what he labeled a “dyarye justification” of his movements for the

13. The North Foreland is the southeastern point of the triangle that forms the Thames Estuary and the easternmost point of Kent.

14. Kenneth R. Andrews “The Economic Aspects of Elizabethan Privateering,” *Bulletin of the Institute of Historical Research* 25 (1952): 84. Note that Herle states that the salt was seized from a Danish ship, which would suggest that the English ship was observing the terms of the commission from the King of Sweden.

month of July, detailing the names and occupations of people he was with during this time and giving a clear account of the places he visited:

It shalbe necessarye to that mi former declaratyon exhibited yesterdaye to your honor, to ad noles a further & a dyarye justificatyon of mi self, where daye by daye I have byn from tewsdaye the third of this present moneth Julye (for then I departed the ship) to this tyme that we are now yn. For seing the Queens Majestie provoked most justlye, by so grevous & dooble crymes, for vyolatyng her stremes & offence to her dere frynds, I shold thinck mi self an unhappye man, yf ether I dyd partake ani thing that waye, or concede ani thing in the rest.¹⁵

Together with an exhaustive record of his movements, Herle submitted two “declarations” explaining his reasons for being aboard the *Tiger* and revealing details of his subsequent arrest and indictment for piracy.

The earliest document in the HCA records concerning this event is Sprackling’s deposition. Sprackling was keen to locate Herle in order to recover a debt of his own (the sizeable sum of £4 17s.) and had been alerted that Herle lay aboard a ship off the North Foreland by two mariners who claimed they were “of the companie of Herles ship.”¹⁶ Sprackling insisted that his reason for boarding the ship was only to recover the debt and that when he embarked, Herle was not on board. The captain, Morehouse, gave Sprackling “gentell entertaynment and sent to the sayd searchers wife a smale rowlet of iij gallons of wine called Taynt, a holand chese and two barrels of powdred coddys, and offered to sell xx barrels of fishe more at xiiij^s iij^d the barrel which he refused.”¹⁷ Morehouse revealed to Sprackling that he and Herle had a license from King Erik of Sweden “to apprehend and take all suche shipps and goods as did appertaine to any of his enemies.” Morehouse also requested that Sprackling victual the *Tiger* with beef, biscuits, and beer.

15. William Herle to Sir William Cecil, 31 July 1565 (endorsed by Cecil on the address leaf as 3 August), TNA: PRO SP 15/12/76.i, fol. 224r. For the corpus of Herle’s letters, see *Letters of William Herle Project*, ed. Robyn Adams, AHRC Centre for Editing Lives and Letters, <http://www.livesandletters.ac.uk/herle/index.html>.

16. Luke Sprackling’s deposition concerning William Herle, TNA: PRO HCA 1/36/393, fols. 393r–395v.

17. *Ibid.*, fol. 393r.

However, after hearing rumors in Margate that Morehouse was involved in piracy, Sprackling countermanded the order to revictual the ship.¹⁸

Sprackling stated that he had been told by the two mariners who first alerted him to Herle's whereabouts that Herle and another member of the ship's company had lodged in a local man's house in Margate the night before and had departed the next morning to an unknown destination. He revealed that Morehouse had been inquiring around the North Foreland for any letters that might have been left for him. Finally, finding their activities too suspicious, Sprackling told how he had ordered Morehouse to pay him a visit and refused to supply his ship with food, declaring he suspected the company to be pirates.

What is interesting about Sprackling's conduct is that, as the Searcher of Margate (a "limb" of the ancient administrative body of the Cinque Port of Dover, which had its own Court of Admiralty)¹⁹ and a local petty official, he was content not to take the matter any further despite the local suspicion and rumors of piracy. This may be because the ship's company sailed under a Swedish commission or letter of marque that authorized its holders to perform activities to hinder the "enemies" of Sweden, giving English authorities little jurisdiction. As C. M. Senior notes, "Some Englishmen tried to circumvent the law by obtaining foreign letters of marque and claiming that they should be treated as foreign privateers rather than pirates. However, this loophole was soon closed by royal proclamation and after 1605 all British subjects found serving abroad foreign privateers were unhesitatingly treated as pirates."²⁰

Rejecting the offer to purchase the plundered commodities offered by Morehouse (offering a glimpse of how both traders and pirates might peddle their goods on shore, ill-gotten or otherwise), Sprackling nonetheless appears to have accepted the gifts to his wife of wine, cheese, and dried fish. We get the sense here of coastal communities being complicit in this kind of exchange, where the boundaries between pirate and privateer meant little in the local marketplace.

Examined again twelve days later, Sprackling was required to answer questions about his personal connection with Herle by Valentine Dale, the

18. Ibid.

19. Introduction to *Select Pleas in the Court of Admiralty, 1547–1602*, ed. R. G. Marsden, Selden Society Publications, no. 11 (London: Quaritch, 1897), xxi.

20. C. M. Senior, *Nation of Pirates: English Piracy in its Heyday* (Newton Abbot: David & Charles, 1976), 8.

investigating judge of the Admiralty. Questioned as to why Herle owed him the money, Sprackling revealed that Herle had sought lodgings at his house the previous August and had stayed for thirteen consecutive days, borrowing around three pounds and running up a bill at Sprackling's table. He added that Morehouse had lodged there at the same time. Pressed further on details of Herle's position aboard the ship, Sprackling revealed how, three months previously, he had heard at Dover that Herle and Morehouse had been granted a license to go to sea. He revealed that he had seen the commission:

He seithe, that the License wherbye the said Herle & his cumponye went unto the seas, was grantyd to the said Herle & Morehowse, whiche he sawe but the contents thereof he understode not, because it was conceyved in Latten.²¹

The clerk transcribing the deposition recorded,

He seithe that he knoweth not what office or rewle the said Herle bare in the said shipp, Whethur he was owner, Capitaigne, peticapitaigne or howe he servid, But was joynid with the said Morehowse, who was namid Capitaigne as he thinckithe, Nor can tell howe longe the said Herle had ben there, nor what he had there don.²²

Finally, Sprackling reported how he understood that Herle and Morehouse had received their license from the King of Sweden at Middleburg.²³

Examined by the Admiralty authorities, Herle declared that his involvement in the ship's business was incidental and that he held no official position:

The said Herle saith further that the said shippes name was named the Tygre, Morehowse captayne in her, Wilson owner and victualer in her . . . nor that he had no parte of the sallt taken as is afore saide.²⁴

Herle stated in both his deposition and his diary that he disembarked the ship on 3 July and headed inland to London, arriving at St Mary Overie on 7 July. When he heard on 20 July that he was wanted for piracy, he hastened to

21. Luke Sprackling's deposition concerning William Herle, fol. 394r.

22. *Ibid.*, fol. 394v.

23. *Ibid.*, fol. 395r.

24. William Herle's deposition, undated, TNA: PRO HCA 1/38/18, fol. 18v.

Armagil Waad's house at Belsize in Hampstead to explain the circumstances and asked that Waad petition Sir William Cecil on his behalf. In January 1565, Herle and Waad had been granted a license for thirty years to make sulfur and oil using extraction methods of their own design, an industry that would benefit the English cloth trade.²⁵ Through this commercial connection, it seems that Herle could rely on Waad to support his claim that he had not participated in any piratical event because, in February 1566, Waad was still petitioning Cecil to look favorably upon Herle's case.²⁶

On 31 July, Herle handed himself in to Cecil and was probably imprisoned pending a further investigation, judging from the following comment by Waad to Cecil when he wrote to recommend Herle's suit: "Herle hath sayd that his adversaryes kepe him in prison whiles in the meane tyme they maye seeke owt some matter agaynst him havynge none nowe to laye to his charge."²⁷ Indeed, in concluding his diary with his current whereabouts, Herle protested his innocence of the charges against him, laid, he believed, by some unknown persons bearing a grudge against him:

thus have I simplye & frelye presented mi self yesterday to your honor . . . yf now, they can charge me ani thing further, I am prest to give a farther accompte & answer it every waye, hopyng that where they wold prevayll with untrue tales to so grett personages as the Cowncell of England be, & fylleng the world besyde with untrue rumors, they may the rather be tawght another tyme, by som admonition now, to be more modest in affyrmeng, where the interest of Princes doth somuche depend, not without som reparatyon of mi damages & discredyte sustayned heryn.²⁸

Furthermore, Herle was emphatic in declaring that, not only was he not aboard the *Tiger* when the piracy was committed, another ship was responsible for the piratical act in question:

25. *Calendar of Patent Rolls, 1563–1566*, vol. 3 (London: Her Majesty's Stationery Office, 1960), items 1144, 235.

26. William Herle to Sir William Cecil, 15 February 1566 (NS), MS Lansdowne 9, fols. 10r–11v, British Library.

27. Armagil Waad to Sir William Cecil, 7 August 1565, TNA: PRO SP 12/37/3, fols. 7r–8v.

28. William Herle to Sir William Cecil, 3 August 1565, fol. 225v.

Nether wyllsons ship is she that hath made this spoyll, nor yett those partyes within her ar to be towched . . . for a Crayer say they with a ship bote abborded them, where in dede that ship had never ani crayer attending uppon her, nor yett the mene to procure on, mary a ship bote they have, an unlykely thing notwithstanding to be used in such attempts.²⁹

Using details of the types of boats as a basis for a forensic description of why the *Tiger* could *not* have been the ship that committed the piracy, Herle inadvertently implicated himself by displaying his extensive knowledge of the lexicon of modest-sized maritime navigation and seafaring. Herle stated that the *Tiger* was sailing alone, without a crayer in tow, and that her ship-boat was in no condition (“unlykely”) to undertake piratical activity.³⁰

No records survive that determine the length of Herle’s imprisonment, and there is no evidence to suggest that Herle went to trial. One persistent problem of establishing with any certainty whether a person accused of piracy was *actually* aboard the ship during the piratical act is that any witnesses confirming this fact would necessarily incriminate themselves. The sentence of death dealt to pirates in later centuries was only applicable under civil law if the defendant confessed or if there were witnesses.³¹ Hence, it is difficult to ascertain whether Herle *was* engaged in the activity for which he was accused and imprisoned.

Another obstacle exists in trying to establish whether Herle was on board the ship when the alleged crime was committed. Herle claimed that he was on land during the period when the deed was done. Morehouse was equivocal as to whether Herle had been aboard. Sprackling had no idea of Herle’s whereabouts at the time of either the misdemeanor or the investigation, and he was clearly motivated by the prospect of reclaiming Herle’s debt. Sprackling’s mention of the Swedish commission and his reference to Morehouse and Herle’s lodging together suggests that the two men had a public and

29. Ibid.

30. A crayer was an old-fashioned, small trading vessel, and a ship-boat was a boat carried or towed by a ship (“crayer | crare, n.” and “ship-boat, n.,” *OED Online*, June 2012).

31. See John Baker, *Oxford History of the Laws of England, 1483–1558*, vol. 6 (Oxford: Oxford University Press, 2003). Baker notes that legal procedures against pirates were regularized in 1536 by introducing jury trials (210–11); in 1538, benefit of clergy was withdrawn for the offence of piracy, “imposing or reintroducing a mandatory death penalty for that particular felony” (539).

local connection, but, as Sprackling could not decipher the Latin of the document, it is possible that the license was counterfeit or lacking either one or both names inscribed upon it. It is on this crucial point, where Herle could have been formally identified as holding a commission from Sweden, that Sprackling's testimony disappointed the authorities. Significantly, Sprackling viewed the license from the King of Sweden with absolute authority, regardless of its incomprehensible script. It did not matter that he could not read it: Sprackling accepted its legitimacy without question, just as he accepted it as fact when told that Herle and Morehouse's names were inscribed on it.

It is here that the complex question over commission and license should be considered in detail. Whether operating under letters of marque or not, the ship on which Herle had previously sailed had allegedly robbed a neutral merchant vessel from Antwerp in the Thames area. Furthermore, the fact that Herle did not emphasize the legitimacy of his actions by pointing to his letters of marque from the Swedish king, which might go some way to vindicate him from guilt, suggests that he may well have disembarked the *Tiger* before the plunder had taken place. The protestations of Margaret of Parma and the Spanish ambassador in naming Herle as perpetrator of the offence are dated *after* Sprackling's deposition. Curiously, Margaret's letter only mentions Herle's name, yet Sprackling details the names of others, including both Morehouse and Wilson. Although there is no extant evidence to reveal how Margaret was alerted to Herle's reported participation in this incident, it is possible that Herle's name was leaked to Margaret by Guzman de Silva, the Spanish ambassador.

It seems that the Elizabethan authorities were determined to make an example of investigating the offence, not least as the Swedish letters of marque would cancel any strategic outcome or economic profit normally required by the English Crown of a privateer. Thus, Herle's provisionally legitimate status as a "privateer" (if his name *had* been inscribed on the Swedish commission) was immediately downgraded to "pirate." As Barbara Fuchs notes, "the trajectory from privateer to pirate is somewhat of a state fantasy in the first place—the pirates are always already there, before the state uses them and also once it no longer has any use for them."³²

In fact, as a result of attacking neutral shipping, Herle's putative Swedish license was void, invalidating his immunity and returning him to Admiralty jurisdiction. Indeed, there is even a question over whether his Swedish license was valid to begin with. As K. R. Andrews notes,

32. Barbara Fuchs, "Faithless Empires: Pirates, Renegadoes and the English Nation," *English Literary History* 67 (2000): 46.

Were English subjects lawfully entitled to accept the commission of a foreign prince? There were no certain answers to these and many similar questions. . . . A captain without letters of reprisal would not be treated as a pirate so long as he confined his attentions to [enemy] commerce, though a properly commissioned man might be indicted for piracy if he spoiled an English or neutral vessel.³³

In a similar way, Martin Frobisher's early career also negotiated this complicated problem of state authorization. Frobisher, like other infamous figures in the Elizabethan naval fraternity, was deeply involved in piracy and privateering before his better-known marine exploration. Arrested and imprisoned on numerous occasions for seizing and selling stolen goods up and down the English coast, Frobisher then secured commissions from Cardinal Chastillon to target French Catholic shipping (1566) and from the Prince of Orange to capture Spanish vessels (1569). However, Frobisher appears to have been indiscriminate about the religious or national affiliation of the ships he targeted and was arrested in 1569 for the spoil of French ships carrying English mercantile goods.³⁴ Released from the Marshalsea prison, he soon entered the queen's service and received a commission to search ships for prohibited goods and to capture pirates. Nonetheless, in 1573, a warrant for his arrest for piracy was issued for the capture of a French ship laden with Portuguese goods.³⁵

Frobisher's example illustrates the fine line between state-sanctioned spoil and plain piracy. Even a letter of commission from the queen might not protect the privateer who plundered goods from a hostile or enemy ship, especially if delicate peace or trade negotiations were being held with ambassadors from that nation. As R. G. Marsden states,

It is difficult to say how far [Frobisher's] operations between 1563 and 1573 were legal, or how far piratical. Though arrested three or four times upon the charge of piracy he never seems to have been put upon his trial upon the criminal charge. Usually, if not always, he was provided with a commission, either from a foreign prince or from his own sovereign, to capture ships,

33. Andrews, *Elizabethan Privateering*, 5.

34. R. G. Marsden, "The Early Career of Sir Martin Frobisher," *English Historical Review* 21, no. 83 (1906): 541.

35. *Ibid.*, 542–43.



Martin Frobisher (knighted in 1588), privateer and explorer. © Trustees of the British Museum.

stay pirates, or search for prohibited goods. . . . Though often arrested he never stayed long in prison; arrest seems to have been merely a move in the diplomatic game.³⁶

Equally, one senses that the official investigation into Herle's movements off the coast was singularly prompted by Spanish demands. Authorities might have quietly dropped the enquiry had Margaret of Parma and the Spanish ambassador not brought Herle's involvement to their attention.

In terms of protecting the privateer during his economic venture, how "stable" are these letters of marque and commissions to capture enemy shipping? If a vessel had to navigate, not only the treacherous channels and passages of her tidal home waters but shifting domestic and international diplomatic policies as well, what chance was there of remaining on the right side of the law and not breaching the remit of the commission? In 1565, at the moment when Herle was accused of the piratical felony against an Antwerp vessel off the North Foreland of Kent, English privateering was in a nascent stage of being simultaneously a separate and mercenary adjunct to the state-operated naval organization and an umbilical, authorized arm of the same. As a mercenary adjunct, it was dangerous in that it held the possibility of operating independently of state authority; as an authorized arm, it was tiresome because it required administrative supervision and support. As Christopher Harding observes,

In formal terms, privateering was a means of engaging in warfare at a time when most countries' navies were not equipped for large-scale or sustained military action. Less formally, the practice also served the economic interests of some countries during a period of maritime economic expansion and of colonial development.³⁷

Herle's presence aboard the *Tiger* and with a financial interest in the spoils, whether legally recovered or otherwise, rendered him party to the activity undertaken by Morehouse. In this interstice of uncertainty, the sudden flurry of paperwork and documentation examining Herle's involvement in this incident is commensurate with his indefinable and problematic status.

This question mark surrounding documentation at sea and on land is powerfully illustrated by the dearth of surviving paperwork aboard ships at

36. *Ibid.*, 544.

37. Christopher Harding, "*Hostis Humani Generis*—The Pirate as Outlaw in the Early Modern Law of the Sea," in Jowitt, 24.

this time. Vessels were not required to maintain log-books or journals recording anything more than their navigation measurements and relative position, and there is little evidence of Elizabethan captains keeping a manifest of their sailors.³⁸ Thus, in this gulf of administration, when documents do appear in the form of commissions and letters of marque, they are endowed with a preternatural significance and authority. Herle makes sure to punctuate the diary of his peregrination around the south coast with references to official letters, receipts, and bonds:

Conferryng there with willson I perused the shippes wrytengs, bycawse these were in the dutche tong, I departed agayn towards London, but in the way was stayed by the vycadmiralls man as suspect to be on of willsons ship, & theruppon provyng that to the contrarye by willsons lettre with the justificatyon of the rest, I offred to the vyce admirall to com up to mi L. Admirall.³⁹

Herle's account of his journey is littered with references to documents, paperwork, and significant figures in the local community, suggesting that he was aware of the processes and routes by which the Admiralty and government authorities would pursue the accusations of Margaret of Parma and the Spanish ambassador.

It is difficult to draw a clear conclusion from the surviving documents relating to this incident in English coastal waters. Herle's claims of innocence, Margaret of Parma's specific accusation of Herle, Sprackling's quest for unpaid debts, and the authorities' ineffectual attempt to chase the perpetrators result in a cache of fascinating archival documents but few answers.

I suggest that there are three key factors that contribute to our understanding of this event and mid-sixteenth-century piracy in general. First is Herle's position within the Elizabethan community. With patronage links to key political figures, an impressive portfolio of skills that could be deployed to a multitude of purposes, and a lifestyle engineered toward mobility and the maximizing of business opportunity, Herle was a flexible and enterprising individual. His intelligence credentials and activity rendered him available for suspicion should his name be raised in relation to criminal offences of the kind under examination here.

38. I am grateful to Lisa Jardine for her comments on this point.

39. William Herle to Sir William Cecil, 3 August 1565, fol. 220v.

Second is the regulation (or lack thereof) of behavior upon the open sea. Despite his protestations to the contrary, Herle's rejecting the offer of the restitution of his debts by William Wilson, no matter the means for procuring the monies or goods in kind, is unlikely. Herle's presence aboard the *Tiger* to recover the debt (a fact he confirmed) suggests that being on board a ship during a piratical act was a practical possibility. The space of the marine vessel is a porous place, with traffic disembarking and embarking without necessarily being in view of Admiralty authorities. The lack of available witnesses to piratical crimes rendered any official investigation largely ineffective. Christopher Harding reflects on this indefinable status in terms of initiating legal process upon marine felonies: "the location of the piratical act on the high seas does in a geographical sense place it in a 'jurisdictionless' zone, within which the normal conditions of jurisdiction do not apply."⁴⁰

Third is the likely event that authorities, inundated with investigations into accusations of piracy, pragmatically turned a blind eye to a large proportion of offences, especially as local officials, whose jobs were to pursue the investigations, were complicit in the local commerce resulting from the illicit activity. Due to the politically sensitive trade negotiations at Bruges, the Privy Council took Margaret of Parma's demand seriously and made an example of Herle by demanding that the High Court of Admiralty conspicuously examine this case. In his bid for financial solvency (a common thread throughout his life, which habitually resulted in chaotic and unfortunate circumstances), Herle had transgressed the fine line between being on board a pirate ship and being on board a ship as a pirate.⁴¹

40. Harding, 22.

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