

Privateering and National Defense:

Naval Warfare for Private Profit

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Introduction

Hans-Hermann Hoppe has argued that “the idea of collective security is a myth that provides no justification for the modern state” and “all security is and must be private” (1999, 27). Furthermore, Hoppe makes it abundantly clear that when referring to security he means protection against not only the small-scale depredations of the common criminal but also the massive aggressions perpetrated by nation-states. The claim that all legitimate defense functions can and must be privately supplied flies in the face of certain economic doctrines that are almost universally accepted. Almost all economists declare that there are some goods or services which will be provided in suboptimal quantities--or not provided at all--by private, profit-seeking firms. These “public goods” allegedly bring benefits to all in the society, whether or not any given individual bears his or her fair share of their cost. This “free riding” by some persons diminishes the profit incentive motivating private suppliers. Therefore, to make sure that such highly-valued goods are provided, the government serves as the principal, or often the only, supplier and taxes all the citizens in order to finance the production and distribution of the good.

There has been spirited debate at times about which exact goods or services should be included in the category of public goods. However, at least one is almost invariably included: national defense. Even some otherwise quite radical thinkers have found it at least plausible that national defense cannot be effectively supplied by the private sector.

One might take David D. Friedman as a notable example. Friedman, despite thinking that “it may be possible to defend against foreign nations by voluntary means”,

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nevertheless grants that tax-financed, government defense forces could prove to be the only way to confront foreign aggression (1989, 143).¹ In fact, at one point he explicitly describes national defense as a public good (1989, 156).

The purpose of this paper is to challenge just that sort of statement. The attack on national defense as a public good which must be provided by the state will be two-pronged. One part, the briefer of the two, will raise theoretical questions about public goods in general and national defense in particular. The second part will be devoted to a detailed survey of privateering, a form of naval warfare conducted by privately-owned ships which lasted from the twelfth century to the nineteenth century. What privateers were, how they operated, the legal customs that grew up around them, how effective they were, how profitable they were, and why they disappeared will all be addressed. The common employment of privateers during wartime will be offered as empirical evidence that defense need not be monopolized by the state.

Some Theoretical Problems

Public goods are commonly thought to be economic goods with peculiar, “collective” characteristics.² If supplied at all, they will be supplied to and provide benefits for anyone and everyone--the phenomena of “joint production” and “external economies”. But what if, when governmentally-supplied, they are not even economic goods? If not, then much of the conventional analysis of public goods is misguided and

inappropriate.

More than a century ago Carl Menger argued that four conditions must *all* be met in order for any given thing to be a good: (1) there must exist some unfulfilled human need,

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(2) the thing must possess properties which are causally related to the satisfaction of the need, (3) the economic actor must have knowledge of that causal relation, and (4) the actor must have sufficient command of the thing that he can actually employ it in satisfying the need (1976 [1871], 52). If any one of these conditions is no longer met, then the thing involved ceases to be a good. “Imaginary goods” are those where no causal relation to human needs actually exists, but some men nevertheless believe that it does---”charms, divining rods, love potions” are examples (1976 [1871], 53). According to Menger, goods become *economic* goods when their “available quantities are smaller than the requirements of men” (1976 [1871], 97), that is, in modern terms, when they cease to be superabundant or “free” goods.

Consider armed forces controlled by the state. First, is it plausible to claim that individual citizens have command of such supposedly defensive forces in a way that satisfies--or even attempts to satisfy--those citizens’ individual preferences regarding protection? No. Even in a democratic state with universal suffrage, it is clear that military and naval decisions are usually made by a handful of men, and often in secret, with little thought of the wishes of the average citizen. In fact, sometimes those armed forces have been used against the very citizens who are taxed to pay for them.³ Second, is it really true that national defense is a collective good because it is some monolithic whole which

must be supplied *in toto* or not at all? No, it “consists of specific resources committed in certain definite and concrete ways....A ring of defense bases around New York, for example, cuts down the amount possibly available around San Francisco” (Rothbard 1970 [1962], 885). The only things that are truly “collective” are those which are

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superabundant, such as air, and therefore not economic goods at all (Rothbard 1970 [1962], 885).

Some might respond to the last point by claiming that, despite the obviously finite magnitude of both the human and non-human resources used by government forces, nevertheless national defense does represent equal protection for all in the sense that there is a perpetual commitment to resist aggression against any part of the nation. But that is false. And the American Civil War is clear evidence of this error in reasoning. Union forces would have done nothing to protect the Confederate states if, say, the government of France had attacked them. Instead, the French would have been viewed as allies in the subjugation of the Southern “traitors”. Intervention from abroad would only have been resisted by the North if it were accompanied by a demand that the southern states, once defeated, would become a possession of that foreign power. And one cannot escape by claiming that the Confederacy was viewed as a separate nation and therefore not owed protection. The North consistently maintained that the Confederacy was an unlawful entity along the lines of a criminal gang, not a sovereign nation.⁴ In short, governmental protection against aggression is never guaranteed, but instead may change with political conditions. In no sense, then, does national defense necessarily

imply equal protection for all areas and all persons. True defense, though its effects may be widespread, is microeconomic in nature.

This is essentially the position Hoppe has recently taken. He rejects the “Hobbesian myth” of collective security provided by a sovereign state and, instead, argues that true protection against aggression can be effectively provided only by private insurers and

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their agents. The proper boundaries of different security-risk zones are the boundaries of private property ownership, because aggression is motivated by the desire to control that which has value---persons and their property (1999, 40-41). Thus, the provision of security must not be homogenized into one product for all, but differentiated and tailored to the specific needs of specific property owners. Moreover, the incentives of private defensive agencies will be to offer ever better services at ever lower prices. In contrast, “[u]nder monopolistic auspices the price of justice and protection must rise and its quality must fall. A tax-funded protection agency is a contradiction in terms and will lead to ever more taxes and less protection” (Hoppe 1999, 33-34).

Or, to use Menger’s terminology, which Hoppe does not do, governmental defense agencies actually supply “imaginary goods”. It is widely believed that, to be effective, defense must be a function of the state. However, there is no clear *causal relationship* between the state’s appropriation of this function and true protection. Modern states may claim to protect their citizens from aggression, but they do less and less as time goes on. Even worse, by means of oppressive laws and regulations, states systematically expropriate property and deprive their own citizens of “the very foundation of all

protection: economic independence, financial strength, and personal wealth” (Hoppe 1999, 31). Much of what is done in the name of “public safety” is, in reality, endangering and impoverishing the public.

For many years, lighthouses were cited right along with national defense as an allegedly clear-cut example of a public good that required the involvement of government. Then Ronald H. Coase (1974) took the time to investigate the actual

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history of lighthouse operation in that nation where maritime issues have probably played a greater role than in any other---Great Britain. He found that the building and operating of lighthouses by private firms was quite common. By 1820, for example, 34 of the 46 lighthouses then in operation had been built by private individuals (Coase 1974, 365).

Owners of these structures gained their revenue from fees paid by shipowners, the beneficiaries of the service. Nevertheless, by 1842 Parliament had eliminated all private ownership of lighthouses. Was this because private lighthouses were badly run? No. This change was effected due to lobbying from the shipowners, who hoped that the fees they paid would be reduced or eliminated if the government ran the lighthouses.⁵ Coase concludes that “economists should not use the lighthouse as an example of a service which could only be provided by the government” (1974, 376).

If the lighthouse is not, in fact, a public good, might the same be true of national defense? This essay has already provided some theoretical reasons for thinking so. The remainder of this effort will, in emulation of Coase, explore the historical evidence on privateering, a form of maritime national defense provided by profit-seeking private

firms.

Basics of Privateering

The history of privateers goes back to the early Middle Ages. Originally, it was a method by which a citizen of one nation who had been victimized by a citizen of another nation could achieve restitution for his losses (Petrie 1999, 2-3). With a permit issued by his government, the offended party could arm one of his ships and go searching for merchant ships flying the flag of the perpetrator's nation. If he encountered such a vessel

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and was able to subdue her, he could then sell the ship and its cargo at auction and pocket the proceeds. The first permit of this kind, which was known as a "letter of marque and reprisal" throughout the several centuries of privateering activity, was issued in Tuscany in the twelfth century. By the end of the fourteenth century they were common throughout the Mediterranean. The use of letters of marque and reprisal in England dates from the year 1243 (Garitee 1977, 3-4). Although begun as a system for effecting private restitution on the high seas, and thus employed whether or not a state of war existed between the two nations, privateering evolved into an instrument of war. By the nineteenth century letters of marque "were issued *only* in time of war to supplement the public vessels of the respective navies" (emphasis in original)(Petrie 1999, 3).

Many naval historians have downplayed the role of privateers in favor of the deeds of public navies (Mahan 1965 [1890], 132). Nevertheless, one should certainly not infer that privateers played only a trivial role during wartime. For example, Elizabethan England was "almost totally dependent upon the private initiative and individual

enterprise of its privateering establishment” (Garitee 1977, 5). Indeed, the sheer magnitude of such activity was remarkable. The American colonies of Britain commissioned 113 privateers during King George’s War of 1744-1748 and 400-500 during the Seven Years’ War of 1756-1763 (Garitee 1977, 7-8). During the American Revolution both sides freely employed privateers. Despite having a large public navy, the British commissioned at least 700 such vessels, ninety-four from Liverpool alone (Williams 1966 [1897], 257, 667-69); while the American secessionists⁶ sent about 800 to sea in search of prizes (Stivers 1975, 29). The War of 1812 saw 526 American vessels

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commissioned as privateers, although only about half that number actually went to sea (Kert 1997, 78, 89). Between July 1812 and January 1815, even the small maritime communities in the Canadian provinces of New Brunswick and Nova Scotia contributed forty-seven privateers to the war effort, but on the side of the British of course (Kert 1997, 78).

Thomas Jefferson articulated the importance of privateers quite well when, in 1812, he declared that “every possible encouragement should be given to privateering in time of war with a commercial nation...Our national ships are too few in number...to retaliate the acts of the enemy...by licensing private armed vessels, the whole naval force of the nation is truly brought to bear on the foe” (Williams 1966 [1897], 459). Historian Faye M. Kert offers the judgment that “without the presence of the American privateers in the Revolutionary War and the War of 1812, the United States would never have been able to hold off the British Navy” (1997, 81). It will surprise those who are enamored of the

state monopoly of defense, but during the period of Western European history from 1600 to 1815 privateers “probably contributed much more than warships to the actual harm done the enemy” (Anderson and Gifford 1991, 101).

In discussions of this topic, one will encounter two terms that can be the source of confusion: “privateer” and “letter of marque”. In the maritime community these came to mean ships with somewhat different functions (Petrie 1999, 4-5). A privateer was a ship whose primary--and often sole--function was to seek out and capture vessels of the enemy nation. A letter of marque was a ship whose primary function was the transportation of cargoes, but which was sufficiently well armed to capture foreign

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vessels if conditions permitted. Both were authorized to act as they did by the letter of marque and reprisal they had been issued, but privateers were usually smaller, more heavily armed, faster, and more maneuverable than letters of marque, and were manned by larger crews.⁷ The possible confusion of course lies in the fact that, depending on the context, letter of marque can mean either the document permitting this general sort of activity or a ship whose owner intends for her to engage in only limited commerce raiding. For rather obvious reasons, the primary concern of the present essay will be with privateers.

Financing and Manning A Privateer

It should be recognized that both profit and patriotism usually motivated the actions of those who invested in, or served as part of the crew of, a privateer (Garitee 1977, 47-64). Evidence of the patriotism can be found in the facts that some privateers fought

instead of running away (their usual tactic) when they were cornered by an enemy warship, and some destroyed enemy shipping even when no profits were to be gained (Garitee 1977, 57).⁸ Nevertheless, it was clear that as normal commercial activity diminished during wartime, the incentive for merchants and shipowners to maintain some degree of prosperity via privateering did increase.⁹ For example, as a result of the British Navy's blockade during the War of 1812, imports into the United States fell from a pre-war total of \$139 million in 1807 to \$77 million in 1812 and \$14 million in 1814 (Garitee 1977, 55). By the fall of 1813, marine insurance rates became prohibitively expensive, reaching 50% of the total value of a ship plus her cargo (Garitee 1977, 116).

This stagnation of commerce served to intensify greatly the building and outfitting of privateers in ports like Baltimore, New York, and Boston because such vessels were undeterred by the blockade. One contemporary observer said that privateers "go where they please; they chase and come up with everything they see, and run away at pleasure" (Garitee 1977, 117). And the inverse relationship between ordinary commercial activity and the provision of privateers was not uniquely American. During the earlier American Revolution, the British House of Lords publicized the fact that, as of February 1778, Britain had lost the alarming total of 559 commercial vessels to American raiders (Williams 1966 [1897], 216). Liverpool was particularly hard hit, experiencing large declines in imports, shipping tonnage, the standard of living, and even population (Williams 1966 [1897], 301). This, too, elicited a boost in privateering on the part of British entrepreneurs.

Whatever the motivation in any specific case, privateering required a significant investment. In Baltimore during the War of 1812, the total cost of building a schooner of about 200 tons---the most common rig and size for privateers---outfitting her, arming her, and providing a crew was at least \$40,000 in 1813 prices (Garitee 1977, 125). In today's prices, that would be equivalent to \$400,000 or more, if one uses official wholesale price indexes. A different, and probably more meaningful, figure is the \$1.5 million it took in 1988 to build the *Pride of Baltimore II*, an exact replica of this type of vessel (Gillmer 1992, 160). For a British example, one might take the Liverpool privateer *Enterprise* of 1779, which was built, outfitted, manned, and operated for about a year at a total cost of slightly more than 7,000 pounds-sterling, or about \$35,000 (Williams 1966 [1897], 661-64).

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Such sums usually required that there be a number of investors, with each one providing perhaps \$1,000-\$4,000, depending on the size of the ship (Garitee 1977, 37).¹⁰ The investors functioned as partners (either general or limited) with ownership in the venture measured in shares. In Canada, it was customary to divide ownership into sixty-fourths so that the partners could readily diversify by investing relatively small monetary amounts in each of several vessels (Kert 1997, 82). In the United States, there seemed to be no standard method of setting the number of ownership shares. One finds ownership divided into thirds, fourths, sixths, eighths, thirtieths, and fiftieths, among other possibilities (Garitee 1977, 86-87). The British *Enterprise* mentioned above had ten owners with shares divided into sixteenths (Williams 1966 [1897], 664). Although those

with maritime business interests were the most common source of investors, ownership of privateers was actually quite varied in terms of occupation. Among the owners of one Baltimore vessel one finds four sea captains, four merchants, three manufacturers, two bakers, three grocers, one shipbuilder, one blacksmith, two paint store proprietors, and one physician (Garitee 1977, 33-34).

It was not enough to build and outfit a vessel for privateering activity, one also had to post a bond in order to guarantee compliance with international laws of the sea. The intent was to make sure that privateers did not degenerate into pirates. Such “letter-of-marque” or “surety” bonds were usually in the amount of either \$5,000 or \$10,000 in the United States, depending on the size of the ship (Garitee 1977, 17). Canadian privateers faced bonds of either 1,500 or 3,000 pounds-sterling, depending on the size of the crew, or about \$7,500-\$15,000 (Kert 1997, 92).

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The performance of the crew of a privateer, especially that of the captain and his lieutenant(s), was crucial to success. However, the owners of privateers rarely seem to have suffered from “shirking” on the part of the crew members they employed. The reason is straightforward. The sailors “received no pay when there were no prizes” (Garitee 1977, 127). Much like the owners, the crews were “residual claimants” whose income rose or fell with the success or failure of the cruise, for their compensation was in terms of shares in the venture, not in terms of a wage rate. This was a thoroughly incentive-based system in which the officers and crew often received one-half of all the proceeds generated by the sale of captured ships and their cargoes, the other half

being received by the owners. Moreover, there were numerous rewards for exemplary service. A crewman who was the first to sight a ship that was later taken as a prize, or who was the first to board a prize in the heat of battle, or who lost a limb in the course of his duties, received one or more extra shares (Garitee 1977, 140-41). On the other hand, any man who mutinied or deserted lost all his shares.

In short, privateering offered the chance of much higher incomes than sailors were accustomed to earning by serving on ordinary merchant ships. In the early nineteenth century the typical monthly wage for a merchant seaman was about \$30. In a detailed survey of nine different American privateers and their prize distributions, Garitee found the average value of one share to be about \$150. Since most crewmen earned from two to four shares, this meant that in the typical privateer cruise of three months, a man might earn the equivalent of eighteen months' wages, and sometimes even more (Garitee 1977, 193-94). Moreover, the payments to privateers' crews were usually made soon

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after the return to port (Garitee 1977, 195). Indeed, maritime prize courts were always known for their "extraordinary dispatch", being "held close to the wharves for the convenience of mariners" (Petrie 1999, 159).

In addition to the potential for large and rapidly distributed monetary earnings, the provision of food and drink on board privateers was usually plentiful; whereas it was merely adequate on public naval vessels (Garitee 1977, 123).¹¹ Indeed, most owners seem to have been actively concerned with the welfare of their crews. The owners of one late eighteenth century British privateer instructed the commander of their vessel to

“take particular care that your crew be treated humanely, that every one be made to do their duty with Good Temper; as Harmony, a good look-out, and steady attention to the main point are all absolutely necessary to be attended to, the success of the Cruise greatly Depending upon it” (Williams 1966 [1897], 24). It should be no surprise that serving on a privateer was often much more popular than naval service. “Compared to the relatively free and easy life of privateering, life aboard a naval vessel must have seemed grim and oppressive” (Kert 1997, 121).

Desperate during wartime, the British Royal Navy, like other navies around the world, often resorted to actual abduction in order to man its ships. This notorious practice of “impressment”, when applied to American seamen, was a catalyst for the War of 1812 (Kert 1997, 11-12). In contrast, the captains of private armed vessels either themselves advertised for seamen or used recruiting agents to supply them with crews. These recruiting agents, who were often the owners of grog shops or boarding houses near the waterfront, provided the seamen with personal loans, food, clothing, and

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lodging (Garitee 1977, 129). Payment for such goods and services was commonly achieved by the sailor by assigning part of his “prize tickets” to the agent. A prize ticket was a document identifying the crewmember, his ship, and how many shares he was due to receive upon completion of the privateer’s cruise (Garitee 1977, 141-42). Thus, one can see that the sailors’ purchases from the agents were effected by what was, in essence, the transfer of equity shares. But to possess a prize ticket, a sailor first had to sign the ship’s Articles of Agreement.

These Articles of Agreement constituted a fairly standardized labor contract between the crewmembers and the owners of the ship. Although the details varied a bit from case to case, certain basics were found in all such documents.¹² The Articles declared the owners responsible for arming and equipping the vessel, stipulated how command would be transferred in the case of the captain's death, specified the tour of duty (usually three months for American privateers, often six months for British), identified the beneficiary of each man (to whom his shares would go in the event of his death), and outlined the bases upon which a crewmember would be rewarded with extra shares (Garitee 1977, 140; Kert 1997, 92). "Before the privateer left port, the articles were read aloud, and each man signed or made his mark, legally binding himself for the cruise" (Kert 1997, 93).

After the privateer had been built, and while the owners were outfitting that vessel and recruiting a crew, they had to request authorization from their government in order to begin raiding the enemy's commercial vessels---unless, of course, they did not mind being branded as pirates. That authorizing document, known formally as a letter of

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marque and reprisal but often referred to as a privateer's commission, included some key information. (The reader should see the Appendix to this essay for the text of an actual document of this sort.) Typically, one would find statements of the tonnage and rig of the privateering vessel, her armament (cannon), the number of men in her crew, and the names and addresses of each of her owners (Garitee 1977, 89). Unfortunately, some of these items are missing from the surviving documents. "[S]uch data was often

unavailable because the vessel's preparation was incomplete at the time of the application" (Garitee 1977, 90).

It is correct to infer from this that the process of outfitting and commissioning was, in all countries, often undertaken with considerable haste. Garitee found, for example, that Baltimore privateers usually had to wait no more than a few days to receive their commissions (1977, 91). Regarding the maritime provinces of Canada, Kert reports that within only weeks of the declaration of war in 1812 "shipyards bristled with new craft on the stocks" and many existing ships were quickly sent on cruises against the ships of the United States (1997, 78). For their part, it took the Americans in the cities of Salem, Baltimore, and New York no more than four months to have operating privateer fleets of forty, forty, and fifty vessels, respectively (Kert 1997, 88).

Laws and Customs of Prize-Taking

Although they have often been castigated for being little better than common pirates, in fact the great majority of privateers were characterized by "a decent, civilized greed... Like sportsmen, privateers played by a code of rules" (Petrie 1999, 69). Nevertheless, deception was an essential part of commerce raiding. Privateers usually carried several

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sets of false papers as well as a number of different national flags, for instance. When first sighting a potential victim and so as not to frighten her away, privateers would display the national flag of the sighted ship, or the flag of some ally of that nation.

Despite this initial ruse, "they never fired a gun under false colors" (Petrie 1999, 69).

That is, privateer captains were careful never actually to engage in combat without

flying the flag of their own nation. True pirates violated that principle with regularity.

Both the form and goal of combat for privateers were usually different from that found with public naval vessels (Garitee 1977, 119-20). The goal was *capture* rather than *destruction*.¹³ Such an approach transferred ownership but left the property intact. It is almost certain that it also resulted in fewer deaths than did the naval approach. Instead of inflicting massive damage on the enemy ship's hull and rigging via heavy broadsides of cannon fire, the privateer sought to do only minor damage. She would then range alongside and send her large crew to take possession after subduing the prize's much smaller crew in hand-to-hand combat, if indeed the prize's crew resisted at all.¹⁴ This helps to explain why, even though a few were as heavily armed as a naval frigate¹⁵, most privateers carried only a small number of cannon. Indeed, in the early nineteenth century the privateers from New York and Boston often had only one, or none at all in some cases (Garitee 1977, 121). It also makes it clear why privateers carried such large crews. Twenty to twenty-five men would have been sufficient to handle the sails and man the few cannon, but it was not uncommon for privateers to have crews of 120 or even more (Garitee 1977, 91).

After a privateer or a letter of marque had taken possession of an enemy ship, the

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next order of business was to put a "prize crew" aboard and sail that ship to either some port of the privateer's home country or, if that was impossible, to some port of a friendly nation that was at war with the same enemy. For an example of the latter, during the War of 1812 some American privateers took their prizes to Norway (Petrie 1999, 101-102).

This need for prize crews constituted yet another reason for the large crews typically carried by privateers. If one of these private armed vessels was particularly successful, her original complement of men could be depleted very quickly. Fortunately, there was a customary way of minimizing that depletion of manpower: the process of “ransom”.

A ransom was a binding contract between the owners of a captured ship and the privateer, and, by the late eighteenth century, it was widely recognized as a legitimate alternative to the destruction or condemnation of the prize (Petrie 1999, 19-20). In other words, instead of being sunk or confiscated by the privateer, the captured vessel could sometimes buy its freedom, at the discretion of its captor. If the prize appeared to be of relatively little market value, if the privateer could not spare a prize crew, or if the privateer had no space for additional prisoners, it was worthwhile for the privateer to accept ransom. This took the form of a promissory note or bill of exchange payable upon presentation to the prize’s owners. American privateers of the War of 1812 seem commonly to have accepted ransoms of either \$2,500 or \$5,000 (Garitee 1977, 272-73).

Once ransomed, a ship was immune from subsequent capture by other privateers during the time it took her to sail to the port and over the route that were stipulated in the ransom contract. The ship’s captain also was required to sign a personal bond which promised payment just in case the owners defaulted. Such defaults were very rare,

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however. “A merchant ship owner who didn’t pay his written obligations simply couldn’t trade in foreign ports in the future or his vessels would be seized there by his creditors” (Petrie 1999, 23).

For privateers, ransom served the very useful purposes of reducing the need to a) send prize crews on every captured vessel and b) maintain large numbers of prisoners on board. These two benefits served to extend the effective cruising ranges of such private armed vessels. During the Revolutionary War, American privateers were wreaking havoc on British shipping. In 1782, in order to reduce those privateers' effectiveness, the British government prohibited the practice of ransoming by any ship flying the British flag (Petrie 1999, 21-22). Despite this prohibition, ransom contracts accepted by British merchant ships could still be enforced in the maritime courts of other nations. And the practice, being in fact beneficial to both parties, did continue. For example, there were at least thirty known instances of ransom given by British ships during the War of 1812 (Petrie 1999, 23).

If the privateer did not accept a ransom contract, and they usually did not, then whatever revenue was earned came from the liquidation of the captured ship and its cargo. This required formal adjudication in what was known as an "admiralty court" or "prize court"¹⁶, because prizes were technically the property of the state, from whose legal rights the claims of the captor were derived (Petrie 1999, 41). Prize cases were called "libels", and the legal seizure of the ship and its cargo was a "condemnation" (Petrie 1999, 9). The decree of condemnation was of crucial importance to a privateer. To obtain such a decree, there had to be sufficient evidence that the captured vessel was owned in a country with which one's nation was at war. If this could not be demonstrated, then it might be said that the privateer had committed an act of piracy.

Two basic types of evidence were relied upon regarding this issue. The court could consider either documents found on board the captured vessel or personal testimony (Garitee 1977, 174-75). The relevant documents might include the vessel's clearance certificates (issued just prior to sailing by customhouse officials at the port from which she had departed), cargo manifests, or instructions to the captain from the owners. The principal testimony was that by the officers and crew of the captured ship.

It should be noted that the ruling of the prize court was not automatic. The critical question concerned the nationality of the captured vessel, and this was often in doubt. During a war, many merchant ships carried fake documents for the express purpose of deceiving the enemy nation's naval vessels and privateers. The judges in prize courts tried mightily to sort out the evidence and render a fair decision (Petrie 1999, 160). Although each decision was made based on the specifics at hand, certain broad principles were followed. If it was found that the captured ship "was not a good prize, but that the captor had probable cause for suspicion, the captive was immediately released, and the parties went their separate ways" (Petrie 1999, 160). If, however, it was found that "the captor's suspicions were unwarranted, the captive was entitled to immediate release, and to a judgment for damages against the captor" (Petrie 1999, 160).

Once the ship was declared a "lawful prize", the court issued the decree of condemnation, and she and her cargo would be sold at auction. However, the gross proceeds from that sale were not received by the privateer. Three deductions first had to be made. As payment for their services, small percentages went to the auctioneer, the

marshal, and the clerk of the court (Garitee 1977, 176). A further, much larger deduction was also necessary. Since the goods that made up the prize's cargo now represented "imports", customs duties were imposed. Although the magnitude of these duties varied with the nature of the goods, Garitee estimates that during the War of 1812 such taxes usually reduced the revenue accruing to American privateers by 30-40% (1977, 183). The owners of privateers protested so angrily against these high duties that, in August of 1813, Congress reduced the taxes on "imported" prize goods by one-third (Garitee 1977, 184).

British and American prize courts operated in very similar ways even after the American Revolutionary War (Kert 1997, 52). And yet, during the earlier period of letter of marque activity, British privateers---including of course those outfitted in Britain's American colonies---were confronted with deductions from the gross prize proceeds that included not only court costs and import duties but also a share for the crown. This share varied from one-half to one-tenth (Kert 1997, 47fn). Due to the growing economic importance and political influence of privateers, the crown's share was gradually reduced and, in 1708, eliminated altogether (Kert 1997, 47-48). As a result, privateer profits increased by as much as 30% (Kert 1997, 47).

Profitability

Right at the outset, one important point should be stressed. At least in principle, there should be a strong positive relationship between the profitability of privateering and its effectiveness as a facet of national defense. Successful harassment of the enemy

meant that many prizes were being taken, and a large number of prizes meant high revenues. But then, high revenues do not necessarily translate into high profits.

If one reflects on the considerable *uncertainty* involving privateers (they might return to port without capturing a single prize, or worse, they might themselves be captured or sunk by the enemy or wrecked in a storm) and the significant *costs* they faced (the initial investment, surety bonds, court fees ¹⁷, import duties, and so forth), one has to wonder whether they were generally profitable or not. One must keep in mind, for example, that 28% of all American, and 21% of all Canadian, privateers were either wrecked, destroyed, or captured during the War of 1812 (Kert 1997, 90). “The profitability of privateering is a nettlesome issue, but several scholars have determined that private armed warships did earn profits” Kert 1997, 104).

During the mid-eighteenth century, for instance, privateers from the American colonies appear to have enjoyed annual rates of return of 130-140% (Swanson 1991, 218; Lydon 1970, 253). In his very detailed study of the privateering business during the War of 1812, Garitee found that 122 Baltimore vessels were either privateers or letter of marque traders. Of those, forty-eight undertook at least one privateering cruise. Twenty-eight, or 58%, of the latter group were judged to have been financially successful, experiencing by “conservative” estimate an average profit rate of 200% (Garitee 1977, 197-98). Details on those twenty-eight privateers’ earnings are also provided by Garitee (1977, 271-74). The average prize proceeds were \$116,712 per privateer. Assuming that each vessel cost \$40,000 ready for sea, as was cited earlier, then average ROE (return on equity) was 192% for the six months it would take to build a vessel, outfit her, and send

her on a three-month cruise. Alternatively, one might think in terms of the average payment to the owners per captured prize. For American privateers, this was about \$13,500 (Garitee 1977, 197-98). Therefore, any private armed ship that captured at least four prizes was likely to achieve positive profits.

By that measure, some of the more successful ones must have been fabulously profitable. In her four cruises, the Canadian *Liverpool Packet* captured fifty American ships (Kert 1997, 211). Purchased at auction in 1811 for 420 pounds-sterling, *Liverpool Packet* probably brought her owners over 10,000 pounds-sterling in prize money (Kert 1997, 83, 166-91). Working independently during the War of 1812, the Americans *Chasseur* and *True-Blooded Yankee* captured or destroyed eighteen British ships in three months and thirty-four in a mere thirty-seven days, respectively (Garitee 1977, xi, xii). The most successful privateer sailing out of Salem, Massachusetts was the large, ship-rigged *America*, which carried twenty-four guns and had a crew of 150 men. She captured twenty-six British ships, which sold for more than \$1 million (Morison 1921, 202). It is certainly true that some privateers returned to port without having taken a single prize, but the average number of prizes taken in the War of 1812 by the private armed ships of each Canada and the United States appears to have been at least six (Kert 1997, 90).

Certain European privateers also seem to have done extraordinarily well. In 1756 the British *Anson* captured sixteen French vessels, and it was said of her that she brought her owners a return of 5,000% (Williams 1966 [1897], 88-90). During the Napoleonic War,

the French corsair *Emilie* took four rich British prizes that netted the equivalent of

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\$700,000 (Lord Russell 1970, 150-51). Indeed, French privateering was considered so respectable, and was usually so profitable, that the Catholic bishops of St. Malo and Nantes were known to be investors in such enterprises (Lord Russell 1970, 23).

Instead of focusing on the returns to specific cruises---returns to “projects” in modern terms---one might prefer to focus on the investors. Here it is important to distinguish between those who provided funds repeatedly and those who owned shares in no more than two or three privateers. The former had diversified their assets fairly well, while the latter had not. Of the fifty “active” Baltimore investors during the War of 1812, fully 80% profited from their involvement with privateering (Garitee 1977, 208). One of the most successful was Arnold Karthaus, who owned large shares of several ships. By the end of the war, “his total personal share of his vessels’ prize proceeds was over \$200,000” (Garitee 1977, 206). There were, however, about 200 different people in Baltimore who invested in privateering on at least one occasion. Of this aggregate, 45% profited, 34% experienced losses, and the extant records for the remaining 21% are ambiguous (Garitee 1977, 208).

One might be tempted to think that financial losses were the automatic result of a privateer being captured, destroyed, or wrecked. And it is true that, in the case of Baltimore, fifty-five of the 122 vessels which held letters of marque and reprisal were lost during the War of 1812. However, “many had paid for themselves several times before they were lost, so a vessel’s loss did not necessarily mean a financial loss on the

owner's books" (Garitee 1977, 211).

From the foregoing it seems clear that privateering was usually profitable, sometimes

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dazzlingly so. In other words, whenever a state of war existed, entrepreneurs had ample motive to supply private armed ships. However, the strategic issue is damage to the enemy. Were privateers *effective*? Did they contribute significantly to the war effort?

Effectiveness

On this issue one will find both summary judgments of their impact (a few of which were noted earlier) as well as data about the magnitude of their effects.

One could begin with the Canadian privateers of the War of 1812. Forty-seven held letters of marque and reprisal, but ten of those captured no prizes at all. The remaining thirty-seven were credited in prize courts with the proceeds from 228 American ships (Kert 1997, 90). However, since ships taken as prizes were often either lost at sea or intercepted by the privateers or naval vessels of the enemy before they reached port, it is likely that the total of American merchant ships taken by these Canadian privateers was close to 600 (Kert 1997, 80). It should come as no surprise, then, that from an American perspective "the privateers of New Brunswick and Nova Scotia provided a major incentive for peace" (Kert 1997, 78). By far the most renowned of these was the *Liverpool Packet*, which hailed from Liverpool, Nova Scotia. She became so feared that just the rumor of her presence along the northeast coast of the United States was enough to drive commercial vessels back into their home ports. It was for this reason that, late in 1812, "the American House of Representatives debated the possibility of cutting a canal

through Cape Cod as a less costly alternative to losses through commerce raiding” (Kert 1997, 84).

The impact of private armed ships on European affairs seems to have been no less significant. French privateers from the ports of St. Malo, Nantes, Le Havre, Cherbourg, Calais, and Dunkirk had been active since the thirteenth century (Lord Russell 1970, 9). Furthermore, they consistently inflicted large losses on France’s enemies. In the conflict with Holland and Spain (1672-79), privateers “captured not less than 1,300 Spanish and Dutch ships” (Lord Russell 1970, 20). In the course of that war, one of the more renowned of French privateer captains, Jean Bart, alone took prizes that “amounted to a total of eighty-one, of which fourteen were men-of-war or well-armed merchantmen” (Macintyre 1975, 69). A decade later the War of the League of Augsburg (1689-97) broke out. The principal privateering city, St. Malo, sent out forty or fifty raiders each year of the war, and these vessels captured “no less than 3,384 English and Dutch merchant ships and 162 escorting men-of-war” (Macintyre 1975, 83). The War of the Spanish Succession (1701-13) saw French privateers scouring the English Channel as well as roaming to Ireland, Portugal, and Rio de Janeiro in search of prizes. They captured or destroyed more than 1,000 ships belonging to the English or Dutch (Lord Russell 1970, 31-32). During the War of the Austrian Succession (1740-48), 765 English merchant ships fell victim to French privateers (Lord Russell 1970, 33).

The Seven Years’ War offers an illustration of both the effectiveness of privateers and the ineffectiveness of public navies. “In the year 1757, the activity of the French

privateers was phenomenal....They cruised so thick round the island of Antigua that it was next to a miracle for an English vessel to get in there, except under convoy” (Williams 1966 [1897], 114). And in just the first fourteen months of the war private French ships captured 637 British vessels (Williams 1966 [1897], 115). Part of the

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reason for the amazing success of the French was the lack of effort on the part of the British Navy. Many of the “commanders of the King’s ships appear to have been shamefully relax in the unpleasant duty of convoying merchant vessels, and in pursuing the privateers of the enemy” (Williams 1966 [1897], 116).

Perhaps the apex of French privateering came during the first few years of the Napoleonic Wars. According to Lloyd’s of London, between 1793 and 1797 the English lost “no less than 2,266 vessels, a large proportion of which were captured by the corsairs” (Lord Russell 1970, 39). To grasp just how accustomed to success the French privateers were, one should note that 1781 was considered a “particularly lean” year. In that year they captured “only” 305 English ships (Lord Russell 1970, 33).

Commerce raiding by private armed ships was practiced for centuries in Europe, but nowhere was privateering undertaken more enthusiastically and energetically than in the United States. And in no American war was privateering more important than during the War of 1812. The damage done to British shipping was, quite simply, enormous. One Baltimore newspaper of the time estimated that at least 1,750 British ships had been captured (Garitee 1977, 243). Modern research by a careful student of American privateering has put the estimate at something between 1,300 and 2,500 (Garitee 1977,

243). Another recent writer has said that the British merchant marine lost 2,500 ships, with the majority captured by privateers (Petrie 1999, 1). “Even a maritime establishment as large as Britain’s in 1815 could not ignore such figures nor enjoy the prospect of greater losses at sea if the war were extended another year or more” (Garitee 1977, 244).

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Englishman Gomer Williams conveyed the impact and importance of privateering in the following terms:

American privateers swept the Atlantic, and even penetrated within a few leagues of the mouth of the Mersey. The merchants and shipowners of Liverpool, instead of fitting out private armed vessels with the energy which had characterised them in former days, put their trust in the Lords Commissioners of the Admiralty, and found, too late, that the King’s cruisers, like the modern policeman, were too often absent from the spot where their services were most required. The depredations of the American privateers on the coasts of Ireland and Scotland at length produced so strong a sensation at Lloyd’s, that it was difficult to get policies underwritten, except at enormous rates of premiums. (1966 [1897], 433)

It is interesting to compare the aggregate record of the U. S. Navy during the War of 1812 with that of the American privateers. The public warships captured or destroyed 165 British merchant ships (Fairburn 1945-55, 821), while the private armed vessels took from 1,300 to 2,500, as noted above. Furthermore, as larger and more heavily armed privateers were employed late in the war, their rate of success rose even higher. Over the last year and a half of the war, privateers took prizes at the rate of almost two per day (Fairburn 1945-55, 821). Also, one should note that in combat with the British Navy, which was their primary function, the American Navy seized or destroyed fifteen

British warships. American privateers took an additional three British warships even though such combat was something for which they were not usually intended (Petrie 1999, 1).

Data from the American Revolutionary War reveal a somewhat similar disparity between private and public armed ships. The ships of the Continental Navy tallied 196 British prizes, while the privateers are credited with at least 600 (Maclay 1899, viii).

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Moreover, as the war progressed, the number of active privateers *increased* from 136 in 1776 to 449 in 1781 before declining to 323 in 1782. During the same years, the number of active public warships *decreased* from thirty-one to nine to seven, respectively (Maclay 1899, viii). It would seem, in other words, that the British Navy did succeed in stifling the efforts of the public American Navy at the same time that it stimulated ever more intense efforts by those willing to invest in private armed ships.

One can, with some justice, respond to the above comparisons by pointing out that such aggregated figures may possibly disguise almost as much as they reveal. The ideal comparison might be one where the relative effectiveness of naval vessels and privateers could be tested under the same conditions. History rarely provides such controlled experiments, and the history of privateering is no different. Fortunately, however, this writer has found one notable example.

In the early nineteenth century there was considerable trade between Russia and Great Britain. To maintain their huge navy, the British badly needed the timber, tar, turpentine, pitch, cordage, and other “naval stores” that Russia could supply. Both the

U. S. Navy and American privateering entrepreneurs realized the strategic importance of this trade, and both tried to disrupt it. In the summer of 1813 three American vessels operated in the North Sea above the Arctic Circle, in search of merchant ships involved in this Russo-British trade. The Navy sent the frigate *President*, sistership of the famous *Constitution* and as powerful as anything the Americans possessed, of 1576 tons, with 52 guns and 460 men (Chapelle 1949, 132, 550). Entrepreneurs sent the schooner *Scourge* of 248 tons, with fifteen guns and 110 men, and the brig *Rattle Snake* of 297 tons, with sixteen guns and 130 men (Petrie 1999, 83, 90).

All three cruised the same waters at the same time, and with the same goal. The results were markedly different, however. The *President* burned “only a single brig carrying pitch and tar” (Petrie 1999, 105). Combined, the *Scourge* and the *Rattle Snake* captured or destroyed at least 23 merchant ships, many of them being large square-rigged, ocean-going vessels (Petrie 1999, 105).

Indeed, American privateers were so good at what they did that by the winter of 1813-14 they constituted “the nation’s *only effective offensive maritime force*” (emphasis added)(Garitee 1977, 61). “Unlike the national navy, Baltimore’s private navy had not been driven from the sea by the British” (Garitee 1977, 162).

Conclusions

Privateering provided profitable opportunities to shipowners and merchants whose revenues from normal commercial activity were greatly diminished due to the state of war. Privateering also provided an effective means of waging war by disrupting the flow

of essential goods to the enemy nation. Why, then, did privateering more or less come to an end in the middle of the nineteenth century? Was privateering an archaic practice that remained viable only as long as there were sail-driven, wooden ships carrying muzzle-loading cannon?

The answer to the latter question is no. The reason is two-fold. First, “technological advances played absolutely no immediate, direct role in the demise of privateering.... privateering essentially ended before the American Civil War....The major changes in naval technology all occurred later” (Anderson and Gifford 1991, 118). Second,

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commerce raiding has continued to be an important facet of naval warfare to the modern day. One might note, for example, that Germany employed surface raiders to great effect during both World Wars (Hough 1983, 87-98; Bennett 1975, 6-12, 135-37). It is also intriguing to consider that the German submarine tactics of those wars, which inflicted so much damage on Allied shipping, may have been explicitly patterned after the methods of eighteenth and nineteenth century privateers (Garitee 1977, xvi). Of course, in those German cases the raiders were public naval vessels for whom there was no profit incentive. Therefore, they destroyed the enemy’s merchant ships and their cargoes instead of capturing them.

Privateering was not a worthless anachronism. It was a powerful method by which maritime nations could discourage aggressors without indulging in the massive public expenditures needed to maintain a large public navy. Indeed, it was, on occasion, publicly acknowledged to be more effective than public navies. For example, during the

Federalist Era many American Congressmen were openly skeptical of having a tax-supported national navy because they thought private armed ships to be a superior option (Stivers 1975, 55). The fact is that privateering disappeared precisely because it was so effective. Career naval officers feared and resented the competition it represented, and those few nations with large public navies wanted to make sure that smaller nations could not challenge their domination via the less costly alternative of private armed ships (Anderson and Gifford 1991, 118-19). These were the primary motives behind the Declaration of Paris signed by seven maritime nations in 1856¹⁸, which prohibited privateering by the signatories and greatly hastened its ultimate end

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(Anderson and Gifford 1991, 119fn).

[Privateering was] less wasteful than other forms of naval “combat” because it did not destroy, but merely reassigned ownership rights to, property.... The extinction of privateering was at least partly the result of rent seeking by established government bureaucracies....Privateering was not a market that can be shown to have “failed”; rather it was one that was eliminated through political means. (Anderson and Gifford 1991, 120)

Historians, even those who specialize in legal or maritime issues, have paid rather little attention to privateering (Kert 1997, 4-5). Economists have almost entirely ignored it, which is particularly unfortunate. This topic offers insights into how private firms can supply defensive services, and it deserves to be investigated further. However, one thing seems clear already. The long, successful history of privateering disproves the claim that national defense is a public good, if one takes that claim to mean that governments must monopolize the market for defense.¹⁹

Notes

1. It should be noted that even though Friedman takes the concept of public goods to be a valid and useful one, he applies the concept in unusual ways. For example, “[u]nder a government, good law is a public good. That is why it is not produced” (1989, 156).
2. For influential treatments of public goods issues, see Samuelson (1954) and Bator (1958).
3. For just one notorious example, recall the internment of Japanese-Americans by the federal government during World War II.
4. This attitude was manifested during the Civil War in many ways. One of the more striking was the condemnation of the commissioned, commerce-raiding warships of the Confederacy as “pirates” (Hearn 1992, xiv). Jeffrey Rogers Hummel states that the “Lincoln Administration’s official position was that the Confederacy did not legally exist” (1996, 168).
5. The British shipowners were disappointed in their expectation. The fees did not decline.

6. The term “secessionists” is, admittedly, not often used to describe the American colonists, but that surely is exactly what they were.
7. During the centuries of private commerce raiding, the overwhelming majority of the privateers of most nations were rigged either as schooners or brigs and ranged in size (measured in terms of carrying capacity or “burthen”) from 150 to 400 tons. For comparison, by the 1850s ocean-going, full-rigged merchant ships ranged from 600 to 2000 tons, and occasionally more. Most schooners and all brigs had two masts, but the former were “fore-and-aft rigged”, while the latter were “square-rigged”. That is, the principal sails of schooners were set *parallel* to the vessel’s longitudinal axis. The principal sails of brigs were set *perpendicular* to the vessel’s longitudinal axis. Both schooners and brigs were usually much better in light or unfavorable winds than large “ship-rigged” vessels (square-rigged, with three masts instead of two). See MacGregor (1973), Chapelle (1949), Kert (1997, 89), and Garitee (1977, 113) for further details. The one clear exception to the above generalizations was France during the reign of Louis XIV. During that period, French privateers (called “corsairs” by the French) were often large, ship-rigged vessels comparable in power to English frigates of the time and which, therefore, occasionally participated in naval battles alongside the ships of the French Royal Navy (Lord Russell 1970, 81).

8. For instance, in the winter of 1812-13 while off the coast of Brazil, the American privateer schooner *Comet* encountered a large Portuguese warship that was escorting

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three armed English merchant ships. *Comet* shot it out with the warship, driving her away. This American privateer then managed to capture all three merchant ships. See Garitee (1977, 150-51).

9. In other words, privateering provided a mechanism by which private and “social” interests could readily coincide.
10. To gauge the significance of such investments, one should compare them with the annual salary of the Secretary of the Navy in 1812: \$4,500 (Garitee 1977, 38).
11. This difference was in part due to a privateer’s ability to add to her stock of provisions from those found on board the ships she captured.
12. In France, two-thirds of the cruise’s proceeds went to the owners and one-third to the captain and crew. Furthermore, in France “[t]he percentages which each member of the crew received were laid down by the Minister of Marine” (Lord Russell 1970, 22). Also, the working conditions on French privateers (“corsairs”) seem to have been much less pleasant than those on privateers from Britain, the United States, and Canada (Lord Russell 1970, 66-67).

13. This should not be taken to mean that naval vessels never took prizes, because they did. Although the primary role of public navies was to engage one another in battle, raiding of the enemy's merchant fleets was frequently undertaken. In fact, prize money for such captures was distributed among the officers and crews much like what was done with privateers (Kert 1997, 124-25). This proved, for example, to be an important factor in attracting young men into the British Navy. Just as happened with privateers' captains, only less frequently, the captain of a Navy ship who took a rich prize could become wealthy overnight. In 1796 two British frigates captured four Spanish vessels that were laden with treasure from South America (Henderson 1994 [1970], 105-6). Each of the two captains received 40,730 pounds-sterling, or 271 times his annual salary!

14. In maritime terminology, this process was succinctly known as "boarding the enemy". This was, of course, a tactic also employed by naval vessels on many occasions. However, for most naval vessels boarding was secondary to the use of artillery.

15. In the days of sail, a naval frigate carried from 24 to 60 cannon and was more powerful than any class of naval vessel except the ship-of-the-line. Frigates were the equivalent of the modern cruiser, in other words. See Henderson (1994 [1970], 123-24, 170) and Chapelle (1949, 39-40).

16. In the English-speaking world, the basis of prize law toward the end of privateering

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activity was the 1753 British document called the "Report of the Law Officers" (Petrie 1999, 7-8).

17. See Kert (1997, 66) for examples of court costs as a percentage of the value of a prize.

18. Those nations were Great Britain, France, Prussia, Austria, Russia, Sardinia, and Turkey. Later in 1856 the declaration was ratified by Belgium, Denmark, the German Confederation, the Netherlands, Norway, Portugal, and Sweden.

19. See Rothbard (1977 [1970], 1-9) for additional discussion of the theoretical issues.

Appendix

Verbatim text of an actual privateering commission (letter of marque and reprisal) issued by the government of the United States to the schooner *Patapsco* during the War of 1812 (Garitee 1977, 96-97):

JAMES MADISON, President of the United States of America.

TO ALL WHO SHALL THESE PRESENTS, GREETING:

BE IT KNOWN, That in pursuance of an Act of Congress passed on the *eighteenth* day of *June* one thousand eight hundred and twelve, I have commissioned, and by these presents do commission, the private armed *Schooner* called the *Patapsco* of the burthen of *159* tons,

or thereabouts, owned by Andrew Clopper, Levi Hollingsworth, Amos A. Williams and Henry Fulford of the City of Baltimore

mounting 6 carriage guns, and navigated by 40 men, hereby authorizing *James M. Mortimer* Captain, and *William Ross* Lieutenant of the said *schooner Patapsco* and the other officers and crew thereof to subdue, seize and take any armed or unarmed British vessel, public or private, which shall be found within the jurisdictional limits of the United States or elsewhere on the high seas, or within the waters of the British dominions, and such captured vessel, with her apparel, guns and appurtenances, and the goods and effects which shall be found on board the same, together with the British persons and others who shall be acting on board, to bring within some port of the United States; and also to retake any vessel, goods and effects of the people of the United States, which may have been captured by any British armed vessel, in order that proceedings may be had concerning such capture or recapture in due form of law, and as to right and justice shall appertain. The said *James M. Mortimer* is further authorized to detain, seize and take all vessels and effects, to whomsoever belonging, which shall be liable thereto according to the Law of Nations and the rights of the United States as a power at war, and to bring the same within some port of the United States in order that due proceedings may be had thereon. This commission to continue in force during the pleasure of the President of the United States for the time being.

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Given under my hand and seal of the United States of America, at the city of Washington, the 17 day of *September* in the year of our Lord, one thousand eight hundred and 12 and of the Independence of the said states the *Thirty seven*.

By the President James Madison

[signature]

James Monroe Secretary of State

[signature]

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