Enemies of All Humankind

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While European, and especially British, discourse never persuasively resolved the dilemma presented by the pirate figure, a discourse that emerged in the United States did. The final rereading of Augustine’s anecdote that I will analyze here exemplifies this resolution and indicates an interesting discursive maneuver in the United States that will inform much of my discussion of hostis humani generis in this study. In the rereading of Augustine in the early nineteenth century, a simple yet effective twist is performed: the United States is squarely defined as the realization of the legitimate civilized state that is anticipated in British discourse, and the entire history of European imperialism takes the place of a static, precivilized state of nature.

The passage I will discuss here is taken from Charles Ellms’s *The Pirates’ Own Book*, published in Boston in 1837. *The Pirates’ Own Book* has been widely reprinted as one of the classic publications on Western piracy, and it is especially famous for its rich body of illustrations. Charles Ellms was a stationer who gave up that profession to write popular books and almanacs on maritime topics. While not much else is known about him, his location in Boston indicates some of the reasons for his topic as well as his perspective: the city has an extensive piracy-related history and was also a hotbed of American phrenology in the early nineteenth century. *The Pirates’ Own Book* strongly reflects both of these contexts.

During the Golden Age of Piracy, Boston could boast of being one of the most important colonial spaces for antipiracy measures. Many of the Golden Age pirates covered by Johnson were tried and executed there, Cotton Mather had preached his pirate sermons there, and booksellers there had traditionally made small fortunes from descriptions of pirate trials and pirates’ dying confessions. In *The Pirates’ Own Book*, Ellms refers to this history by often inserting texts originally written by Captain Charles Johnson, William Blackstone, and other central sources on piracy into the
chapters, copying texts extensively and verbatim. Other passages in The Pirates’ Own Book from British sources are interwoven with the text and often greatly revised from their original versions. I see this use of key texts on piracy as an attempt to come as close as possible to an authoritative account of the history of piracy. Indeed, the texts incorporated by Ellms represented a cultural consensus about piracy in the nineteenth-century United States. Ellms may have attempted to summon and summarize the most important historical documents on piracy to contextualize the actual focus of his publication, the pirates of the early nineteenth century. I will return to this aspect in a moment.

First, the second reason for the importance of Boston must be addressed, as it heavily influences Ellms’s perspective on piracy. As noted above, Boston played an important role in the American history of phrenology, a discourse that structures the entire text of The Pirates’ Own Book and is explicitly mentioned in the rereading of the Augustinian anecdote I will discuss below. Phrenology essentially argues that the character of a person can be determined by the shape of his or her head. The theory assigns special meaning to certain “bumps” and their prominence—for instance, the bump of destructiveness that informs piratical behavior. Phrenology is largely dismissed today as a racist and sexist pseudoscience, and indeed it contributed to the progression of scientific racism, to the naturalization of dichotomist gender constructions in American society, and to the social exclusion of disabled citizens. The hierarchy of heads in phrenology clearly favors white, able-bodied men as the ideal that is superior to all others, and because of this position these men become a standard of civilization.

The mainstream popularity of phrenology in the United States began with a series of lectures given by Charles Caldwell in the 1820s, one of which notably was in Boston. In 1832, five years before the first publication of The Pirates’ Own Book, one of the fathers of phrenology, Johann Gaspar Spurzheim, came to Boston during a lecture series and fell victim to a deadly fever. His funeral was a very public event that may help illustrate the great popularity of phrenology in the city. In the course of the funeral ceremony, a cast of Spurzheim’s head was made, his corpse was publicly dissected in front of as large an audience as the anatomical theater allowed, his brain and skull were removed as artifacts for the Bostonian phrenological society, and his burial was attended by approximately three thousand people (Oehler-Klein, Schädellehre, 340–41). Considering the visibility of such events, it is not surprising that Ellms was aware of the long-lived phrenologist community in Boston. His own deep familiarity with phrenological discourse suggests that he was an active part of that community. For instance, almost every chapter of The Pirates’ Own Book ends with a detailed physical description of the
protagonists. These descriptions, which are complemented by the book’s famous illustrations, appear as postscripts with no apparent narrative connection to the rest of the chapter. Their only function is to add important phrenological information such as a person’s beauty, disfigurement, and other meaningful physical characteristics.

In the passage discussed here, impressions are reviewed from the trial of Benito de Soto, one of the most famous, bloodthirsty, and glamorous Latin American pirates of the early nineteenth century. In 1820 and 1830s, after the Napoleonic wars, there was a spate of particularly vicious pirate crews in Europe and, more importantly for the United States, in Latin America. As Peter Earle notes, many of the features associated with Golden Age piracy in the United States today actually stem from the post-Napoleonic period that Ellms lived in and wrote about. Americans were extremely aware of these contemporary waves of piracy and were kept informed by newspapers throughout the nation (Earle, *Pirate Wars*, 216–20). Because of the prominence of Latin American pirates in US discourse, Ellms devotes the greatest portion of his book to the pirates of his own day and their phrenological interpretation. Here, too, he makes free use of trial documents and other primary sources.

The passage that refers to the Augustinian anecdote reads as follows:

Indeed, when I saw him [Captain Benito de Soto] in his cell and at his trial, . . . he still exhibited strong traces of what he had been, still retained his erect and fearless carriage, his quick, fiery, and malevolent eye, his hurried and concise speech, and his close and pertinent style of remark. He appeared to me such a man as would have made a hero in the ranks of his country, had circumstances placed him in the proper road to fame: but ignorance and poverty turned [him] into the most ferocious robber, one who might have rendered service and been an honor to his sunken country [Spain]. I should like to hear what the phrenologists say of his head; it appeared to me to be the most peculiar I had ever seen, and certainly, as far as the bump of destructiveness went, bore the theory [of phrenology] full out. *It is rumoured here that the skull has been sent to the savans [sic] of Edinburg [sic]; if this be the case, we shall no doubt be made acquainted with their sage opinion upon the subject, and great conquerors will receive a farther assurance of how much they resemble in their physical natures the greatest murderers.* (Ellms, *Own Book*, 99; emphasis added)

In this rereading of Augustine, the narrative construction is very different from the previously discussed examples. Whereas Augustine and Johnson had used the similarity between pirate and emperor as a dramatic way to shatter certain existing claims to legitimacy, the figures’ relationship in Ellms is characterized as neither surprising nor problematic. It is merely a
“farther” affirmation of a long-established scientific fact. At the same time, it is noticeable how much effort Ellms devotes to associating the emperor with Europe rather than the United States, as the repeated remarks about de Soto’s “country” or even “his sunken country” indicate.

The most obvious indication of a vilification of Europe is the reinterpretation of a prototypical remark in eighteenth-century British discourse on piracy—namely, the lament that the pirate might have been of great service to the empire if circumstances had been different. In the context of Captain Edward “Blackbeard” Teach, who was at least as glamorous a pirate as de Soto, Johnson had observed that “here was an End of that courageous Brute, who might have pass’d in the World for a Heroe, had he been employ’d in a good Cause” (General History, 82). Johnson suggests that a brute might be a hero, indicating, however, that his superior courage is the decisive aspect in that assessment—a nod to the Achilles-like qualities that the eighteenth century attributed to the pirate. Ellms uses a very different formulation: “ignorance and poverty turned [him] into the most ferocious robber, one who might have rendered service and been an honor to his sunken country.” In this sentence, Ellms highlights the structural shortcomings of European societies and identifies the lack of education and economic opportunity as the main causes of piracy. He not only replaces “courageous” with “ferocious,” but he also formulates the reference to heroism as a parallel construction to “the most ferocious robber.” He suggests that being a despicable and exceptionally cruel criminal and being “one who might have . . . been an honor to his sunken country” are virtually synonymous. The famous and widespread British lament about Blackbeard is no longer used to conceptualize a legitimate “us” but an illegitimate “them.”

The two categories of pirate and emperor are thereby collapsed before Ellms even evokes Augustine, and they are collapsed specifically as the common properties of Europe. The state of the pirate who bears mere “traces of what he had been” as he awaits his execution mirrors the decay of the “sunken country” he might very well have served. Ellms uses famous and recognizable turns of phrases from the context of piracy—in this case, the combination of Johnson’s lament about Blackbeard and the Augustinian anecdote itself—but never uses the word “pirate.” Instead, he uses much more obviously derogatory characterizations such as “robber” and “murderer,” thus underlining the unambiguous illegitimacy that he assigns to both pirate and (European) emperor. Pirate and emperor no longer constitute a vexing paradox of imperial expansion, but pathologies of the past, regrettable social anomalies that are the direct product of the pirates’ European origin.

The age of the legitimate empire that is both heralded and postponed in Johnson is no longer a state of the future in Ellms’s writing. Rather, it
is a state that has long been achieved—not in Europe (which still battles with the dilemma of being imperialist invaders and narrative equivalents of the pirate) but in the United States (which, according to Ellms, had never been imperial in the first place). In terms of territorial expansion, citizens of the United States are portrayed in a completely defensive light throughout the book, and the US westward (and, significantly in the context of Ellms’s topic, southward) imperial expansion is rendered as invisible in *The Pirates’ Own Book* as is the fate of the external innocent victims in the Free Prince speech. Instead, Ellms suggests that the foundation of the United States is nothing less than the fundamental turning point that British texts such as the Free Prince speech anticipated—a securely achieved state of civilization from which one can review the follies of an earlier developmental stage with scientific rationalism and moral disinterestedness.

In my analysis of this new position, I will focus on two larger points. Most important, I will discuss Ellms’s position in the debate about abolitionism. This point is important insofar as Ellms’s take on phrenology is directly linked to the legal use of the hostis humani generis fiction that addresses, for the first time, a crime other than piracy. Some fifteen years earlier, piracy law had been amended to criminalize the deep-sea slave trade as one additional form of piracy. Thus, in Ellms’s time, the slave trade was considered a crime committed by enemies of all humankind. But first, I will discuss the impact of Ellms’s use of the discourse of phrenology in this passage, and how this discourse helps naturalize the United States as an absolute representative of legitimate rule.

Phrenology, seen as a science, attempts to empirically identify and differentiate personalities by physical features and to create verifiable standards to measure any person’s true nature, character deficits, and likely future behavior. Early phrenologists tended to focus on criminals and other problematic segments of the population—an obvious example being Ellms himself, who writes about pirates. Phrenology’s founder, Franz Joseph Gall, originally promoted a deterministic analysis of a person’s personality bumps. The American tradition almost immediately deviated from this and allowed that people may gradually change their own skull’s bumps and also may encourage change in the bumps of others. Spurzheim in particular argued that Gall’s main fault lay in his focus on ideal character types who represented only one property, such as “the emperor,” instead of attempting to identify an ideal equilibrium of features—in other words, the normal state—from which extreme types deviated, and to which they should be led back (Tomlinson, *Head Masters*, 84–86). In this sense, the American phrenological tradition explicitly affirms the modern invention of the normal as the new standard of human behavior (Hacking, *Taming of Chance*, 160–69) and emphasizes the notion of the criminal as a curable deviant.
Even though phrenology relied on a blatantly hierarchical structuring of humanity that remained deterministic in its core assumptions and helped naturalize these assumptions as scientifically proven facts of life (such as the inherent superiority of white over nonwhite), American phrenologists believed that favorable social conditions, education, and the willingness to improve could change the bumps of an individual person for the better: “Once instructed by phrenology, individuals [were considered to have] both the means and responsibility for self-improvement” (Cynthia Hamilton, “Man and Brother,” 175). Because young bones were especially capable of changing, the all-important reliance on the self-help tradition was accompanied by the second pillar of the American phrenological movement, a decided focus on pedagogy (Tomlinson, *Head Masters*, 265–85) that drew on Locke’s and Rousseau’s reasoning that the education of a child determined the character of the adult. Furthermore, the scientific, empirical results of bump analyses were used to argue for the improvement of various underprivileged populations’ station in life. After all, as Spurzheim had argued, every human being was considered to consist of good parts and bad parts that needed only to be balanced to create a good nature. Such transformations could occur even in those who were otherwise deemed hopelessly lost and wicked. Social justice was necessary to facilitate skull transformations toward a normal equilibrium: following this reasoning, phrenologists opposed physical punishment and the death penalty in the legal system and argued for the more humane treatment of the mentally ill who were housed in asylums (Oehler-Klein, *Schädellehre*, 335–36).

Even though most strands of phrenology clearly helped usher in scientific racism, the discourse was also sometimes used to oppose African American slavery. For instance, an abolitionist pamphlet of 1839 compared the heads of Africans, American slaves, and American freedmen, deducing that the Africans (who had never been exposed to Western notions of order) stood at the lowest level and the freedmen (who had been exposed to the Western order but not reduced to slavery by it) stood at the highest level in the hierarchy of heads (Cynthia Hamilton, “Man and Brother,” 181–82). *The Pirates’ Own Book*, too, is structured by a pronounced abolitionist argument (see especially Ellms, *Own Book*, 82).

In Ellms’s reading of the Augustinian anecdote, the discursive basis of American phrenology helps clarify the role implicitly attributed to the United States in the text. Like Spurzheim in his critique of Gall, Ellms refuses to read the pirate and the emperor as ideal types who represent a form of rule, as in Augustine, or externalized early stages of civilization, as in Johnson. Instead, Ellms reads them as individuals who reveal the flaws of a less than ideally organized regime. Their extremity does not render them
archetypes. Rather, they are considered warning signs that a given regime cannot maintain an environment for its citizens that allows them to develop normally. As indicated by the equating of the ferocious robber and the European hero in Ellms’s rereading of the Augustinian anecdote, the central property of Europe is the reducing of entire classes to ignorance and poverty. Not only did the social conditions of Europe push European citizens into violent extremes, but they even celebrated such personal degradation as heroic. It is in light of this that Ellms understands the special legitimacy of the United States—namely, as an environment that encourages people to develop freely and to achieve personal and collective happiness. Here, he agreed with the Fowler brothers, perhaps the most famous American phrenologists and Ellms’s contemporaries, who wrote: “In this land of plenty and equal rights, conscious of its liberty to exercise any and all of its powers, the human mind marches forth unfettered and free” (Fowler and Fowler, Phrenology, iii).

Both the Fowler brothers and Ellms saw the free and natural development of the mind as the central ideal represented by the United States, but they also indicated that violent and decadent excesses might result from such freedom. The Fowler brothers continued: “Here, then, if anywhere, we might expect to find, not only the greatest variety [of human characters], but, also, the greatest extremes” (Phrenology, iii–iv). This is hardly a completely positive statement in a discourse that emphasized the virtue of tranquil normalcy. In Ellms, therefore, American judges and officials are the most virtuous characters because they wisely regulate the undesirable extremes represented, in this case, by criminal pirates. In the numerous trial scenes in the book, but also in included documents such as letters from the US president and assorted military leaders, US officials represent the ideal of fatherly tranquility that welcomes and supports any credible attempt to improve oneself after previous bad conduct (Own Book, 41–43). At the same time, they sternly defend the law and citizens against those who continue to resist betterment (ibid., 68). The evocation of extremes in the American nation-state is a starting point for an individual to either become better or be excluded from the nation. The stage of this society, in other words, is not determined by the characters that live there but by the ideal of a national character to be striven toward. This ideal, Ellms argues, serves as the basis for the United States’ supreme legitimacy, because those who already represent and reproduce these ideals are at the same time the direct representatives of US statehood.

The Pirates’ Own Book contains one chapter (33–48) that is an interesting elaboration of this basic premise, and I will include it in this analysis because it helps specify the role of the United States in the text more generally.
The chapter in question revolves around Jean Lafitte, the pirate who had helped defend New Orleans against British forces in the War of 1812, and who had therefore gained the status of a regional American folk hero. Ellms does not share the romanticized view of Lafitte. In *The Pirates’ Own Book*, Lafitte’s heroic entanglement with the United States in the defense of New Orleans is described as a mere episode in his life that helps demonstrate both the tragedy of his deeply rooted wickedness and the desirability of being an American citizen.

In Ellms, Lafitte has lost his American citizenship due to his piratical activities before the beginning of the chapter and desperately seeks a chance to win it back. When the British attempt to win his assistance in the invasion of New Orleans, he turns his back on their generous offer in exchange for a second chance to be an American citizen. After the successful defense of New Orleans, he and his men are indeed rewarded with renewed citizenship. In Lafitte’s decision to defend standards rather than to be recruited for money, the pirate has taken up the role of Captain Beer, who answers the economic argument of a low, amoral pseudosovereign with a normative answer that evokes his allegiance to a legitimate ruler. The representatives of the US government respond justly and grant him a second chance within the nation.

As indicated by Ellms’s use of the Augustinian anecdote, however, the United States is the legitimate rule that succeeds, replaces, and justly condemns European predatory rule as well as its piratical counterparts. Lafitte fails to live up to American standards. He soon returns to his piratical activities and reestablishes pirate ports just outside of United States territory (Ellms, *Own Book*, 46). These specific ports are also associated with historical practices of slave trading (Exnicios, “Jean Lafitte,” 41). In consequence, Lafitte loses his citizenship once more, this time forever. This story indicates that the externalization of the pirate not only lies in his predatory economic practices but also retains a pronounced territorial component: piracy can occur only outside of American territory.

Lafitte’s second failure proves that the pirate, even at his best, is an anachronistic figure in American society; indeed, this is one of Ellms’s major points throughout the book. A pirate is an individual so deeply entangled with precivilizational, illegitimate structures that his betterment in the spirit of phrenological logic is impossible. Failure ensues not because some human natures are naturally unfit to better themselves, but because they have been too fully exposed to un-American influence in the skull-defining years of their youth. As Lafitte’s reestablishment of alternative community structures indicates, he does not feel comfortable in a society that is good for his nature but chooses to remain in an environment that brings out the worst in him.
He is imperial, predatory, and culturally European—he continues to lose his citizenship because he is simply not enough of an American to keep it.

Lafitte’s story substantiates Ellms’s suggestion to treat de Soto’s skull as a scientific proof that emperors and pirates are alike. It is even a fitting gesture in this context to suggest sending the skull to Europe, since the gesture not only pays tribute to the widely acknowledged Scottish expertise in phrenology at the time but also allows the pirate’s skull to be in an environment that can provide the skulls of emperors to compare to the pirate’s. The United States as a state, Ellms suggests, is the completion of the modern project and therefore necessarily free of emperors; the United States is the natural heir and successor of the “sunken countries” of Europe and will gradually but necessarily remove the scattered piratical relics of earlier colonial times.

In this sense, Ellms’s perspective and Augustine’s perspective on the pirate-emperor problem are direct inversions of each other. They argue for the existence of two cities (one just and one unjust) and emphasize the same characteristic of the unjust regime (namely, that it is based solely on the law of conquest). Neither city is hermetically sealed off from the other; both Augustine and Ellms allow for the parallel existence of just and unjust individuals in each city or regime. However, Ellms’s central premise is the exact opposite of Augustine’s. Whereas Augustine presupposes the impossibility of any just regime on earth, Ellms presupposes that the United States constitutes just such a regime, and already exists. In Augustine, the just are marginalized and are engaged in a futile struggle to better a world that cannot be saved as such. In Ellms, the unjust are marginalized deviants who will necessarily be expelled from the just regime because they cannot live up to its standards.

This rearrangement of Augustinian elements is stabilized by an approach that has been mentioned before in the context of the American discourse of phrenology—the self-help tradition. Ellms renders piracy as a symptom of an individual failure to better oneself. It is in this sense that the emperor and the pirate return to what they were in Augustine—namely, metaphors of a flawed state of mind. Rather than failing to strive to attain the City of God, these flawed characters now fail to strive to reach the City on a Hill. The American nation takes the place of a promised legitimate kingdom that fulfills Christian dreams of a utopia. The imperfections of this legitimate nation are due merely to the imperfection of its individual citizens, not to the national character that in fact represents precisely the paternal, merciful rule advocated by Augustine. In this spirit, the United States in Ellms is characterized by the perpetual willingness of its citizens to better themselves, combined with a regime that allows and encourages them to do so. This personal as well as structural devotedness to the ideal of a just nation are positioned
in sharp contrast to the situation in Europe, which systematically produces degenerated men and rewards them for their viciousness.

Both pirate and emperor are structurally as well as individually characterized as un-American or pre-American entities: for the first time in this discussion, the Augustinian anecdote is used to demonstrate where both pirate and emperor inherently fall short in comparison to the systemic virtues of national statehood. In contrast to Augustine and Johnson, Ellms uses the pirate to mark the territorial—that is, national—limits of an achieved just regime by placing him always just outside of the United States. The spatial location of pirate communities marks territories that have to be dissolved into the United States or be vanquished by it in self-defense (Own Book, 37). This territorialization of an achieved state of order is directly and constitutively linked to the notion of race, even though the American, the European, and the pirate are all marked as white. The notion of race is used to identify the innocent as distinct from all three, as in Brown’s gendered state, and thus as an entity that stabilizes the claim to legitimate US rule. Augustine’s innocent neighbor, dependent on mercy rather than a flawed idea of justice, appears as the enslaved African in Ellms. This is why Ellms’s topic of piracy and his abolitionist argument mesh so well.

Augustine had repeatedly suggested that motivation was central to determining the justice of violent intervention. He contended that a defense of the Christian faith was the only cause that could render violence just. Sovereign violence was allowed to coerce enemies into submission only if this intervention also forced these enemies to consider the superior wisdom of Christian faith, which would inevitably result in their eventual acceptance of its truth. John Mark Mattox explains Augustine’s reasoning at this point by analogies of a shepherd who uses the stick to usher straying sheep back into the safe fold and a doctor who forces an unwilling patient to take the medicine that will eventually save his life. The normative orientation of Christianity is assumed to be universally valid, because even enemies are expected to acknowledge its truth if they look at it without prejudice. Then they can acknowledge that war against them is ultimately for their own good, and violence is only the last resort to achieve the actual goal—namely, to better them (Mattox, Just War, 68–71). This argument directly corresponds with phrenology’s assertion that a just regime is defined by its practice of enabling individual betterment and its resolution to defend its institutions against the incorrigibly wicked.

In my discussion of Augustine above, I mentioned that the meeting of the pirate and the emperor necessarily evokes two other entities, the legitimate ruler and the innocent. The innocent is the constitutive victim of the pirate-emperor who must be protected by the Christian, who in turn represents the
only truly thinkable legitimate ruler, God. In Ellms’s usage of the anecdote, the nation replaces God as well as the anticipated stable empire, so the nation has to mercifully defend someone who is systematically victimized by Europeans and pirates alike.

A specific and continuously evoked American order that represents such an alternative to the illegitimate pirate-emperor entails the need for an equally specific and tangible innocent who must be protected to actualize American legitimacy. In Ellms, those innocent are African slaves. He frequently reminds the reader that the United States can claim to be really just only if the humanity of every human being is acknowledged, including that of slaves. Like the innocent in Augustine, African slaves in Ellms are not active agents but merely the recipients of merciful acts that substantiate the Augustinian characteristics of the American nation-state. The interests of African slaves may be represented by American courts, but the slaves themselves are almost never acknowledged as parties in Ellms, which is consistent with contemporary legal practice (Martinez, Slave Trade, 73).

The African slave as a figure in Ellms’s narrative is as external to the United States as the pirate is. For example, Ellms ends the chapter on de Soto with the following scene: “The black slave of the pirate stood upon the battery trembling before his dying master to behold the awful termination of a series of events, the recital of which to his African countrymen, when he shall return to his home, will give them no doubt, a dreadful picture of European civilization” (Own Book, 101). The African slave here is decidedly a foreigner to the just nation. He has been wrongfully removed from his native home and will now return to it; this is made clear when Ellms uses the adventure topos of the sole survivor to frame the slave’s perceptions of events. The evocation of this topos allows Ellms to ignore the structural links of the slave trade and the institution of US slavery in his own review of “events” and allows him to muse instead on the bad reputation given to Europe by being linked to practices of piracy and the slave trade. It is in this sense that the innocent reenter the picture in the form of African slaves who must be rescued from the exploitation of an illegitimate Europe and given neighborly assistance by the just American nation. Violent acts by the United States against Europe are therefore inherently legitimate because they are carried out in defense of the innocent.

Importantly, it is the entire continent (“country”) of Africa that is assigned the role of a passive, innocent victim in the economy of the slave trade. There is a territorially discernible nation-state (the United States) taking the place of the legitimate ruler and a territorially discernible “country” (Africa) taking the place of the innocent. This territorialization in Ellms emphasizes the most extreme poles of a legitimate spectrum: first, an achieved just order
understood as a fulfilled Augustinian sovereignty that, in its supreme legitimacy, is equivalent to a sovereignty directly carrying out the laws of God and nature; and second, a passive, faultlessly victimized territory that represents pure innocence. The pirate-emperors of Europe are considered outsiders to both of these spaces and are marked as illegitimate as soon as they interfere with either legitimate territory. Space, in other words, becomes constitutive in resolving the dilemma posed by the Augustinian anecdote, especially its modern variety presented by Johnson. The innovations in Ellms are that legitimacy is specifically discussed in terms of normalcy and deviance and that normalcy is linked to the specific definition of the American nation. *The Pirates’ Own Book* portrays pirates as the brothers of slave traders because both represent illegitimate economic infrastructures that victimize the innocent continent of Africa and are punished by the just US nation-state. The United States and Africa as the spatial equivalents of the legitimate ruler and the innocent stabilize a perception of all other regimes that exist in the world as inherently illegitimate and predatory.

Ellms suggests that the history of European and Latin American piracy is a history of barbarism that does not go back to the European privateering tradition, but (somewhat inconsistently) to the history of the North African Barbary States of the Mediterranean (*Own Book*, 24). This representation resonates with the writing of later abolitionist authors (for example, Du Bois, *African Slave Trade*). While the most famous English privateers roaming the Americas (such as William Dampier, Francis Drake, Henry Morgan, and Walter Raleigh) are completely missing from Ellms’s account, the Vikings and the Barbary corsairs are included and portrayed as the true forefathers of eighteenth- and nineteenth-century colonial pirates. This repositions the pirate as the heir not of daring pioneers but of cunning and brutal invaders and slave traders. This is an important narrative deviation from the British context, especially when considering the dilemma of the British tradition that acknowledged a structural kinship with white, Christian Golden Age pirates. As Ellms’s selection of his contemporary pirates’ roots indicates, pirates were redefined as white predators engaged in a nonwhite tradition of piracy and slave trading.

Even potentially problematic tendencies, such as US warfare against Native Americans, can be rationalized as legitimate in such constructions. Even though, as I have mentioned, Ellms does not address the question of US territorial expansion in the Americas, it makes sense to suggest that he would have characterized this kind of expansion as a continuation of the legitimate US project of removing threats to the national ideals, exemplified by Lafitte’s removal from the nation and the destruction of Lafitte’s pirate colony just off the coast of the United States. Indeed, this differentiation between Native
American Others and African slaves is substantiated by phrenologist discourse’s general racialized naturalization of this difference (Fowler and Fowler, *Phrenology*, iv). In part 2 of this book, I will offer a more specific discussion of a narrative that naturalizes warfare against Native Americans on related grounds in my analysis of a novel of Ellms’s time, James Fenimore Cooper’s novel *The Deerslayer* (1841).

At this point in the argument, however, it is more interesting to explore why Ellms’s construction of the inherent legitimacy of the United States would help expand the hostis humani generis fiction—which until the early nineteenth century had been limited to piracy—to encompass the slave trade. Initially it was Great Britain, not the United States, that most loudly condemned the slave trade. At the same time, it is important for this study’s argument to understand on what grounds this position was embraced in the United States.

At first glance, the equation of pirates and slave traders does not completely hold up. Pirates of the Golden Age regularly preyed on slave traders. For example, archaeological research has shown that the historical Samuel Bellamy used a transformed slave ship for his piratical enterprises (Christopher Hamilton, “Whydah”). In the second volume of the *General History*, a utopian pirate kingdom is evoked that abolishes slavery and accepts former slaves as the brothers of pirates because they, too, have been abused by tyrannical, profiteering merchants (Johnson, *General History*, 403–4). At the same time, however, historians strongly affirm that the historical practices of piracy and the slave trade were interwoven on many levels. On a structural level, Michael Kempe argues that in the seventeenth century “the members of the ‘Pirate Round’ at the back of international trade relations helped to connect the economic realms of the West Indies and Eastern Asia. This was especially true for the slave trade. Pirates indirectly helped to open or expand new markets for the international slave trade by their ‘wild’ enslavement of Eastern Africans in the Indian Ocean” (*Fluch der Weltmeere*, 203; my translation). The tendency of slavers to employ sailors with a shady past soon created an overlap between people engaging in piracy and people engaging in the slave trade. It was an open secret that “the crews of [nineteenth-century] slave ships were generally made up of ‘suspicious and dangerous characters,’ some of whom were also engaged in piracy” (Martinez, *Slave Trade*, 77).

In the United States in the early nineteenth century, piracy was connected to the slave trade because both established predatory economies. Ever since the merchantman system came to dominate the Atlantic region, trade had been considered equivalent with peace, and a strict separation of war and trade had been emphasized as a core feature of the modern world order
(Kant, *Frieden*, 33; see also Rodger, *Wooden World*). In legal discourse, it was because of the aspect of predatory economies that slave traders were defined according to the standards of piracy. The importation of slaves into the United States was abolished in 1808, and the US law against piracy was amended to also cover the slave trade in 1820. In any maritime context, “if any citizen of the United States, . . . seize any negro or mulatto, not held to service or labour by the laws of either of the states or territories of the United States, with intent to make such a negro or mulatto a slave . . . such citizen or person shall be adjudged a pirate” (“An Act to Continue in Force,” 2). Congress enacted the law in 1823, which established a firm link between the two crimes’ definitions in US law that remains in effect. The abolition of the slave trade indicated the US investment in the notion that predatory economic infrastructures were disruptive of peaceful international trade, which the nation depended on.

The slave trade, in contrast, was not considered a part of peaceful trading structures. It was based on the violent abduction of Africans from their homelands, and—more important, for writers like Ellms—it destabilized sovereign claims to a legitimate monopoly of force in national territories. Seen from his perspective as a citizen of the United States, the cases of Latin and South America demonstrate this destabilization. When the slave trade was abolished in the United States but not in major American slave trade markets such as Cuba and Brazil, wild inter-American trade infrastructures immediately emerged and allowed the increasingly intertwined businesses of smuggling, slave trading, and piracy to continue in Latin America and US coastal regions (Exnicios, “Jean Lafitte,” 39; Howard, *American Slavers*, 49–56; Labaree, *Boston Tea Party*, 52–57). The mutually beneficial presence of slave traders and pirates in connection with the Latin American pirate wave after 1820 rendered this informal economic infrastructure increasingly problematic for the United States, as Ellms’s pirate portraits in *The Pirates’ Own Book* generally affirm. The abolition of the slave trade was also already contextualized by the decade-long efforts to abolish privateering as the institutional backdrop of piracy, efforts that came to fruition in the mid-nineteenth century (Stark, *Abolition of Privateering*).

As Ellms’s use of the discourse of phrenology indicates, the inherent illegitimacy of these predatory infrastructures could be substantiated by emphasizing the degeneration of the customs and practices associated with them. After all, the Latin American pirates of the early nineteenth century were renowned not only for their ability to develop unaccountable infrastructures, but also for their excessive cruelty (Earle, *Pirate Wars*, 218–20). Ellms thus emphasizes the reliance of both piracy and the slave trade on excessive violence in connection with their illegitimate usage of space. In
the international legal discourse of the early nineteenth century, the slave trade had already been explicitly characterized as “a ‘crime against humanity,’ putting that term into legal use more than a century before its more famous debut at Nuremberg” (Martinez, *Slave Trade*, 114). In the more specific US context, Ellms states that “the regard for human life is one of the most prominent proofs of a civilized state of society. . . . You will ever find that the more a nation becomes civilized, the greater becomes the regard for human life. There is in the eye, in the form, and heaven-directed countenance of man, something holy, that forbids he should be rudely touched” (*Own Book*, 82). In Ellms, the condemnation of both piracy and the slave trade serve to secure the ability of the United States to exist peacefully, and at the same time to substantiate the nation’s normative claims to legitimacy in Augustinian terms.

However, the inherent illegitimacy of the slave trade remained restricted to its comparison with legitimate international trade in the maritime realm. Therefore, the slave trader as hostis humani generis also remained firmly restricted to the international maritime context, while slave traders in the United States remained excluded from the definition. In addition, the identification of slave traders was directly derived from the existing regulations concerning piracy, indicating that the legal fiction’s new usage still considered the undisturbed sovereign rule over space, rather than the protection of a universal humanity, as a central legitimating factor.2 Pirates were commonly recognized by their attacks on other ships; in contrast, slave traders were more than eager for a calm, swift, and discreet passage. It was thus impossible to identify them as enemies of all humankind without at the same time breaching the rights of all legitimate traders. After a treaty was signed between France and Great Britain in 1831 that granted the countries mutual rights of search when slave trading was suspected, the United States remained the last major maritime power whose flag granted slave traders protection from British search on the high seas. Despite its comparatively early criminalization of the slave trade as piracy in domestic law, the United States refused to allow international enforceability of punishment for the crime until 1862, a date that corresponds with the end of the Western slave trade as a whole (Martinez, *Slave Trade*, 79). The bitter disputes about the right of foreign navies to search trade ships directly originate in this close definitional analogy between piracy and the slave trade (Soulsby, *Right of Search*, 28–33). In the nineteenth century, this aspect of the slave trade helped establish the more general Western understanding of piracy as a practice of exploiting legal loopholes.

In this sense, it has become obvious that especially this final rereading of the Augustinian anecdote operates on a basis of its transfer to crimes
other than piracy, which introduces a new understanding of the humankind that the enemy of all humankind attacks. In the classic case of piracy, the enemy of all humankind is defined as such because he randomly attacks all vessels he encounters; in the derived case of the slave trader, the enemy of all humankind attacks the very “regard for human life” that would later re-emerge as the philosophical essence of human rights law. The rise of this new understanding of humankind is why the legal fiction could henceforward be separated from the crime of piracy and reinforce the ability of the hostis humani generis constellation to formulate legitimate violence much more fundamentally than before.