

Preparing for a New Pirate Studies to Set Sail?

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Why Have We “Set Sail” Without Defining “Piracy”?

For this collection of papers, without laying down a definition of “piracy” we decided to have authors present what they saw as such, and then reconsider the nature of piracy, why it happens, and the reasons it is not easily repelled. However, we refrained from uncritically adopting the association between piracy, illegal acts, anti-social acts, “enemies of society,” and so on. In light of the popularity of Hollywood movies with pirates as their main characters, we can see that people do not just assume that pirates are evil. Rather, it is easy to imagine how for ordinary people bound by the fetters of the world, pirates—outliers who enjoy the freedom of escaping such bonds—are beings to which they can pin dreams unrealizable on their own, or perhaps true feelings unspeakable in public. What kinds of dreams have people entrusted to these “freemen” that are pirates?

Furthermore, at the same time an instinctual apprehension remains in people’s minds: in the first place, can social justice really be achieved by rooting out and eradicating “evil”? Is not an “ideal society” in which no evil exists a possibly suffocating dystopia characterized by the politics of fear and “justice” and “order”-based domination? Even if such notions are nothing more than a substitute fantasy offered by entertaining television programs, pirates thus are endowed with a “positive” character that is neither that of an anti-hero nor the “villain” role in professional wrestling. Rather, pirates become a secretly hoped for “hidden saint,” that is, a “good person” dressed up as a hooligan. Or perhaps they come to represent victims unwillingly put to death by the judiciary or government administration; thereby taking the form of a node of societal institutions’ contradictions. What kinds of mechanisms are hidden on the underside of this phenomenon? This is also a topic for “pirate research.”

However, with that said, it is also not the aim of this collection to advocate unconditional or unreserved praise of pirates. We might be criticized by the historical figures under discussion or currently living individuals: “why are you calling me a pirate?” Having made clear that “pirates” do not automatically equal an evil that should be erased from society, here I would like to discuss the nature of the topic of the present proceedings: “pirates” and “piracy.”

Breaking the Law and Circumventing the Law

In recent years, one frequently hears the word *dappō* 脱法 in Japan, which literally meanings “circumventing the law.” One cause of this might be the likes of *dappō habu* 脱法ハーブ, drugs that try to imitate marijuana while circumventing its legal prohibition. While it seems that their use is not an illegal act prevented under the law, even if they are not the object of busts by police authorities, they are seen as requiring observation, and as necessary become the object of

control and compulsory investigations that mandate suspect's cooperation. Insofar as we look at news reporters' handling of such issues, it appears that the mass media's approach is to criticize those involved as would-be criminals, if not offering undercover reports about underground organizations similar to secret societies.

Of course, the spread of drugs is very dangerous, and there's no need to describe how the insanity brought about by withdrawal can lead to acts that harm others, and how smuggling and illicit sales easily become hotbeds of crime and can bring about crises that undermine public peace. With that said, it is certainly impossible to have decisions be automatically made regarding the banning of substances, and such decisions are thus influenced by the era and social situation. In Myanmar and other places opium poppy was originally a medicine, effective in small amounts when, for example, babies and small children caught a cold. However, major societal problems arose due to substances being refined into the likes of morphine or opium and being used as narcotics. And smuggling was used by warlords and state authorities that are or had been colonial powers, giving rise to the "drug war." This goes back to the Opium Wars. When things develop to this extent, it is no longer possible to root drugs out. However, in the case of the Amazon Rainforest of Brazil, it is impossible to make medical or pharmacological decisions regarding the distinction between illegal narcotics and officially recognized medical herbs (for native people's religious rituals and the like). Such decisions are completely political and arbitrary forced drawings of lines.

Returning to the topic of *dappō*, there is no doubt that we have a very vague situation surrounding this legal term. Society's sensibility almost implies that this legal circumvention is even more heinous than breaking the law. On the other hand, if we look at this from a strictly legal perspective, in the background to the term *dappō* must be circumstances in which the cultivation and distribution of medicinal herbs that have escaped identification by name cannot be deemed illegal. In other words, *dappō* is a word that refers to the narrow grey zone between "legal" and "illegal." This zone has actually due to its nature received considerable societal scrutiny, and bizarre incidents and heinous crimes that arise in this realm tend to receive extra attention in an exaggerated fashion.

Put more precisely, *dappō* is the world that deviates from legal frameworks' validity itself. For this very reason, clear distinctions cannot be made. It is a world outside of rules in which judgments regarding guilt and innocence are impossible. Due to its nature as a "grey issue" precisely demarcating its scope is impossible. Readers will surely agree that the top contender for treatment in the present proceedings could very well be this indefinite grey zone of *dappō*.

Let us bring to mind the metaphor of a jigsaw puzzle missing a piece that we considered in the introduction. There is no guarantee that by fitting in the missing piece social order will be restored. Why did that piece drop out, no longer fitting in the puzzle? If we do not consider this, we will actually be secretly be put within the existing order, and not extract issues that had become putrefied.

Dappō means escaping the regulations of the present legal system. Insofar as this is true it exists prior to an illegal act. Thus, all the more, from the perspective of the government authorities that aim to support the current social order, it appears to be something that is secretly planning ominously evil events. They must pluck away the seedlings of crime before they grow,

and thus it is seen as needing observation. However, from the perspective of those in this grey zone, it is quite a nuisance to be suspected unjustly and receive societal criticism despite not yet engaging in any “illegal acts.” They might argue that such a sanction itself is nothing other than an “anti-social act” that pretends to be authority; unidirectionally banning something that is just a new business simply on the grounds that it does not fit existing frameworks is unreasonable; it is more of an abuse of power to impose penalty on something that will be a touchstone for creating a better society . . .

While reading the above, perhaps various incidents that worked the mass media into a frenzy came to mind. There have also been cases of mistaken arrests based on predictions, and of innocent individuals lives being brought to ruin due to a view of justice led by the media getting out of control. Here we find a wide variety and considerable number of problems. While the space available is certainly not enough to reexamine all of them, considering typical examples is indispensable.

An Uncharted Voyage and the Shores of Legality and Illegality

Below I have listed several discussion points that derive from the above.

(1) First, novel phenomena that cannot be judged with the criteria of the existing order are intuitively viewed warily based on what could be called the system’s instinct for self-preservation. This is because of an indescribable anxiety regarding it being no longer able to control things. Factors (financial transactions, communication, etc.) that cannot be controlled with traditional business transactions, radio laws, and public broadcasting rights appear by the thousands with the rapid development of electronic mediums, and, furthermore, novel technological developments cannot be controlled with the traditional legal net. In such situations, existing authority tends to fit them into the logic of crime handling by using rather forced methods: deeming them as trivial offenses under existing legal structures, arresting people for other reasons, or getting individuals to enter into plea bargains. Within the government employees that directly carry out crackdowns, are the people of justice, the stuffy, timid, and earnest people who are all about following rules still supporting the cutthroat world on the ground? While referring to Itami Jūzō’s *A Taxing Woman* (1987) might show just how old I am, the comical way the work of tax investigators in the film was carried out seems pastorally nostalgic . . .

(2) Second, at times the mass media might flatter the ruler or ruling party at the time, by adopting an accommodating posture, seeing “following those with power” as the best policy. Or, while perhaps we have suddenly ceased to see this recently, at other times they might call for a revolt against the existing order and, aiming to recapture power, guide popular sentiment or public opinion. The tendency in such cases is for the mass media to pretend as if their opinion were the “atmosphere” that represents the general tendency in society. Here, those in grey zones such as *dappō* are sometimes seen as a Robin Hood-like figures and praised (for example, Nezumi Kozō in Japan—a chivalrous robber nicknamed “grey-colored rat-like naught guy”) yet in the end arrested and executed. Or, they might contribute to the formation of a public opinion that, while secretly harboring sympathy for “perpetrators,” sees societal punishment as a positive.

(3) However, thirdly, we should note that here the traditional schema of “authority vs. anti-authority” is no longer valid. Systematic oppression of specific religious groups and military control by the authorities professing to be the “international community” are certainly not stories of the past. However, these are either examples that can be understood within existing schema, or manifestations of an approach that forcibly tries to incorporate new examples into existing frameworks. The current mass media-based world network is decisively behind the times, with the approval for broadcasting and handling of incidents being stiffened by institutional sclerosis.

(4) While a tremendous number of events are happening that cannot be handled in existing frameworks, responses have not caught up. Or perhaps I should say that despite cases arising that in principle *cannot* be caught up with, novel methods for handling them have not been developed. This is the situation we should focus on. In the present proceedings, it is by committing the risk of abusing the framework of “pirates” at the fringe of reason and absurdities that we are trying to bring to the surface this domain, i.e. a troublesome grey zone for which border cannot be demarcated with clear definitions.

In the case of “Horiemon” (Horie Takafumi: chapter 1), there were indications that his novel financial endeavors were fanned by his own aspiration to get rich quick. Society’s envy and jealousy came together, putting the prosecution’s investigation at an advantage: by attacking him for tax evasion he could be prosecuted. However, in the case of Nishimura Hiroyuki (of 2channel and NicoNico Douga fame: part 2, 06), to develop his businesses, which could not be regulated with existing copyright laws and radio wave legislative administration, Japan’s domestic infrastructure was inadequate and as a result he had to rely upon overseas information resources. In turn, he was accused of evading taxes and violating copyright. While at first glance we might see such suspects as clever criminals that manage to pass through the net of existing legal regulations (such as tax obligations), in actuality it is closer to reality to see them as having discovered spaces left empty in a jigsaw puzzle and made a display of proposing new pieces for such holes, all while enjoying themselves in the process. In the pursuit of those who are “criminals for pleasure” and uninterested in making money on the grounds of tax evasion we can see the stiffness and exhaustion of the legal system.

In the case of Winny’s Kaneko Isamu (1970–2013), while he was cleared of criminal charges, immediately afterwards he reached the tragic ending of dying of a heart attack at a young age. In the unexpected false accusations of criminal responsibility against him, which resulted from his advocating the development of technologies that transcend existing legal environments and regulatory frameworks, are revealed the piratical elements that creep in the heart of the police authorities, which can manifest themselves any time: while on the one hand, it became clear that an environment has arisen in which the law—which is supposed to protect citizens’ human rights—exercise legal sanctions in the opposite direction by overstepping its authority, and on the other hand, even if in the end Kaneko was found criminally innocent, it also became clear that in front of the unforeseen arising of a “piratical situation” that accompanied technological innovation no effective measures could be taken.

Of course I am not advocating any decisive opinion regarding such legal judgments through the present proceedings, and am not trying to present criteria for judgment that

could serve as a guide for lawyers, let alone something that could serve as a legal tactic in the courtroom. Before or perhaps beyond such things there is the border of the current legal system, a place where the seams are exposed, and a “grey” ocean that cannot be handled with the existing judgments of good and evil usually applied to the “high seas.” Is not an approach that focuses on this “piratical” area necessary? This is neither acting as if we were righteous, nor taking a defiant attitude as the “bad guy”—because we inhabit a “grey space” in which there is no knowing when a completely normal citizen could be at some point somewhere treated like a criminal.

Therein lies the significance and aims of pirate research.

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