

**A CRITICAL EVALUATION OF PETER LEESON’S ARGUMENTS
ABOUT PIRACY**

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ABSTRACT

The purpose of this review is to critically evaluate Peter Leeson’s paper in which he argues that piracy as profit-seeking criminal activity may produce socially desirable outcomes and achieve a social order and then, concludes that criminals’ self-interested and profit-seeking activities are capable of producing public benefits in the context of invisible hand. More precisely: the purpose is to critically discuss and evaluate Leeson’s general conclusion, line of reasoning and to present counter-arguments in the context of invisible hand and pirates’ relative racial tolerance policy towards black sailors in their crews. Leeson tries to investigate the political economic and social impacts of piracy in the late seventeenth and early eighteenth century and argues that black crew members’ economic and social status in pirate ships were more progressive compare to the legitimate merchant ships. Leeson reads black crew members’ status in pirate ships as an improvement in racial equality, economic and social justice. Therefore, he concludes that self-interested and profit-seeking criminal activities are capable of producing socially laudable outcomes. In contrast to Leeson, the argument in this review is that self-interested and profit-seeking criminal activities are not capable of producing socially laudable outcomes.

Keywords: *Piracy, Thievery, Social Contract, Invisible Hand, Self-interest Seeking.*

PETER LEESON'IN KORSANLIK İLE İLGİLİ ARGÜMANLARININ ELEŞTİREL BİR DEĞERLENDİRMESİ

ÖZ

Bu derlemenin amacı; Peter Leeson'un kâr amacı güden bir suç faaliyeti olarak korsanlığın sosyal olarak arzu edilebilir sonuçlar üretebileceğini ve sosyal bir düzen sağlayabileceğini savunduğu ve akabinde, suçluların kişisel çıkar ile kâr amacına dayalı faaliyetlerinin görünmez el bağlamında kamu yararı üretebileceği sonucuna varmış olduğu çalışmasını eleştirel olarak değerlendirmektir. Daha açık olarak; amaç Leeson'un varmış olduğu genel sonucu, akıl yürütme çizgisini eleştirel olarak tartışıp değerlendirmektir ve karşı argümanları, görünmez el ile korsanların mürettebatındaki siyahi denizcilere karşı görece ırksal tolerans politikası bağlamında sunmaktır. Leeson, korsanlığın on yedinci yüzyılın sonlarında ve on sekizinci yüzyılın başlarındaki politik ekonomik ve sosyal etkilerini araştırmaya çalışmaktadır ve siyahi mürettebat üyelerinin korsan gemilerindeki ekonomik ve sosyal statüsünün, meşru ticari gemilerdekilere kıyasla daha ilerici bir konumda olduğunu savunmaktadır. Leeson, siyahi mürettebat üyelerinin korsan gemilerindeki statüsünü ırksal eşitlik, ekonomik ve sosyal adalet alanlarında bir gelişme olarak okumaktadır. Bu nedenle, kişisel çıkar ile kâra dayalı suç faaliyetlerinin sosyal olarak övgüye değer sonuçlar üretebileceğini savunmaktadır. Leeson'un aksine, bu yazıda, kişisel çıkar ile kâra dayalı suç faaliyetlerinin sosyal olarak övgüye değer sonuçlar üretemeyeceği savunulacaktır.

Anahtar Kelimeler: *Korsanlık, Hırsızlık, Toplum Sözleşmesi, Görünmez El, Kişisel Çıkar Arayışı.*

1. INTRODUCTION

The paper I wish to critically evaluate is “The Invisible Hook: The Law and Economics of Pirate Tolerance” [1]. Peter Leeson has published multiple fascinating papers and books about political, economic, social and legal aspects of piracy. But for the sake of this review, I wish to focus on “The Invisible Hook: The Law and Economics of Pirate Tolerance.” In this paper, the main idea is that self-interested and profit-seeking criminal activities are capable of producing socially desirable outcomes. Leeson tries to draw this conclusion by focusing on the impacts of pirates’ group policies and practices in the late seventeenth and early eighteenth century which is the main subject of his paper.

Leeson investigates the political economic and social impacts of pirates’ activities, practices and racial tolerance policy towards black crew members. He argues that piracy as a form of criminal activity can produce socially progressive and constructive outcomes in the context of invisible hand and therefore, it can be concluded that even criminal self-interest seeking can produce socially beneficial outcomes compare to the legitimate self-interest seeking. In contrast to Leeson, I contend that criminal self-interest seeking can not produce socially beneficial outcomes in the context of invisible hand.

This paper is divided into five sections. Following this first introduction section, I will discuss Leeson’s conclusion regarding the impacts of criminal activities in the economic and social context. Then, in the third section, I will explain Leeson’s arguments about pirates’ activities and racial tolerance policy towards black crew members. In the fourth section, I will present critical counter-arguments about piracy and will share conceptual mistakes from Leeson’s paper. In the last section, I will try to draw a brief conclusion about all of these.

2. CRIMINAL ACTIVITIES IN THE ECONOMIC AND SOCIAL CONTEXT

Leeson focuses on the concept of thievery in order to understand and appreciate the underpinnings of pirates' organized structure. He evaluates thievery as a conditional necessity of self-interest seeking behavior in the context of piracy. He chooses to pay particular attention to the thievery when claiming the ability of criminal activities in producing progressive and constructive outcomes for society as his general conclusion. This treatment seems narrow. Thievery is necessary, but not sufficient element in order to define the concept of criminal activity as a whole. I will mention this as a conceptual mistake in the following sections. But for the sake of this section: I will discuss thievery -as a form of criminal activity which is linked to piracy- in the economic and social context in order to argue its inefficiency in producing beneficial and desirable outcomes, unlike Leeson's general conclusion in his paper.

It is universally acknowledged that there is incompatibility / tension between the available resources and human beings' needs or desires. The competition between finite resources and infinite needs or desires plays a crucial and decisive role in daily lives. The finite resources and risk for scarcity require individuals to make rational and profit maximizing choices in order to avoid / eliminate potential risks and to fulfill the needs or desires effectively in the long term.

Thomas Robert Malthus, for instance, has focused on the inequality between human population and production in Earth. Malthus has believed that a critical comparison between human population and production is necessary in order to understand and examine the commencement, development and functioning of society. In *An Essay on the Principle of Population*, he has argued that human population has a tendency to grow geometrically and production for subsistence has a tendency to grow arithmetically when unchecked or uncontrolled. Thus, Malthus has emphasized the tension between human population and production in Earth as challenge and obstacle for the improvement of society [2]. This challenge has been

interpreted as an active motivator / trigger for individuals to establish preventive authority above them in order to minimize potential risks and conflicts regarding the finite resources, risk for scarcity and protection of property.

Our imperfect and unbalanced world is full of with opposing interests, conflicts and struggles. In this respect, the relation / tension between human population and production, opposing interests, risk for scarcity, security concerns, uncertainty, unpredictability and instability can be evaluated as key reasons or justificatory elements for offensive and defensive actions among human beings. The variety and complexity of the reasons and outcomes regarding these actions have triggered the need for a collective, rational and judgmental agreement above all human beings. At this point, we should discuss the position of thievery in the light of all of these and ask ourselves if thievery can be conceptualized as a reflection of offensive and defensive actions in order to survive and to eliminate conflicts? Moreover, can thievery produce socially positive and constructive outcomes? A critical historical look towards the development of private property, civil society, formation of states and binding legal authority can be read as signs of will in adopting defensive and preventive measurements and in achieving self-control for the elimination of irregular, uncertain and anarchic elements that thievery also includes. Therefore, I believe that conceptualizing thievery as a constructive and beneficial activity implies a historical and moral contradiction.

Hereupon, I wish to refer to John Locke's version of social contract theory and Adam Smith's invisible hand theory in order to criticize Leeson's conclusion about the impacts of thievery and criminal actions in the economic and social context. At this point, political philosophical framework of social contract can be part of our guide in criticizing Leeson's conclusion about the impacts of thievery and criminal actions in general.

Social contract theory has been used in order to appreciate the connection between nature and politics. John Locke has conceptualized the theory of social contract as a necessity for peaceable living. This theory implies collective and binding agreement among human beings in order "to join and

unite into a community, for their comfortable, safe and peaceable living one amongst another, in a secure enjoyment of their properties and a greater security against any that are not of it" [3]. It can be argued that the formation and determination of political authority by human beings' consent underpin social contract theory which emphasizes the need for security and conflict resolution.

In the state of nature -a hypothetical and methodological model that implies the natural status of human beings before being subject to any superior agreement, political power or legal code above them- there was no civil society and judge. But this environment that lacks of civil authority and judge can not be evaluated as immoral, since human beings are naturally concerned with social and moral principles [4].

Human beings have an intrinsic tendency for moral compass in deciding what is right and what is wrong and share a sense of collective duty and social responsibility towards one another. Human beings' intrinsic tendency for morality and sociality has a divine source. Locke has argued that all human beings are God's property, which means that they can not be subject to any authority on Earth without giving their consent. This divine and natural equality in the state of nature implies the principles of reciprocity, altruism, tolerance, independency and state of being free from any coercive or autocratic power. This state of equality and liberty -by nature and God-commands human beings not to harm one another's "life, health, liberty or possessions" [5], in Locke's expressions.

This moral command is part of the divine law of nature which expresses a collective duty and social responsibility for comfortable and peaceful lives. Thus, if a human being would violate the law of nature (harm one another's property), then it would be rightful and reasonable for others to punish the crime since it threatens the state of equality, freedom and peace. At this point, the issues of crime and lawfully / justly punishment and boundaries of the law of nature can be evaluated as most decisive elements in deciding to abandon the state of nature, to agree on a social contract, to enter into a civil society and to establish a political authority which can properly remedy the

irrationalistic and unjust characters that govern / effect human beings' actions and judgment adversely and thus, disrupt human beings' security and happiness [6]. Social contract is necessary for the functionality and improvement of mutually peaceful relationships.

Simply summarize all of these: individuals become subject to political power and legal authority tacitly or explicitly under the binding obligation of social contract. Locke's version of social contract identifies the reasons for human beings' need of a secure and peaceful environment which is essentially connected with the protection of property rights and justice. Political authorities' legitimacy and settlement -which has a civil and humane foundation- depends upon meeting this need -of a collective security and protection- lawfully / justly [7].

Thievery and criminal activities in general threaten this collective and harmonic framework that individuals have preferred to establish and follow in order to avoid or punish unjust, dysfunctional and violent actions. Leeson seems to take a position that tends to interpret pirates' internal structure in accordance with the underpinnings of functional civil societies. But he seems to ignore the external impacts of irregular, uncertain and anarchist structure of thievery and a society or social order can not be sustained in the long term if it has irregular, uncertain and anarchist structures. Thievery, this paradox, threatens the development of civil society and therefore, it can not be able to provide publicly desirable and effective outcomes and can not achieve a social order as Leeson concluded by referring to Adam Smith's theory of invisible hand as well.

Adam Smith's theory of invisible hand explains how self-interested individuals unintentionally or unknowingly contribute to the well-being of society. Self-governed and self-interested individuals promote to the functionality and continuity of society. This situation is like a sample of natural design or order. The existence and development of society depends on the interdependency and cooperation between individuals. Thus, individuals have a natural tendency for mutually beneficial behaviors without intervention. Invisible hand as metaphoric socio-economic explanation in converting individualism into collectivism -by emphasizing

socially beneficial and constructive outcomes of self-interested choices and behaviors- emphasizes natural and voluntary exchange activities for public good [8].

Smith's notions of self-interest seeking, ability for rational and profit-maximizing decision making process, free and voluntarily choice are connected with moral values and ethics which also govern human nature. Human beings are both individualistic and social creatures. They have both economic and social characteristics. They have social, unsocial and selfish passions. They may concern for both private and public interest. Besides, rationality may not be the prominent and dominant characteristics that govern human beings' choices and behaviors [9]. Leeson does not have this kind of a comprehensive perspective towards the causes and effects of piracy.

I think Leeson's notion of collectivism (mainly refers to the crew members in pirate ships and black sailors within) does not reflect Smith's notion of collectivism (mainly refers to the formation, development and continuity of society) accurately and completely. It can be argued that self-interest seeking can not be evaluated as merely selfish or internal concept from Smith's point of view.

There are both positive and negative outcomes and both individualistic and collectivistic characteristics regarding human beings' choices and behaviors. Justifying the potentiality and actuality of thievery as a constructive and positive form of crime implies a threat for the functionality of society and notion of justice. In general: Leeson does not focus on the difference between self-interest seeking and selfishness / public interest and private interest in understanding and investigating the motivations and effects of pirates' behaviors. It seems that behavioral economic references in this paper are limited and superficial. Therefore, I argue that Leeson fails to appreciate the intertwined connection between economics and moral values which results in the development and continuity of societies in the context of invisible hand.

Achieving a social order or establishing a society should include moral values and justice as well from Smith's point of view. At this point, prioritizing the notion of justice is essential and necessary strategy. Justice underpins the continuity of society. Smith emphasized the risk for corruption of moral sentiments in making the existence, survival and admiration depending on material wealth and capital [10]. Thus, I argue that piracy and thievery include a risk or threat in corrupting moral sentiments and justice that contribute to the well-being and functionality of society.

To summarize this section: mutual desire or will -that can not be discussed separately from moral values and justice- should be a necessary condition for exchange activities and profit-maximizing strategies. But thievery implies a threat of violence and force to the public interest. Therefore, the probability of Leeson's conclusion (criminal actions are capable of producing publicly beneficial outcomes) given its premises (pirates' activities in the late seventeenth and early eighteenth century produced publicly beneficial and desirable outcomes in the form of invisible hand) is low in the context of social contract and invisible hand theories.

3. LEESON'S ARGUMENTS ABOUT THE ECONOMICS OF PIRATES' RACIAL TOLERANCE POLICY

Leeson's arguments about the economics of pirates' racial tolerance policy towards black sailors are as follow: Both pirates and legitimate merchant ships hired black sailors into their crews. But the conditions were more progressive in pirate ships, then in legitimate merchant ships for black sailors. Leeson argues that pirates as well-organized, capitalistic, predatory firms, societies and enterprises provided better conditions and rights for black crew members compare to the legitimate merchant ships and this was a racial tolerance policy in the self-interested and opportunistic form [11].

Leeson argues that black crew members were better off in pirate ships and the reason for this progressive racial tolerance policy was mainly economic rather than enlightened ideas or moral values. Leeson makes a comparison between pirate ships and legal merchant ships regarding the cost and benefits of slavery trade and argues that there was a greater racial equality,

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economic income and incentives for blacks in pirate ships. Therefore, he defends that “analogous to Adam Smith’s invisible hand, whereby legitimate persons’ self-interest seeking can generate socially desirable outcomes, among pirates there was an invisible hook, whereby criminal self-interest seeking produced a socially desirable outcome in the form of racial tolerance” [12].

Pirates mainly focused on illicit profit-seeking activities and thus, developed rational policies and strategies in accordance with this purpose. Pirates needed to decide effectively in order to choose the best alternative for their interest. They tried to measure and manage potential risks and impacts. At this point, Leeson explains that pirates had their own management and governance system of costs and benefits in the context of self-interest seeking [13]. This specific, kind of personalized and flexible internal governance strategy, according to Leeson, contributed to the idea of self-governance in public. Since pirates needed to jointly steal or obtain, they all had a right for ownership and also vote in affecting and shaping the crew’s management and governance system which reflects a democratic and constitutional political economic structure.

Pirates as rational economic actors aimed to capture large ships and to attain useful goods and gold that could finance them in the long term. Pirates could not rely on a legal authority while stealing. They had to operate in accordance with their own costs and interests. This was the main reason for the development of self-governance and racial tolerance policy towards black sailors. Thus, social justice, economic opportunities and incentives were larger in pirate ships for black sailors than in legitimate merchant ships. Black sailors, as part of pirate ships, could receive large payments or compensation from plunder as long as they contributed which emphasizes the capitalistic, reciprocal and incentive characteristics of piracy from Leeson’s perspective [14]. Leeson argues that pirates’ both collective and individualistic ownership and their illicit group identity should be evaluated as decisive reasons in adopting a racial tolerance strategy and in achieving a social order.

It seems that there was no need to adopt racist attitude for most of the pirates, since they were the outsiders of law and authority anyways. The group identity, motivation and cooperation between crew members were strong due to the conditions of this environment or in Leeson's word: of this "floating society" [15].

To summarize Leeson's arguments: pirates used black people for their own interests, just like legitimate merchant ships, but the circumstances in pirates' ships were more progressive and beneficial for black people back then, compare to the legitimate merchant ships. Pirates' racial tolerance policy created desirable and democratic reflections (such as improvements in racial equality, economic and social justice) in public. Therefore, Leeson concludes that criminal activities can produce socially desirable, constructive and beneficial outcomes in the context of invisible hand.

4. CRITICAL COUNTER-ARGUMENTS ABOUT THE ECONOMICS OF PIRATES' RACIAL TOLERANCE POLICY

Leeson emphasizes that pirates are self-interested, opportunistic and rational actors. Therefore, he tries to read the rational motives and triggers behind pirates' behaviors in the context of invisible hand, but ignores the irrationalistic and anarchistic characteristics that also underpin pirates' behaviors. Leeson does not focus on the irrationality and complexity in human nature and internal / external causes and effects of illicit group identity in general. In his paper, anarchic and behavioral context is limited, because Leeson evaluates them as well-organized and rational capitalistic firms. But that seems problematic and narrow.

Max Weber, for example, has evaluated the concept of capitalism as a peaceful exchange. He has attracted attention to the connection between rationalism and capitalism, but also argued that "a capitalistic economic action as one which rests on the expectation of profit by the utilization of opportunities for exchange, that is on (formally) peaceful chances of profit" [16]. Thus, piracy can not be evaluated as a form of capitalism, unlike Leeson's argument. Apart from this issue, Leeson uses some metaphors from Adam Smith in order to justify his conclusion about criminal activities,

but does not mention Smith's core arguments about the connection between morality and economics. Simply put: his efforts in making the concept of invisible hand suitable for the consequences of profit-seeking criminal activities do not refer to the whole point from Adam Smith's perspective.

Leeson does not discuss the terrifying reputation that pirates possessed in society back then and how that may help to increase a prejudice towards black people since some of them would prefer to be part of this structure from Leeson's point of view. In this respect, the outcomes of piracy may affect black people and their status in society adversely too. Leeson seems to fail to present both internal and external views and reflections about piracy. Leeson cares for the public opinion and benefits, but can not manage to present a comprehensive psychological and social framework about the views and reflections of piracy in society. Besides, Leeson does not share the psychological elements that underpin pirates' group identity. We can not find details about how all of the crew members could cope with collective responsibility and possible guilt psychology regarding the outcomes of their actions. There is an ambiguity in referring to the notion of collectivism in Leeson's paper anyways and lack of a detailed psychological and social framework about piracy contributes to this as well.

Leeson investigates only specific period and area of piracy. He tries to justify his general conclusion about criminal activities by comparing two "business" units (pirate ships and legal merchant ships) and actors within. But still, he tries to draw a general political economic and social conclusion that can be permanently valid and sound for the world that we live in. His general assumption about the potentiality and actuality of criminal activities seems controversial and can be critically examined as an example of hasty generalization and false dichotomy regarding economic and social justice.

In addition to these: there was a temporal proximity between the golden age of piracy and domination of mercantilist political economic experiences which emphasize the importance of commercial activities and colonization overseas for the accumulation of capital and wealth [17]. In this respect, power and authority on seas have been evaluated as key strategy in

competitive international environment. Nations needed to minimize the cost of labor in order to increase the frequency of their overseas journeys and discoveries. It can be argued that the development and temporary domination of mercantilist policies effected the mobilization of black sailors both in pirate ships and legal merchant ships. But Leeson seems to ignore this historical background that effected pirates' behaviors and policies towards black sailors.

I wish to mention some conceptual mistakes from Leeson's paper in order to conclude this section. Leeson shares his conclusion regarding the outcomes of criminal activities from a superficial point of view. In his paper, the concept of criminal activity includes piracy and thievery within a specific period and area. This perspective seems narrow. Like it is mentioned before: thievery is necessary, but not sufficient sample for us in order to define the concept of criminal activity as a whole. Therefore, I think Leeson fails to appreciate different and multiple aspects of criminal activities -and also piracy- in his paper.

Leeson tries to share classic capitalistic concepts in order to understand pirates' motivations and desires. In doing so, he tries to refer to the concepts of pragmatism and rationalism as if they are interchangeable. But this is problematic. Pragmatism is defined as "an approach that evaluates theories or beliefs in terms of the success of their practical application" and rationalism is defined as "the practice or principle of basing opinions and actions on reason and knowledge rather than on religious belief or emotional response and the theory that reason rather than experience is the foundation of certainty in knowledge" in Oxford Dictionary [18].

Practical and decisive consequences matter for the concept of pragmatism. Pragmatism implies a deterministic framework within the actual consequences. Reason and logic matters for the concept of rationalism rather than consequences and individualistic / collectivistic experiences. At this point, Leeson seems to refer to these two concepts as if they are commensurable in the context of piracy and invisible hand. He does not seem to appreciate the conceptual differences between pragmatism and rationalism in investigating pirates' motivations and desires.

5. CONCLUSION

Leeson aims to challenge the traditional view about piracy. He desires to present a different kind of historical and at the same time contemporary view about pirates' policies towards black sailors. He adopts comparative and interpretive perspective in the political economic and social context. But he fails to share multi-layered, comprehensive and critical variables regarding pirates' choices and behaviors in the form of self-interest seeking. His interpretation about the desires and motivations that underpin pirates' behaviors is reductive. His line of reasoning which adopts historical and comparative political economic perspective in the context of pirates' racial tolerance policies towards black sailors as a starting point in order to draw a generalized and contemporary conclusion regarding self-interested, profit-seeking criminal activities includes inconsistencies.

In general: there are both rational and romantic interpretations about the outcomes of pirates' activities which is contradictory. There are theoretical and conceptual problematics about Leeson's arguments, conclusion and inductive methodology. Therefore, in contrast to Leeson, I contend that criminal profit-seeking is not capable of producing socially desirable outcomes. That also automatically implies that pirates' policies and activities in the late seventeenth and early eighteenth century did not produce socially desirable and laudable outcomes in the context of invisible hand or in his paper's title: "the invisible hook".

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