This chapter discusses the first construction of hostis humani generis as a constellation in early modernity. As I emphasized in the introduction, the pirate—who, at the time discussed in this chapter, was still the only representative of the fiction—was already a highly ambiguous figure. In law, piracy could encompass the activities of a whole range of maritime entities. Rogue privateers, privateers acting in the name of enemy sovereigns, predatory coastal communities, and small independent pirate states were already part of the pirate discourse in early modernity. Why, then, is there a need to redefine the pirate in the specific terms provided by hostis humani generis?

The reason lies, somewhat unsurprisingly in the context of this study’s focus, in the imperial expansion of European empires into the Atlantic region and the new constitutive centrality that was necessarily assigned to the maritime realm that connected the distant spheres of emerging imperial influence. For centuries, the central maritime antagonists of all European states had been the Barbary States of the Mediterranean (primarily, but not exclusively, Algiers, Tunis, and Tripoli). The Barbary States were autonomous city-states of the Ottoman Empire; in Europe, they were often conceptualized as wholly independent entities. This was due to the Barbary States’ specialized predatory economies, which largely rested on the combined enterprises of maritime warfare and the slave trade. Barbary corsairs conducted raids along the coasts of Europe as far as the British Isles, enslaving and selling European villagers, sailors, and travelers. From Don Quixote to Robinson Crusoe, European epos and literature reproduced a construction of the corsairs and the Barbary States as an impenetrable, faceless evil, the nemesis of Christian sailors who could flee their captivity but could never triumph over the captor. Institutional responses were also widespread across Europe. Entire religious orders were formed on the slaves’ behalf, and slave funds that helped organize the release of captives from Barbary slavery.
constituted long-standing insurance institutions in coastal regions (Clark, “Barbary Corsairs,” 23). The picture was not, of course, wholly black and white. For instance, European sovereigns also made use of European slaves bought in Barbary ports to man their galleys. The galley was a favorite in the Mediterranean because it could accelerate quickly during battle and maneuvering was possible even in a lull. Its popularity was one of the great reasons for the maritime slave trade as conducted in Barbary ports (Earle, Corsairs of Malta, 49–49 and 168). Still, the fear of Barbary corsairs remained a constitutive European sentiment for centuries.

In the altered context of an increasingly colonialist world order, the role of the Barbary States as a defining violent Other was complemented in Europe with the Otherness of colonial peoples. In the context of European imperial states’ rising economic, military, financial, and cultural importance since the onset of early modernity, the Barbary States became only one of many influential non-European sovereigns. After the invasion of Algiers by the French (1830) and the Ottoman Empire’s abolition of privateering in the Declaration of Paris (1856), the Barbary States would eventually be subsumed into a general racialized category of nonwhite, non-Christian, and non-European inferiority and would henceforward disappear from all mainstream accounts of European history.¹

In early modernity, of course, the Barbary States were far from decline and constituted a central military antagonist for the rising European empires. At the same time, these young European empires were eager to define themselves by their overseas activities and to create unified bodies of law that would address the core question of legitimate maritime violence in a way that would facilitate, as well as legitimate, imperial expansion anywhere. Early modern imperial law was preoccupied with the question of what kind of maritime violence should always be criminalized as piratical, and what kind should always be naturalized as legitimate imperial outreach.

In the context of legal studies, the discursive link between the Mediterranean and the Atlantic regions has long been a topic of research. The facts that the Atlantic and the Mediterranean regions were so vastly different yet both so essential in the development of colonial and international law resulted in major efforts to establish common ground between them in the sixteenth and seventeenth centuries. The central concern of many legal scholars of these centuries was to formulate universally applicable laws (for an excellent overview and analysis of the history of these debates, see Fisch, Europäische Expansion).² After all, consistent legal approaches and instruments had to be in place so that all extrasovereign spaces could be addressed in an equally meaningful way, and thus the very premises of sustainable imperial rule could be established. The early modern conceptualizations of
legitimate violence in the Mediterranean and the Atlantic region were thus formulated in conversation with each other.

The Mediterranean still provided the richest context in Europe for a discussion of maritime legitimate violence, and it also provided the basic model of space used for the hostis humani generis constellation, along with the original properties assigned to early modern corsairs. However, the Atlantic region allowed a fundamental redefinition of the categories that had already moved the model beyond its core example of the Barbary corsairs. The notion of race as it is used in the constellation, then, is a central contribution of the Atlantic discursive context, and it eventually replaces the importance of territorial shorelines and a specific cluster of political antagonists.

If the history of hostis humani generis had relied on the Mediterranean context alone, it would not have been so necessary to make essentialist racialization a core property of the hostis humani generis constellation. As in the messy case of the galley slaves mentioned above, European sovereigns of the seventeenth century were still willing to side with Muslims against each other in the struggle of Catholics versus Protestants, and they did not use just one aspect of Otherness, such as race, to argue for their own difference from the Barbary States. Since the medieval period, the difference between Europeans and Turks in the Mediterranean had been established by a whole cluster of properties: pigmentation, religion, regional origin, and cultural and political backgrounds were all included into these discourses, but typically not differentiated from each other (Loomba, Shakespeare, 24–27 and 70–71).

Because of the vast variety of unfamiliar political entities in colonial spaces, however, a very general conceptual distinction between European and non-European became necessary, and the notion of race was gradually identified as the smallest common denominator of the non-European Other. The early modern period began to structure these differences systematically and to insert conceptual hierarchies. Intertwined and increasingly overlapping notions of religion and race eventually came to be the core means to define inherent difference from an increasingly normalized image of white, male, European supremacy (Loomba, Shakespeare, 24–27). In this vein, a variety of “noncivilized” nations were collapsed into one “nonwhite” race (Haselstein, Gabe der Zivilisation, 19; my translation).

In other words, the rise of colonialism in early modernity introduced two important notions into European discourse on legitimate maritime violence that directly informed the formulation of the hostis humani generis constellation: first, the notion of Europeans’ difference from, and already latent superiority to, all other peoples they encountered; second, the claim that one legal definition had to be able to apply to all violent maritime antagonists
that were described as illegitimate. Hostis humani generis was designed to suit both the establishment of a model of space that would help legitimate expansionism and the corresponding model of race and racial deviance that would define the Other’s inability to make legitimate claims to a contested space.

The European, and especially English and Scottish, legal debate on the nature of civilization as the core justification for legitimate expansive violence is therefore central. In early modernity, the notion of civilization is a comparatively unsophisticated construction and boils down to “us, by definition.” This lack of sophistication stems from the fact that in these early discourses of imperialism, civilization was synonymous with the sovereign who claimed it, or, if applied in the context of a racialized Other, with the larger group of Christian rulers. Especially in the context of European expansionism, the notion of civilization was an extremely flexible construction that was only really relevant for Europeans when they were confronted with someone who was not European.

In the sixteenth and seventeenth centuries, the period that this chapter addresses, this Other was not actually inferior in any immediately discernible way. The Barbary States were strong enough to dictate terms in the Mediterranean and to invite complex political maneuvers that sometimes included them as allies. The situation was not very different in the Americas, where Native American nations were deemed serious potential partners as much as potential rivals (Colley, Captives, 162–67). The open questions regarding power relations in non-European spaces are the reason why the European construction of civilization became central to any discussion of the imperial project, and why a comprehensive and overarching definition of civilization was rarely part of the conversation.

In the introduction to this book, I mentioned that two main models of civilization dominated these conversations in early modernity, both of which addressed the properties and expected development of the Other rather than of civilization. The traditional mode of defensiveness against the Barbary States explains why it was the essentialist model of civilization—the model that assumed an inherently hostile Otherness that demanded the Other’s removal or even extinction—that remained overwhelmingly dominant in English and Scottish assessments of the Mediterranean context and that informed the development of the hostis humani generis fiction in law. The essentialist model of civilization, with its tendency to imagine essentialist blocs of irresolvable antagonism, drew on the geographical context of Mediterranean shorelines. Civilization and an Other controlled opposing shores and encountered each other in the Mediterranean, a territory that was inherently beyond rule or possession (Muldoon, “Sea”; Bynkershoek, Domino
Because the Barbary States’ significance as Others was based on corsairdom, the sea—the specific, discernible, and locatable zone in between civilization and Otherness—was treated as the central locus of civilizational negotiation. The Other, barbarous or uncivilized, always lurked beyond this neutral zone of contact.

However, the sea was not merely neutral: it was believed to have its own effects on both the contractual and moral situation of Britons. The sea had long been considered an inherently transformative space in European legal traditions. This status had been indicated by the medieval establishment of the institution of privateering as a form of state-supported violence that did not automatically lead to war—a sea-derived institution, in other words, that supplemented but did not extend the sovereign’s reach, and was therefore able to strategically destabilize property relations otherwise secured by enemy sovereigns (Rubin, *Law of Piracy*, 31). In his discussion of these fundamental destabilizations performed by the sea, Daniel Heller-Roazen has suggested that the transformative effect could sever not only property relations but also vows of loyalty such as marriage vows (*Enemy of All*, 75–76).

Although most early modern writers tended to condemn these rather more serious implications of the sea’s transformative nature, the possible destabilization of allegiance was nevertheless obvious to many European observers due to the Barbary States’ massive recruitment of European privateers into their service. It is here that the central racialized differentiation within the hostis humani generis fiction takes its historical root. The main reason for an internal racial differentiation of pirates was that captives and slaves were not the only Europeans who entered the Barbary States on a mass scale; a substantial number of early modern Barbary corsairs themselves were renegades from Europe (Earle, *Corsairs of Malta*, 35). Paul Baepler even claims that at times, two-thirds of the Barbary fleet was captained by Europeans, accompanied by an even larger estimated number of unknown common sailors (introduction, 42).

The fact that so many of the Barbary corsairs were European renegades is a significant historical detail in the development of the hostis humani generis constellation. The conspicuous mix of native and renegade Barbary corsairs required a differentiated legal position toward the phenomenon of privateering-derived piracy at large. After all, it was conceivable for Europeans that someone who acted loyally in the name of his native faith and sovereign (even if faith and sovereign were not deemed civilized) should be treated differently from someone who had treacherously abandoned his native faith and sovereign and turned against them (at least if these original allegiances were European and had been abandoned for a barbarous alternative). The result was a more formalized acknowledgment of what might
be called cultural treason, combined with an increasingly firm and explicit rejection of the idea that treason actually achieved a successful change in allegiance. European—especially English and Scottish—philosophy increasingly insisted that certain allegiances were too inherent to man even to be transformed by the sea.

As to the native and renegade corsairs specifically, Hugo Grotius makes their differentiation explicit in his first major work, *Commentary on the Law of Prize and Booty* (originally published in 1604), a work that attempted to harmonize the various legal positions toward the different conflict-ridden maritime spaces of his time, notably including colonial maritime spaces (van Ittersum, introduction). Grotius identifies four different forms of illegitimate maritime violence, two of which are encountered inside—and two of which outside—of the civilized realm. I will discuss only the figures outside of the civilized realm at this point in my argument. In formulating the two types of violence beyond the reach of the civilized sovereign, Grotius does not mention the Barbary corsairs. However, his argument seems carefully crafted to speak to the Mediterranean situation, which was at the core of contemporary legal debates (Rubin, *Law of Piracy*, 73 and 86). Grotius writes:

For, in the first place, that gain is dishonourable [sic] which is acquired by individuals who despoil others through privately exercised force and without urgent reason for so doing. To such individuals we give the name of “piratae” when their activities take place upon the sea. Secondly, the same criticism applies to acquisitions made by persons who without any legitimate cause usurp authority to wage public war. For example, it is recorded that in earlier times whole peoples—such as the Cretans, the Cilicians, and even the Greeks themselves (according to the testimony of Homer), as well as the Germans and the Normans—engaged openly and publicly in the practice of despoliation without so much as an appropriate pretext. To despoilers of this kind we refer (and not unjustly) as “praedones.” (Grotius, *Law of Prize*, 447–48)

The English translation used here in fact translates “pirata” as “pirate” and “praedo” as “freebooter.” In this quote, I have maintained the Latin terms originally used by Grotius because his characterization of these entities is the basis for the terminology I use in this chapter. Because the discussion of Grotius that follows will eventually lead to an abstraction of these two key terms into the terminology I use throughout the book, a few signposts that anticipate this change might be helpful, and indeed, necessary. My own usage of the terms praedo and pirata in the remainder of this study will not refer to specific groups of enemies and/or criminals, but to the positions of any kind of figure in any given text that uses the hostis humani
generis constellation to establish a claim to legitimate violence. For example, the pirate is a figure with a vast and multifaceted legal, cultural, and literary history that is linked to the identification of someone or something as distinctly piratical. The praedo and pirata, in contrast, are figures that appear only in the hostis humani generis constellation. As we shall see, neither figure necessarily has to be a maritime or an economically oriented actor: the terms refer to each figure’s position as a node in the constellation.

I find the Latin terms offered by Grotius useful for a number of reasons. First, I use the terms used by his translator (especially “pirate”) in other capacities in this book, and I hope to avoid confusion by visibly differentiating them. Second, the less familiar Latin terms are not burdened with the cultural associations we have with terms such as “pirate,” “freebooter,” and “privateer,” and they can be more easily and more fully identified as strictly analytical terms. Third, the terms, once established as recognizably analytical terms, still clearly betray their origin in pirate law—as indeed the hostis humani generis constellation as a whole does, even when it is most clearly abstracted from its original context. Fourth, Grotius, in his specific use of these terms, describes precisely the relationship between these constellational nodes that I find central for an understanding of hostis humani generis in general.

Grotius’s differentiation between praedo and pirata in the passage is appealingly clear. The difference between these entities is primarily achieved by their fundamentally different normative reference points as entities. The praedo is the representative of an entire predatory culture. He is thus fairly congruent with what Michel Foucault describes as a barbarian, “someone who can be understood, characterized, and defined only in relation to a civilization, and by the fact that he exists outside of it. There can be no barbarian unless an island of civilization exists somewhere, unless he lives outside of it, and unless he fights it” (Society, 194). Still, Grotius allows that in the context of the praedo’s own people’s laws and customs, he acts for legitimate public ends. Even though causing maritime mayhem itself is not legitimate, Grotius acknowledges that in the case of the praedo, the desire to serve a common good lies behind his actions, and that his raids can even support the existence of a whole society such as the Cretans or the Normans. It is only because the general structure of these societies is inherently barbarous that the actions of the praedo are unjust.

The pirata, in contrast, commits violence for private ends. He is an expressly individualized figure. The notion of abandonment is the central aspect of the pirata’s characterization in Grotius. If the praedo’s crime is to support a pseudosovereign’s attempt to “usurp authority” to wage war, the pirata’s crime is the abandonment of any collective cause, legitimate or
illegitimate. The emphases on individuals and private ends indicate that a community of piratae is not a community brought together by a cause that reaches beyond them, but merely an unstable, strategically motivated group of individuals who simply happen to pursue the same ends—namely, each member’s personal enrichment.

In the context of English law, these motivation-based differentiations remained implicit rather than explicit in the use of the hostis humani generis fiction. By the seventeenth century, the conflation of praedo and pirata had become a common practice in English courtrooms. The reason is perhaps best stated by the Italian-English jurist Alberico Gentili, who was mentioned briefly above. For Gentili, the difference between praedo and pirata was irrelevant. What made a sovereign legitimate, in Gentili’s view, was the acknowledgment of that legitimacy by England, and thus a sovereign whose status as civilized was undisputed. It did not matter whether an illegitimate sovereign (for instance, a Barbary State) officially commissioned a ship to plunder, or whether the crew plundered without any commission at all. Both were automatically and equally illegitimate from Gentili’s perspective. In the political, economic, and legal climate of European states that struggled hard to find a satisfactory position toward the Barbary States, as well as toward the rapidly expanding rest of the world, Gentili’s sweeping conflation of piratae and praedones in the course of an essentialist reading of hostis humani generis was quickly absorbed as a general practice. Even scholars like Grotius who otherwise fundamentally disagreed with Gentili shared his basic view on conflict lines in pirate law (Rubin, *Law of Piracy*, 70).

Even though English law thus treated hostis humani generis as a broad category, differentiations remained that suggested an implicit acknowledgment of the distinction between praedo and pirata made by Grotius. The large numbers of European renegades in Barbary service kept all parties in English courts, including Gentili, acutely aware of the difference between a native and a renegade Barbary corsair. The former was the faithful representative of a culture that was at the same time feared, reproached, and envied; the latter was the despicable, self-interested traitor to civilization who dared give in to godless Barbary temptation. As a result, the qualitative difference between pirata and praedo remained an important implicit feature of the early modern pirate discourse. While legal language insisted on the figures’ conflation as mere varieties of the same threat, the rising discourse of racism began to insert itself deeply into the hostis humani generis fiction and became the discourse-defining carrier of qualitative difference between praedo and pirata. The structural vehicle of this differentiation was the contractual basis of privateering law.

Put simply, a legal privateering contract requires two parties: the repre-
sentative of a privately equipped war ship (the privateer to be) and a legitimate sovereign. A privateering contract is voided if either party’s status as sovereign or privateer is illegitimate, and this voiding of the contract marks the piratical transgression. For this reason, the pirata is originally understood as a privateer who acts outside of his commission and thus loses his status as a legitimate man-of-war. The praedo, in contrast, fully satisfies these standards and would normally be a legitimate privateer, if not for his reliance on an illegitimate sovereign. Here, it is the commissioning entity that has assumed a rightful sovereignty that does not exist, and as a result this entity does not have the right to create privateers in the first place—meaning that this sovereign’s privateers can be charged with piracy. The contractual dimension of hostis humani generis maintains the notion of two inherently different, but structurally complementary, entities within pirate law. This is a kind of constellation that could be racialized comparatively easily.

The hostis humani generis fiction was especially suited to incorporating structures of racism because the historical positioning of the fiction’s subcategories of pirata and praedo already relied on the notion of religion and conversion. In the larger essentialist discourse of civilization in Europe, Islam had come to serve as a cultural shorthand for the illegitimacy of all Barbary corsairs (Rubin, Law of Piracy, 39–40 and 72–74). In the more specific context of the hostis humani generis constellation, the reference to Islam served as a second pillar, in addition to that of contractual legitimacy, for the establishment of a distinction between native and renegade Barbary corsair as praedo and pirata. According to the contractual logic alone, all Barbary corsairs, native or renegade, would count as praedones. However, the religious notion of conversion allowed the application of the individual-collective divide to this context. Whereas the native Barbary corsair was collectively Muslim, the renegade Barbary corsair had to convert individually. Native Barbary corsairs could claim to represent a cultural collective that was larger than themselves and epitomized by Islam; they could claim to represent a common public cause and were imagined as culturally homogeneous, a collective bloc of Otherness. Not so the converting renegades, who were solely compared to other converts to Islam and thus legally grouped with other individual, isolated transgressors like them: people who were originally European and Christian but acted as if they were not, and who did so only because they wanted to serve their private ends of personal profit.

The reference to Islam therefore established an internal hierarchy between praedo and pirata. The native Barbary corsair and his features always remained central in the popular imagination of the Mediterranean conflict.
This hierarchy was a direct result of each figure’s position in relation to Islam: the native Barbary corsair truly represented Islam, he was the real agent of moral bankruptcy and the actual taster of forbidden fruit (Matar, *Turks*, 109–27). Even though the treacherous renegade’s employment by the Barbary States and his assumption of the Muslim faith were strongly condemned, the renegade only imitated the native and thus remained a sideshow to the central, gruesome antagonist: the native Barbary corsair, the “king of evil” (Crowley, *Empires*, 45).

Indeed, in judging the otherwise exchangeable performances of these corsairs at sea, English law increasingly emphasized not the renegade’s present status of allegiance but his original allegiance. The origin and original faith of the corsair at hand were used to determine his status as pirata or praedo. Treason and conversion became simultaneous acts, the political and religious sides of one and the same abandonment. The renegade was not considered a Muslim corsair, but a Christian privateer who had turned against his homeland (Baepler, “Barbary Captivity”; Earle, *Corsairs of Malta*, 30; Rubin, *Law of Piracy*, 72–74). This simultaneous conversion and treason could not undo Christian Europe’s enduring claims to these privateers’ loyalty and could not stop it from attempting to enforce them. This essentialization of origin is illustrated in this extract of a 1624 ballad on renegade Barbary corsairs:

> Those halfe-Turkes and halfe Christians, who now ride  
> Like sea-gods (on rough billows in their pride),  
> Those renegadoes, who (their Christ denying)  
> Are worse than Turkes, Turkes them in heart defying . . .

(“Lamentable Cries,” 344)

In this ballad, renegades are presented as hybrids whose natures are torn between Christian and Turkish aspects. It is fairly clear how these conflicting natures manifest themselves: the Muslim aspect of the renegades is that of activity and performance—they roam the sea to attack their own countrymen and deny their own God—but both the Christian God and the home country remain at the core of their properties as figures. In all formulations of the ballad, the Christian aspects are deemed inherent to the renegades’ natural selves, while the denial of these natural allegiances is characterized as sinful (“proud”) and insolent. Their Muslim aspects of the renegades are, in this sense, characterized as falsehoods against themselves and their better natures as well as crimes against their innocent victims. Even in the last line of the extract, which directly relates renegades and native Barbary corsairs, these two are treated as completely separate entities. Renegades act like Muslim corsairs although they are Christian privateers. From an English
perspective, essentialized identity is more important than transgressive performance both legally and culturally, even though this differentiation is not explicitly spelled out in pirate law.

Christianity and Europeanness—the two central categories that, according to Ania Loomba, began to be distilled into the notion of whiteness in early modernity (Shakespeare, 45)—were defined as the unchangeable characteristics of a person in treason-based pirate law, even if that person had become a Muslim Barbary corsair in practice. Birthplace and original religion were treated as the features that continued to define a person despite all contrary experiences and practices. In this sense, the conviction of European Barbary corsairs as traitors can be called the first racializing act of Western pirate law. The element of treason in pirate law had the primary effect of isolating the renegade as a pirata and denying him the ability to assimilate into the community of praedones. Instead, a new form of community was imagined for him: a recruitment-based, unstable and ad hoc community that was based not on a common cause, but on the fact that all members happened to have the same individual cause.

The complementarity of praedo and pirata quickly became the central characteristic of the hostis humani generis constellation in the Anglo-American tradition. The substitution of a simple contractual differentiation with a nuanced characterization of Mediterranean corsairs came at a time when legal scholars were becoming increasingly unwilling to accept the idea that the allegiance to a sovereign, let alone to civilization, could be voided. The construction of renegades as piratae insisted that English civilization was and always would be the normative center of the world for any Englishman regardless of his choices, as well as for the members of any other people that could only either barbarously defy or progress toward this superior civilization.

The basic spatial structure of the Mediterranean, along with the unnatural convert status of the renegade as a defining additional feature of the basic essentialist antagonism, became the defining feature of the hostis humani generis constellation. Precisely because the convert status of the renegade is so central, it should be mentioned that the colonial context contributed to this figure’s enduring presence in the fiction and helped shape his properties well before the Golden Age of Piracy as Great Britain’s problem-defining example of pure piratae who were converts only to their own individual cause and were characterized by a radical “legal and spiritual isolation” (Baer, “Plot of Piracy,” 10–11).

As I emphasized at the beginning of this chapter, the hostis humani generis constellation has a long tradition of use in comparatively arbitrary pirate charges against any given maritime antagonist—European or not,
Christian or not, and privateer or not. Empires’ expansion into the colonial realm of the Americas was routinely accompanied by charges of piracy against their equally Christian and European rivals. Indeed, Grotius himself uses the discussion of pirates, freebooters, and robbers as the basis for an expanded argument on the derived evils of inter- and intra-imperial illegitimate seizure. He requires the discussion of unambiguously illegitimate seizures by pirata and praedo to prepare the ground for the much less clear-cut problem of illegitimate violence within the realm of civilization. I will briefly return to this problem in the fourth part of this book.

At this point of my argument, it is notable that the routine interimperial accusation of piracy assumed a racialized dimension in early modernity that directly cited the Mediterranean situation of the renegade traitor-convert. In her discussion of Spanish-English rivalries in early modern America, Nina Gerassi-Navarro draws attention to this dimension. For example, when sixteenth-century English imperialists were discovered by their Spanish rivals to have formed strategic alliances with natives, the English were charged with being corruptible “traitors to their own race” whose greed detached them from civilization (Gerassi-Navarro, *Pirate Novels*, 52). The Spanish argued that English cooperation with natives “infected” them with the inherent barbarism of the natives. This charge of corruption through natives was meant to legitimate the claim of Spain to the colonial space in question. This fairly early episode affirms the general logic of an internal racialization of hostis humani generis, as well as the hierarchies and forms of influence (“infection”) assumed between pirata and praedo.

As is immediately obvious in the example provided by Gerassi-Navarro, imperialist struggles in the colonial realm underscored the importance of race as a category for discussing piracy. In the hostis humani generis constellation that was to bring all conceivable spaces together, however, the Mediterranean model dominated for two main reasons.

First, the construction of space and legitimacy was clear there, whereas colonial space was still a legal no man’s land with too many unknown properties. Piracy had always been a space-related crime, in the sense that piracy was something that took place by uncommissioned entities outside of the sovereign realm. But how was an imperial power to conceptualize non-European space in early modernity? Was such space the sovereign space of a native nation or even an imperial rival, was it nonsovereign space, or was it one’s own sovereign space? Any answer would have far-reaching political implications that exceeded the reach and authority of pirate law as only one of many legal frameworks that were able to speak to the issue of non-European space.

The Mediterranean, in contrast, was a clear-cut case, especially in the
context of the essentialist model of civilization that dominated the construction of the modern hostis humani generis fiction. At the same time, this case had a long history of leaving room for even the starkest political contradictions, transformations, and readjustments. In its legalist abstraction, the Mediterranean realm was divided into one shore dominated by civilization and another shore dominated by barbarism. These shores, firmly and enduringly inhabited by legitimate good and illegitimate evil (often translated as Christianity versus Islam), were divided by a transformative sea space within which all contact between the realms—friendly, hostile, or neutral—occurred in all its broadness and complexity. The sea that divided good and evil was defined as a liminal in-between zone, a buffer zone that allowed civilization and its Other to coexist in an existential antagonism, but left sufficient leeway for political maneuvers that deviated from this core premise.

Second, even though the sea (or the later conceptualization of precolonial space as sea-like) radically expanded the possible forms of contact by being a space beyond all sovereign rights, there was something that the sea could not do: it could not undo race, which primarily meant the ties of origin and religion. Here, the Mediterranean context helped specify categories. In the Mediterranean context of renegade Barbary corsairs, the charge of race-based treason was more serious than in the colonial context because in the former context it was not just noisy political saber rattling by imperial rivals. The Barbary renegade had proven to be greedy and corrupt by taking Barbary employment for his personal benefit; he had proven to be a traitor to civilization by his indiscriminate attacks against Europeans, and even more so by his explicit spiritual abandonment of the Christian God. He was a true renegade to barbarism for the entire world to see. Therefore, he could become the prototype of the pirata, the epitome of civilization-abandoning degradation that imperial rivals only cited in their accusations against each other.

It is in this context that the Mediterranean realm assumes the greatest importance: it is there that the notions of race and space are combined for the hostis humani generis constellation. While the constellation of civilization versus barbarian can easily be established anywhere by virtue of racial categories, the barbarian will become a praedo only if there is also a pirata, and the pirata can meaningfully exist only in a zone in between clear blocs of mutual essentialist antagonism. The Mediterranean context provided a model for the way such a zone was internally structured. It thus contributed greatly to the conceptualization of precolonial space as empty and transformative, as well as the conceptualization of the inhabitants of such space as entities against whom violence was always inherently legitimate.