

## **Buccaneers, Pirates and Privateers**

VIJAYALAKSHMI BALAKRISHNAN

### **Learning to Fish: The Net and the Sea**

Cyberspace governance is going through a period of transition. Until the last decade, the user community saw the World Wide Web as free space, pure, pristine, where ideas and individuals rather than interest groups and institutions had primacy in decision-making. This has changed over the last ten years. Today, an individual's access to information on the Internet is fenced off and restricted, by both State and market.

This fencing off has been so gradual, and the methodologies used so sophisticated, that activists attempting to keep electronic space free have been forced onto the back foot, remaining primarily reactive in their advocacy. Nation states and market players from the old economy have strategically focused on defining the architecture of the internet, to ensure that in the new economy their relevance remains as high.

In their search for public arguments to persuade people and develop adequate groundswell, freedom activists have limited their challenge to the rules and regulations within the domain of what is now international law. The confrontations and challenges have improved access to information for end-users through innovative legal solutions; but the resistance has been unable to question the core understanding of the internet as another marketing channel for the players of the old economy.

One reason for this has been the limited range of learning opportunities. Cyber-activists and proponents have emerged from the wider anti-globalisation struggles; memories and experiences have remained linked to resistance around land and related notions of property; ideas of power struggles have been learned through engagement with and challenges to this facet of markets. And yet, the entire lexicon of the internet is the legacy of human engagement with the sea.

There are, at the very least, four levels of similarities between the internet and the sea:

- > Both use similar terminologies: surf, navigate, trawl, sea spider.
- > Neither has geographic boundaries, and are thus difficult to control by the nation-state system.

- > For the market, both the sea and the Internet offer opportunities for growth as well as pose challenges of control.

- > Mechanisms that earlier controlled sea trade, like mechanisms that control the internet today, have the ability to reduce distance and redefine notions of time and space; and thus redefine power relationships. In the case of the sea, the big breakthrough came in the mid-15<sup>th</sup> century.

When the domains of the sea and of cyberspace are compared, the basic realities, character and flavour of the historical maritime strategies of nation states and the contemporary cyber-business strategies of for-profit corporations turns out to be closer and more constant than one might imagine.

### **Sailing, down the Ages**

In *An Enquiry into the Nature and Causes of the Wealth of Nations* (1776), economist Adam Smith has argued that the discovery of America and that of a passage to the East Indies by the Cape of Good Hope are the two greatest and most important events recorded in the history of mankind.

The dramatic language, when read with the benefit of hindsight, may suggest an overstatement, but it is difficult even today not to appreciate the critical role these two events that took place in quick succession have had in shifting the balance of power in the world economy.

Through much of history, contact between Asia and Europe was hyphenated, being mediated through engagement with Arabia. Despite having been a seafaring people all through history, the Europeans had no involvement in the maritime trade of the Indian Ocean, which was entirely in the hands of Asians and Arabs. All of this began to change in the 16<sup>th</sup> century, when the Iberians began serious maritime exploration, aided by the compass and changes in shipping technology.

By the beginning of the 17<sup>th</sup> century, Dutch and British oceanic merchant shipping had become the main connection between Asian and European markets. Much of the maritime trade between different parts of Asia was also taken over by European ships. How did the Europeans, in a matter of three generations, shift from being non-players to the dominant actors in Indian Ocean trade?

It is interesting to think of the epoch of maritime discovery as a previous chapter in the history of what is considered globalisation today. Then too, the impulses that knit large distances together did not originate in only one location (the west) and did not flow only in one direction (towards the east). There were significant countercurrents that made the history of global contact a far more complex matter than we are accustomed to believe.

### Moment I: Gaining Control of the Oceans

Around 1660, the *Faujdar* of Balasore ; in present-day Orissa ; was approached by the King of the Maldives to intercede with the Emperor Aurangzeb, so as to impose a ban on Dutch and English ships. Being a realist, the *Faujdar* justified the situation thus: by stating that the Emperor was master only of the land and not of the sea. In that statement lay the ruins of the Mughal empire and the seeds of the rise of the new imperium. Over the next half-century, that power shift would be well cemented.

One of the key differentials between the three European powers ; the Dutch, the Portuguese and the English ; who entered Asia to trade was in their treatment of privateers. The Portuguese strongly discouraged it; the Dutch pragmatically acknowledged and accepted that privateers would continue to function, given the situation in Asia. Only the English converted the reality of privateers into an arm of colonial expansion strategy.

Pirates, through history, have had an ambiguous relationship with authority. While both pirates and privateers had profit in mind, the key difference is the relationship to a nation-state, for the privateer was also seen as an extended arm of the state. Thus the privateer usually functioned with the support of a letter or marquee, which provided a list of countries whose ships could not be attacked. However, there was little support for privateers who were captured. In most cases, the hostile country would treat the privateer as a pirate, charge and execute him. And in most countries, a key distinction was made between a merchant and privateer, in that the privateer was not paid by the nation or company but earned from the treasures on board ships or properties that were attacked.

England was one of the few countries that went further in its strategic utilisation of privateers to fulfil expansion ambitions. Thus, during war, England commissioned privateers to seek out and attack the ships of hostile nations; sailing on the account , i.e., they would loot, pillage, and plunder England's enemies for King and Country . For their efforts, the captain and crew would receive a portion of the plunder, between 20 and 50%, with the rest going to the Crown. In return, the captain and crew had safe harbour and were protected by England. It was not just during times of war, that the State in England and privateers worked together. Through law and policy measures, the State worked closely with privateers, advancing their interest as also its own.

The Navigation Acts controlled the movement of ships throughout the emerging empire. They had three key provisions.

First, defining who could trade: Trade with colonies could only be conducted on English or colonial ships.

Second, clearly outlining what could be traded and with whom: Certain key raw materials, tobacco, sugar and indigo were exclusively meant for trade within the empire.

Third, mapping the trading route that would need to be followed: Stipulating that all goods meant for sale outside the Empire would have to be routed through England.

Since trade outside the English colonies primarily meant the sale of goods to continental Europe, the Acts effectively transformed England and English ports into a gateway to Europe and established Britain as the preeminent commercial and shipping

power. Between 1660, when the first Navigation Act was implemented, and 1700, a few years after the last reworking of this legislation, British exports grew by 50%; at least half that increase in profits came from the re-export of colonial imports to Europe, underlining the importance of Europe as a commercial market destination. Crucially, the Navigation Acts made no distinction between the goods brought in through private trade, of individuals and that of the official monopoly holder.

By the 17<sup>th</sup> century, however, there was growing ambiguity about the status of pirates and privateers. Many privateers reneged on their commitment to the state, attacking for profit rather than as a political duty, just as there were some pirates who, in times of crisis, were willing to accept a relationship with the state, thus prioritising politics over profit. Other countries attempted to get England to rein in its privateers, but this did not happen until well into the 17<sup>th</sup> century. And in 1856, at the Congress on Maritime Law in Paris, privateering was banned. The first article of the treaty signed in Paris is categorical: *Privateering is, and remains, abolished...f*

By abolishing privateering, the European states were primarily delinking profit from justice. This had as much, if not more, to do with their greater sense of control over the seas and the colonies, and the perceived threat from privateers, now operating as corporations global economic players, as it had to do with any ethical considerations.

However, while the Congress of 1856 managed to end privateering, thus separating state and market expansion activities, piracy on the seas continued to flourish, challenging both state and market expansion.

All of this is similar to contemporary activity within cyberspace. Tacit support is provided for creative innovations that will push technology and the overall boundaries of the economic space. However, this support is conditional: as with privateers in the past, it is available until the status quo of existing corporate structures is threatened.

## **Moment II: The Past in the Present**

In her book *Law and Internet Cultures*, Kathryn Bowrey examines copyright litigation by content owners against successive generations of peer-to-peer networks, such as Napster, Kazaa and Grokster.<sup>1</sup> Instead of digital piracy, she suggests, a different way of framing the issue: Perhaps we should think of peer-to-peer devotees not as buccaneers, but as privateers ; the patriots of the information age*f*.

Bowrey seems to use the term *buccaneerf* as a synonym for pirate, though in reality the buccaneers were much more. According to Wikipedia sources, buccaneer communities had established pockets of a democratic, largely stateless society. Crews operated as a democracy: the captain was elected by the crew and they could vote to replace him. The captain had to be a leader and a fighter ; in combat he was expected to be fighting with his men, not directing operations from a distance. Spoils were evenly divided into shares; the officers had a greater number of shares because they took greater risks or had special skills. Often the crews would sail without wages ; on account ; and the spoils would be built up over a course of months before being divided. There was a strong *esprit de corps*

among pirates. This allowed them to win sea battles: they typically outmanned trade vessels by a large ratio. For some time there was also a functional social insurance system, guaranteeing money or gold for battle wounds at a worked-out scale.

Thus, if anything, the buccaneers appear to have created and administered a more egalitarian and equal society than any in Europe at that time. And yet the Buccaneers movement did not last. They had begun life on the high seas as French sailors who had either jumped ship or decided to stay on in the Caribbean rather than return to Europe; they set up their own self-governed community. In time, they grew so powerful that they began to threaten the trading and imperial ambitions of the Spaniards, who claimed the islands that they lived on. A persistent challenge to Spain's economic and political ambitions in the Caribbean, captured buccaneers were treated with particular violence by the Spanish navy.

The English, who turned their attention westwards later than the other European powers, saw in the buccaneers a strategic way to challenge and possibly weaken the Spanish. They offered the buccaneers a safe haven at Port Royal in Jamaica. Thus they turned the buccaneers into privateers, an extension of their own navy against a common enemy. This converted the independent collective into one which worked to advance the economic and imperial interests of the English state.

In Bowrey's reading of buccaneer history, the first part of the story is transformed: the buccaneers are perceived not as shapers of a public space, challengers to the state and the market, but as pirates; those who challenge the status quo for private profit, without a justice objective. And when circumstances force a compromise and an acceptance of the nation-state framework, the privateers are written into the frame of patriotism, for now the same formerly illegal activities have sanction; and thus, notions of profit conveniently mix with notions of justice.

Down the ages, there has been a distinction; in law and practice; between pirates and privateers; it is a distinction which has been lost in the transition of the word piracy to the digital world. The distinction, however, is important, if we are to understand the dangers that certain kinds of commercial activity pose, and to whom.

In her reading of the relationship between modern piracy and the nation state, Bowrey leaves no space for a third alternative: that of pirates and privateers functioning from a higher understanding of justice than frameworks of laws and legal systems, which might at some points have had some State sanction. However, in suggesting that peer-to-peer networks are not a challenge to the existing State legal system, but in reality a new-age version of privateers, Bowrey is not wrong.

In many ways the open source movement is similar to the privateers of the age of maritime exploration. Using the letter of marquee, pirates and privateers were strategic players in opening up the sea routes, leading to a growth in trade volumes, and also in changing the power balance between Europe and Asia in the 16<sup>th</sup> and 17<sup>th</sup> centuries. Then, privateers and pirates were the spearhead, roaming the seas with tacit approval of the State; weakening competing powers and thus making it possible for the State to leverage its formal naval forces effectively to support commercial expansion in Asia. The open

source movement does something similar. Using contract law, it reaches out through commercial relationships to challenge some players in the market. However, the movement does not challenge the larger power dynamic with the State.

Napster, Kazaa and Grokster... Each such attempt, on a smaller scale, operates much like the open source movement, challenging not the architecture and power relationships of cyberspace governance, only the mechanics.

### **An Alternate Future**

The early history of the Internet's expansion and growth echoes the past. Through the early voyages in the 16<sup>th</sup> century, Asian commodities, textiles and spices were sought out; through the early years of the Internet and expansion of the virtual market, the West has reached out to Asia for human talent, skills and labour, to maximise the economic opportunities that technological breakthroughs have enabled.

What is happening today in cyberspace has a distinct resonance with an earlier period in Maritime history as described in this essay. Tacit support is provided for creative innovations that will push technology and the overall boundaries of economic space. However, this support is conditional: as with privateers in the past, it is available until the status quo of existing corporate structures is threatened.

There are many similarities in trends and patterns, separated by time and space, in world affairs. And yet there have been moments in the past which suggest that an alternate trajectory could have been charted. Identifying a range of those moments may make it possible to ensure that this time around, human decisions can help chart an alternate future.

This text is adapted from a paper presented at the Asia Commons Conference, June 2006.

### **NOTES**

1. Of all the performing arts, music has through the centuries been a constant site of resistance, and the domain of music has always been contested terrain where notions of authority have been challenged. With the coming of new technologies, big business and its authority to define the way music is experienced by the general public has been seriously challenged, using the institutions of the nation-state system. These three high-profile cases, in which the power of big business was weakened, relate directly to the way music is shared in the contemporary moment. For more information:  
 On Grokster, see <http://www.wired.com/news/technology/0,1282,68033,00.html?tw=rss.TOP>  
 On Kazaa, see <http://www.wired.com/wired/archive/11.02/kazaa.html>  
 On Napster, see <http://en.wikipedia.org/wiki/Napster>

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