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Abstract

During the War of 1812, hundreds of private armed vessels, or privateers, carrying letters of marque and reprisal from their respective governments, served as counterweights to the navies of Great Britain and the United States. By 1812, privateering was acknowledged as an ideal way to annoy the enemy at little or no cost to the government. Local citizens provided the ships, crews and prizes while the court and customs systems took in the appropriate fees. The entire process was legal, licensed and often extremely lucrative. Unlike the navy, privateers were essentially volunteer commerce raiders, determined to weaken the enemy economically rather than militarily. So successful were they, that from July 1812 to February 1815, privateers from the United States, Britain, and the British provinces of New Brunswick and Nova Scotia (as well as those sailing under French and Spanish flags) turned the shipping lanes from Newfoundland to the West Indies, Norway to West Africa, and even the South Pacific into their hunting grounds. In the early months of the war, privateers were often the only seaborne force patrolling their own coasts. With the Royal Navy pre-occupied with defending Britain and its Caribbean colonies from French incursions, there were relatively few warships available to protect British North American shipping from their new American foes. Meanwhile, the United States Navy had only a handful of frigates and smaller warships to protect their trade, supported by 174 generally despised gunboats. The solution was the traditional response of a lesser maritime power lacking a strong navy—private armed warfare, or privateering.

Introduction

The name privateer refers to both the ships and the people who sailed in them. Operating independently of the navy, and occasionally of the law, privateers were the weapon of the mercantile community who stood to lose the most in a war against trade. Conducted by businessmen for economic reasons, privateering was practicable only as long as it was considered worth the investment. Although more than 600 American privateers were licensed, only 27% of them made more than a single cruise, indicating both the large number of lost or unsuccessful vessels and the owners' low tolerance of risk.¹ Nevertheless, by issuing letters of marque entitling privately-owned vessels to attack enemy commerce at sea, both the United States and British North America created seagoing militias which proved surprisingly effective throughout the War. Yet, no sooner had privateering proven its worth than it was over. This paper will look at private-armed warfare along the Atlantic coast during the last international conflict in which it played a major role.

Dating back to the Middle Ages, privateering was a strictly regulated, legitimate form of licensed warfare which, although often condemned as no better than piracy, was actually governed by international law and adjudicated through admiralty and vice-admiralty courts (in British colonies) especially created for the purpose. Also known as commerce raiding or '*guerre de course*', privateering focused on capture rather than combat, targeting well-laden merchant vessels that were almost always smaller and more lightly armed than the privateer. This was not due to a want of bravery on the part of the privateers, but rather to the economic reality that any exchange of gunfire inevitably resulted in damage to the prize and cargo, which, in turn, reduced its value at auction and thereby, the amount of prize money earned by the crew. Similarly, damage to the captor meant costly repairs and lost sailing time while death and injury to the crew reduced morale and enthusiasm for another cruise. Privateering was a business based on a calculated assessment of risk versus revenue. As long as there were profits to be made, privateers put to sea, encouraged by a legal process that was generally quick, clear, conclusive— and not surprisingly, tended to favour the captor.

Over six centuries, the court process around privateering evolved into an effective and efficient means of determining whether a capture had been legally made, confirming enemy ownership of ship and/or cargo and passing sentence accordingly. Every captor pleaded his case with a document known as a libel. Filed by the privateer owners, it contained details of the capture and stated the grounds for condemnation

as prize. These grounds included the existence of a state of war, the privateer's possession of a bona fide letter of marque and reprisal, and enemy ownership of the prize. Since all of this information was 'true, publick and notorious', the judge was urged to condemn the ship and its cargo to the libellant as 'good and lawful prize' according to the Law of Nations.² Notations on many of these court documents indicate that the decision to condemn or release a prize took no more than a few weeks, remarkably swift when compared with the regular judicial process of the time.

The prize court system was unique in that the case was against the ship itself, '*in rem*', rather than the owners (since they were unlikely to be present at either the capture or in the court). The judges were skilled in civil rather than criminal procedure, and because of the complicated nature of international maritime law, there was no jury.³ The judge based his decision solely on the captured ship's papers supported by affidavit testimony from one or more crew members questioned according to a fixed set of Standard Interrogatories. Speedy process was essential for both parties because of the danger of spoilage or damage to cargoes, and the costly interruption of the voyage due to capture. Refined over time, the entire prize process from arrival in port to judgement could take as little as three to four weeks, although more complicated cases occasionally dragged on for years.⁴ Owners or investors unhappy with the decision could appeal to the High Court of Admiralty in Britain or the Supreme Court in the United States. Whether reluctant to waste more time in court or actually satisfied with the verdict, very few plaintiffs bothered to contest the judges' decisions. Most appeals came from Spanish, Portuguese and Swedish claimants who were nominally neutrals and, as such, exempt from capture.

War of 1812

By 1812, privateering was firmly established and widely recognized as a means of helping one's country while helping oneself. State navies, under orders to protect national interests at all times, assumed both defensive and offensive combat roles once war was declared. Privateers, on the other hand, fell within the context of economic war and were under no obligation to attack or defend anything. Damaging enemy property and harassing their trade at sea could be as destructive as a naval broadside, but the main value of privateers lay in their siphoning enemy forces away from blockade or combat duties in order to protect merchant convoys, in causing insurance rates to rise, and in depriving markets of badly

needed commodities that became increasingly more expensive as they became harder to obtain. That privateer goals coincided with national objectives was fortuitous rather than deliberate in most cases. Profit not patriotism was the *raison d'être* of privateering, and the former always took precedence.

Once a formal declaration of war set privateering in motion, it was followed by a *Prize Act*, which empowered the government to issue letters of marque.⁵ In the British provinces of New Brunswick and Nova Scotia, commissions were issued by the lieutenant governors 'to suitable persons under adequate safeguards', while in the United States, local customs officials distributed letters of marque to 'respectable' applicants on behalf of the Secretary of State. A letter of marque detailed the name and type of vessel being commissioned, the tonnage, owners, number of crew, guns and the name of the captain and first lieutenant. It authorized the British holder to 'apprehend, seize and take, the ships, vessels and goods' belonging to the US or citizens thereof, and their American counterparts to 'subdue, seize and take any armed or unarmed British vessel, public or private'.⁶

The similarity in wording and intent reflects the influence of British practice on American privateering. The two systems were practically identical. Privateers were required to keep a journal of their cruise; treat foreign nationals, captured passengers and prisoners of war respectfully, according to international law; avoid any theft or interference with the cargo (known as breaking bulk); prevent fraud, smuggling, or any other financial or physical transgressions. Because privateering could be a bloody business, 2 per cent of the net amount of all prize money after payment of court and other costs went into a Patriotic Naval Fund for the support of widows and orphans as well as those wounded or disabled in the course of their privateering activities. In 1812, this fund amounted to \$8,677.99, and typical awards were \$10–12 per month for the widow of a privateer captain or \$4–6 per month for debilitating wounds or the loss of a limb.⁷ To ensure good behaviour at sea, both sides required sureties from at least two investors (usually not the owners); \$5,000 for a crew of up to 150 men, and \$10,000 for a larger vessel.

In effect only against a specified enemy, each letter of marque was good for a single cruise of three to six months and applied only as long as the key components of the commission were in place. For example, if the captain changed, or the vessel was sold or renamed, or changed its rig or completed its cruise, a new letter of marque was required. Because there were fewer than 50 privateers in Atlantic Canada, their commissions were not numbered, but the more than 600 American private

armed vessels operating between June 1812 and February 1815 held at least 1172 letters of marque.⁸ This reflects the fact that while just over 60 per cent of American privateers applied for only one commission, many others made two or more cruises and the most successful prize makers, such as *America* and *Fame* (Salem, MA), *Chasseur* (Baltimore, MD), *Dash* (Portland, ME),⁹ *Industry* (Lynn, MA), *Fox* (Portsmouth, NH), *Rattlesnake* (Philadelphia, PA), *Saucy Jack* (Charleston, SC), *Snap Dragon* (New York, NY) and *Yankee* (Bristol, RI) held four or more commissions, indicating their ongoing profitability. Among Atlantic Canada privateers, only the *General Smyth* (St. John, NB), *Retrieve* (Halifax, NS) and *Liverpool Packet* and *Retaliation* (Liverpool, NS) undertook three or more cruises.

A letter of marque legally distinguished a privateer from a pirate. Although the line between the two was occasionally thinner than the paper the commission was printed on, a letter of marque authorized the vessel and its crew to capture enemy property within the guidelines of the *Prize Act* and the internationally recognized laws of war. Pirates, on the other hand, operated outside the 'line,' attacking the ships of whatever nation came to hand and subjecting the fairness of their captures to no judgement but their own. Since pirates denied allegiance to any state, international law proclaimed them enemies of all mankind and, if captured, likely to be hanged. Needless to say, privateers were anxious to avoid any confusion over their status and carried numerous copies of their commission to ensure that there was one left aboard every prize they captured.

One advantage of privateering over regular trading was that a letter of marque was supposed to protect colonial privateers from impressment by British naval vessels, although there were exceptions. For example, in April 1813, the Halifax privateer *Crown* captured the Boston brig, *Sibae*, while HMS *Atalante* (F. Hickey) was in sight. Hickey's claim of joint capture was loudly rejected by privateer captain, Solomon Jennings which angered Captain Hickey to the point of pressing two of *Crown's* men and scaring two more into deserting at the next port.¹⁰ A letter of marque was also meant to ensure that captured privateers would be treated as prisoners of war and nominally entitled to parole and exchange like naval personnel. Of course, this 'courtesy' was only applied to privateers in vessels of 14 guns or more, which ruled out 90 per cent of American letter-of-marque vessels and all but three from the Atlantic provinces. Some privateers captured early in the war were exchanged after swearing not to carry arms, but for the hundreds of American privateers who languished for months, if not years, in British prisons in Halifax, the West Indies and England, the reality was far different.

Naval officers and crews were always exchanged before privateers, especially by the British who had a greater need of manpower, and as naval crews were so much larger, there were few opportunities for non-naval captives. The number of privateer prisoners of war varies but one estimate of approximately 2,650 British naval seamen versus 6,000-7,000 Americans, mostly privateers or merchantmen, is likely fairly accurate.¹¹ Ira Dye's study of American maritime prisoners of war suggests that 14 per cent of American naval and private seamen (approximately 14,000 men) were held as prisoners for at least part of the war.¹²

A letter of marque or commission was essential for seizing enemy prizes, however, not all vessels carrying letters of marque were considered serious privateers. With a letter of marque in hand, a captain had two choices. He could undertake a normal trading voyage supplemented with a few extra guns and hire a slightly larger crew to work for wages. In that case, if a likely prize sailed into view, his letter of marque ensured title to the captured ship and cargo, if the court agreed. Alternatively, he could abandon any attempt at trade and cruise as a privateer with a much larger crew working for agreed-upon shares of whatever prizes they could capture. Since most large merchant ships already carried some form of defence against pirates or other predators, the transition from trader to privateer was a relatively simple process of reinforcing the deck to support more guns, increasing the crew space to carry additional hands, and securing the powder magazine. As soon as the United States declared war on Great Britain, ship owners, merchants and maritime investors on both sides raced to convert existing vessels, construct new ones or re-commission captured enemy ships as privateers. Similarly, seamen, fishermen and coastal captains eagerly signed on to win their share of the fabulous sums of prize money that were advertised as theirs for the taking.

Within days of President Madison's declaration of war on 18 June, American privateer owners jockeyed for commission number one and began nagging their customs officers for letters of marque to be the first out of port. Meanwhile, frustrated New Brunswickers and Nova Scotians were forced to wait until 13 October, when Great Britain finally realized that there was no chance of reconciliation and responded to the American declaration of war with one of its own. This discrepancy in timing gave American privateers a serious advantage in the prize stakes in the first few months of the war. While the Halifax Court of Vice Admiralty processed over 150 prize cases in 1812, only 25 were taken by three privateers, 21 of them by the *Liverpool Packet*.¹³ Along the eastern seaboard, however, American admiralty courts were kept busy adjudicating at least 400 prizes

carried in by 227 privateers over the same period.¹⁴ This figure does not include the many prizes known to have been recaptured, ransomed, destroyed or lost on their way back to port.

Once news of the British declaration of war reached Atlantic Canada, the pace of privateering picked up and 18 private armed vessels from New Brunswick and Nova Scotia accounted for 110 of 359 cases in 1813 or 35 per cent. It was a slightly different story for American privateers. Although still enthusiastic about prize making, slightly fewer American privateers actually sent in prizes towards the end of 1813. Over 270 commissions were issued to 207 privateers which captured roughly 450 prizes, although a third of them were either recaptured or destroyed. The increased number of prizes burnt or destroyed rather than sent into port for adjudication reflects the gradual tightening of the British blockade of North America and the realization that manning prizes had become too dangerous to be cost-effective. Chances of a small, four- or five-man prize crew reaching port were so slight, especially for ships captured in European and African waters, that it was safer to divest a ship of its crew and cargo and destroy it. Not only did this strategy reduce privateer profits from the eventual sale of the captured ships, it also meant relinquishing more prizes to serve as cartel vessels to carry captured crews into various ports. It did, however, reduce the prospect of recapture by the enemy's navy or privateers and deny the enemy whatever cargoes the captors could carry home for eventual adjudication. Thanks to the British blockade of North America, by the end of 1813, sea traffic was reduced to little more than a trickle and prey grew scarce for privateers on both sides of the conflict.

In 1814, only 123 American privateers requested commissions (half the previous year's tally) and a mere handful took out a second commission for another cruise. They captured roughly 700 prizes, but again, many were recaptured, ransomed, given up or destroyed. In a December 1814 report to the British House of Commons, Lloyd's insurance underwriters stated that the United States had captured 1175 British vessels since the start of the war although 373 of them (approximately one-third) had been recaptured or released. The suggestion of one in three prizes actually reaching port is probably not far off.¹⁵ Meanwhile, in the British colonies to the north, about 200 cases passed through the Halifax court in 1814, 60 of them brought in by 10 different privateers.

By 1815, although the privateers were not yet aware of it, the war was over. This, however, did not prevent at least sixteen American privateers from requesting new commissions, even though only 60 prize vessels actually reached port; the rest were recaptured, released,

Table 1 Letter of marque vessels taking prizes during the War of 1812.

| Date | US Letters of Marque | Prizes | USN Prizes | NB & NS Letters of Marque | Prizes to Halifax | RN Prizes To Halifax |
|--------------|----------------------|-------------|------------|---------------------------|-------------------|----------------------|
| 1812 | 227 | @ 400 | @ 35 | 3 | 25 | 128 |
| 1813 | 270 | @ 450 | @ 63 | 18 | 110 | 231 |
| 1814 | 123 | @ 600 | @ 69 | 10 | 60 | 138 |
| 1815 | 16 | @ 20 | @ 5 | 4 | 6 | 8 |
| TOTAL | 834 | 1470 | 162 | 35 | 201 | 505 |

My research indicates that during the War of 1812, just over 600 American privateers were issued at least 1,172 letters of marque. Of these, Table 1 records the number of letter of marque vessels that took prizes each year. The number exceeds 600 because some privateers took prizes in more than one year or under more than one letter of marque, while others took no prizes at all. Although *Niles' Weekly Register* lists 1634 prizes, some are duplicates or were lost or recaptured by the British and others were not recorded by *Niles*. Since American prizes were adjudicated in various District Courts, it is almost impossible to determine how many prizes were actually condemned. The figures given are estimates which serve to indicate the volume of British shipping captured by American privateers and letters of marque vis-à-vis the American navy. The figures for prizes carried into Halifax by New Brunswick and Nova Scotia privateers and the Royal Navy are more accurate, since they are based on the Vice-Admiralty Court records from Halifax. (LAC RG8, IV, Vols. 73–115). The British colonies licensed at least 44 private armed vessels, with some making no prizes, others having modest success and the *Liverpool Packet* capturing at least 50 vessels. Many more American ships were condemned in Vice-Admiralty courts in Newfoundland, the Caribbean, and of course, England.

ransomed or sent in as cartels. Only four Nova Scotia privateers thought it worth continuing to prowl the icy waters of the North Atlantic in 1815, but their half-dozen prizes were all condemned by mid-February.

There is no doubt that privateers served as an offensive weapon, sometimes extremely offensive, according to various newspapers. Unlike the navy, they operated independently, only occasionally cooperating with one another, but always with one eye on the horizon and the other on the bottom line. The objective was to repay the owners' original investment on the first cruise and make their fortune on succeeding cruises. Given the large number of one-time cruises, it would seem that this goal was not easily attained. Even when a prize was taken, profits had to be shared between the owners and their officers and crew, with sales sometimes barely covering the court costs. Privateering investors usually spread the risk by acquiring shares in several vessels, but as the

war went on and prizes began drying up, the interest in privateering declined accordingly. They understood that if one type of commercial activity ceased to be profitable, there were other ways of making money.

One option was through licensed trade. During the early months of the war, the need for wheat and other stores to replenish British forces in Spain, Portugal, the West Indies and British North America, led to the issuing of hundreds of licences to unarmed American ships willing to carry food and non-military supplies to what amounted to enemy forces. Although decried as treasonous by many American patriots and forbidden by law, at least 500 licences were approved by the British Board of Trade (signed by Lord Sidmouth) by August 1812. Until Britain made them illegal in November 1812, licences continued to be issued by Sir John Sherbrooke, the Lieutenant Governor of Nova Scotia, Admiral Herbert Sawyer, Commander of the North American Station, and Andrew Allen, the former British Consul in North America.¹⁶ So popular that they were frequently counterfeited at home and abroad, licenses were defended by no less a practical patriot than Thomas Jefferson, who argued that since the British government was going to pay someone to carry supplies to their troops in Spain, it might as well be Americans. This would not only keep British soldiers busy in Europe, but it would also support a struggling US economy whose taxes would be spent against the British. Aware that American merchants felt less than whole-hearted commitment to the War, especially at the outset, Jefferson understood that 'to keep the war popular, we must open the markets'.¹⁷

For those with fewer scruples, there was always smuggling. This time-honoured practice of evading excise duties had been honed to a fine skill particularly by merchants on either side of the Maine-New Brunswick border. They refused to let war upset traditional trading patterns. Privateers, in fact, were among the worst offenders. The number of complaints, spurious commissions and pre-arranged captures among New Brunswickers forced Lieutenant Governor George Stracey Smyth to stop issuing letters of marque early in 1813. Thereafter, anyone applying for a commission had to go through Nova Scotian authorities. Although government efforts failed to halt smuggling in the Passamaquoddy Bay area, fewer private armed vessels participated in it as the war progressed. This might also have been a result of the customs collector's compliance with Secretary of State, James Monroe's decree of 21 January 1814 forbidding collectors to issue letters of marque to vessels carrying fewer than 20 men, since it was the small whale boat privateers who could most easily hide in the many small harbours of Passamaquoddy Bay.

If a letter of marque was a ticket to the lottery, winning still remained a matter of skill and luck. Successful captains, such as Samuel C. Handy of the Salem privateer *Fame*, had no trouble gathering crews for at least four cruises. Ambitious sailors could move from smaller to larger, more powerful ships, rising, like Joseph Boyer of New York, from master of the 115-ton schooner *Swallow* to sole owner and master of the 215-ton *Spark*. Privateer vessels came in all rigs and sizes from the 555-ton letter-of-marque ship *Jacob Jones* of Boston, credited with two prizes from Canton filled with gold dust and opium worth more than \$90,000, to open boats like the tiny, 2-ton *Lark* from Frenchman's Bay, ME, which was carried into Portland on the deck of its 140-ton prize, *Traveller*.¹⁸ Isaiah Hook, the local Collector of Customs, strongly suspected the 'David and Goliath' story of the *Lark* had more to do with a pre-arranged capture than a lucky prize, but could do nothing except recommend that its licence be revoked.

The most common American privateers were 100- to 200-ton schooners carrying 80 to 100 men as privateers and 20 to 50 men as letters of marque.¹⁹ Among these was the *Comet*, Captain Thomas Boyle, whose 30 prizes included the *Hopewell*, worth \$150,000 alone. Hunting smaller prey closer to home, British provincial privateers tended to be less than 100 tons with much smaller crews. The *Liverpool Packet*, Nova Scotia's most successful privateer with a career total of at least 50 prizes conservatively estimated as worth a million dollars, was a 67-ton schooner with 5 guns manned by 40 men. In 1813, the *Liverpool Packet*, formerly the scourge of the American coasting trade around Cape Cod, was captured by the privateer *Thomas* of Portsmouth, New Hampshire. Re-commissioned as a privateer under two different names, she failed to take a single prize in five months under the American flag. Once recaptured by the Royal Navy and re-purchased by her original owners, however, she went on to cruise successfully, taking another dozen prizes as the *Liverpool Packet* once more.

Reluctant to risk their ships in battle, privateers resorted to various stratagems in order to get close enough to their intended prey to determine the likelihood of a capture. The men did not wear distinctive uniforms and regularly flew false flags to deceive enemy lookouts. On more than one occasion, they even deceived their own countrymen and exchanged shots before they managed to raise the same flags and recognize each other.²⁰ With most of the crew concealed below decks, a privateer looked much like any other merchant vessel, a resemblance further confused by the way privateers captured by one side were quickly redeployed against their former owners. For example, 18 captured American

privateers were turned against their former owners as New Brunswick and Nova Scotia privateers.

Comparing the privateering efforts of American and British colonial privateers is difficult given the differences in scale and reach between the two. The numbers of private armed vessels, approximately 600 versus 44, resulted in an equally disparate number of captures, perhaps 1600 as compared to 200. If these numbers are averaged out, the American privateers captured 2.6 prizes apiece while the New Brunswickers and Nova Scotians averaged 4.4 each or nearly twice as many. Yet the net impact of privateers on both sides was probably similar. With fewer ships at sea, American trade suffered proportionately higher losses than did the vast British mercantile fleet, despite all the prizes captured by so many hundreds of privateers and letter of marque vessels. Privateer actions were widely reported in the newspapers and helped boost morale early in the war, but reports of their defeats, losses and recaptures had the opposite effect. As far as the victims were concerned, every prize represented several problems: an economic loss of ship and/or cargo to several investors, men and officers deprived of their liberty, consumers forced to do without necessities and insurers having to recoup their losses at the expense of future voyages. For every captain or cabin boy who made his fortune as a privateer, there were many more who returned home empty-handed, or not at all. Aside from capture and imprisonment, many privateers were lost at sea through storms, accident, disease or combat and were never heard from again.

Meanwhile Britain attempted to strangle any American trade the privateers failed to capture through the twin tourniquets of compulsory convoy and blockade. After 31 July, 1812, all shipping from Britain to North America and the West Indies was required to travel in convoy. A few weeks later, the Lt. Governor of Nova Scotia ordered all vessels departing from Nova Scotia to travel in convoy as well. Compliance was not an option, and those merchants who contemplated sailing alone found that doing so invalidated their insurance.²¹ Like German submarine 'wolf packs' in the Second World War, privateers began hunting together, in the hope of distracting the guard ships long enough to enable one of them to cut out a likely prize. Although some merchants chafed at it, the convoy system frustrated all but the most determined privateers.

Even more destructive to both American trade and American privateers was the British blockade. Designed to put pressure on the pro-war southern states first while leaving the more ambivalent northern states alone, the British blockade slowly moved northwards strangling trade along the east coast of North America. Beginning on 26 December,

1812, the British government proclaimed a blockade of the Delaware and Chesapeake Bays, although the fleet of a dozen vessels under Sir George Cockburn did not actually arrive off Hampton Roads until February 1813. A month later, the blockade had moved northwards as far as Rhode Island, and by 26 May the Prince Regent had ordered a strict and rigorous blockade of New York, Charleston, Port Royal, Savannah and Mississippi.²² By 1814, New England ports had fallen under the blockade and goods were becoming both scarce and dear. Markets dried up as incoming trade was effectively sealed out and even prizes ceased as privateers and US naval vessels found themselves locked in. The effect on the American economy was swift and dramatic. Exports dropped 10% from \$61 million in 1811 to \$6.9 million in 1814, imports plummeted 35% from nearly \$58 million in 1811 to \$13 million in 1814 and customs revenue was cut in half from \$8.2 million in 1811 to \$4.6 million in 1814.²³

Once privateering ceased to be a profitable commercial alternative to shipping, it lost its appeal. The widespread hardship and annoyance it generated may have helped promote an end to the war, but it was the British blockade that was the deciding factor in the maritime War of 1812. It 'caused material losses to the American people a hundred times greater than the American Navy and privateers were able to inflict upon Great Britain during the entire war'.²⁴

While privateering may have been as 'true, publick and notorious' as the War of 1812 itself, once peace made trade a viable economic prospect, privateering was over. The development of iron hulls, the use of specialized weapons like torpedoes, rockets and heavy guns, and the advent of steam-powered vessels during the nineteenth century, meant that privately-owned merchant ships could no longer compete with powerful naval vessels in the war against trade. In April 1856, the Paris Declaration of Maritime Law ended both the Crimean War and privateering. Signed by most of the nations of the day (except for the United States, Spain, Mexico and Venezuela), it made privateering illegal and declared 'Privateering is, and remains, abolished'.²⁵

Notes

1 The generally accepted number of American privateers based on various sources ranges from 517 to 526. My research indicates that at least 606 American privateers and letter- of-marque

vessels received commission numbers or were referred to by more than one source. Repeat figures for Nova Scotia and New Brunswick privateers were slightly higher with nearly half (40 per cent) of the 44

- provincial privateers making more than one cruise.
- 2 Libels were also known as Allegations in a Prize Cause in the Nova Scotia Court of Vice Admiralty and accompanied every case.
 - 3 American admiralty courts were regulated by the individual states and some were initially reluctant to consider a court without a jury. During the Revolutionary War, attempts were made to have juries determine prize cases, but finding a jury with adequate expertise proved too cumbersome and time-consuming and the practice was abandoned. *Prize Cases decided in the United States Supreme Court 1789-1918* (Oxford: At the Clarendon Press, 1923), Vol. 1, 4. Also Carl Ubbelohde, *The Vice-Admiralty Courts and the American Revolution* (Chapel Hill, NC: University of North Carolina Press, 1960), 195-99.
 - 4 William McFee, *The Law of the Sea*. (Philadelphia, PA: J.B. Lippincott & Co., 1950), 120. The case of the Charleston privateer, *General Armstrong*, attacked by British warships in the neutral Portuguese harbour of Fayal in 1814, took 40 years to settle.
 - 5 The American *Prize Act*, 26 June 1812 (2 Stat. 759).
 - 6 Letter of marque, *Fly* (Nova Scotia) Library and Archives Canada (LAC), RG8, IV, Vol. 93, *Packet*; letter of marque *America* (Salem, MA) LAC, RG8, IV, Vol. 133, *Paragon*.
 - 7 Most of these regulations were either outlined in the *Prize Act* or issued as additional instructions as required. The payment of privateer pensions is recorded in National Archives records RG 217 of the US General Accounting Office and highlighted for Baltimore privateers in Jerome R. Garitee, *The Republic's Private Navy: The American Privateering Business as Practiced by Baltimore during the War of 1812* (Middletown, CT: Wesleyan University Press, 1977), assorted footnotes.
 - 8 American letters of marque were allotted in sequences of five to ten numbers depending on the size of the port and the number of requests expected by customs collectors. Baltimore Customs Collector James H. McCulloch issued Commissions 1 through 10 (although 11 in number) to accommodate an angry privateer. President Madison wished to recognize the Revolutionary War services of Joshua Barney, captain of the *Rossie* with the first letter of marque but complaints of favouritism by George Stiles, also of Baltimore and owner of *Nonsuch*, meant that both received commission number one, although Stiles' is dated one day earlier. US National Archives and Records (NARA) RG45, E575, Vol. 1–6.
 - 9 During the War of 1812, Maine was still a district of Massachusetts, but for convenience various locations in what became the state of Maine are identified as ME in this paper.
 - 10 LAC, RG 8, IV, Vol. 96.
 - 11 Patricia Crimmin, 'The Impact of the Exchange of Prisoners of War in the Defense of Shipping in the Americas, 1812-14' in Clark G. Reynolds (ed.) *Global Crossroads and the American Seas* (Missoula, MT, Pictorial Histories Publishing Co., 1988), 148.
 - 12 Ira Dye, 'American Maritime Prisoners of War, 1812-1815' in T. Runyan (ed.) *Ships, Seafaring & Society*. (Detroit, MI: Wayne State University Press, 1987), 293. The Admiralty process regarding American prisoners of war was relatively straightforward since the Royal Navy had been capturing and managing French sailors since 1793.
 - 13 The privateers were the *Liverpool Packet* from Nova Scotia, *General Smyth* from Saint John, New Brunswick, and *Fly* from Newfoundland.
 - 14 Data for Halifax Vice Admiralty Court prize cases from Library and Archives Canada, RG8, IV - Vice-Admiralty Court, Halifax, 1784-1818, Prize Court Records (Vol. 73–150). American prize data based on *Niles' Weekly Register* (Baltimore, MD) Vol. 3, No. 53, 5 September 1812, p.10 to Vol. 8, No. 206, 12 April 1815 and *Lloyd's List*, (London) from Vol. No. 4689, 31 July 1812 to Vol. 4998, 22 August 1815 (University of Michigan, <http://babel.hathitrust.org>), plus assorted other documents.
 - 15 Godfrey Hodgson, *Lloyd's of London. A Reputation at Risk* (Harmondsworth: Penguin Books, 1986), 47–58. Snider, C.H.J. *Under the Red Jack* (Toronto: The Musson Book Co., 1926), 112.
 - 16 Nicholas. Tracy, *Attack on Maritime Trade*. (Toronto: University of Toronto Press, 1991), 77. *Niles* (Vol. V, No. 105, 4 Sept. 1813), 4. The penalty for violating Sect 7 of the Act of 6 July, 1812, prohibiting licences and trade with Great Britain was the forfeit of twice the value of

- any ship, merchandise or articles of trade, conviction of a misdemeanour, and liability of up to a year in jail and a fine not exceeding \$1,000. Michael Crawford, 'The Navy's Campaign Against the Licensed Trade in the War of 1812' (*American Neptune*, Vol. XLVI, No. 3, summer 1986), 165–166. Until June 1813, the lieutenant governors of Bermuda, Bahamas and other British Caribbean islands were also authorized to issue licences to any but French vessels to import staves, lumber, horses, and other livestock and provisions (except beef, pork, butter and salted, dried or pickled fish.) (*Bermuda Gazette*, 16 January, 1813, in the *Norfolk Gazette and Public Ledger*, 1 March 1813), 3.
- 17 Crawford, 'Licensed', 167.
- 18 *Jacob Jones, Niles' Register*, Vol. 8, No. 206, 12 April 1815, (Baltimore, 1815), 407; *Lark, Niles' Register*, (Baltimore) Vol. 3, No. 58, 10 Oct. 1812, 94, and Vol. 5, No. 110, 9 Oct. 1813, 104; *Lloyd's List*, No. 44782, 29 June 1813 (London, 1813). Case file, *Robinson v. Hook*, October Term, 1826 National Archives, RG 21, Maine Circuit Court Records, NARA Northeast, Waltham, Massachusetts – letter from Josiah Hook, Collector, to Secretary of State, Monroe, dated 26 Sept. 13, recommending that the *Lark* and the *Lydia* have their licences revoked because they were smugglers.
- 19 As a letter-of-marque schooner in February 1813, the 356-ton *Chasseur* carried 10 guns and 52 men but never sailed because of a mutiny on board. Re-rigged as a brig and under a new captain in December 1813, she added four guns and nearly tripled her crew to 148 men to sail as a privateer. Similarly, the 338-ton schooner *Expedition* sailed with 8 guns and 43 men as a letter of marque and 12 guns and 75 men as a privateer.
- 20 Privateers usually carried several different flags in order to disguise their nationality. Once they went into battle, they ran up their own flag, partly to inform their opponent of their true identity, but also because under international law, sailors and vessels were subject to the laws of the state under whose flag they fought. Lloyd Duhaime, *Duhaime's Legal Dictionary*, <http://www.duhaime.org/LegalDictionary/L/LawoftheFlag.aspx>.
- 21 Andrew Lambert, *The Challenge. America, Britain and the War of 1812* (London: Faber & Faber, 2012), 112.
- 22 LAC, RG8, IV, Vol. 94, *Republican*, Proclamation by Sir John Borlase Warren Bart. K.B. Admiral of the Blue, aboard *San Domingo*, at Bermuda 26 May, 1813.
- 23 Brian Arthur, *How Britain Won the War of 1812. The Royal Navy's Blockades of the United States, 1812-1815* (Rochester, NY: Boydell Press, 2011), 229, 230, 241.
- 24 Richard E. Winslow, '*Wealth and Honour: Portsmouth during the golden age of privateering, 1775-1815*. (Portsmouth, NH: Portsmouth Marine Society, 1988), 173.
- 25 NARA, RG45, SP. Both Confederate and Union forces made use of privateers during the American Civil War, but their contribution to the war was negligible. The Hague Convention of 1907 marked the end of six centuries of private armed warfare.

Note on Contributor

Faye M. Kert is a former public servant and underwater archaeologist. She is now an independent historian specialising in privateering, especially during the War of 1812. Her Master's work at Carleton University on Canada's Atlantic privateers during the War was followed by a Ph.D. from the University of Leiden. As well as presenting numerous papers, she has published a number of reviews, articles and book chapters. Her books include *Prize and Prejudice: Privateering and Naval Prize in Atlantic Canada in the War of 1812* (1977), *Trimming Yankee Sails; Pirates and Privateers of New Brunswick* (2007) and *Privateering: Patriots and Profits*

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