THE BRIEF INTRODUCTION TO the historical genesis of the two most defining elements (pirata and praedo) of hostis humani generis and the sea-like space in which they are imagined to operate largely rests in the immediate context of pirate law. The discussion of these basic relations within pirate law does not yet explain how these two complementary figures became associated with the fundamental negotiations of legitimate violence in the Augustinian anecdote. To understand the source of this connection, it is helpful to start out with the most authoritative and comprehensive definition of hostis humani generis to date and to work our way backward to trace this definition’s philosophical and historical origins.

William Blackstone’s Commentaries on the Law of England (first published in 1765–68), which contains this authoritative definition, is generally considered fundamental for British law as well as for the establishment of United States law (Holdsworth, Historians, 55 and 59). While Blackstone’s is not the only definition of hostis humani generis in English or British law, it is the most interesting and by far the most frequently cited one. Blackstone writes:

Lastly, the crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke (Third Part, 3 Inst. 113) hostis humani generis. As, therefore, he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community hath a right by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or personal property (Commentaries, 2:71).
The noteworthy aspects of this definition become obvious when compared to the definitions of hostis humani generis offered a century earlier. Coke and Charles Molloy had both explicitly stated that the enemy of all humankind was a robber and operated at sea. Coke, who is referred to in Blackstone’s definition, had primarily rendered the pirate an enemy of all humankind because he considered piracy a form of treacherous conspiracy (Coke, Third Part, 113); Molloy added that the community made up by the pirate was generally not a lawful society (Iure Maritimo, 71). Blackstone remains in the tradition of these assessments, but in contrast to his legal predecessors, he elaborates what it means to be an enemy of all humankind. This elaboration is more than a specification of the crime of piracy; instead, and for the first time, the pirate is subsumed under the larger category of hostis humani generis. This hierarchization in fact constitutes the basis for the numerous uses of the legal fiction to conceptualize crimes other than piracy and spaces other than the sea.

While it differs in quality from the descriptions in previous legal commentaries, Blackstone’s understanding of hostis humani generis is not original to him. It is Locke who actually speaks in this passage,1 with Blackstone simply paraphrasing Locke’s words as a straightforward description of an enemy of all humankind. In Blackstone’s definition, the enemy of all humankind is essentially equivalent to Locke’s invader in the state of nature (“Second Treatise”). This figure of the invader, therefore, is central to the discussion in this chapter. Indeed, when we study the invader in Locke, it becomes apparent that Blackstone’s choice of this invader figure as a prototype of the enemy of all humankind is not incidental: Locke himself was influenced by the traditions of piracy law when he constructed the invader figure. This chapter will thus briefly outline Locke’s relation to the Augustinian anecdote, then discuss the invader figure, and finally discuss the consequences of this transfer for the definition of hostis humani generis in Blackstone.

Locke’s usage of the Augustinian anecdote in the “Second Treatise” is remarkably nuanced, and it is integrated into the context of a larger argument in a way that rivals Augustine in its theoretical complexity. When it comes to legitimate violence, Locke rereads Augustine just as Augustine rereads Cicero. While most other rewritings of the anecdote in modernity exclude the argumentative context in Augustine to give the pirate-emperor constellation a radically new meaning, Locke acknowledges the rather more serious questions about the possibility of just rule raised by Augustine, which directly lead him into an argument on legitimate violence as foundational violence that is crucial for the role played by hostis humani generis in modernity, especially in the United States.

The “Second Treatise” engages in a debate on legitimate violence in ways
that are somewhat comparable to *The City of God*. Augustine attacks traditional Roman values in defense of the value system of Christianity, a faith that was rapidly growing in popularity and whose value system was becoming increasingly accepted. Locke engages the defenders of hereditary monarchy such as Robert Filmer, whose arguments he challenges directly in the “First Treatise.” The main disagreement that Locke has with scholars such as Filmer is that they claim there is a natural sovereign right to domination over the people of the respective territory—a right whose defense permits legitimate violence against both those people and external enemies. In contrast, Locke claims that the sovereign and the population have entered into a contract, and that this includes the right of the governed population to reform and even to resist and overthrow the sovereign, if the sovereign is not just. The contract is specified in Locke’s discussion of the state of nature and the law of nature.

The state of nature is not part of a terminology in the sense that it is strictly defined; it merely describes a precivilizational state that reflects the truly general and natural properties of humanity. These properties have to be considered as the bases of any order that claims to be appropriate to humans, but the state of nature also draws attention to tendencies in human nature (such as destructive desires) that have to be neutralized by any order that claims to be just. The state of nature, Ingo Berensmeyer explains, is a fiction used across the political spectrum in early modernity because it “fulfills a compensatory function by serving as a homogenizing communicator of a generalized sense of normativity in a society increasingly characterized by rapid change and increasing heterogeneity” (Contingency, 179; my translation). Locke, like Augustine, essentially claims the existence of eternal and universally applicable norms in a world characterized by turmoil and uncertainty.

In the “Second Treatise,” the original state of nature is a tranquil state of plenty characterized by friendly, neighborly relations. In contrast to other Enlightenment thinkers such as Hobbes or Rousseau, Locke considers the state of nature a largely positive backdrop to contemporary civilized human life. His state of nature is neither brutish and terrifying, as in Hobbes, nor prehuman to the point of incomprehensibility, as in Rousseau. The state of nature in Locke is characterized by the condition of absolute freedom, and life among humans is informed by the “great Maxims of Justice and Charity” (Locke, “Second Treatise,” 270). Locke argues that these maxims are dictated by the law of nature:

The *State of Nature* has a [divine] Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but
consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. . . . Every one as he is bound to preserve himself, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to be the Preservation of the Life, the Liberty, Health, Limb or Goods of another. (“Second Treatise,” 271)

Locke’s state of nature is a state of peaceful cohabitation without any mediating institutions. Humans operate in an environment common to all, and human actions are only geared at securing the immediate well-being of the individual, his family, and his cooperative community. Unlike some scholars today (see, for example, Gray, “Hunter-Gatherers”; Rancière, Dissensus, 27–44), Locke does not assume from this that the maintenance of egalitarian collectivism can be the principal objective of political practice. Instead, Locke’s main objective is to conceptualize the legitimate protection of the inherent human “double Right: First, A Right of Freedom to his Person,” and “Secondly, A Right, before any other Man, to inherit, with his Brethren, his Fathers [sic] Goods” (“Second Treatise,” 393–94). The first right is central because it points to the freedom of every human to preserve himself and thus establishes a definition of defensive violence as legitimate violence, since the right to self-defense is the birthright of every man (though not every human). The second right is central because property is constructed by Locke as a natural extension of the individual (white male) body into the world. Importantly for his debate with Filmer, Locke’s understanding of the right to property as a natural birthright establishes claims to the land by the people who cultivate, rather than rule, it. According to Locke, one can generally distinguish the characteristics of a society by the way property is managed. The only just political society is the one that leaves property to the disposal of the individual who makes it property by labor in the first place, rather than having a sovereign who controls all of the property while his subjects control none of it (Locke, “Second Treatise,” 384).

In Locke’s original state of nature, the invader who disregards the natural rights to life and property and who amasses the property of others by violence inspires both the formation of political order and the explicitly formulated expression of the law of nature as the law of society. The argument in the “Second Treatise” about the invader is directly derived from the discourses on piracy and legitimate violence discussed in part 1. Locke himself draws explicit parallels between the invader and Cicero’s and Augustine’s respective treatments of the pirate: “That the Aggressor, who puts
himself into the state of War with another, and *unjustly invades* another Man’s right, can, by such an unjust War, *never* come to have a right over the Conquered, will be easily agreed by all Men, who will not think, that Robbers and Pyrates have a Right of Empire over whomever they have Force enough to master; or that Men are bound by promises, which unlawful Force extorts from them (Locke, “Second Treatise,” 385).”

In this passage, the pirate is not only mentioned as a specific example, but Cicero’s central distinguishing feature of the pirate—namely, that it is legitimate not to keep a promise made to a pirate—is taken up as a defining feature of the invader that underlies the all-important right to resist him in defense of the law of nature. The despotic sovereign, Locke suggests, is to be treated like the Ciceronian pirate. Thus, it does not come as a surprise that in the same paragraph, the Augustinian anecdote is paraphrased as an integral part of Locke’s argument: “The Injury and the Crime is [sic] equal, whether committed by the wearer of a Crown, or some petty Villain. The Title of the Offender, and the Number of his Followers make no difference in the Offence, unless it be to aggravate it. The only difference is Great Robbers punish little ones, to keep them in their Obedience, but the great ones are rewarded with Laurels and Triumphs, because they are too big for the weak hands of Justice in this World, and have the power in their own possession, which should punish Offenders” (Locke, “Second Treatise,” 385–86).

Locke takes up the argumentative context of Augustine’s anecdote and comes to the same conclusions about the nature of the pirate-emperor who violates divine right, though he substitutes for the mediator of divine will; instead of Christianity and the church, reason and the law of nature are the central normative orientations that allow each individual man to commit violence legitimately. This possibility is dramatized by the encounter of peaceful people who obey the law of nature in the state of nature with the invader who threatens their lives and property. People in the state of nature react to invasion with defensive violence and the simultaneous formation of law and order: they organize to defend themselves against a collective threat and, in the process, distill the divine, unwritten, universal law of nature into a specific body of positive law. The invader thus emerges as the all-important catalyst that ends the state of nature, since his attack makes explicit that the protection of life and property are the main functions of both rule and law. Defensive violence creates social organization and the law itself.

In this way, the claim to legitimate violence in Filmer is directly inverted by Locke—not only the sovereign but every individual carries within himself an inherent potential to commit legitimate violence in the name of the law of nature. The invader can be either a pirate (Locke, “Second Treatise,” 385) or a sovereign who abuses “his” population. The invader is thus already, in the
truest sense of the word, a pirate-emperor; and because this figure occasions the replacement of nature with order, Locke’s law of nature is made most visible, and most explicit, by the exercise of legitimate violence against the invading pirate-emperor. It is worth quoting some of the respective passages in full:

In transgressing the Law of Nature, the Offender declares himself to live by another Rule, than that of reason and common Equity, which is that measure God has set to the actions of Men, for their mutual security: and so he becomes dangerous to Mankind, the tye [sic], which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole Species, and the Peace and Safety of it, provided for by the Law of Nature, every man upon this score, by the Right he hath to preserve Mankind in general, may restrain, or where it is necessary, destroy things noxious to them. . . . Besides the Crime which consists in violating the Law, and varying from the right Rule of Reason, whereby a Man so far becomes degenerate, and declares himself to quit the Principles of Human Nature, and to be a noxious Creature, there is commonly injury done to some person or other, and some other Man receives damage by his Transgression, in which Case he who hath received any damage, has besides the right of punishment common to him with other Men, a particular Right to seek Reparation from him that has done it. . . . And thus it is, that every Man in the State of Nature, has a Power to kill a Murderer, both to deter others from doing the like Injury, which no Reparation can compensate, by the Example of the punishment that attends it from every body, and also to secure Men from the attempts of a Criminal, who having renounced Reason, the common Rule and Measure, God hath given to Mankind, hath by the unjust Violence and Slaughter he hath committed upon one, declared War against all Mankind, and therefore may be destroyed as a Lyon or a Tiger, one of those wild Savage Beasts, with whom Men can have so Society or Security. (Locke, “Second Treatise,” 272–74; emphasis in original removed; emphasis added)

I have highlighted some of these passages to draw attention to the direct parallels between the characterizations of the Lockean invader and the construction of hostis humani generis in Blackstone quoted above:

Lastly, the crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke (Third Part, 3 Inst. 113) hostis humani generis. As, therefore, he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community bath
a right by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or personal property (Blackstone, Commentaries, 2:71; emphasis added).

Blackstone’s definition of hostis humani generis thus positions the confrontation with any enemy of all humankind as the confrontation with an invader who tests the very normative foundations of civilized society (designed to protect both life and property) and once more occasions the law of nature to become explicit in positive law.

However, the invader in Locke carries some concealed analytical baggage that is important for a further analysis of Blackstone’s definition. The replacement of the state of nature with a state of order in Locke is clearly the prerogative of white Europeans. Characteristically for Enlightenment thought as a whole, Locke singles out the wilderness of North America as an example of a state of nature that is still in place. Locke presupposes an inherent difference between Europeans and non-European Others on this basis, using Native Americans as an exemplary people still arrested in the state of nature (see, for example, “Second Treatise,” 277, 287, 294, 296, and 339; see also the critique of Mills, “Racial Liberalism”). Locke was not alone in this assessment of Native Americans. For instance, Hobbes unambiguously shared his perspective and, in accord with his own characterization of the state of nature, cast Native Americans as inherently hostile and brutish (see, for example, Leviathan, 85; see also Eggers, Naturrechtslehre, 34–35).

This link between the state of nature and the notion of race, which is still comparatively implicit in the “Second Treatise,” is significantly developed and substantiated during the Golden Age of Piracy. The pirates of the Golden Age replaced Mediterranean corsairs as the historical core example of hostis humani generis in law and of piracy in the popular imagination. The Golden Age begins approximately a year after the publication of the “Second Treatise” and colors the interpretive history of the invader figure in the years leading up to Blackstone’s definition. This shift in emphasis away from the Mediterranean standard of maritime violence and toward Golden Age piracy reflected a more mature stage of the oceanic revolution as described by Thomas Bender: previously marginal European states subverted the cultural, economic, and political dominance of the Ottoman Empire by orienting themselves toward other, more remote spaces (Among Nations, 20–27). Ottoman imperial power, concentrated in the Turkish control over the Mediterranean, was replaced by European imperial power, concentrated in the Atlantic and the Indian Oceans. The trade routes exploited by Golden Age pirates and the goods stolen by them constituted the lifelines of this new regime
of European colonialism, and the normative questions raised by the existence of Golden Age pirates were questions about the inner logic and developments of European imperialism in general, regardless of specific nationalities.

Even though the Golden Age pirate was from and of European civilization, he openly defied the trade system that was the backbone of the imperial project—and, like the Barbary States, he recruited great numbers of seafaring Europeans into his service, causing them to abandon their sovereigns in the very spaces where imperial power was weakest.

In British discourse, fundamental questions were thus raised about the nature of seafaring men who constituted both the pool from which this kind of threat emerged and the group most vulnerable to the threat. What was the nature of common sailors—were they most appropriately viewed as monsters in disguise, slaves to be broken for the prevention of revolt, innocent subjects to be protected, citizens to be respected, or even sovereigns in the making? When the pirate, a former mercantile worker, broke away from the empire, what kinds of communities did he found, and what did these communities explain about the nature of the mercantile worker and humanity in general? When the pirate was seen as an opportunistic parasite of colonialism, what kind of malfunctioning structures of colonialism did he expose, and what were his positions on money and trade? What did his crime consist of, and when was he not a criminal? How did he interact with space, representatives of European rivals, and natives? How did he interact with God and the notion of family? Was he lost or evil or free? Was he primitive or visionary? All of these questions were only superficially questions about the Golden Age pirate. They were really cultural and philosophical negotiations of a new system of expansive imperialism. That system was, to some extent, prepared to incorporate the parasitical colonial pirate into its normative logic and official history.

While the previous chapter focused on the construction of praedo and pirata as racially divided allies, this chapter is interested in a later, more mature version within the project of imperialism: a construction of praedo and pirata that does not imagine them as allies who necessarily operate in concert, but as organizationally and racially separate entities whose complementary existence is mediated only by their common existence in sea-like, transformative spaces beyond the reach of imperial power.

The native Other remained the most serious, unreadable threat of pre-colonial spaces. Encounters with Native American nations and the Barbary States were unambiguously established as variations on the same struggle of white, European civilization versus a barbarous, nonwhite, collectivist bloc of Otherness (Baepler, “Barbary Captivity,” 228). In these discourses, the Native American is constructed both as a fragment of the wilderness (when
he is arrested in the state of nature and merely exists somewhere) and an illegitimate aggressor (when he is a praedo who represents a barbarous culture and engages in war with Europeans). Hobbes in particular claimed that contracts with any (non-European) antagonist do not have to be honored (Griffin, American Leviathan, 26; Kempe, Fluch der Weltenmeere, 155–56).

It was certainly conventional to conceptualize war with Native Americans as an essentialist clash of good Europeans versus evil Others, but to claim that the Native American was a praedo combined this routine charge with a new possibility for legitimating a claim to precolonial space. Where Native Americans and European imperialists clashed as praedones and representatives of civilization, one could speak of a clash in sea-like territory—that is, in empty, unruled, and unpossessed space. Land had not previously been conceptualized in this manner, but the advantages of attributing sea-like qualities to the precolonial wilderness were obvious. After all, an inherently empty and unpossessed territory could, by right, be claimed by Europeans without raising the charge of illegitimate conquest. However, a pirata figure was still required to complete the constellation and turn an argument about contested land into one about empty land.

The Golden Age of Piracy may have become such a discursively constitutive period and may have been able to absorb previous as well as later pirate waves almost completely, because these pirates were the perfect pirata complement to a Native American praedo on land. The white Golden Age pirate was a renegade in pursuit of his own interests, and with his peers he formed independent, unstable brotherhoods of economic parasites. Golden Age pirates were deemed so radically beyond allegiance that not even the familiar notion of simultaneous treason and conversion could properly describe them (Baer, “Plot of Piracy”). To his contemporaries, instead of religious or cultural conflict, the Golden Age pirate began to stand for the existential questions of Enlightenment philosophy that were already raging within Europe. With the pirate as a problem-defining example, central issues about the nature of the human being could be addressed.

The state of nature that is later evoked by Blackstone is primarily characterized by the absence of enforceable sovereignty. The explicitly mentioned high seas are defined as inherently nonpossessed at a very early point of modernity, so it is clear that they constitute a central example. However, Blackstone’s enemy of all humankind explicitly relies not on his presence at sea, but on his presence in the state of nature. Whereas the legitimate defender against the invader only acts as if he exists in a state of nature, enemies of all humankind do exist in that state. As mentioned above, arrestedness in the state of nature is a characteristic that Locke and especially Hobbes unambiguously assign to Native Americans, but the great visibility of the
Golden Age of Piracy requires that these pirates are described similarly. In part 1 I touched on the ways in which the Golden Age pirates’ distribution of property, in particular, was considered proof of a (white) state of nature capable of developing into an (imperial) state of order in precolonial space. But only in combination could the Native American and the still-maritime Golden Age pirate support the larger point of these characterizations, which was the construction of the American continent as an unpossessed quasi sea.

Blackstone’s definition obviously speaks only of one enemy of all human-kind. However, the figures of praedo and pirata, who are already latently complementary in customary pirate law as well as in Locke’s original, are made visible in Blackstone by the conflation in the definition of two very different premises of conflict. These premises are a construction of good versus evil, and a construction of the norm versus deviance. Although these premises seem to be related to one and the same figure—the enemy of all humankind—the premises’ narrative implications are vastly different from one another, and even mutually exclusive to some extent. Their intertwined nature affirms that hostis humani generis encompasses two kinds of figures rather than just one, and furthermore it allows certain deductions about the specific quality of the state of nature they operate in.

The construction of good versus evil is immediately obvious in the passage. In Blackstone’s definition of hostis humani generis, civilization and savagery, or humanity and its Other, are divided into two incompatible blocs, one of which represents an illegitimate aggressor while the other is a legitimate defender of “society and government”—or, indeed, of humanity itself. Quite in line with Locke’s argument, the invader somehow exists outside of humanity.

The defender’s mission in this struggle is to establish or reestablish a stable legitimate sovereign rule in a lawless zone of conflict. The inherent antagonism in this construction of good versus evil locks Blackstone’s figures into a constellation of essentialist struggle. Civilized humanity opposes an inhuman, barbaric invader. Whoever loses will perish, and if civilization loses, humanity will fall back into a terrifying state of permanent war (Locke, “Second Treatise,” 400). Unsurprisingly, the existential struggle is the one I assign to the praedo in Blackstone’s reading of hostis humani generis. In her analysis of narrative constructions of existential conflicts, Eva Horn has aptly characterized this sort of conflict as a “war of two races” (“Enden des Menschen,” 107; my translation), which emphasizes once more that this construction has a long tradition of being associated with the understanding of race discussed in this book.

As noted above, a construction of the norm versus deviance is also apparent in Blackstone’s definition. This form of antagonism describes a
transformative movement based on the notion of weakness and corruption: an individual “renounces” civilization, then “reduces” himself to a state of nature, and eventually “declares” war on civilization. This is the process that the pirata—a figure originally informed by the Barbary renegade—goes through. However, as the pirata in particular assumes a different and more important role in the context of the Golden Age of Piracy than previously, I will discuss this notion at greater length here.

To understand the narrative logic of deviance that is at work here, it is worth considering the Anglo-American tradition of the captivity narrative at least very briefly. The captivity narrative constituted the genre within which the renegade corsair appeared in his most fully formed relation to England or Britain; indeed, this body of texts helped inform the pirata’s original legal position. The Barbary captivity narrative (accounts of white sailors who were captured and enslaved by Barbary corsairs and wrote of their experiences after their safe return) provided constructions and characterizations of spaces and antagonists in the Mediterranean that were eventually transferred to the American context in the American captivity narrative (Baepler, “Barbary Captivity,” 219; see also Carroll, *Rhetorical Drag*). In the Barbary captivity narrative, the praedo traditionally represents the larger core antagonism of civilization and barbarism. The pirata, in contrast, is set up in direct structural contrast to the captive who narrates the account. The reason for this is based on the context of these narratives’ publication in England, as Nabil Matar argues:

[The pronounced and widespread] anxiety about the returning captive in seventeenth-century England suggests an identity insecurity. To have been among the Muslims did not necessarily mean that the English/British/Christian identity had been preserved. Rather, it had been tested, and there was no foregone certainty that it would have passed the test successfully. Long before the Stockholm syndrome was identified, communities worried that a captive would have started to identify with the captor—especially at a time when becoming Muslim might have led to advancement and financial gain. To have been among the Muslims was not just to have been a prisoner of war, but a prisoner of temptation too. And many of the prisoners reported on compatriots who had succumbed to Muslim allure and settled among the Muslims. (*Turks*, 72)

In response to these anxieties, Matar continues, former captives presented themselves as spies for England who offered their writings as strategic reports from within the enemy fortress. These reports also served as testimonies of their detachedness from the Muslim Other: former captives presented themselves as particularly devout Christians who, in contrast to others, had passed the “test” of captivity. In other words, the genre of the
captivity narrative structurally relies on a near-essentialist separation of the virtuous captive and the pirata renegade who yields to the temptations offered to him. The weak, sensual compatriot who succumbs to the call of preferment and the promise of advancement—the pirata—is the ideal complement of the Barbary captivity narrative’s hero because he makes explicit what the protagonist represents as unthinkable for himself. Without the pirata’s transgression, the genre’s retrospective construction of the steadfastness of the representative of civilization is meaningless (Colley, Captives, 82–98).

In the Golden Age of Piracy, this structure of complementarity is adopted in the construction of honest sailors as the counterparts of pirates that even identify themselves as pirates. These self-assured outlaws are perfect examples of conscious deviance. A good illustration of how the process of renunciation, reduction, and declaration in Blackstone functions is the story of Bartholomew Roberts, one of the most famous pirate captains of the Golden Age of Piracy. The following passage is part of Charles Johnson’s attempt to construct Roberts as the prototypical pirate:

In the Beginning he [Roberts] was very averse to this Sort of Life, and would certainly have escaped from them [the pirates], had a fair Opportunity presented it self; yet afterwards he changed his Principles, as many besides him have done upon another Element, and perhaps for the same Reason too, viz. Preferment,—and what he did not like as a private Man he could reconcile to his Conscience as a Commander. . . . Roberts was accordingly elected [captain], tho’ he had not been above six Weeks among them, . . . and he accepted of the Honour, saying, that since he had dipp’d his Hands in muddy Water, and must be a Pyrate, it was better being a Commander than a common Man. (General History, 194–95)

This passage features the elements of renunciation of civilization, reduction to a state of nature, and a subsequent declaration of war against the law of nature. In the passage, it appears that the renunciation of benefits is still a neutral rather than a hostile act. It is achieved through Roberts’s voluntary removal to remote spaces where sovereign power over him becomes difficult to maintain without his explicit consent. This may still be the act of an honest sailor. The removal from the imperial center is intensified by his abduction to a pirate ship that is beyond “society and government” (Blackstone, Commentaries, 2:71) and is itself capable of representing the state of nature (Baer, British Isles, 208–9). The removal to this state of nature directly exposes Roberts to the danger of being infected or, in Blackstone’s words, “reduced.” At this point, his presence aboard is still only a form of captivity, as in the example of Captain Beer (discussed in part 1), who finds
himself in a very similar situation. In his analysis of the pirate in the captivity narrative, David Johnson has rightly pointed out that the captive, faced with a situation such as Roberts’s, has no option but to transform himself, either into a purer version of what he had previously been (an honest sailor, a Christian, and so on) or into the monstrous, soiled Otherness of the pirate (“Limits of Culture,” 366). In an essentialist model of civilization, a third option does not exist. The parallel reading of the figures of Beer and Roberts illustrates this fact very clearly.

Roberts’s reduction to pirata savagery is established by the corruption that has generally been emphasized in the context of the enemy of all humankind in a colonial setting—the awakening of sensual “Preferment” for the life of a wild beast, which results in an acceptance of his situation and smothers his desire to return to order. Roberts’s eventual election as pirate captain features the official declaration of his transformation, “that since he had dipp’d his Hands in muddy Water, and must be a Pyrate, it was better being a Commander than a common Man” (C. Johnson, General History, 195). The greatest weight of his statement here is not carried by his acceptance of the position of captain (even though it is offered as a partial explanation) but by the acknowledgment that his transformation into a pirate necessarily results from his awakened “preferment.” The “muddy Water” on Captain Roberts’s hands is as fatal as the blood on the hands of Lady Macbeth: after six weeks of exposure to a ship’s company in the state of nature, a transformation has taken place after which he cannot turn back but has to be an aggressive deviant.

As the conflict of a good captive self and a bad pirate self in Captain Roberts as well as Bellamy’s Mephistophelian hailing of Beer indicate, the British merchant sailor and the pirate are systematically constructed as inversions of each other in the eighteenth century (Rediker, Villains, 51, 86, and 136). Confronted with the twin hail of threat and seduction, the merchant sailor is always urged to prove himself and reveal his colors as a truly honest man (such as Beer) or as a lurking pirata in disguise (such as Roberts). In other words, pirata and merchant sailor are no longer different shades of gray in European privateering practices; instead, they constitute clearly delimited identities defined in contrast to each other just as clearly and inversely as pirata and praedo. Knut Weibust relates a much-quoted anecdote of the teachings of an experienced hand on a merchant ship that summarizes this dichotomist view: “There is no justice or injustice on board ship, my lad. There are only two things: duty and mutiny. . . . All that you are ordered to do is duty. All that you refuse to do is mutiny” (Deep Sea Sailors, 372).

Within the essentialist, racialized framework that already informs hostis humani generis in the eighteenth century, this allows the creation of a unique
position for the pirata in the larger discourse of the essentialist model of
civilization. The pirata and the praedo act in the same way but are racially
different, while the captive or sailor and the pirata are racially the same but
act differently. In other words, the pirata illustrates the essence of both Same
and Other, and civilization and barbarism, by personifying their unnatural
conflation. He is able to combine these incompatible elements because the
entire dramatization of the essentialist relationship occurs in any sea-like
zone in between, and because a completed transformation into the Other
is deemed impossible in the essentialist model that informs early modern
pirate law based on treason.

These relations had already existed in the context of the Mediterranean
simultaneous treason and conversion; now, however, their possible applica-
tion is significantly expanded. Not just sea space, but any space, is thinkable
as an in-between zone. Praedones do not necessarily represent an Other
sovereign, but an Other humanity. Piratae do not necessarily cooperate with
praedones, but are simply cast as deviant Europeans who—like the praedo,
but not necessarily in cooperation with him—invade European order.

This is, of course, precisely the point at which I break with previous
scholarship on the enemy of all humankind. As I mentioned above, the as-
sumption that there is always only one enemy of all humankind instead of
two informs virtually all analyses of hostis humani generis available to me.
From such an alternative perspective, one might argue that Roberts as a
representative deviant does transform himself into a full-fledged antagonist
and thus occupies the positions of pirata and praedo at different times. If
that were so, the two narrative positions of the enemy of all humankind that
I have introduced as separate would instead be successive. For three reasons,
I am not convinced that such an argument holds.

First, much of the possible confusion about the topic of one enemy of all
humankind may stem from the already discussed fact that Blackstone uses
a generic “he” to discuss hostis humani generis. But if Blackstone’s distinc-
tions are indeed informed by Locke, we must acknowledge that his use of
the generic “he” in the state of nature suggests extremely ambiguous and
multifaceted notions of agency. We furthermore have to consider that the
praedo and the pirata are entities whose actions at sea are exchangeable and
who have a discursive history of cooperation. If we also consider that the
racialized split in hostis humani generis has always been implicit rather than
explicit in legal practice, it is obvious that the fiction can easily apply to a
parallel variety of representative persons of extremely different properties
without rendering the usage of the singular “he” nonsensical.

Second, the constructions of good versus evil and the norm versus devi-
ance that clearly coexist in the passage in Blackstone evoke different narrative
implications. While both constructions evoke antagonism, the first contrasts good with something inherently other than itself, while the second contrasts good with a treacherous element of itself. There is a substantial difference between conceptualizing an antagonist as an unreadable Other who invades from elsewhere for unknown reasons, and conceptualizing that antagonist as the direct answer to and product of one’s own civilizational priorities and shortcomings. On the basis of mere description, these two structures may be interwoven so as to prevent an easy recognition of their difference—which Blackstone’s definition certainly does—but their narrative implications cannot be reconciled so easily, and will necessarily lead to internal contradictions if the separation of pirata and praedo in the constellation that I have suggested does not take place. As the narrative choices of the Barbary captivity narrative and of Charles Johnson’s eighteenth-century *General History* have demonstrated, this problem was appreciated and addressed by contemporary writers.

The third reason is, as I have repeatedly suggested, that the hostis humani generis fiction has historically been inserted into the larger discourse of an essentialist model of civilization and derives much of its meaning from this discursive context. It is this context in particular that renders the idea of a temporal transformation from deviant to antagonist unconvincing. In terms of the praedo, the link to the essentialist model of civilization is straightforward: the essentialist model of good civilization and an inherently evil Other is directly duplicated by the narrative construction of the barbarous praedo in Blackstone, a figure that invades representatives of civilization (as well as the innocents whom such representatives have to defend and protect, in Wendy Brown’s sense in *States of Injury*).

The deviance of the pirata requires the essentialist approach primarily because the figure and its development are unthinkable in the alternative framework of the progressivist approach. Even though the pirata’s development mirrors the progressivist approach’s basic structure—someone crosses over from one camp to the other, or at least attempts to do so—the pirata “reduces” himself to savagery instead of rising to civilization. He cannot be conceptualized within the progressivist framework because his development fundamentally contradicts this approach’s central premise of civilization as the universal objective of any personal and societal development. In the context of the progressivist approach, the pirata as a descending entity is utterly nonsensical.

Of course, the pirata also remains somewhat alien to the essentialist approach because the notion of transformation is not inherent in a concept that assumes two stable blocs of antagonists. In the end, it is the racializing internal split of the invader figure and the pirate figure that offers a justification of the pirata’s existence within the essentialist model. The pirata’s
transformation can be conceptualized as an attempted rather than an actual transformation—despite all efforts, the deviant remains unable to merge with the Other because he must always remain on his side of the racialized divide. What loyalty to the homeland and faith to God cannot achieve, an essentialist argues, the natural fact of racial incompatibility establishes. This way, the pirata does not challenge the inherent difference presupposed by the essentialist approach and can be tolerated as a figure explicable by the logic of the model. Precisely because of this narrative context, the pirata begins to move into the position of perpetual potentiality that I outlined in chapter 1 as a pronounced, defining feature of the pirate in modernity. His movement is not in fact a transgressive crossing over but a kind of loop, as if the pirata were an orbiting satellite of civilization that, despite all lack of communication and coordination, is unable to escape civilization’s gravity. The pirata is civilized, however like a savage he acts.

All of this is important for a discussion of the notion of space because the specific nature of the racial narrative split with the hostis humani generis fiction explains the properties of space presupposed by the fiction in Blackstone—properties, indeed, that this definition helped establish for colonialist law more generally.

Thus far, the discussion of this chapter has three implications. First, all constellations identified within hostis humani generis are mediated by space rather than by time. If praedo and pirata are divided by race rather than by developmental stage (as they would be if they were indeed one), their complementarity is the exact reflection of a pirata-captive constellation. While the captive and the praedo respectively represent civilization and Otherness in an in-between zone, the pirata represents the sea-like in-between zone itself—primarily its ability to transform behavior and allegiance, though not racial identity. When the in-between zone is not identified as such by its own materiality (for example, by being a sea), it is successfully identified as an in-between zone only if a pirata exists to specify the other two figures’ struggle as taking place in a zone that is beyond predetermined boundaries of order and legitimacy.

Second, when all three figures are present, an existential state of war between civilization and barbarism (represented by captive and praedo) exists, which is in turn indicative of a state of nature. However, not all three figures are in this state of nature—it is restricted to the two figures that can be described as enemies of all humankind. The praedo is inherently caught up in the state of nature, and the pirata explicitly attempts to reduce himself to it by his praedo-like behavior. The pirata’s deviant behavior generally indicates the dilemma of the representative of civilization in the essentialist model. In this model, civilized man is defined not by positive traits but only by his refusal to
behave like a savage. If any representative of civilization were truly in a state of nature, he would automatically be transformed into a pirata. Blackstone acknowledges this problem when he carefully distances the representative of civilization from any such implication: the representative of civilization defends himself only “as if” he existed in a state of nature, which “otherwise” would entitle him to employ any means necessary against an “invasion” such as that of the enemy of all humankind. The state of nature is forced on him by the existence of enemies of all humankind; his defense is not only against an immediate attacker, but primarily against the state of nature itself.

In fighting praedo and pirata, the representative of civilization defies the absence of legitimate order. No matter which means of violence he employs, the explicit end of a defense of the sovereign order at its margins justifies all of his means. The enemies of all humankind had originally been derived from the spatial properties of the sea, but now the existence of a state of nature is derived from the presence of enemies of all humankind. In other words, Blackstone suggests a dialectical relationship between the identification of enemies of all humankind and the characterization of the space within which they are encountered.

Third, if the state of nature represents the absence of order, and the presence of the pirata indicates a zone in between the blocs of civilization and barbarism, the dialectically identified space can be located in specific historical situations. It is significant, at this point in my argument, that Blackstone is writing in the mid-eighteenth century. At this point, British colonialism is already a comparatively well-established system, and the existence of piracy has already been rendered a phenomenon typical of colonial space. In such a context, the legitimacy of appropriating land must be secured, and this is precisely what legal scholars of Blackstone’s age attempt to do.

In the Americas specifically, the main apple of discord between Native Americans and European settlers was the question of who could legitimately claim to be the ruler of American territory: the natives, who had an ancient claim of use, or the Europeans, who—by their own definition—constituted the civilizational peak of human existence? This had always been the core question of colonialism, since British law did not traditionally admit to a legitimate right of conquest and annexation. In 1758, only a few years before the publication of Blackstone’s Commentaries, Emer de Vattel had famously postulated the establishment of infrastructure as the foundation of European claims to the American continent and had established the notion of space itself as a vehicle for imperialist claims. Vattel writes:

The cultivation of the soil deserves the attention of the government, not only on account of the invaluable advantages that flow from it, but from its being
an obligation imposed by nature on mankind. The whole earth is destined to feed its inhabitants; but this it would be incapable of doing if it were uncultivated. Every nation is then obliged by the law of nature to cultivate the land that has fallen to its share; and it has no right to enlarge its boundaries, or have recourse to the assistance of other nations, but in proportion as the land in its possession is incapable of furnishing it with necessaries. Those nations (such as the ancient Germans, and some modern Tartars) who inhibit fertile countries, but disdain to cultivate their lands, and choose rather to live by plunder, are wanting to [sic] themselves, are injurious to all their neighbours, and deserve to be extirpated as savage and pernicious beasts. There are others, who, to avoid labour, choose to live only by hunting, and their flocks. This might, doubtless, be allowed in the first ages of the world, when the earth, without cultivation, produced more than was sufficient to feed its small number of inhabitants. But at present, when the human race is so greatly multiplied, it could not subsist if all nations were disposed to live in that manner. Those who still pursue this idle mode of life, usurp more extensive territories than, with a reasonable share of labour, they would have occasion for, and have, therefore, no reason to complain, if other nations, more industrious and too closely confined, come to take possession of a part of those lands. Thus, though the conquest of the civilized empires of Peru and Mexico was a notorious usurpation, the establishment of many colonies on the continent of North America might, on their confining themselves within just bounds, be extremely lawful. The people of those extensive tracts rather ranged through than inhabited them. (Law of Nations, 35–36)

In this passage, Vattel, too, visibly draws on Locke when he argues that the use of land is the foundation of any sovereign claim to territory, and that nomadic and predatory uses of land are the two most obvious thinkable ways to void such a claim. The characterization of the Native American as a nomad who must make room for “more industrious” (that is, civilized) peoples had found its way into law especially through Vattel (even though the assumption of Native American nomadism had existed in Europe for at least a century, as Hobbes’s use of the same notion indicates). The land-use argument associates the European as the inherent representative of civilization with the “industrious” use of “the earth,” “the soil,” “the land,” “territories,” and “tracts.” The colonial conflicts discussed by Vattel in this passage do not simply occur in space, they are mediated by it.

Vattel’s evocation of an imposing, obligating “nature” thus has a double sense. Primarily, the term “nature” is a straightforward reference to human nature and, more specifically, to the law of nature: Vattel claims that the land-use argument constitutes a universal rule of human conduct.
In a passage discussing the earth as a normative centerpiece of sovereign rights, however, a more literal interpretation of the term “nature” can be added to its Lockean meaning. The nature that “imposes” a certain form of possession can also be interpreted as the specific wilderness of the American continent. The wilderness can be understood as an imposing “nature” in the sense that it is a space in which, by virtue of its properties as a space, the state of nature occurs. Such an assumption achieves something important: the act of taking possession is the act of introducing the land to the legal sphere in the first place.

According to Vattel’s logic, Europeans cultivate the wilderness according to civilized needs—namely, the needs of European empires. The representative of civilization, then, is the person who settles in colonial space and associates himself with the imperial interest. Vattel’s contention that Native Americans are nomads renders them praedones eternally existing in the state of nature; a pirata would either be someone white who is both nomadic and associated with Native Americans (Paul and Hein, “Fugitive,” 230) or someone who settles but delinks himself from some imperial project, such as the oft-cited Golden Age pirate kingdoms (Baer, introduction, vii).

In this way, the American continent becomes the eighteenth-century precedent-setting space for a mature modern understanding of hostis humani generis, which uses the state of nature—rather than the much narrower concept of the sea—as the main resource for understanding the in-between zone. In Blackstone’s definition of hostis humani generis, the inherently hostile natural space allows a broader reading of the constellation as applying anywhere that features an untamed and uninhabited space.

In an explicitly imperial framework, the hostis humani generis constellation and the fixed relations encountered in it thus help establish the notion of the imperial margin. After all, colonial space is transformative only due to its spatial distance from legitimate sovereign rule. Eighteenth-century piracy continuously supported this notion by providing impressive examples. The farther away from the homeland, the more mutinies occurred (Rediker, Villains, 136), the more sailors decided to desert and to live as brothers or kings of natives (Kohl, “‘Travestie,’” 95; C. Johnson, General History, 62), and the more standard reports of marooned or lost wild white men in the colonial woods became (Exquemelin, Buccaneers, 55–57; Seidel, Robinson Crusoe, 36–46). Transformative space was thus considered a force unto itself that would completely replace the political notion of the nonwhite “kings of evil” in the context of hostis humani generis. The space in which the praedo was encountered and that produced the pirata became the margin both of the empire and of the wilderness as a bloc elsewhere.

This significantly broadened application of hostis humani generis was pos-
sible because of two central discursive changes that occurred in the course of the eighteenth century. These were the increasing merging of the progressivist and the essentialist approach to civilization and the solid establishment of binary identity difference as a core feature of European approaches to human nature in general. As applied to the Barbary States, the hostis humani generis fiction’s inherent reliance on the essentialist approach severely limited its cultural explanatory potential. After all, the progressivist approach offered a powerful alternative that relied largely on the missionary charisma of Christianity. During the eighteenth century, however, the progressivist approach drew nearer to the essentialist model. For instance, the notion of Native Americans as inherently inferior was an increasingly conceivable position even in the progressivist approach. By the end of the eighteenth century, the progressivist position had strongly deemphasized the possibility of a full crossing over to civilization in the unfolding larger context of imperialism, a notion that is especially evident in the view of natives as eternal children (Lehmkuhl, “Kolonialismus,” 45).

In North America, progressivist and essentialist characterizations of the Native American Other by European settlers had existed in parallel for a long time. This parallel existence was due to significant regional differences, since the concrete experience of specific settlers with specific Native Americans informed the discourse chosen to characterize the relationship. Settlers who had friendly relations with their Native American neighbors tended to express progressivist views that often included missionary efforts and the hope for the Other’s conversion; settlers who tended to have less peaceful experiences with their neighbors emphasized the essentialist antagonism between brave, civilized settlers and wild, bloodthirsty savages. Nancy Shoemaker writes of the situation by the end of the eighteenth century:

It is easy to see how imperialistic desire drove European settlers to believe themselves different from Indians, but more importantly, imperialistic desire also shaped the design of those differences. Across a wide spectrum of cultural attributes, Europeans classified Indians as inferiors. They made proper use of the land; Indians did not. Europeans had kings for leaders; Indians had chiefs. Europeans could write; Indians could not. European men behaved with civility; Indian men behaved like animals. Casting Indians as inferiors, as incarnations of a primitive past, Europeans saw no need to treat Indians as equals in diplomacy, no need to invite them to peace treaties held at Utrecht and Paris, no need to recognize their governments or territorial claims as legitimate.

Underlying the belief in Indian inferiority, one question remained: could Indians change or was Indian inferiority as immutable as skin color? (Strange Likeness, 142)
Shoemaker suggests that this central question was eventually decided in favor of the essentialist perspective. According to her, colonists and Native Americans were strongly convinced of their “intransigent differences” by the end of the eighteenth century (*Strange Likeness*, 141), a conclusion that considerably changed the function of civilizational approaches in the American context. Because of the increasing agreement on the existence of an essentialist divide between the races, the hostis humani generis constellation could insert itself into virtually all discourses on encounters with the Other, provided these encounters took place in a marginal zone that could be read as a sea-like in-between zone.

But it was not only the notion of race that became more important in imperial discourse—the notion of binary identity difference generally began to dominate all imperial relations as a central category. Leo Braudy suggests that hierarchical gender constructions that had rendered captives of both genders in America exchangeable versions of each other were replaced by a two-part model that assigned inherently different meanings to male and female representatives of civilization in the wilderness. While woman in the wilderness was reduced to her sexuality and either remained chaste (which maintained her status of an idealized representative of civilization) or not (which sullied her forever and rendered her lost in the wilderness), man in the wilderness was able to act as a representative “subject of a secular political philosophy, [and] a contradictory compound of all these elements, single but collective, private but public” (Braudy, *Chivalry*, 202; see also 199–214). It was therefore not least the construction of all enemies of all humankind as unambiguously male that allowed the constellation to remain philosophically relevant. The importance now assigned to the masculinity of all enemies of all humankind and the pirata’s whiteness, which was much more developed than many other figures’ racialized position, emphasized these figures’ roles of philosophical representation. At the same time, the notion of the captive as a representative of civilization was gendered, and thus the captive as a figure was removed from the more aggressive representative of civilization in the American context. Man in the wilderness explored and tamed, while the American captivity narrative conventionalized captivity as a specifically female experience. The notion of passive captivity, then, was also factored out of American applications of the hostis humani generis constellation in the wilderness.

In summary, the hostis humani generis constellation premises a stable and unquestioned antagonism between civilization and Other in a marginal zone in between empire and a nonwhite wilderness, inhabited by praedones insofar as they represent the wilderness itself rather than a specific political entity. As we have seen, furthermore, the margins as spaces are most
clearly narrated and negotiated by the white male figures that operate in these zones and who make existential decisions there—they either become purified as better versions of themselves (that is, they become true defenders of the innocent) and thus turn into representatives of civilization, or they degenerate and become piratae. This specifically colonial constellation of civilizational representative, pirata, and praedo in a state of nature in between blocs of civilization and wilderness allows a simultaneous negotiation of civilizational space, British identity, and imperial legitimacy within the expansive framework of mercantile expansionism.

This basic constellation with its muddled philosophical and legal history was ready by the early nineteenth century to be used as a solid basis for imagining contexts other than piracy. The extension of the legal fiction to conceptualize the slave trade as a crime is one of these examples, but it may be the least illustrative one when it comes to the potential of the constellation to negotiate the question of legitimate violence anew. It is at this point that literature becomes a particularly helpful site to trace the significance of hostis humani generis as a constellation that structures the meaning of violence in deliberately unspecific contexts of violence.