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# “Raise the Black Flag!”: The Conceptual Persona of the Pirate against the Law

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## ABSTRACT

The pirates were (and, perhaps, are) for the state apparatus and its law the outsider *par excellence*, a miasma and transgressor which needed to be hunted down and exterminated before it manages to infect the “good citizens” with its immorality, brutality and complete ignorance of a sense of duty. On the other hand, radical literature presents a more positive image of the pirates and their societies. It argues that pirate societies were characterised by a sense of mutual aid and equality, based on different ways of living, sense of justice and understanding of a (non)law. The article focuses on the Golden Age of piracy (between mid-17<sup>th</sup> to early 18<sup>th</sup> century) to shed more light on this conflicting image of the pirates.

Furthermore, the article draws from Gilles Deleuze and Félix Guattari’s idiosyncratic terminology, especially terms such as those of the *conceptual persona* and the *nomad* and presents the figure of the pirate as a similar conceptual persona to that of the nomad. In doing so, it aims to argue that the persona of the pirate could be an interesting one in an effort to rethink our ways of existing beyond the current oppressive state’s apparatus and its official law, towards a way of living that aims to disorient the dogmatism and hierarchy of the law and which aims do politics following its own (non)law.

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## KEYWORDS

pirate, Golden Era of Piracy, conceptual persona, nomads, (non)law, Deleuze and Guattari.

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## 1. Introduction

In the plateau, *Nomadology: The War Machine*, Gilles Deleuze and Félix Guattari discuss how the nomads and their war-machine operate as an exterior to the state apparatus (1987). As they argue, the nomads move in a smooth space without beginnings nor ends, as opposed to the striated space of the state, which counts, calculates, imposes fixed identities and ways of living with its hierarchical laws and commands. The nomads form a philosophical, *conceptual persona* (Deleuze & Guattari 1994) which refuses this capture of the law and its oppressive structures. Despite their refusal

to be captured by the state apparatus and its laws, the nomads are not unable to operate, to create and recreate their ways of living. This is done through their own *nomos* or *nomoi* – which are, however, “very different from the law” [*C’est un nomos, très différent de la loi*] (Deleuze & Guattari, 1987, 360; Marneros 2021).

In this article, I aim to argue that this persona of the nomads shares striking resemblances with the persona of the pirate – at least, with the way that this was shaped in the imaginary of the western societies. The pirates were (and, perhaps, are) for the state apparatus and its law the outsider *par excellence*, a miasma and transgressor which needed to be hunted down and exterminated before it manages to infect the “good citizens” with its immorality, brutality and complete ignorance of a sense of duty. Thus, the state authorities and writings often portrays the pirate as a drunkard, a rapist and a traitor – in short, the very personification of evil.<sup>1</sup> On the other hand – and despite the fact that the pirates, their traditions, aims and beliefs remain a mystery – radical literature (Wilson 1995; Kuhn 2010; Graeber 2023) argues that the figure of the pirate could be an interesting one in an effort to rethink our ways of existing beyond the current oppressive state’s apparatus and its official law, towards a way of living that aims to disorient the dogmatism and hierarchy of the law and which aims to live and do politics following its own (non)law.

In particular, the pirate code could be seen as a form of *nomos* that creates and recreates ways of living which oppose the hierarchical structures of the law by “haunting the seas” (Goodrich 2017) and mocking state’s jurisdiction, thus questioning its omnipotence. The article examines on the persona of the pirate, its resemblance to the Deleuzian nomad and how the pirate code as a way of life opposes the law of the state. It is important to be noted, however, that I do not aim to suggest that the way that pirates are often portrayed should be seen as identical to the Deleuzian understanding of the nomad and at the same time, I do not aim to idolise the often-

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<sup>1</sup> The writings of Sir Edward Coke (1552-1634), a barrister, judge and politician who served as Solicitor General of England and Wales, are exemplary of the state’s view on pirates. Coke, who was considered one of the greatest jurists of Elizabethan era wrote in his *The Third Part of the Institutes of the Laws of England* the following: “*pirata est hostis humani generis* [and was] *contra ligeancea suae debitum*” (“The pirate is the enemy of humanity in general” and was “against the debt of his liege or allegiance” (found in Goodrich 2017, 206). In essence, this manifests that the identity of the pirate personified the utmost treason against decency, loyalty and allegiance to the law and the state and to that extent, the only proper form of punishment was death.

despicable acts of the pirates or the way that pirate groups, societies and enclaves were structured and operated. What I aim to do is to suggest that the reading of a pirate as a philosophical, conceptual persona through the lenses of the nomad, in Deleuze and Guattari's corpus has the potential to oppose and disorient the hierarchy and dogmatism of the law and the normativity of the state.

In doing so, the article proceeds as follows: In section two and its subsections, I focus on what is known as "the golden era of piracy" which is situated in the mid-17<sup>th</sup> to the early 18<sup>th</sup> centuries and, in particular, between 1630s and 1720s (Brunsman 2019; Graeber 2023; Simon 2023). My examination engages mainly with the elements of the "pirate code" or (non)law and the formation of pirate societies and groups. In doing so, I try to demonstrate a different formation of society to those of the state and its official laws. Such pirate societies, as we will see demonstrated significant elements of equality, as well as a shift from the hierarchical structure manifested in western societies – even a tendency to "mock" such hierarchical tendencies. In section three and its subsections, I analyse Deleuze and Guattari's notion of conceptual persona as this explained in their last collaborative project, *What is Philosophy?*. I further discuss its application to the notion of the nomads and their nomos by focusing on Deleuze and Guattari's *Nomadology: The War Machine*. Finally, the concluding section, section four, offers a reading of the pirate's being and thinking through the lenses of the conceptual persona and that of the nomad in order to demonstrate how such a reading can offer a potential escape out of the hierarchy and dogmatism of the state and its laws.

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## **2. The Pirate in the Golden Age**

### **2.1. *Hostis Humani Generis***

We saw above that being a pirate was considered such a heinous crime, one that makes every pirate an enemy of the whole of human race. The laws that existed before the golden era of piracy were deemed to be ineffective in addressing the problem of piracy. To that extent, new laws had to be created in order to address the nuisance caused by the enemy of all. The drafting of these new laws between mid-17<sup>th</sup> to early 18<sup>th</sup> century is

another indication that this is, indeed, a period in which piracy flourished – a truly “golden era”.

For example, the law of England and Wales addressed issues relating to offences taking place in the sea under the “Offences at Sea Act 1536”. The Act was an initial effort from the British authorities to address the problem of piracy. For example, while it did not give a definition of who would be classified as a “pirate”, the Act suggests that crimes such as robberies, felonies and murders that happen in the sea, should be tried in the same manner with crimes committed in the land. As such, we can see here an analogy between the identity of the pirate and that of the robber, felon and murderer. Setting this particular narrative regarding the identity of the pirate, the British authorities used the Act to move the act of piracy from the realm of civil wrongs to the that of criminal law. This had as a consequence the application of capital punishment for the newly created crime of piracy (Article I, in Tanner 1922, 347). Another important remark regarding the identity of the pirate, is made by Gabriel Kuhn. Kuhn distinguishes between buccaneers and pirates, suggesting that the former shared some alliances with and maybe had some indirect allegiance with the state and their laws (e.g. British buccaneers were plundering and robbing Spanish armadas and *vice versa*) while the latter did not have any allegiance or alliance. “A pirate is in a perpetual war with every individual, and every state, Christian or infidel. Pirates properly have no country, but by the nature of their guilt, separate themselves, and renounce on this matter, the benefit of all lawful societies” (Kuhn 2010, 8). Thus, the state did not only take an issue with piracy due to the acts committed by the pirates but rather it was the refusal to obey, to become part of the state apparatus and utilised for its aims that turned pirates into the absolute enemy. This is perhaps, the main reason which made the pirate the enemy of humanity *par excellence*.

Going back to the way that state authorities tried to address piracy, we find an important development in the late 17<sup>th</sup> century. With the emergence and flourishing of piracy the existing law was considered insufficient and certain corrections were considered necessary. During the reign of Henry VIII, the “Piracy Act 1698” was passed to resolve the inadequacies of its predecessor. This is evident in the reasoning given for the enactment of the Act and which is worthy citing in its full length:

Whereas by the Offences at Sea Act 1536 it is enacted that Treasons Felonies Robberies Murthers and Confederacies committed on the Sea shall be enquired of tryed and determined according to the common Course of the Laws of this Land used for such Offences upon the Land within this Realme whereupon the Triall of those Offenders before the Admirall or his Lieutenant or his Commissary hath beene altogether disused And whereas that since the making of the said Act *and especially of late Yeares it hath beene found by experience That Persons committing Piracies Robberies and Felonies on the Seas in or neare the East and West Indies and in Places very remote cannot be brought to condign Punishment without great Trouble and Charges in sending them into England to be tryd within the Realme* as the said Statute directs insomuch *that many idle and profligate Persons have beene thereby encouraged to turne Pirates and betake themselves to that sort of wicked Life* trusting that they shall not or at least cannot easily be questioned for such their Piracies and Robberies by reason of the great Trouble and Expence that will necessarily fall upon such as shall attempt to apprehend and prosecute them for the same And whereas the Numbers of them are of late very much increased and their Insolencies soe great that unlesse some *speedy Remedy be provided to suppress them by a strict and more easie way* for putting the ancient Laws in that behalfe in Execution the Trade and Navigation into remote Parts will very much suffer thereby [emphasis added].

It is significant to note here that the British parliament considered the 1536 inadequate due to the increasing number of pirates. This because, according to the 1698 Act, the pirates had to be transferred back to Britain to face trial. The Piracy Act delegated powers to admirals and their officers to conduct these trials either on their ships or British colonies, whichever place deemed to be more convenient. In addition, the inadequacy of the laws preexisting the 1698 Act had another negative impact; it encouraged more and more sailors, privateers and other members of the navy to become pirates, because they considered the possibility of punishment to be minimal. The punishment for those who were found guilty of piracy was death, following the 1536 Act. Furthermore, another important information that we learn from the 1698 Act is the *place* of pirate operations, namely, East and West Indies in the Caribbean.

The place of operation of the pirates had a significant impact on the collective imaginary regarding the persona of the pirate. In the book *A General History of the Robberies and Murders of the most Notorious Pyrates* published in 1724, by a mysterious author or authors under the name, Captain Charles Johnson (most probably it was the pseudonym of the writer Daniel Defoe), we learn about the legendary pirate enclaves in Hispaniola (situated between Cuba and Puerto Rico), Tortuga (in Haiti) and Port Royal (in Southeastern Jamaica). This imaginary has two sides. The first narrative is based on the dominant, negative narrative around pirates' brutality and incivility, developed and promoted by the state and its allies. The second is based on contemporary, radical literature, which focuses on the way that the pirates organised in the aforementioned enclaves. For example, we learn, that in these enclaves, the pirates achieved to create "their own short-lived [but] highly anarchic society" (Wilson 1995, 190). What is significant about these enclaves is that, while pirates are always considered *creatures of the sea*, these enclaves demonstrate another element of the persona of the pirate and the model of society that it created, namely the formation of pirate enclaves *on land*. This aspect of pirate life was, perhaps, neglected or it was rather buried by the official narrative of the state which aimed to present them as brutes and murderers.

In Captain Johnson's negative portrayal of pirate life, we encounter stories about the way pirates mistreated the local population. For example, in his account of the pirate, Captain Charles Vane and his crew, who operated around New Providence in Bahamas and Hispaniola, Captain Johnson states the following: "[...] Vane went to a small island and cleaned; where they shared their booty and spent some time in *a riotous manner of living, as is the custom of Pirates*" (2022, 105 [emphasis added]). Captain Johnson continues the account by stating the following: "Vane made towards the coast of Hispaniola, living riotously on board, having a store of liquor, and plenty of fresh provisions, such as hogs, goats, sheep, fowl, which he got upon easy terms for touching at a place called Isleatherer [? Adderley], he plundered the inhabitants of as much of their provisions as they could carry away" (2022, 122). In these passages we see that the pirates' identity is part and parcel with a riotous way of life. Being a pirate is thus, equated with being automatically a nuisance to the peaceful population of their places of operation. The pirates are drunkards that engage in plunder and gluttony and shamelessly rob the flock and provisions of the locals. More interestingly,

Captain Johnson gives a further reason on why the pirate enclaves in the Caribbean were short-lived. He presents the pirates as hotheads who engage constantly in excessive and unreasonable in-fighting. Continuing his account of Captain Charles Vane and his crew, Captain Johnson narrates how a successful operation, that gave Vane the command of a rich British ship, called the *Kingston*, did not last long, due to an inexplicable and immature quarrel over the quantity of alcohol with the (in)famous fellow pirate, Captain John Rackham, or, as it is better known, Calico Jack:

Here they cruised to about February, when, near the windward passage of Cape Maysi, they met with a large rich ship of London, called the *Kingston*, laden with bale goods, and other rich merchandise, and having several passengers on board, some English, and some Jews, besides two women. Towards the north end of Jamaica they also met with a turtle sloop, bound in for that island, on board of which (after having first plundered her) they put the captain of the *Kingston*, and some of his men, and all the passengers, except the two women, whom they kept for their own entertainment, contrary to the usual practice of Pirates, who generally sent them away, lest they should occasion contention.

The ship *Kingston* they kept for their own use, for now their company being strengthened by a great many recruits, some volunteers and some forced men out of the Neptune and Kingston, they thought they had hands enough for two ships. Accordingly, they shifted several of their hands on board the *Kingston* and John Rackham, alias Calico Jack (so called, because his jackets and drawers were always made of calico) quartermaster to Vane, was unanimously chosen Captain of the *Kingston*. The empire of these Pirates had not been long thus divided before they had like to have fallen into a civil war amongst themselves, which must have ended in the destruction of one of them. The fatal occasion of the difference betwixt these two brother adventurers was this: It happened that Vane's liquor was all out, who sending to his brother captain for a supply, Rackham accordingly spared him what he thought fit, but it falling short of Vane's expectation, as to quantity, he went on board of Rackham's ship to expostulate the matter with him; so that words arising, Rackham threatened to shoot him through the head, if he did not immediately return to his own ship, and told him likewise that if he did not sheer off and part company he would sink him (Johnson 2022, 123).

The portrayal of pirates by the state and pro-state accounts had a significant impact on the formation of a persona of the pirate as synonymous to absolute evil. The pirate is a drunkard, a rapist (“except the two women, whom they kept for their own entertainment”) murderer and a thief that does not care about anything and anyone else but for itself. It is someone that is prepared to sacrifice big gains (for example, command of a large crew and rich ship, such as the *Kingston*) for the insignificant reasons such as a quarrel over the sharing of alcohol and as such, someone who is irrational and untrustworthy.

This is crucial if we consider that the Pirate Golden Age runs in parallel with the Enlightenment period. The Enlightenment era, the age of reason, is the period in which we witness “*man’s emergence from his self-imposed immaturity*. Immaturity is the inability to use one’s understanding without guidance from another. This immaturity is *self-imposed* when its cause lies not in lack of understanding, but in lack of resolve and courage to use it without guidance from another” (Kant 2009, 1). While reason was celebrated as the highest value of the Enlightenment era and it was only through reason that human beings were to liberate themselves from their immaturity and inability to act autonomously, the sort of conduct of the pirates and the violation of the moral and rational law of the so-called “civilised states” stand as the opposite of such values. The pirate, thus, represents the absolute enemy of the greatest values of humanity – a true *hostis humani generis*. To that extent, for the narrative produced and supported by the state, the pirate must be annihilated both physically and as a persona that mocks and disobeys the state and its laws, and which may intrigue the interest of the collective imaginary. While the state may have succeeded in its first aim, with the numerous executions of pirates and the destruction of their enclaves, state’s second aim has not been very successful.

## **2.2. Pirate (non)law and alternative politics**

There is a different, clandestine narrative that unfolded and escaped the official accounts of the state. A consensus suggests that the seamen who ended up becoming pirates were coming from the lowest social classes and as such, they were considered by the official accounts as “desperate Rogues who could have little hope in life ashore” (Rediker 1981, 208).

What the state's classism considered as a unity of outcasts, a dangerous miasma that aims to disorient and infest the peaceful life of the upper-classes and the trade of colonial Empires, was something that gave a sense of unity amongst those who ended up becoming pirates. What also united these outcasts was the lack of any familial and national ties, thus, the nationalistic and racist tendencies that prevailed in the mentality of the state were completely alien to pirates. According to David Lister and Marcus Rediker:

The alternative social order of the pirate ship was all the more impressive because it had been created by the “villains of all nations”, workers of many races and ethnicities who, according to conventional wisdom, in their own day and in ours, were not supposed to cooperate. Any given pirate ship might have English, Irish, Greek, Dutch, French, or Native American crew members.

African and African American seamen played an especially prominent role as they freely and subversively sailed Caribbean and North American waters near the coastal slave plantations from which many of them had escaped (2023, 6).

We further see how the pirate life was an alternative to slavery for many African and Afro-Caribbeans who managed to break their bonds and joined a crew. We should not hold naïve views and valorise the aims of the pirates though. According to Gabriel Kuhn “[t]he threat that the golden age pirates posed to the slave trade, however, did not come from the pirates’ struggle for equal rights or an early abolitionist conviction, but from interrupting its routes, stealing its “cargo” and making its ventures more costly” (Kuhn 2010, 67). Nonetheless, we should not underestimate the fact that piracy, even indirectly, became a form of resistance against the colonial practices of the west. Especially, the way that pirates treated ex-slaves in the plantations and accepted them in their ranks and/or shared a relationship of respect and mutual aid is diametrically oppositional to the way that the so-called “civilised” Europeans treated these populations (Kuhn, 2010, 67). Even in the situations where the native populations were treated harshly and were the victims of plunder by the pirates, these populations had *the option* and felt *empowered* to cut all ties and business relations with the pirates. Of course, a similar response would have been impossible to even

think about, let alone act upon, when it came to their relations with the European colonisers.

Similarly, the pirate ships and enclaves were critical of organised religion. The official account of the state presented the pirates as infidels, demons, pagans and satanists due to what the state conceived of as immorality and blasphemy. The stance and ethos of the pirates towards life was again something that made the “pious” Europeans quite perplexed. According to Rediker, anyone who chose the pirate life knew that death was lingering (Rediker 1981, 209). The acceptance of a short but free life and the refusal of dominant morality had a huge impact on the way that the pirates understood organised religion. The most famous pirate symbol, the black flag with the skull, “the Jolly Rogers” manifests this acceptance of death and the freedom accompanied by it. “Beneath the Jolly Roger, “the banner of King Death”, a new social world took shape once pirates had, as one of them put it, “the choice in themselves” (Rediker 1981, 204). There was not any promise of tomorrow, let alone of afterlife, there was only *this life*, a life of freedom from the yoke of organised religion and moral law, a life with *no gods and no masters*.

More importantly for our purposes here, the critical stance against organised religion and the acceptance of a short life, had an impact on the way that pirates structured their social life and their communities. Their critical stance towards the dogmatism and hierarchy of religion “held that the punitive apparatus of European law and religion was made necessary only by an economic system arranged in such a way that it would inevitably produce precisely the behaviours that apparatus was designed to repress” (Graeber 2023, 8). The pirates rejected the rigid authority of the law of the state and its hierarchical formation. In its place, they enacted pirate codes, according to the needs and formation of the crews and the enclaves. Radical commentators agree that such codes were revolutionary in comparison to the legal charters of the age (Kuhn 2010, 81). Interestingly, the articles of the codes were written down and were specific to each crew (see Simon 2023 for examples of different codes). These codes were rather experiments on horizontal, participatory politics with an *anarchic* character, in the sense that did not recognise any form of higher authority be that in the form of law, morality or a ruler, such as the captain. For example, Rediker informs us that:

A striking uniformity of rules and customs prevailed aboard pirate ships, each of which functioned under the terms of written articles, a compact drawn up at the beginning of a voyage or upon election of a new captain, and agreed to by the crew. By these articles crews allocated authority, distributed plunder, and enforced discipline. These arrangements made the captain *the creature of his crew*.<sup>2</sup> Demanding someone both bold of temper and skilled in navigation, the men elected their captain. They gave him few privileges: he “or any other Officer is allowed no more [food] than another man, nay, the Captain cannot keep his Cabbin to himself” (1981, 209).

In terms of the sharing of the bounty, this was also dictated by the written articles of the respective codes of ship or enclave. The portion was usually determined by the kind of expertise which was offered by each member of the crew and their *usefulness* to the rest (e.g. captain, doctor, warrior and so forth) (Rediker 1981, 209). This is radical even for our current standards as the pirates demonstrated that they replaced a conception of themselves as workers with a conception of themselves as partners in a cooperation.

Ultimately, when it comes to the question of justice, the pirates demonstrate a unique understanding of what it means to serve the just and punish the unjust. While pirate justice created an ethics of vengeance – yet, and this is the important aspect here – this vengeance was against those who were enjoying a position of authority. Kuhn explains that pirate “justice is done by avenging what is perceived as *injustice*, namely the arbitrary violence and domination exercised by those with “authority) (2010, 159). At the same time, within their communities the pirates tried to make the procedure of justice as smooth and as inclusive as possible. According to Captain Johnson, the pirates were deciding how to serve justice in communal councils which unlike the esteemed courts of the state “had more lawful commissions for what they do” (2017, 1993). Violations of justice such as bribing, abusing

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<sup>2</sup> The position of the captain as a servant of the crew is similar to the way that Pierre Clastres (2020) described the role of the chief in the Indigenous American tribes that he examined, such as the Guayaki in Paraguay. His ethnographic work demonstrates how the chief acted merely as a facilitator of the tribe in negotiations and distribution. Any chief that was not generous and tried to take advantage of the position, was to be disposed or abandoned. This was also something that confused (and still confuses) the hierarchical mentality of the west. On this comparison see also, Kuhn (2010, 30–34).

witnesses and the jury – still common in our liberal democracies – were completely unknown to them (Johnson 2017, 193). The language of the procedure and the councils was as simple as possible in order to ensure inclusivity for all, irrespective of their level of education and/or knowledge of the language – something extraordinary if we consider the legal terminology of the judiciary and the justice system of our states (Johnson 2017, 193).

In this section, I highlighted some of the main achievements of the pirates when it comes to the way they disoriented and questioned the official law and politics of the state. While their achievements in many aspects are quite extraordinary, this should not lead us to consider that pirate societies were ideal.<sup>3</sup> Instead, my aim here is to demonstrate that it is useful to ponder on the persona of a pirate, as a method of thinking about law and politics otherwise. To that extent, in the subsequent section, I focus on Deleuze and Guattari's writings on the notion of the conceptual persona and that of the nomad against the law, to draw parallels with the portrayal of the pirate presented here.

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### **3. Deleuzoguattarian terms and the pirate**

#### **3.1. The conceptual persona**

In Deleuze and Guattari's idiosyncratic definition of philosophy as "the discipline that involves *creating* concepts" (1994, 5), we encounter the "conceptual persona" as a philosophical term. The term signifies the use of fictional or quasi-fictional (in the sense that they may be historical characters, but their use does not focus and does not claim to aspire towards "historical authenticity") characters which are used by authors, or in better terms by philosophers, in order to facilitate them to create new philosophical concepts. The conceptual personae are further used to express and convey these new philosophical ideas to their readership and/or audience. Deleuze and Guattari explain that philosophers can use both sympathetic and antipathetic personae in order to advance their thinking and create *new*

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<sup>3</sup> Previously it was stated, for example, that their fight against colonial practices was often driven by their profiteering rather than their ideological opposition to them. It was further stated that their treatment of indigenous populations was heinous in many cases.

*image of thought*, that is, new ways of thinking, living and doing politics.<sup>4</sup> Furthermore, it is important to clarify that the conceptual personae are not “aesthetic figures”, in the sense that their purpose is not to create affects and percepts, such as works of art (Deleuze & Guattari 1994, 65). Instead, the conceptual personae are the forces that facilitate the creation of philosophical concepts.

To that extent, the conceptual personae should be understood as integral participants in this constructive process of philosophical discipline and concept-creation. Yet, the conceptual persona:

is not the philosopher’s representative but, rather, the reverse: the philosopher is only the envelope of his principle conceptual persona and of all other personae who are the intercessors [interscesseurs], the real subjects of his philosophy. Conceptual personae are the philosopher’s “heteronyms”, and the philosopher’s name is the simple pseudonym of his personae. I am no longer myself but thought’s aptitude for finding itself and spreading across a plane that passes through me at several places. The philosopher is the idiosyncrasy of his conceptual personae. (Deleuze & Guattari 1994, 64).

This “real subjects” of a philosopher’s thought can be understood as the characters that “map out” (Deleuze & Guattari 1994, 69) a thinker’s thought; to that extent, they give material or *personality* (Deleuze 1995, 96) to the philosophical concepts that populate its philosophical plane. In other words, a persona should not be thought as an actual subject (i.e. not the person Socrates in the Platonic dialogues, but rather the persona, Socrates). A persona in this sense is the indicator of a territory that points out certain problematisations generated by the thought of a philosopher, a particular tradition or timeline (for example, Spinoza’s philosophy, “phenomenology” or “Roman philosophy”). Furthermore, a conceptual persona can also help us to draw a sort of lineage of a particular thought, such as “a philosophy of immanence” (as that of Deleuze) as opposed to that of “transcendence”

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<sup>4</sup> The main example they provide is that of Friedrich Nietzsche. Nietzsche “populated” his thought by adversarial conceptual personae, such as those of Christ, the priest, the higher man and Socrates, and worked along with his sympathetic personae, such Zarathustra and Dionysus (Deleuze & Guattari 1994, 65).

(as that of Plato). For example, in Spinoza, Nietzsche and subsequently Deleuze the critique and opposition against the persona of the priest functions as a device which gives “a material form” to the dogmatic machinations of the official morality and the law of the state. If philosophy is, according to Deleuze “like a novel” (1995, 140), the personae can be thought of as the protagonists of this novel that materialise its story’s *morale* or *ethos* (Marneros 2022, 171). For example, the persona Socrates *territorialises*, in a geographical or temporal manner (for example, as in “Classical Greek philosophy”) certain problems posed by Platonic thought (for example, the meaning of *eros* or justice). When philosophy is faced with new problematisations, new conceptual personae will emerge to *detrterritorialise* the pre-existing concepts, which lose their interest on behalf of new concepts. For example, Zarathustra *detrterritorialises* the pre-existing values and *reterritorialises* philosophical thought, in a temporal manner and a particular philosophical tradition, i.e. late 19<sup>th</sup> century and Nietzschean thought, to pose and engage with different problems of the relevant period (e.g. Nietzsche’s effort to revalue the dominant values of western thought and Christian morality). The relationship between the conceptual persona and the philosopher is one of becoming, not in the sense that the philosopher will be exhausted in their conceptual persona and *vice versa* – “[b]ecoming is not being, and Dionysus becomes philosopher at the same time that Nietzsche becomes Dionysus” (Deleuze & Guattari 1994, 65) – but rather in the sense that the conceptual persona unleashes the creative forces of philosophy, its becoming(s) and ensures the creation of innovative concepts.

Following this line of thought we can say that the figure of a pirate is such a conceptual persona; one which functions as the mapping out and the materialisation of different way of living, beyond the yoke of the state and its official law, religion and morality. The *ethos* – that is the way of living – of the persona of the pirate is, thus, creative in its opposition to the dogmatic mentality of the legalistic rules of the state. But how does the persona of the pirate achieve that? The first step is a dissatisfaction with ready-made solutions which leads the pirate to become a vagabond or, in the Deleuzoguattarian jargon, *a nomad*. What I mean by that, is that the *conceptual persona* explores different ways to respond to a particular case and, thus, freely wanders (as a nomad, not necessarily in terms of physical movement), including into uncharted or extra-juridical waters – the (non) law of the pirates. Through this “journey” the pirate arrives at the second

step of creativity: invention. The persona of the pirate strives to produce interesting and inventive ways to problematise and respond to a singular situation (for example, how to share the bounty amongst the crew), without falling into the trap of searching for ready-made solutions in the dogmatic and moralising commands of the state and its law. Thus, the pirate as a conceptual persona, which is subjected to no fundamental laws, is in a position to unleash “an active” critique (as opposed to a reactive one, which simply opposes or compromises)<sup>5</sup> – and to experiment, question and problematise – or even go against the supposedly, “sacred” commands of the law of the state and its norms of juridical stagnation. In order to grasp how the persona of the pirate can help us in our efforts to think beyond and against the law, it is important to examine how Deleuze (with Guattari) create the philosophical persona of the nomad. The nomadic movement and the nomos of the nomads as opposed to the law of the state share some very interesting similarities to the pirate’s constant effort to escape the official law of the state and its ability to create something new – its (non)law.

### 3.2. The Nomad

While Deleuze did not write directly on issues relating to juridical studies, the law and its theory, he emphasised his fascination of the law and the process of law-creation in multiple instances.<sup>6</sup> Yet, the kind of the law that he was interested in had nothing to do with the official law of the state and the way that judges decide – “we mustn’t go on leaving [law creation] to judges” he proclaimed (Deleuze 1995, 169). Instead, his use and understanding of law, or nomos, and his writings on the conceptual persona of the nomad, point toward a way of living beyond the yoke of the state and its law, one which disorients and questions state’s dogmatism.

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<sup>5</sup> For the distinction between active forces and reactive ones, see Deleuze’s reading of Nietzsche’s thought. (2006). The former set of forces are creative, and they strive to offer new, inventive modes of living and thinking, whereas the latter are a mere reaction to the already-existing dogmatic ways of commanding our ways of living, and thus, they are *uncreative*.

<sup>6</sup> Speaking to Claire Parnet, he says: “I have always been fascinated about jurisprudence, about law... If I hadn’t studied philosophy, I would have studied law [...]” (Deleuze 2004). In another instance, he states when he was asked by Dominique Ségla why he chose to do his thesis on David Hume, Deleuze, replied “[b]ecause of the law. My true vocation is the law, philosophy, and the law” (Dosse 2007, 121). On Deleuze’s understanding of “jurisprudence” see, Marneros (2019).

Deleuze engages with the notion of *nomos* in *Difference and Repetition*, where he refers to the practice of the distribution *in* land in Homeric period. While *nomos* is widely known as the modern Greek translation of the English word “law”, according to Deleuze, its Homeric use significantly differs from our understanding of what law is or could be nowadays – “it is a *nomos* very different from the ‘law’” (Deleuze & Guattari 1987, 360). Following the analysis on the meanings of the word by the French linguist Emmanuel Laroche, Deleuze explains that *nomos* for Homeric society has a pastoral sense. For Deleuze, this meaning of allocation or distribution was not a matter of land distribution, because as he states the understanding of *nomos* as land-distribution was “only belatedly implied” (Deleuze 1994, 309). Instead, Deleuze explains that:

Laroche shows that the idea of distribution in *nomos-nemō* does not stand in a simple relation to that of allocation [*temnō, diaō, diaireō*]. The pastoral sense of *nemo* (to pasture) only belatedly implied an allocation of the land. Homeric society had neither enclosures nor property in pastures: it was not a question of distributing the land among the beasts but, on the contrary, of distributing the beasts themselves and dividing them up here and there across an unlimited space, forest or mountainside. The *nomos* designated first of all an occupied space, but one without precise limits (for example, the expanse around a town) – whence, too, the theme of the “nomad” (1994, 309).

The opposition of *nomos* and the nomad to the enclosed space is significant as it presupposes a different way of existing beyond the limits of the state, law and property. If the nomads and their *nomos* is not limited by any enclosure, “[t]hen there is a completely other distribution which must be called nomadic, a nomad *nomos*, without property, enclosure or measure. Here, there is no longer a division of that which is distributed but rather a division among those who distribute themselves in an open space – a space which is unlimited, or at least without precise limits” (Deleuze 1994, 36).

Along with Guattari this time, Deleuze revisits the notion of the *nomos* and the nomad and, more importantly, the issue of space. Influenced by the method of musical composition of the composer Pierre Boule, they make the distinction between *smooth* and *striated* space (Deleuze & Guattari

1987, 553-554). Speaking about the model of nomadic movement, they explain that:

The model is a vortical one; it operates in an open space throughout which things-flows are distributed, rather than plotting out a closed space for linear and solid things. It is the difference between a *smooth* (vectorial, projective, or topological) space and a *striated* (metric) space: in the first case “space is occupied without being counted”, and in the second case “space is counted in order to be occupied” (1987, 361-362).

The persona of nomad, as that which follows nomos but not law, moves within a *smooth space*. This suggests that striated space, faithful to the calculable or metric mentality of the state apparatus and its official law, *calculates* which beings, ideas, ways of living, morals and so forth, are “fit” to be included within the enclosed space of its boundaries of *pseudo-benevolence* and *protection*. To that extent, the striated space measures, puts barriers, borders and hierarchises between insiders and outsiders, “good citizens” and transgressors, or for our purposes here, humanity and the pirate as the enemy of humanity. On the other hand, smooth space is a place for creation and invention without a predestined or pre-empted distribution of shares, laws, morals and so forth. It is there to be occupied and moulded accordingly, in order to serve particular needs and respond to a particular situation.

The nomads disorient the authority of the state apparatus and striated space because such a static or striated formation of identities is insignificant [for them] since their slipping away from the norms of the state ensures the dissolution of any form of identity that could supposedly claim any sort of purity (Deleuze & Guattari 1987, 362-363). Operating within a smooth, boundless space, the nomads are – even when they do not physically in movement – always slipping from the capture of the state and its law. Their space is without a beginning or end, similarly to *the becoming of the conceptual persona*. In that sense, the nomad proceeds in a mode of *becoming*, in the sense that one refuses to be limited by any form of stagnation of the official law of the state and its morality, which dictates rigid norms and identities. As such, the nomad comes to disorient the conformity of the obedient subject to the state, i.e. “the good citizen”. Perhaps, the most distinctive characteristic of the nomads is then that they always try to slip away from the law, the state apparatus, its official laws and morality.

[E]ven though the nomadic trajectory may follow trails or customary routes, it does not fulfil the function of the sedentary road, which is to *parcel out a closed space to people*, assigning each person a share and regulating the communication between shares. The nomadic trajectory does the opposite: it *distributes people (or animals) in an open space*, one that is indefinite and non-communicating. The *nomos* came to designate the law, but that was originally because it was distribution, a mode of distribution. It is a very special kind of distribution, one without division into shares, in a space without borders or enclosure. The *nomos* is the consistency of a fuzzy aggregate: it is in this sense that it stands in opposition to the law or the *polis*, as the backcountry, a mountainside, or the vague expanse around a city (“either *nomos* or *polis*”). Therefore, and this is the third point, there is a significant difference between the spaces: sedentary space is striated, by walls, enclosures, and roads between enclosures, while nomad space is smooth, marked only by “traits” that are effaced and displaced with the trajectory. Even the lamellae of the desert slide over each other, producing an inimitable sound. The nomad distributes himself in a smooth space; he occupies, inhabits, holds that space; that is his territorial principle. (Deleuze & Guattari 1987, 381-382).

While the state always tries to appropriate nomadic creativity – presenting it even as “entrepreneurship”, “innovation” and “progress”, the nomads must remain vigilant and find the *line of flight* to escape capture, and to continue to live in a creative, open space. All the above demonstrate a clear relation between the persona of the nomad and the persona of the pirate. In the concluding section, I aim to shed more light on this and its usefulness for an effort to rethinking our ways of living and a politics beyond the yoke of the law.

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#### **4. The conceptual persona of the pirate against the law and the state**

An immediate relation between the conceptual persona of the nomad and that of the pirate can be drawn through their relevance to the sea. The “sea is perhaps principal among smooth spaces, the hydraulic model par excellence” (Deleuze & Guattari 1987, 387). The pirate as a creature of

the sea operates within this smooth space. Yet, as Deleuze and Guattari further explain, “the sea is also, of all smooth spaces, the first one attempts were made to striate, to transform into a dependency of the land, with its fixed routes, constant directions, relative movements, a whole counterhydraulic of channels and conduits” (1987, 387). Perhaps, the hatred towards the pirate by the “civilised” states is due to the latter’s resistance to the striation of the sea. The pirate wanted to keep the sea free from enclosures, predetermined routes and more importantly, the calculations of the market via trade and its most heinous form, *slavery*. The pirate through its nomadic movement and its ability to map out its own territories, through the *nomoi* of the pirate code demonstrated that the organisation of society through the state-form and its laws is not the only way of living and doing politics.

However, the pirate should not be only understood as a creature of the sea but also, as stated above, its operation in the land is equally important, if not more significant. This is because the pirate not only manages to escape the capture of the state and its law in the sea, but it further manages to disorient the law of the state in the latter’s safest enclosure, namely *the land*. While, admittedly, the pirate utopias were not always successful in creating a purely smooth space (and perhaps, this was never their aim), they remain important because they can help us imagine an alternative to our current state of affairs. This is achieved because the pirate manages to keep its habits, traditions and way of living in the enclaves that it creates in land. We saw how in places such as Tortuga and Hispaniola, the pirate formed alliances with the local populations, treating them even as equals and offered a way out of the colonial yoke of the west. The persona of the pirate, thus, “infests” the safe space of the state, i.e., the land. The pirate desecrates state’s laws and “mocks” its authority and dogmatism. Moreover, just like the Deleuzoguattarian nomad, the pirate is not reduced by the laws of the state – these are rather external and alien to it. Instead, the pirate chooses to map its own territories, which are boundless. This is achieved, as we saw, by developing its own sense of (in)justice and its own (non)law in the form of the pirate code.

To that extent, the pirate code of the pirate, just like the *nomos* of the nomads and their distribution into space, paves the way for a necessarily non-juridical understanding of a (non)law since it escapes the narrow-pre-set boundaries of juridical hierarchy and dogmatism. The nomadic law and the pirate code expose the law’s blackmail of the supposedly catastrophic

results in the absence of the state, demonstrating that a life beyond its yoke is not only possible but also *desirable*. By disorienting the striated and calculable distribution in the enclosure of the state – the constant blackmail, that “there is no alternative” – the pirate invites us to see that these limits are just a “sham” that permits the eternalisation of the pacifying domination in the form of rules disguising the *a priori* necessitated distinction between the “masters” and the “subordinates” and the ways in which we can oppose such masters. Ultimately, then, the conceptual persona of the pirate can, hopefully, point towards an alternative way of living beyond and against the state and its law.

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## Bibliography

- Brunsmann, D. (2019). Pirates vs. Press Gangs: The Battle for the Atlantic. *História*, 38, 1–16. <https://doi.org/10.1590/1980-4369e2019004>
- Clastres, P. (2020). *Society Against the State: Essays in Political Anthropology* (R. Hurley & A. Stein, Trans.) New York: Zone Books.
- Deleuze, G. (1994). *Difference and Repetition* (P. Patton, Trans.). New York: Columbia University Press.
- Deleuze, G. (1995). *Negotiations* (M. Joughin, Trans.). New York: Columbia University Press.
- Deleuze, G. (2004). *Gilles Deleuze: From A to Z*. Los Angeles: Semiotext(e).
- Deleuze, G. & Guattari, F. (1987). *A Thousand Plateaus* (B. Massumi, Trans.). Minnesota: University of Minnesota Press.
- Deleuze, G. & Guattari, F. (1994). *What is Philosophy?* (H. Tomlinson, Trans.). London & New York: Verso.
- Dosse, F. (2010). *Deleuze and Guattari: Intersecting Lives* (D. Glassman, Trans.) New York: Columbia University Press.
- Goodrich, P. (2017). *Mos Piraticus: On the Haunting and Infesting of the Sea*. *Law & Literature*, 29(2), 193–221. <https://doi.org/10.1080/1535685X.2016.1234590>
- Graeber, D. (2023). *Pirate Enlightenment, or the Real Libertalia: Buccaneers, Women Traders and Mock Kingdoms in Eighteenth Century Madagascar*. London: Allen Lane.
- Johnson, C. (2022). *A General History of the Robberies and Murders of the most Notorious Pyrates*. London & New York: Routledge.
- Kant, I. (2009). *An Answer to the Question: What is Enlightenment?* (H.B. Nisbet, Trans.) London: Penguin Great Ideas.
- Kuhn, G. (2010). *Life Under the Jolly Roger: Reflections on Golden Age Piracy*. Oakland: PM Press.
- Lister, D. & Rediker, M. (2023). *Under The Banner of King Death*. London & New York: Verso.
- Marneros, C. (2019). *Gilles Deleuze: Jurisprudence*. *Critical Legal Thinking*. <https://criticallegalthinking.com/2019/11/14/gilles-deleuze-jurisprudence/> (Accessed 22 February 2025).

- Marneros, C. (2021). "It's a Nomos Very Different from the Law": On Anarchy and the Law *Folia Iuridica*, 96, 123–137. <https://doi.org/10.18778/0208-6069.96.10>
- Marneros, C. (2022). *Human Rights After Deleuze: Towards an An-archic Jurisprudence*. Oxford: Hart Publishing.
- Piracy Act 1698. <https://www.legislation.gov.uk/aep/Will3/11/7/1991-02-01> (Accessed 4 January 2025).
- Rediker, M. (1981). "Under the Banner of King Death": The Social World of Anglo-American Pirates, 1716 to 1726. *The William and Mary Quarterly*, 38(2), 203–227.
- Simon, R. (2023). *The Pirates' Code: Laws and Life Aboard Ship*. London: Reaktion Books.
- Tanner, J.R. (1922). *Tudor Constitutional Documents: With an Historical Commentary*. Cambridge: Cambridge University Press.
- Wilson, P.L. (1995). *Pirate Utopias: Moorish Corsairs & European Renegadoes*. New York: Autonomedia.

