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DAVID BEDERMAN, MASTER AND COMMANDER

*Katherine Brokaw**

Deep down, Professor David Bederman identified, I am convinced, with Captain Jack Aubrey. This may surprise the reader who knew David as a slightly built, mild-mannered, gentle, and bespectacled scholar, given that Jack Aubrey (played by Russell Crowe in the movie *Master and Commander*¹) is described throughout the books that chronicle his maritime career as an enormous, blond, muscular Anglo-Saxon.² You may not think of David Bederman as a swashbuckler³ à la Errol Flynn.⁴

However, I first met David when we both had swords in our hands. David was a fencer in college, a member of Princeton University's fabled men's fencing team, which had captured countless Ivy League and NCAA titles.⁵ David fenced foil, one of the three weapons allowed in competition, an elegant, cerebral weapon whose practitioners often experience fencing as a sort of physical chess game. Lest anyone assume that fencing is for sissies, however, I note that one of our teammates of that era had been badly wounded during a fencing bout when his opponent, a Navy fencer, had a blade break in mid-charge, the sharp end of which pierced our friend's protective jacket and abdomen, resulting in the kind of emergency surgery one imagines must have

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¹ See MASTER AND COMMANDER: THE FAR SIDE OF THE WORLD (Twentieth Century Fox 2003). I will not hesitate to use Hollywood movies as sources, following in David's footsteps with his trenchant insights into the *Pirates of the Caribbean* movie trilogy. See, e.g., David J. Bederman, *The Pirate Code*, 22 EMORY INT'L L. REV. 707, 713–14 (2008).

² See, e.g., PATRICK O'BRIAN, MASTER AND COMMANDER 13 (W.W. Norton & Co. 1990) (1970).

³ "The word 'swashbuckler', generally describes a protagonist who is heroic and idealistic to the bone and who rescues damsels in distress. His opponent is typical[ly] characterised as the dastardly villain. There is a long list of swashbucklers who combine outstanding courage, swordfighting skill, resourcefulness, chivalry and a distinctive sense of honor and justice . . ." *Swashbuckler*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Swashbuckler> (last modified June 30, 2012). Those seem to be fitting words to use about David.

⁴ See, e.g., CAPTAIN BLOOD (Warner Bros. 1935); ERROL FLYNN: PORTRAIT OF A SWASHBUCKLER (White Star 1983).

⁵ See *Men's Fencing Record Book—Ivy League & NCAA Honors*, GOPRINCETONTIGERS.COM, http://www.goprincetontigers.com/ViewArticle.dbml?DB_OEM_ID=10600&ATCLID=3750394 (last visited July 16, 2012). I was on the women's fencing team, which drilled with the male fencers, separating only for competition. We were all coached by the formidable Stan Sieja, longtime head coach for Princeton fencing and a U.S. Olympic team coach in his spare time.

been commonplace in the heyday of the eighteenth-century naval empires, one of David's many areas of interest.

David spent much of his multifaceted career as a noted scholar, teacher, and practitioner of maritime and admiralty law—the law of the high seas and water-borne commerce. He was also a leading expert on international law, both public and private, as well as legal history and other subjects. His real intellectual love, though, seems to have been pirates. David gave his first lecture as the K.H. Gyr Professor in Private International Law on *The Pirate Code*—the *Chasse-Partie*, or consensual rules governing crew members “on a piratical cruise.”⁶ Now, David had no illusions about pirates himself. As he said, “Despite the romantic connotations that are continuously afforded to pirates in the popular media, let us not forget that they are criminals.”⁷ And David knew more about pirates and piracy throughout history than most living beings, extending from his scholarship on Roman law and international law in antiquity⁸ through his studies of the development of maritime law in the sixteenth through the nineteenth centuries,⁹ into his active legal representation of RMS Titanic, Inc.,¹⁰ the salvagers of the most famous shipwreck of the twentieth century, and on to his role as chairman of the board of Odyssey Marine Exploration.¹¹

Being a law-abiding man, though, David cast his professional lot with those who pursued pirates and those who pursued wealth at sea through lawful means. He is, in my imagining, more Captain Jack Aubrey than Captain Jack Sparrow.¹² Jack Aubrey was a career officer in the Royal Navy of the British “Golden Age of Sail,” fighting naval battles during the Napoleonic Wars.¹³ He was also a privateer. As David has noted, “[T]he only thing distinguishing a pirate from a privateer was a ‘letter of marque and reprisal’ issued to a

⁶ See Bederman, *supra* note 1, at 714.

⁷ *Id.* at 712.

⁸ See, e.g., DAVID J. BEDERMAN, INTERNATIONAL LAW IN ANTIQUITY (2001).

⁹ See, e.g., David J. Bederman, *Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law*, 51 VA. J. INT'L L. 299 (2011).

¹⁰ See, e.g., R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 435 F.3d 521 (4th Cir. 2006).

¹¹ See, e.g., Carol Clark, *Legal Treasure Hunter*, EMORY REP., Sept. 10, 2007, at 3, available at http://www.emory.edu/EMORY_REPORT/erarchive/2007/September/Sept10/Profile.htm.

¹² Capt. Jack Sparrow is the pirate captain protagonist of the movie trilogy *Pirates of the Caribbean: Pirates of the Caribbean: At World's End* (Walt Disney Pictures 2007), *Pirates of the Caribbean: Dead Man's Chest* (Walt Disney Pictures 2006), and *Pirates of the Caribbean: The Curse of the Black Pearl* (Walt Disney Pictures 2003).

¹³ ANTHONY GARY BROWN, THE PATRICK O'BRIAN MUSTER BOOK: PERSONS, ANIMALS, SHIPS AND CANNON IN THE AUBREY–MATURIN SEA NOVELS 9–20, 39–49 (2d ed. 2006).

privateer by a legitimate government, authorizing the vessel to engage in captures on the high seas and requiring that the captures be properly adjudicated before a duly-constituted prize court.”¹⁴ So Jack Aubrey certainly knew how to swashbuckle with the best of them, although he was legitimate. Given my recollections of David with a sword, I think he had more than a sneaking admiration for swashbuckling.

Like Captain Jack Aubrey, David was a polymath.¹⁵ David had an extraordinary breadth of knowledge and took an intellectual interest in many things. I found it fascinating that he had not majored in classics but became a leading expert on Roman law, publishing in that field and teaching a popular class on it, in which he enlightened students about small matters like the classical Western roots of our own Constitution and modern international law dating back to the first Western European empires; he related those to his twenty-first-century representation of RMS Titanic, Inc. and his work as chairman of the board of Odyssey Marine Exploration, a deep-sea-exploration company that uses modern equipment and techniques to salvage ancient shipwrecks and explore marine archaeological sites.

David granted my request some years ago to deliver a joint student/faculty colloquium, inviting students to hear firsthand from their teachers about the scholarship that faculty regularly share with each other as works in progress. In his inimitable way, David enthusiastically prepared and gave a lecture titled *Shipwrecks, Treasure and Pirates: Old Law for New Booty*, complete with slides about the salvage of the shipwreck of the Titanic, based on his legal representation of RMS Titanic, Inc.¹⁶ During that lecture, David noted self-deprecatingly that he had been invited more than once to go see the wreck in the deep-sea-exploration submersible vehicle but had declined the offer because his idea of adventure at sea was to go into the deep end of a swimming pool. The standing-room-only audience in our largest lecture room cracked up.

David’s puckish sense of humor and wit also gleamed through his impeccable scholarship. With regard to the modern profession of law, he wrote, “Pirate codes had detailed rules for the distribution of income. *Not unlike provisions of contemporary articles of partnership for law firms* or

¹⁴ Bederman, *supra* note 1, at 714.

¹⁵ The character of Dr. Stephen Maturin in O’Brian’s books is usually the one called a polymath (one who is learned in many things), but Captain Aubrey’s facility with music as well as the many skills required of a naval officer (mathematic, geographic, strategic, etc.) qualify him as one, too. See BROWN, *supra* note 13, at 9–20.

¹⁶ See *R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel*, 435 F.3d 521 (4th Cir. 2006).

practices of accountants, the essential purpose of the *chasse partie* was to regulate the distribution of gains and the allocation of losses among the joint-venture enterprise.”¹⁷ This is more sophisticated humor than, for example, Jack Aubrey’s repeated practical jokes against his long-suffering friend, colleague, and sometimes bunkmate, Dr. Stephen Maturin,¹⁸ but the impulse to laugh at human frailty, including his own, and to puncture intellectual pretension is the same. David’s wit was more of the rapier variety, befitting a former foilist, whereas Aubrey’s is more like a blunderbuss.

Also like Captain Jack Aubrey, David committed himself to the training and well-being of his juniors who were entering his profession,¹⁹ i.e., his law students. As David was being taken to the hospital for the last time, one of the concerns he most frequently expressed was that his students in international law not be inconvenienced and that their exam, which he had carefully written long in advance, proceed as scheduled. David loved to teach, and he was a phenomenal teacher. It does not surprise any of his colleagues that he made it to the end of the fall semester, teaching his beloved international law course in full one last time. Teaching was his life’s work; it energized him and helped him continue to live as he wished to live: fully engaged, curious, generous with his intellect, and connected to the people around him. “For me, teaching admiralty is an energizing experience, a constant reminder of all the good and noble reasons why I wanted to become a law professor, and why what we do in the classroom matters.”²⁰

But in the final analysis, although I enjoy imagining David as the swashbuckling Captain Jack Aubrey, and I think he would chuckle over that, perhaps he was most in spirit like Peter Pan as portrayed in the 2003 movie: happy, brave, energetic, daring—indeed, swashbuckling in a swordfight—and absolutely, passionately devoted to his Wendy.²¹ In Lorre Cuzze, David found his greatest love and a partner who was his equal in every way. She fought for him and his health with tenacity and grace, a rare combination. She kept him living, working, teaching, and writing through his long illness, long beyond what might reasonably have been expected for lesser mortals, and we are all the richer for it. A Princeton man through and through, David would appreciate

¹⁷ Bederman, *supra* note 1, at 716 (emphasis added).

¹⁸ See, e.g., PATRICK O'BRIAN, *THE FORTUNE OF WAR* 49 (W.W. Norton & Co. 1991) (1979).

¹⁹ Jack Aubrey’s care for the training of midshipmen appears throughout the books and the movie about him. See O'BRIAN, *supra* note 2; MASTER AND COMMANDER, *supra* note 1.

²⁰ David J. Bederman, *Guilty Pleasures of Teaching Admiralty*, 55 ST. LOUIS U. L.J. 559, 559 (2011).

²¹ PETER PAN (Universal Pictures 2003).

the compliment inherent in my calling Lorre a tigress on behalf of her dearest. She was his Wendy; he was her romantic hero, her Errol Flynn.

So adieu, David, we commend your spirit to the infinite, as the earthly remains of those who are buried at sea are committed to the deep. We remember the words of the psalmist David: “They that go down to the sea in ships, that do business in great waters; These see the works of the Lord, and his wonders in the deep. For he commandeth, and raiseth the stormy wind, which lifteth up the waves thereof.”²² “Then they cry unto the Lord in their trouble, and he bringeth them out of their distresses. He maketh the storm a calm, so that the waves thereof are still. Then are they glad because they be quiet; so he bringeth them unto their desired haven.”²³

David, we know you are now quiet and at peace; we trust that you have been brought to your desired haven. You were the master of so many skills and so much knowledge; you commanded the love and respect of all who were lucky enough to know you through your too-short life. You were a real Master and Commander.

²² *Psalms* 107:23–25 (King James).

²³ *Id.* 107:28–30.