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Law, order and plunder at sea: a comparison of England and France in the fourteenth century

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ABSTRACT. *This article addresses the management of maritime plunder and conflict in the waters of England and France in the fourteenth century. It argues that during this century a fundamental change occurred. Around 1300, maritime conflict was handled by recourse to the strictly civil law merchant and law maritime, or by Marcher law. However by the 1350s and 1360s the kings of England and France, moved by contemporary political events and theories of sovereignty at sea, created courts of Admiralty that challenged the previous systems' jurisdiction. These initiatives eventually paved the way for the criminalisation of private maritime conflict.*

1. INTRODUCTION

From the beginning of the fourteenth century the kings of England and France began to claim sovereignty over the sea, giving them supreme jurisdiction over transgressions taking place in the waters surrounding their kingdoms.[1] Not least among such crimes was the act of violent plunder at sea: piracy. This lay in a legal grey area; somewhere between an act of war, the act of a private individual seeking justice through reprisal or retaliation, and a crime conducted with the sole purpose of self-enrichment. Whether an act of maritime plunder was deemed to be legal or illegal depended on both the relationship between the perpetrator and his victim and the state of affairs between the countries from which the two parties hailed. In the High Middle Ages there were two, non-exclusive methods for dealing with cases of maritime conflict and plunder at sea. Firstly, such cases could be settled according to civil codes of maritime or commercial law at market or town courts. Alternatively,

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they could be dealt with through meetings of commissioners from the countries of the assailant and the alleged victim who attempted to settle the – often reciprocal – claims of their kings' subjects against each other through arbitration and the laws of equity. In north-western European waters this latter settlement procedure seem to have followed the lines of 'Marcher' law: It was practised in loosely defined 'border' or 'frontier' regions, which were known in the Middle Ages as 'Marches', such as Gascony in France or the Scottish Borders. Until the beginning of the fourteenth century, Marcher law was used to manage and settle larger conflicts between mariners from the various maritime communities of the British Isles, France, Iberia and the Low Countries.[2] However, it is the argument of this article that in the fourteenth century this means of settling maritime disputes was challenged by a new perception of the legality of maritime plunder that accompanied reforms of the ways in which French and English kings managed conflicts between their mariners. While scholars have long been aware that royal interest in maritime jurisdiction greatly increased during the fourteenth century, to my knowledge only Timothy J. Runyan has studied this in any detail.[3] Runyan's analysis focuses exclusively on legal developments, however, and neglects their consequences for the status of the sea as a legal and political space. Furthermore, researchers have tended to overlook the relationship between legal changes and the expansion of the powers of the kings of England and France. Maritime and political historiographies dealing with the fourteenth century tend to be written from rather different perspectives. This article seeks to bring the two fields together by analysing the institutionalisation and growing power of the French and English Admiralties during the fourteenth century; a pivotal era in which the power of the state expanded out to sea where new forms of regulation were needed.

The article is divided into five further sections. The first two each discuss one of the two 'systems' for the management of disputes at sea in place in north-western Europe during the Middle Ages. The following sections describe the various legal models for settling maritime disputes available at the beginning of the fourteenth century, before discussing how these were challenged as, through their Admiralties, the kings of both England and France widened their jurisdictions. The final section contains some concluding remarks on the implications to be drawn from the formalisation of the admirals' jurisdiction over maritime disputes in the late Middle Ages.

2. STATES AND THE STATUS OF MARITIME PLUNDER

The degree to which the taking of goods and property by force is within the law very much depends on one's point of view. The victim will see it as robbery, plain and simple, whereas the perpetrator usually provides some kind of

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justification for his actions. This is particularly true for those acts undertaken at sea, which today we call piracy. While initially this term seems self-explanatory, it actually denotes a phenomenon that is rather more complex than mere robbery at sea. In *Piracy in the Graeco-Roman World*, Philip de Souza prudently offers a minimal definition of piracy and pirates:

> Piracy is a term normally applied in a pejorative manner. Pirates can be defined as armed robbers whose activities normally involve the use of ships. They are men who have been designated as such by other people, regardless of whether or not they consider themselves to be pirates.[4]

However, de Souza's definition essentially only covers the agents of piracy, not the practice itself.[5] I would therefore like to augment de Souza's definition by suggesting that: 'Piracy is the seaborne appropriation or destruction of goods and values in a maritime (high seas, estuaries, coasts) or a riverine space through violence or threats of violence.'[6] Furthermore, it should be noted that whereas the Romans saw pirates as particularly monstrous outlaws and Cicero famously deemed them to be 'the enemy of all',[7] by the Middle Ages, the term 'pirate' was largely used as a neutral term to denote a 'sea-warrior'. In the following discussion the term 'piracy' will be used as a shorthand, value neutral, term for the practice of private maritime plunder irrespective of the legality of the action.[8]

How an act of piracy was viewed in law was closely tied to the prevailing distribution of power within society. The following discussion draws on Vincent Gabrielsen's theory concerning the reciprocal relationship between piracy and central power, which he developed after studying piracy in Greek society in the Hellenic (c. 700–323 BC) and Hellenistic (323–31 BC) eras. Gabrielsen argues that piracy flourished in the Mediterranean until the first century BC thanks to the presence of two forms of state: the oligopolistic and the monopolistic. One may paraphrase Gabrielsen's views as follows: a distinguishing feature of an oligopolistic state was a formally accepted nexus between *raiding, licit conduct* and *public office*. Under such conditions piracy constituted an acceptable mode of private enrichment; a mark of superior martial prowess; an honour-conferring achievement; and an economic expedient on a par with other such expedients. Oligopolistic states possessed legal, social and political structures that favoured the raider, yet co-existed in perfect harmony with those legal structures that are ordinarily believed to emerge as states develop their legal codes. In contrast, Gabrielsen notes, in monopolistic states, the nexus between *raiding, licit conduct* and *public office* was severed. In such states citizens were banned from enriching themselves through the use of violence; trade was the only legitimate route to riches. The state alone could resort to violence, and the centralisation and strict control of the right to violent acquisition was the hallmark of a monopolistic state.[9]

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States in northern Europe during the High Middle Ages were largely oligopolistic, but in the thirteenth century there was a move towards more monopolistic models, and over the course of the fourteenth century changes in the conceptualisation of the law gained momentum. In medieval terms most states can be regarded as oligopolistic – in medieval parlance 'seigneurial' (see below). In such states power, based on the private possession of land, military might and juridical prerogatives, was largely in the hands of an aristocratic and ecclesiastic minority who enjoyed a contractual relationship based on mutual obligation with their superior; the ruler of the larger fief or kingdom. Such societies tended to have a horizontal, rather than a hierarchical, power structure, with the aristocrats governing through ad hoc negotiations with their king. While the term 'feudal' is most often used to describe such states, I believe the term 'seigneurial' is preferable when discussing the law and legal authority, as it more precisely captures the horizontal and competing claims to jurisdiction over the sea during the Middle Ages; something which the concept of the 'feudal pyramid' fails to convey.[10]

Where European states were monopolistic there was a close correspondence between developments in the law and each monarch's claim to sovereignty and supreme jurisdiction over their kingdoms. These states could thus be termed 'sovereign' or 'proto-sovereign' states.[11] I will argue that there was an historical evolution from oligopolistic to monopolistic states; but it should be stressed that this development was not straightforward, as changes in 'the power of the state' depended on the ebb and flow of the power of the central government. Thus while the Roman Empire was, and modern Western states are, monopolistic, states in the Hellenic and Hellenistic world and during the Middle Ages were predominantly oligopolistic.

3. THE SETTLEMENT OF MARITIME DISPUTES IN 'SEIGNEURIAL' STATES

As Emily Sohmer Tai has pointed out, medieval maritime disputes and their resolution took place in an era of 'legal pluralism', which saw 'the operation of competing systems of law throughout a common region'.[12] In the Middle Ages, cases of disputes at sea could be handled through one of several legal institutions: either a local court, such as a lord's court, a town court or a market court; a parliamentary court; the royal chancery; or in front of the king and his council. Finally disputes could be settled through negotiations between the parties involved following the procedures of 'Marcher' law, which will be discussed below. Over the course of the fourteenth century, European rulers increasingly challenged this legal pluralism by introducing sovereign or royal courts of maritime law.

A central issue was that maritime disputes often involved parties from different nations. This posed a problem, as the laws of a realm, such as the common

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law in England, were deemed unsuitable when a case involved a foreigner, who was held to be ignorant of the tenets of the law.[13] Such domestic laws were sometimes applied in disputes between people from the same kingdom, and some plaintiffs certainly tried to make foreigners abide by these laws as we shall see in the case of William Smale below, but more often people took recourse to the 'law merchant' (*lex mercatoria*), which was exercised by law courts at fairs and in market towns.[14] It is important to note that the law merchant was not actually codified in law. Instead it was a customary law, used by merchants in commercial transactions, which was apparently a *ius gentium*, or 'law of nations', known to and used by merchants throughout Christendom. Rather than being a law applying to a class of men, it applied more to specific types of transaction.[15] When applied to maritime disputes in north-western Europe it was often cited in connection with the international maritime law known as the *Rôles d'Oléron.*[16]

Like the law merchant, the *Rôles d'Oléron* were a form of international customary law, used to deal with cases relating to the conduct of shipmasters and their crews including their duties, discipline and terms and conditions of employment, along with issues to do with health and safety, management, seamanship and freight. Like the law merchant the *Rôles* were not used to address criminal offences; these were subject to royal justice. Despite the existence of the *Rôles d'Oléron*, English law courts dealing with piracy sometimes stated that the case should be judged according to either the laws maritime, the laws merchant, or both.[17] This was probably because in law piracy could be, and often was, treated just like an incident involving the collection of a commercial debt, in that the recovery of property unjustly detained by another party was being sought. As a result, courts judging cases of piracy in accordance with the laws merchant and maritime could only award restitution of lost property or monetary compensation to the plaintiff. The suits had to be treated on a purely economic basis, and any acts of violence or killing had to be ignored because the law merchant had no mandate to conduct criminal cases. This must have been unsatisfactory to many plaintiffs, but at least such cases were dealt with much more swiftly and efficiently than they would have been had they gone through the royal courts. The sea-lanes were also potentially no safer after a law merchant verdict was handed down, as disgruntled plaintiffs were free to seek revenge and the defendants could return to their predatory activities. This legal system based on the law merchant had no executive power strong enough to judge, and to enforce judgement, in either civil or criminal cases, and thus could not ensure a certain level of security at sea.[18] Plaintiffs sometimes took their case to a parliamentary court in either the defendant's country or their own country. This course of action could lead to the ruler of the plaintiff's country ordering the seizure of goods and valuables belonging to countrymen of the defendant, in order to

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force the ruler of the defendant's country to grant restitution to the plaintiff. However, because the defendant often had an alternative explanation of the alleged piracy and its causes, his ruler could order counter-seizures, both as a means of protecting his subjects but also sometimes as a way of promoting his own political agenda with the plaintiff's ruler. As a result cases could slowly escalate from low-level, individual quests for justice to high-level politics.[19]

Under the seigneurial system, maritime disputes involving parties from different countries or maritime communities with a propensity for independent and collective plunder – such as the confederation of towns in the coast of south-eastern England known as the Cinque Ports – seem to have been settled using procedures following Marcher law. Such laws were developed for use in border areas such as the Marches of Gascony and the Scottish Marches, which lay on either side of today's border between Scotland and England. As the various Marches lay in different parts of Europe, there were differences in their customary laws, but they had some traits in common because each March was in the same legal position; a politically and judicially contested area, lying within and between the jurisdiction of two rulers.

One aspect of conflict settlement in the Marches that differed from that in areas under the jurisdiction of one undisputed ruler was that the Marcher lords and towns had the right to settle their differences by arms, without any direct interference from their overlords. Kings also had recourse to this method of settlement when negotiating with another monarch over a dispute between maritime communities in their respective countries. In such cases of general Marcher law settlement negotiations were conducted by a commission consisting of an equal number of negotiators from each side, who were obliged to adjudicate by equity rather than by law. Equity entailed that judgements should be reached not by following the rigid letter of the law, but rather by general notions of fairness in relation to the specific legal issue at hand. Once a judgement had been reached the plaintiff and the defendant were responsible for ensuring that its terms were executed. While royal officials could intervene in the judicial process, they were not *a priori* authorised nor recognised as an executive body, but rather functioned as a third party that offered counsel to both sides. It was not unknown, however, for kings to pledge help to ensure that the terms of the settlement were upheld. Thus, no one official or ruler sat in judgement on the case, and the character of the negotiations was more that of an orderly meeting in the March called *journée de marche* where all parties involved could present and discuss the issues at stake and reach a settlement. In maritime matters the settlements reached were often recorded in peace treaties between specific maritime communities in the different kingdoms involved in the dispute.[20]

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While the use of arbitration to settle disputes and manage cases concerning maritime plunder followed Marcher custom, it was, first and foremost, pragmatic. The Marcher system was used primarily to deal with major incidents of maritime conflict, or to sort out tangled reciprocal accusations of piracy levelled by two political entities, be they kingdoms, lordships or maritime communities. This system was used largely because none of the rulers in north-western Europe had full and effective control over the waters of their realms, and were often dependent on the same mariners involved in maritime plunder to serve in the national navy in times of war. This meant that justice and the pursuit of justice were largely in the hands of private persons who resorted to reprisal and retaliation.

Reprisal was the main legal principle that underlay justifiable attack on, or seizure of, property at sea. If a person was, or claimed to have been, subjected to piracy, or any other form of seizure of their ships and goods, they could ask that their lord's officers seize goods from any of their attacker's countrymen. Alternatively, the plaintiff himself could organise a private action against natives of the community from which his attacker hailed in order to retrieve his goods or to cover the cost of his losses. The object of such reprisals was to obtain compensation for injuries or losses, including spoliation, imprisonment and outstanding debts, suffered at the hands of individuals who could not be brought to justice. In principle kings would only license reprisal when legal redress could not be obtained by any other means. The amount of reprisal was not supposed to exceed the value of the loss the plaintiff had suffered. This was in line with contemporary theories of 'just war'; reprisal allowed the taking of spoils, but the spoils taken were seen as restitution of an amount outstanding to the aggrieved individual and not as illegitimate plunder.[21]

Reprisal, on the other hand, was only legitimate if authorised by a ruler, but mariners frequently took matters into their own hands rather than wait for official authorisation. It would appear that, at least in theory, the use of violence when carrying out a reprisal was forbidden, and the distinction between reprisal and retaliation has to be emphasised. Reprisal was viewed as the retrieving of something, usually some form of property, taken illegally from a person without payment. Retaliation, however, went beyond the material aspect of reprisal. It represented an aggressive response to a wrong suffered; a vindictive wish to inflict on a perpetrator the same damage that had been suffered at the hands of that perpetrator.[22] Unfortunately, when people thought goods rightly belonged to them they could not be expected to hand those goods over without a fight and violence followed; acts of reprisal by private persons often escalated into retaliation. Furthermore, as reprisal and retaliation both had at their core the concept of collective liability, this meant that not only the perpetrator, but also his family, friends, associates and fellow

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countrymen could be considered as legitimate targets. Any situation in which reprisal and retaliation were involved thus ran the risk of spiralling out of control. This seems to have been what happened in 1292–1293, when a small squabble between seamen from England, Bayonne and Normandy developed into a full-scale maritime war between these communities, which eventually escalated into the Gascon War (1294–1297) between England and France.[23]

The reprisals system created many problems for European rulers, and this may explain why there was a gradual transition towards a monopolistic handling of maritime disputes. Around 1300, however, the best means of limiting maritime conflicts open to the ruling elite was the seizure of goods from the countrymen of an offending party or, more rarely, the issue of a letter of *marque* authorising a reprisal. Both of these steps were meant to facilitate negotiations following the lines of Marcher law.[24] In the end, no matter whether justice was administered by individual plaintiffs or by the lords under Marcher law, a satisfactory level of justice was not really achieved; both strategies encouraged reprisal and retaliation.

Procedures based on Marcher law were used to settle a number of conflicts in the decades around 1300, including the disputes rumbling between merchant mariners from Bayonne, Great Yarmouth and the Cinque Ports. In the 1290s Marcher law was used in negotiations between the Portuguese and the English, and in the first decades of the fourteenth century it was employed to resolve a number of disputes between merchant mariners from Bayonne, England and Castile.[25] Although the final form of the settlements that were negotiated in these conflicts varied, they were all reached, following procedures seen in Marcher law, by a bi-partite commission made up of equal numbers of commissioners, typically two, from each side of the dispute who were left to resolve the accusations of aggression, plunder and confiscation without any interference from their kings or lords. Where a case was tied, the commission applied to an additional, neutral person for adjudication. A prime example of the application of Marcher law in the settlement of maritime conflict is the so-called Process of Montreuil.

In May and June 1306, commissioners sent by Edward I of England and Philippe le Bel of France met in the Castle at Montreuil, a thriving port town on the English Channel, to settle long-standing issues relating to acts of reciprocal piracy that had been taking place since 1292.[26] The English and the French both appointed two commissioners. The English sent Philip Martel, the King's clerk and a professor of civil law, and John Bakewell, a knight. The French sent Etienne Bourret, sub-dean of Poitiers, and Jean de Ver, also a knight. The two teams of negotiators thus included men from both ecclesiastical and secular backgrounds; a configuration typical of Marcher negotiations. The commissioners were to inquire into the damages and losses suffered by both sides, to ensure that plaintiffs whose claims

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were upheld received satisfaction, and to refer cases where questions remained to the monarchs for settlement.[27] As George P. Cuttino put it: 'The (P)rocess of Montreuil was a series of legal cases involving maritime losses brought for hearing and settlement before what amounted to an international commission.'[28] However, the commissioners were directed not to proceed by French or English law, but rather by equity agreed between them. Pierre Chaplais has argued that this was effectively the procedure that would have been used by two Marcher lords rather than in a trial by sovereign law. He further argues that there was nothing new in the settlement procedure adopted at Montreuil, as Cuttino claimed: it was an old and time-honoured way for the French and the English to settle their differences.

From the twelfth to the fourteenth centuries, whenever Anglo-French disputes occurred in times of truce, they were amicably resolved according to Marcher laws by commissioners known as *dictatore*s or *conservatores treugarum*. Chaplais listed a number of similarities of procedure between the Process of Montreuil and the *journées de marche*, such as the choice of the town of Montreuil, which lay within the Anglo-French March both on land and at sea; the title of *dictatores* or *conservatores treugarum* given to the commissioners; and the prevalence of reprisals amongst the cases considered, a classic trait of Marcher disputes.[29] The Process began well, but it eventually broke down when both the English and the French kings effectively sabotaged it through their legal manoeuvrings, the most prominent of which was the English king's claim to sovereignty over the sea.

4. SOVEREIGNTY AND THE COURTS OF ADMIRALTY

In his seminal article, 'The sovereign and the pirates, 1332', Frederic Cheyette demonstrated how judgements in cases of piracy were essential to the formulation of sovereignty in France and England. Cheyette used a 1332 court case from Agde to illustrate how the king of France applied theories of sovereignty to contest that his admirals, rather than a local lord, the bishop of Narbonne, had the right to pass judgement on some recently captured Genoese pirates.[30] Although Sicilian admirals had held judicial powers since the twelfth century, French admirals had not previously done so, and this development entailed, as Cheyette put it, both the 'sovereign legitimation of the violence of war and sovereign limitation of the violence of justice'.[31] Until 1332 complaints concerning piracy had been dealt with by local lords, royal officers or by the king in Paris. The king's move therefore constituted an important step towards his holding a monopoly on the legitimate exercise of violence.[32] By giving the admirals sole jurisdiction over the sea, the king was claiming sovereignty over the seas of his kingdom.

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The concept of 'sovereignty' was initially a fluid one; a concept that European monarchs endeavoured to revise.[33] It originally derived from the authority invested in the Roman Emperors and, through the Carolingians, it was transferred to the Holy Roman Emperor, who was deemed to have jurisdiction and authority over all other kings of Christendom. The emperor's sovereignty was such that his 'supreme authority was indivisible and inalienable: the emperor was *lex animata*, legality and justice personified – every human creature was subjected to his will'.[34] During the thirteenth century the French kings increasingly contested the emperor's sovereignty, arguing that they enjoyed the same legal and political status within France as the emperor did in his realm, which made the king the equal of the emperor.[35] The medieval notion of sovereignty referred to raw power (*potestas*) as well as to authority (*auctoritas*). Indeed, the latter was a fundamental prerequisite for sovereignty.[36] Furthermore *postestas* also encompassed *iurisdictio* (jurisdiction), *dominium* (power to rule) and *imperium* (power to command). Accordingly, and as Francesco Maiolo observes, 'in the Middle Ages, jurisdiction played the role of "synthesis of powers"'.[37]

Although the French initiated the formulation of a theory of sovereignty, the first northern European ruler to claim sovereignty over the sea was the English king at the Process of Montreuil. In order to counterbalance the French king's status as the natural lord over the Duke of Aquitaine, the English claimed that English kings had, 'since time immemorial been in the peaceful possession of the sovereign lordship of the Sea of England and the islands in that sea'.[38] As an admiral was the lieutenant of the king in maritime affairs he was to have undisputed jurisdiction at sea. The English dated their claim from the time of King Henry II and the Angevin Empire, so the 'Sea of England' was understood to extend from the Pyrenees to Flanders. The English further claimed that their possession of sovereignty was uncontested and recognised by all nations trading in the relevant waters except, of course, the French. However when this claim was voiced during the Process at Montreuil, it was only a ploy to permit the English and French kings to negotiate as equals, rather than as vassal and lord. The actual status of the sea as an area of jurisdiction was of little concern, and the declaration was not rooted in any legal practices or any legal prerogatives accruing to the English admirals.[39]

Nevertheless, a few decades later in 1339, at the beginning of the Hundred Years' War, the Montreuil declaration of sovereignty at sea was at the core of the collection of documents referred to as the *Fasciculus de Superioritate Maris*.[40] These documents were used by Edward III when he renounced his allegiance to the French king. In one of the documents it was repeated that the English kings had since time immemorial had sovereignty over the sea of England (*antiquam superioritatem maris Angliae*) and that the English admiral had supreme jurisdiction to uphold the English king's law there, to

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pass judgement on all nations plying their trade in those waters, to punish all criminals in those waters, and to ensure satisfaction for damages incurred there.[41] However, there was nothing in the documents from either 1306 or 1339 that showed that the claims made in any way reflected the reality of English power at sea or the actual legal powers of the English admirals.[42] The English claim to sovereignty over the sea in the *Fasciculus* should not be seen as any more genuine than the claim in the declaration at Montreuil; both were merely contributions to the politico-legal attempts of the English kings to negotiate with the French on equal terms. The admirals' legal authority was a theoretical construct that came to play a pivotal role in the implementation of sovereignty at sea and as such it was one of the most obvious signs of the transformation from a seigneurial to a monopolistic maritime jurisdictional system. In the next section we will take a closer look at the development of the English and the French Admiralties during the fourteenth century.

5. THE ADMIRALTY COURT

The title of 'admiral' came to northern Europe from the Mediterranean where it had been used by French naval commanders since 1247. The title was first used by the English in 1295.[43] Around 1300, English and French admirals were usually private individuals specialising in maritime warfare who served the Crown in times of war on what amounted to temporary employment contracts that were usually reviewed, and renewed, on an annual basis. No one held the title of admiral during times of peace, and at this period an admiral had almost no judicial powers beyond the discipline of mariners in royal service. The French preferred to employ professional seamen from the Mediterranean to serve as admirals whereas the English tended to use prominent shipmasters from English ports: in both cases the men could be regarded as maritime mercenaries.[44] In their actions the admirals differed little from privateers, private persons commissioned by a government to attack the enemies of their kingdom, or from pirates, private persons who attacked their country's friends and foes indiscriminately. As a result, many admirals were accused of raiding ships for their own personal profit.[45] For example, two early fourteenth-century French admirals, Renier Grimaldi and Berenger Blanc, were accused of illegitimately attacking or seizing both neutral and allied shipping, and English mariner families, such as the Alards of Winchelsea, alternated between serving as admirals and being indicted for the plunder of foreign and domestic merchants at sea.[46] Such behaviour was not necessarily a problem for a monarch as long as the actions of the admirals primarily hurt the enemies of his kingdom. Indeed an admiral's record of self-serving, predatory activity appears to have acted as a recommendation of their skill in maritime warfare rather being a cause for concern.

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In the first decades of the fourteenth century, however, the legal authority of the admirals was slowly expanding and the outbreak of the Hundred Years' War sped up this process in both England and France. Until 1336 all French admirals seem to have served in an ad hoc basis and had little or no authority beyond their fleet. Justice in maritime cases involving Frenchmen was handled by royal bailiffs and they carried out the judgements of the *Parlement de Paris*, the supreme court in France, in cases of prize and *marque* adjudication.[47]

In 1342, the French admiral (at this time essentially preoccupied with Normandy) was granted independence from, and was no longer answerable to, the Constable of France, the kingdom's highest military commander. In 1351 the legal powers of the admiral were confirmed by royal ordinance. Article 22 of the ordinance stipulated the limits of the admiral's jurisdiction: his judgements could be appealed at Normandy's *Echiquier* (Exchequer) and article 25 stressed that Norman bailiffs, viscounts and provosts should not tolerate the admiral encroaching upon or usurping their jurisdiction. However, the exact legal remit handed to the French admiral in 1351 is unclear.[48] In 1356–1357 the *Etats Généraux* (Estates General) granted the admiral the right to part of any spoils taken by French privateers; from 1359 he could claim a tenth of each prize. He was also accorded the authority to judge the legitimacy of the prizes taken, although the *Parlement* remained the ultimate court of appeal in these cases.[49] According to Auguste Dumas the combination of the admiral's right to a tenth of each prize and his right to command, and discipline, mariners in royal service as well as privateers acting against the enemies of the Crown formed both the origin and the backbone of the French admiral's jurisdiction. These rights formed the basis of the admiral's civil jurisdiction, from which his legal competence in all matters relating to crimes committed at sea or along the coastline eventually evolved. His judgements were to take place at the Marble Table in the *Palais de la Cité* in Paris, but it is uncertain whether this court was formally in place even as late as 1359.[50]

It was not until 1373, however, that Charles V of France issued a more detailed ordinance – the *Reiglement sur le faict de l'admiraulte* – laying out the legal prerogatives of the admiral, namely to repress piracy, protect passengers on merchant ships, arm ships to attack an enemy and validate all prizes taken by French privateers.[51] The last prerogative effectively meant that the admiral was granted the right to determine who was an honourable soldier and who was a criminal pirate. The ordinance of 1373 sought to make the extent of the various jurisdictions clear and to curb corruption within the Admiralty. An example of this can be seen in a case from Dieppe in 1370–1371. Breton merchants had been using a Flemish cog to transport freight when it was seized by Norman privateers. The case set the local

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bailiff against the admiral's lieutenant in Dieppe as the bailiff supported the Bretons, who claimed that they were innocent victims, whereas the admiral's lieutenant claimed that the privateers had taken a legitimate prize as the Bretons were aiding the English. As neither the bailiff nor the lieutenant appeared to have supreme jurisdiction, the matter was ultimately settled by the *Parlement de Paris*, who sided with the bailiff. Such legal confusion was time-consuming and gave rise to problems in times of war. The Admiralty also gained a reputation for corruption and for colluding with privateers, by turning a blind eye to indiscriminate plunder in return for a tenth of the prize.

The ordinance of 1373 was designed to reform the Admiralty. It was accompanied by the appointment of the upright Jean de Vienne as Admiral of France.[52] However this proved to be a fleeting victory: over the next two centuries the French admirals would remain inferior to the royal bailiffs in legal matters and their jurisdiction was constantly challenged by local lords and the *Parlement*.[53] As a result, the jurisdiction of medieval French admirals never extended beyond policing the country's waters and controlling privateering. In contrast, the English admirals gained more extensive jurisdictional rights over the sea, reflecting the explicit claim by the English king that he held sovereignty over the sea. While the legal prerogatives of the English admirals most certainly expanded over the 1340s and 1350s it was not until around 1360 that they became clearly specified with the establishment of the English Admiralty Court.[54]

A vital prerequisite for the creation of this court was the signing of the Treaty of Brétigny in May 1360. The treaty stipulated that Edward III and his heirs would enjoy the same rights over the sea as the French kings had held in the areas surrendered to Edward as part of the treaty; particularly the Duchy of Aquitaine. The English must have taken this to mean that Edward had sovereignty over these lands and islands and over the coasts and waters bordering them. Through this treaty Edward III came close to reassembling the twelfth-century Angevin Empire as he now controlled the coastline of France from the Pyrenees to the Loire. His ally, Duke John V of Brittany, controlled much of the coast from the Loire to Normandy, and Edward was in direct control of three important strategic ports on the French side of the Channel: Brest, Barfleur and Calais.[55] The sovereignty that the English had claimed over these waters since at least the beginning of the fourteenth century could now be enforced in practice.

In March 1360, a few months before the signing of the Treaty of Brétigny, John Pavely was appointed Captain of all the Fleets of England and given the right to judge, and punish, all men serving in the royal fleets according to the law maritime.[56] Pavely was apparently not given the title Admiral, and was only an interim commander of the English fleets. Furthermore he lacked complete legal power over the bellicose Cinque Ports, which enjoyed important

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juridical privileges and exemptions, despite having a predilection for indiscriminate plunder at sea. In July 1360, power over the Cinque Ports, along with a thorough rounding out of the jurisdiction of the Admiralty, was accomplished when all the Fleets of England were explicitly united under the command of Admiral John Beauchamp.[57] Beauchamp was given full jurisdiction over all maritime legal cases, not just those pertaining to ships in royal naval service. Furthermore he was at the same time appointed Warden of the Cinque Ports and Constable of Dover Castle (hereafter 'the Warden-Constable'), a political and legal necessity if the Admiralty were to have legal supremacy.[58] Beauchamp died shortly after his appointment, however, and it fell to his successor as Admiral of the Fleets and Warden-Constable, Robert Herle, appointed in 1361, to institute the Admiralty Court and conduct the first official cases. [59]

Two of the cases before the Court in 1361 concerned William Smale, a Dartmouth shipmaster and former lieutenant to Admiral Guy Brian. In March 1361 Smale was indicted because West Country ships under his command had attacked and plundered a ship owned by English and Flemish merchants while it was en route from Nantes to Flanders. Initially Herle was ordered to hear and judge the case according to common law. However by May this order had been revoked, Edward III and his council ruling that 'according to the law and custom of our realm, felonies, trespasses, or injuries done upon the sea ought not to be dealt with or determined before our Justices at the common law, but before our Admirals according to the maritime law'.[60] Despite the fact that Smale's men had slaughtered 100 people on board the ship he was never brought to justice;[61] the court appears to have failed to reach a verdict. Nevertheless the Admiralty Court had been granted the important legal prerogative of passing judgment according to maritime law.

In the following July Smale and another Dartmouth shipowner, John Bronde, accused the French shipmaster, Johan Houeel, of capturing their ship off Winchelsea in 1359, plundering it and slaying the crew. The ship had later been recaptured by another Englishman and taken to Great Yarmouth with its goods. Though Smale and Bronde attempted to have the case tried by common law, the documents stress that the Admiralty was to pass judgement according to equity and maritime law, not common law, especially as Houeel was a foreigner and therefore ignorant of the latter law.[62] During the trial Houeel claimed that the seizure of the ship had happened in a time of war and it was thus a legitimate prize. He also argued that, according to the Treaty of Brétigny, suits pertaining to captures made during war could not be prosecuted after peace had been concluded. However Smale and Bronde were able to prove that the ship had been seized during a truce. The case, held at the Wool Quay, which would later become one of the two locations where the Admiralty Court sat, was adjourned. Houeel was sentenced to pay £1,000

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in damages and was handed over to the Marshal's custody until he had paid. In line with the commercial nature of maritime law he was not, however, punished for the killing of the crew.[63] The court appears to have been impartial and Houeel, who may have been in custody since the recapture of the ship, did not contest its jurisdiction. Two aspects of English fourteenth-century maritime policy were brought together in the cases involving Smale, and made the Admiralty Court an important stepping-stone on the path towards a monopolistic view of the legality of maritime plunder. From the beginning of the fourteenth century the English had been attempting, in negotiations with the French and the Castilians, to reform the legal provisions surrounding the settlement of maritime disputes. Traditionally, settlements had been formulated when drawing up peace treaties that aimed to identify and punish individual culprits according to the principle of *lex talionis*, or 'an eye-for-an-eye'. The English argued that corporal punishment should be abolished as this was almost never employed in practice, caused the Crown to lose face and left the perpetrator to continue his acts of piracy. Instead, they argued for monetary fines and for restitution to be agreed bilaterally along Marcher lines. Furthermore, if the perpetrators would not pay or evaded justice, the government of the port to which they belonged were to coerce their families into paying.[64] Should they refuse to undertake this duty the government officials would be forced, by the supreme lord of the port (the king) to pay the outstanding sum out of their own pockets.

The proposed reforms combined the precepts of the laws maritime and merchant with Marcher law procedures used in the settlement of maritime conflicts. The ineffectual *lex talionis* punishments, often employed under Marcher law, were to be abandoned and the ultimate responsibility for adherence to the court's decisions was to be shifted from the individual, notoriously slippery, perpetrators onto local government. A legal system would thus be created, which discouraged retaliation and made it much clearer where responsibility lay. There was only one problem: the reforms would remain ineffectual as long as only one party was committed to them. It appears that the English eventually abandoned the proposed reforms, no doubt as a result of their protracted conflict with France from 1337 onwards.[65] The idea of an alternative model for the settlement of maritime conflict remained with the English, however, and re-emerged, in a revised form, with creation of the Admiralty Court in 1361. In this court the king, represented by his admiral, passed judgement based on the civil laws merchant and maritime, paving the way for a monopolistic model of maritime jurisdiction.

This reform of the maritime justice system was quite subtle. It did not entail a sovereign brutally imposing the law on the international community of mariners and merchants plying their trade at sea. Instead the king of England offered to uphold the existing laws merchant and maritime for the international

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community and also to provide the executive force which the maritime justice system had traditionally lacked. Furthermore, the reforms challenged the system of reprisal and retaliation condoned by Marcher law, as the English king proposed to act as the disinterested protector of the merchants and the peaceful maritime commerce of his realm. Finally the reforms incorporated the legal privileges Edward III had already conceded to the international mercantile community under the Statute of the Staple of 1353. In these Edward offered extensive protection of the staple towns – towns where foreign merchants were required to put their goods for sale for a certain time before travelling onwards to conduct trade in England – and he guaranteed that the mayor and ministers of the staple towns would have jurisdiction over maritime and commercial cases and could judge according to law merchant, not common law.[66]

Although the Admiralty Court soon lost credibility because some admirals proved to be corrupt and because it met with fierce opposition from England's other courts of law, the creation of a court with jurisdiction over maritime matters, whether naval, criminal or civil, meant that law merchant gradually became absorbed into the common law system.[67] As with the French Admiralty Ordinance of 1373, this also paved the way for the English Crown's increasingly precise use of the word 'pirate' to denote a criminal rather than as a neutral term for a sea-warrior, as can be seen in the documents of the *Inquisition of Queenborough* compiled between 1375–1403.[68] Hence the Romans' criminalisation of pirates and piracy found a new voice in the fourteenth century, even though it would take several more centuries before this became the norm. The French also attempted to implement control of their coastal waters but the inherently disparate nature of the French kingdom and the catastrophes of the Hundred Years' War meant that the French king and his government did not succeed in this until after 1453. As Pierre Prétou has remarked, 'piracy' as a term denoting a crime was recreated in France at the threshold of modernity.[69]

6. CONCLUDING REMARKS

Between them, changes in the concept of sovereignty and the setting up of the Admiralty Court transformed a theoretical claim by the kings of England to sovereignty at sea into actual practice. This process entailed a judicial and territorial reordering of maritime spaces that had previously been subject to *ius gentium* mercantile and maritime laws and to Marcher law, but without any clear executive authority to enforce rulings. The Admiralty Court in England and the gradual expansion of the admirals' power in both England and France were important steps in the change of the perception of what

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constituted legitimate violence and seizure at sea as the seigneurial states evolved into monopolistic ones.

The 1360s to the 1370s were a pivotal period in this change. During these decades, the kings of England and France were able to strengthen their royal power over the sea. Edward III in England and the French Dauphin and, from 1364, King Charles V were in positions of strength. Edward had repeatedly won great victories in France, which had bolstered his prestige and perceived power as king.[70] Charles, paradoxically, owed his strengthened position to the French defeats by the English and his subjects' frustration with the French nobility's appalling military performance in the first decades of the Hundred Years' War. Many Frenchmen came to see their king as the sole institution capable of stopping the ravages of the English and restoring order. Charles managed to prevent a *coup d'état* and to obtain an honourable, if disadvantageous, peace treaty with England, but to achieve the restoration of order he needed to gain more control over the armed might of his kingdom. As a result the initiatives he took to increase his power as sovereign were not restricted to those concerning the sea: he ensured that, along with pirates, de-commissioned freebooting soldiers were also increasingly criminalised in France.[71]

Increasing condemnation accompanied the changes in perception of those carrying out acts of rapacious violence at sea or on land as rulers' powers to determine, define and declare who were criminal robbers and who were legitimate warriors increased.[72] For the first time royal policymakers considered the sea independently; it was no longer an ad hoc military issue but of universal concern. While the expanding jurisdiction of the admirals and both the English and the French kings continued to be challenged, and even briefly reversed, over the following centuries, vital steps in the transition from a seigneurial to a monopolistic view of the management of maritime disputes and the treatment of maritime plunder had been taken, even though the transition would not be completed until the seventeenth century.[73]

ENDNOTES

1 Frederic L. Cheyette, 'The sovereign and the pirates, 1332', *Speculum* **45** (1970), 40–68, here 54, 59–67; Daniel Heller-Roazen, *The enemy of all: piracy and the law of nations* (Cambridge, 2009), 62–8.

2 Thomas K. Heebøll-Holm, *Ports, piracy and maritime war: piracy in the English Channel and the Atlantic,* c. *1280–1330* (Leiden, 2013), 163–73.

3 Timothy J. Runyan, 'The Rolls of Oleron and the Admiralty Court in fourteenth-century England', *American Journal of Legal History* **19** (1975), 95–111.

4 Philip de Souza, *Piracy in the Graeco-Roman world* (Cambridge, 1999), 1.

5 See for instance, de Souza, *Piracy*, 17–18.

6 Heebøll-Holm, *Ports*, 9.

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7 '… nam pirata non est ex perduellium numero definitus, sed communis hostis omnium: cum hoc nec fides nec ius iurandum esse commune [… a pirate is not included in the number of lawful enemies, but is the common foe of all the world; and with him there ought not to be any pledged word nor any oath mutually binding]'): Cicero, in William Miller ed., *De Officiis* (London, 1968), Book III, 29. For the medieval discourse on pirates, see Bryan Dick, '"Framing piracy": restitution at sea in the later Middle Ages' (unpublished PhD thesis, University of Glasgow, 2010), 12–18; Heebøll-Holm, *Ports*, 13–22, Thomas K. Heebøll-Holm, 'Between pagan pirates and glorious sea-warriors: the portrayal of the Viking pirate in Danish twelfth-century Latin historiography', *Viking and Medieval Scandinavia* 8 (2012), 141–70, here 144–8.

8 For a more detailed discussion of the problems with the terms 'pirate' and 'piracy', see Gregor Rohmann, 'Jenseits von Piraterie und Kaperfahrt: für einen überfälligen Paradigmenwechsel in der Geschichte der Gewalt im maritimen Spätmittelalter', *Historische Zeitschrift* (forthcoming).

9 Vincent Gabrielsen, 'Warfare, statehood and piracy in the Greek world', in Nikolas Jaspert and Sebastian Kolditz eds., *Seeraub im Mittelmeerraum: piraterie, Korsarentum und maritime Gewalt von der Antike bis zur Neuzeit* (Paderborn, 2013), 133–54, here 138–9.

10 For a discussion of the seigneurial system (*seigneurie banale*), see Marc Bloch, *La société féodale* (Paris, 1994 [orig. pub 1939]), 603–10; Robert Fossier 'Seigneurie', in Claude Gauvard, Alain de Libera and Michel Zink eds., *Dictionnaire du Moyen Âge* (Paris, 2002), 1314–17; Dominique Barthélemy, 'Seigneurie', in Jacques Le Goff and Jean-Claude Schmitt eds., *Dictionnaire raisonné de l'Occident médiéval* (Paris, 1999), 1056–66.

11 See also Frederick H. Russell, *The just war in the Middle Ages* (Cambridge, 1975), 302.

12 Emily Sohmer Tai, 'The legal status of piracy in medieval Europe', *History Compass* **10** (2012), 838–51, here 839.

13 Robin Ward, *The world of the medieval shipmaster* (Woodbridge, 2009), 11–12.

14 See, for instance, Stephen E. Sachs, 'Conflict resolution at a medieval English fair', in Albrecht Cordes and Serge Dauchy eds., *Eine Grenze in Bewegung: private und öffentliche Konfliktlösung im Handels- und Seerecht/ Une frontière mouvante: justice privée et justice publique en matières commerciales et maritimes* (Munich, 2013), 19–38; Jean Hilaire, 'La résolution des conflits en matière de commerce à travers les archives du Parlement au XIIIe siècle', in Cordes and Dauchy eds., *Eine Grenze in Bewegung*, 1–17; D. A. Gardiner, 'The history of belligerent rights on the high seas in the fourteenth century', *Law Quarterly Review* **48** (1932), 521–46, here 531.

15 Frederick Pollock and Frederic William Maitland, *The history of English law*, 2 vols., 2nd edn (Cambridge, 1968), I, 467.

16 For a discussion of the origins of this law, see for instance, Runyan, 'Rolls of Oleron', 98–9; Ward, *Medieval shipmaster*, 20–1; Heebøll-Holm, *Ports*, 127–34.

17 Runyan, 'Rolls of Oleron', 99–103; Ward, *Medieval shipmaster*, 15–18, 23; Edda Frankot, *'Of laws of ships and shipmen': medieval maritime law and its practice in urban northern Europe* (Edinburgh, 2012), 13–14; R. G. Marsden, 'The Vice-Admirals of the coast', *English Historical Review* 22 (1907), 468–77, here 468–9.

18 Heebøll-Holm, *Ports*, 50, 143–4, 180; Hubert Hall ed., *Select cases concerning the Law Merchant A.D. 1239–1633* (London, 1903), 81–3; Sachs, 'Conflict resolution', 30–1.

19 Heebøll-Holm, *Ports*, 134–48. For a somewhat divergent view, see Bryan Dick, '"Framing piracy"', 56–69.

20 Heebøll-Holm, *Ports*, 162, 169–74.

21 Maurice Keen, *The laws of war in the late Middle Ages* (London and Toronto, 1965), 218; Gardiner, 'Belligerent rights', 538–9.

22 Stephen C. Neff, *War and the laws of nations: a general history* (Cambridge, 2008), 123.

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23 Heebøll-Holm, *Ports*, 83–126.
24 For a discussion of marque, see René de Mas Latrie, 'Du droit de marque ou droit de représailles au Moyen Âge', *Bibliothèque de l'École des chartes*, 6e série, tome II (1866), 529–77; Marie-Claire Chavarot, 'La pratique des lettres de marque d'après les arrêts du parlement (XIIIe – début XVe siècle)', *Bibliothèque de l'École des chartes* **149** (1991), 51–89; Heebøll-Holm, *Ports,* 134–40, 149–55.
25 Pierre Chaplais ed., *English medieval diplomatic practice Part I: documents and interpretations* (hereafter *EMDP*), 2 vols. (London, 1982), I, 389–92; *Calendar of the Close Rolls in the Public Record Office* (hereafter *CCR*), *1272–1279*, 420; Thomas Rymer ed., *Foedera, Conventiones, Litterae et Acta Publica*, rev. edn by A. F. Clarke, F. Holbroke and J. Coley, 4 vols. (London, 1816–69) (hereafter *Foedera*), Years 1272–1307, 789–90, 799; Jules Balasques, *Études historiques de la ville de Bayonne*, 3 vols. (Bayonne, 1862–75), III, 538–47. These are treated in more detail in Heebøll-Holm, *Ports*, 195, 203–5, 214.
26 Numerous documents relating to the proceedings exist in the National Archives, London (hereafter TNA), under the headings TNA C 47/27/5; C 47/27/6; C 47/29/5; C 47/29/6; C 47/31/19. A list of all the documents with the old Public Record Office headings can be found in G. P. Cuttino ed., *The Gascon Calendar of 1322* (London, 1949), 57–61; G. P. Cuttino, *English diplomatic administration* (Oxford, 1940), 51. For the older claims of maritime aggression leading to the Process, see for instance, Jacques-Joseph Champollion-Figeac ed., *Lettres de rois, reines et autres personnages des Cours de France et d'Angleterre, depuis Louis VII jusqu'à Henri IV: tirées des archives de Londres par Bréquigny et publiées par M. Champollion-Figeac*, 2 vols. (Paris, 1839–1847), I, 404, 424–9; *Foedera 1273–1307*, 900, 936 and 940.
27 Cuttino, *English diplomatic administration*, 22, 51.
28 Ibid., 52.
29 Pierre Chaplais, 'Règlement des conflits internationaux franco-anglais au XIVe siècle', *Le Moyen Âge* **57** (1951), 269–302, here 277–9.
30 Cheyette, 'The sovereign', 40–3.
31 Ibid., 42. For the Sicilian admirals, see Hiroshi Takayama, '*Amiratus* in the Norman Kingdom of Sicily – a leading office of Arabic origin in the royal administration', in Karl Borchardt and Enno Bünz eds., *Forschung zur Reichs-, Papst- und Landesgeschichte, Volume I* (Stuttgart, 1998), 133–44.
32 Russell, *Just war*, 302; Cheyette, 'The sovereign', 45, 49–50.
33 Francesco Maiolo, *Medieval sovereignty: Marsilius of Padua and Bartolus of Saxoferrato* (Delft, 2007), 79: 'The term sovereignty generally denotes the position of supremacy of somebody, or something, in respect of somebody, or something else'; Janice E. Thomson, *Mercenaries, pirates, and sovereigns: state-building and extraterritorial violence in early modern Europe* (Princeton, 1994), 13: 'Sovereignty organizes global political space into territorially bound, "juridically mutually exclusive and morally self-entailed domains". It is based on "an ethics of absolute exclusion".'
34 Walter Ullmann, 'The development of the medieval idea of sovereignty', *English Historical Review* **64** (1949), 1–33, here 3.
35 Ullmann, 'Idea of sovereignty', 9–10, 15.
36 Maiolo, *Medieval sovereignty*, 70–1.
37 Ibid., 143.
38 *EMDP* I, 367; Heebøll-Holm, *Ports*, 175–85.
39 Reginald Godfrey Marsden ed., *Select pleas in the Court of Admiralty*, 2 vols. (London, 1894), I, xviii–xix; Heebøll-Holm, *Ports*, 151, 186–90.
40 Marsden ed., *Select pleas*, xxx–xxxv.

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41 J. M. Pardessus, *Collection de lois maritimes antérieures au 18. Siècle*, 5 vols. (Paris, 1828–1844), I, 289.
42 For an elaboration of this argument, see Thomas K Heebøll-Holm, 'The origins and jurisdiction of the English Court of Admiralty in the fourteenth century', in Anthony Musson and Nigel Ramsay eds., *The English Courts of Chivalry and Admiralty* (forthcoming); Karl-Friedrich Krieger, *Ursprung und Wurzeln der Rôles d'Oléron* (Cologne, 1970), 43–6.
43 Eric Barré, 'Notes sur l'amirauté de France en Normandie au Moyen Âge', *Revue d'histoire maritime* **19** (2014), 21–31, here 21. For the history of the medieval French admirals, see Marc Russon, *Les côtes guerrières: mer, guerre et pouvoirs au Moyen Âge* (Rennes, 2004), 432–50.
44 Russon, *Côtes*, 452–4, Tai, 'Legal status', 839–40.
45 For a more *longue durée* investigation of the admirals in regard to pirates, see Louis Sicking, *De piraat en de admiral* (Leiden and Boston, 2014).
46 Russon, *Côtes*, 448, 468; Heebøll-Holm, *Ports*, 175, 178, 179; Auguste Dumas, *Étude sur le jugement des prises maritimes en France jusqu'à la suppression de l'office d'amiral* (Paris, 1908), 48; *Foedera 1307–1307*, 272, 279, 280, 292, 350, 455, 502–03; *CCR 1318–1323*, 496 and 692; Malcolm Vale, *The origins of the Hundred Years' War: the Angevin legacy* (Oxford, 1996), 59; *Calendar of the Patent Rolls in the Public Record Office 1313–1317*, 545–6; David G. Sylvester, 'Communal piracy in medieval England's Cinque Ports', in N. Christie and M. Yazigi eds., *Noble ideals and bloody realities: warfare in the Middle Ages* (Leiden, 2006), 163–77, here 168; Rachel A. Dressler, *Of armor and men in medieval England: the chivalric rhetoric of three English knights' effigies* (Aldershot, 2004), 45–50; L. F. Salzman, 'Some notes on the Family of Alard', *Sussex Archaeological Collections* 61 (1920), 126–41.
47 Dumas, *Jugement*, 33–5, 38–9, 44–7.
48 Eusèbe J. Laurière, François Secousse and L. G. de Vilevault eds., *Ordonnances des rois des France de la troisième race* (hereafter *ORF*), 21 vols. (Paris 1723–1849), II, 408.
49 Dumas, *Jugement*, 53–5; Pierre-Clément Timbal et al., *La guerre de Cent Ans vue à travers les registres du Parlement* (Paris, 1961), 259–68.
50 Barré, 'Notes', 21–5; *ORF* II, 408–9; Dumas, *Jugement*, 51, 63–9.
51 Travers Twiss ed., *The Black Book of the Admiralty*, 4 vols. (Cambridge, 2012/1871), I, 430–2; Valérie Bessey et al., *Construire l'armée française: textes fondateurs des institutions militaires, Volume I: De la France des premiers Valois à la fin du règne de François Ier* (Turnhout, 2006), 68–74; *ORF VIII*, 640–4. While this document was dated to 7 December 1400, Pardessus has shown that it ought to be dated to 7 December 1373. J. M. Pardessus, *Collection des lois maritimes*, IV, 224; Dumas, *Jugement*, 72, n. 1; Charles de la Roncière, *Histoire de la marine française*, 6 vols. (Paris, 1909–1932), I, 42, n. 2.
52 On Jean de Vienne, see Terrier de Loray, *Jean de Vienne: Amiral de France, 1341–1396* (Paris, 1878).
53 Félix Aubert, *Le Parlement de Paris: de Philippe le Bel à Charles VII (1314–1422)*, 2 vols. (Geneva, 1977), II, 106–8; Dumas, *Jugement*, 58–61, 273–82; Roncière, *Histoire de la marine II*, 42–50.
54 On the maritime jurisdiction exercised by other courts of law, see for instance Gardiner, 'Belligerent rights', 531–5.
55 *Foedera 1344–1361*, 515; Jonathan Sumption, *The Hundred Years' War, Volume II: Trial by fire* (London, 1999), 458–9.
56 The English fleet had traditionally been divided into the northern, western and, sometimes, southern fleets. Each fleet had an admiral assigned to command it. N. A. M. Rodger, *The safeguard of the sea: a naval history of Britain, Volume I: 660–1649* (London, 2004), 134–6.

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57 Runyan claims that the court was instituted in 1357, but I disagree, as the admirals did not enjoy any official and exclusive right to adjudication at this date Moreover, no Court of Admiralty is mentioned in any documents from 1357, suggesting that the jurisdiction of the admiral was no different from that of other royal officers charged with judging maritime cases in the 1350s. See Runyan, 'Rolls of Oleron', 107–9.
58 Marsden, 'Vice-Admirals', 472.
59 Marsden ed., *Select pleas*, xlii; *Foedera 1344–1361*, 479, 505; *Foedera 1361–77*, 597, Graham Cushway, *Edward III and the war at sea* (Woodbridge, 2011), 177; K. M. E. Murray, *The constitutional history of the Cinque Ports* (Manchester, 1935), 123–4; Marsden, 'Vice-Admirals', 469.
60 Reginald Godfrey Marsden ed., *Documents relating to law and custom of the sea, Volume I: A. D. 1205–1648* (London, 1915), 88–9: 'videtur esse consonum dictis legi et consuetudini quod felonie, transgressiones, seu injurie, supra mare facte, non coram Justiciariis nostris ad communem legem, sed coram Admirallis nostris juxta legem, sed coram Admirallis nostris, juxta legem maritimam deducantur et terminentur [it appears that, according to the law and custom of our realm, felonies, trespasses, or injuries done upon the sea ought not to be dealt with or determined before our Justices at the common law, but before our Admirals according to the maritime law]').
61 *CCR 1360–1364*, 120; Marsden ed., *Law and custom*, 84–9; Cushway, *Edward III*, 177–8.
62 Charles Johnson ed., 'An early Admiralty case (A.D. 1361)', in *Camden Miscellany, Volume XV* (Camden Third Series Vol. XLI, London, 1929), 4: 'ceste court qest office damiralle ne serra pas rullez si estroit come serront les autres courtz du roialme qe sont rullez par commune ley de la terre, mes est reullable par equite et ley marine ou chescun homme serra resceu a dire sa verite, et le dit Johan Houeel est alien et nad pas conisaunce des leys de la terre [this court [of law] which is the office of the admiral will not be ruled as narrowly as the courts of the realm that follow common law. Rather it is governed by equity and law maritime where all men shall be received to tell his truth, and the said Johan Houeel is a foreigner and is ignorant of the laws of the land]'; my translation); Ward, *Medieval shipmaster*, 36.
63 Johnson, 'Early Admiralty', 1–5; *EMDP* I, 370, n. 36; Cushway, *Edward III*, 178.
64 This closely resembled the procedure employed in traditional law merchant suits. Sachs, 'Conflict resolution', 27–8.
65 Heebøll-Holm, *Ports*, 211–15, 223–7. For treaties concluded during 1337–1360, see for instance, *Foedera 1344–1361*, 228–9, 266–8.
66 Alexander Luders et al. eds., *The statutes of the realm: printed by command of his majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts*, 11 vols. (London, 1810–1828), I, 332–43; Dick, '"Framing piracy"', 200.
67 Runyan, 'Rolls of Oleron', 104–7, 110, Ward, *Medieval Shipmaster*, 12; Marsden, 'Vice-Admirals', 469–70.
68 Ward, *Medieval shipmaster*, 23; Twiss, *Black book* I, 133–78, esp. 148; Rohmann, 'Jenseits'; David Simpkin, 'Keeping the seas: England's Admirals, 1369–1389', in Richard Gorski ed., *Roles of the sea in medieval England* (Woodbridge, 2012), 79–101, here 88–92.
69 Pierre Prétou, 'Du "larron écumeur de mer" aux "pirathes": les genèses de l'accusation en piraterie à la fin du Moyen âge français', in Michèle Battesti ed., *La piraterie au fil de l'histoire* (Paris, 2014), 37–47, here 46–7; Tai, 'Legal status', 838–9.
70 W. M. Ormrod, *The reign of Edward III* (New Haven and London, 1990), 26–7.
71 For the connection between piracy and banditry/ brigandage on land, see Heller-Roazen, *Enemy of all*, 36; Russell, *Just war*, 27, 277–8; Valérie Toureille, *Vol et brigandage au Moyen Âge* (Paris, 2006), 37–8; Loïc Cazaux, 'Réglementation militaire royale et usage de la force dans le royaume de France (XIVe–XVIe siècles)', *Inflexions: Civils et militaires:*

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pouvoir dire **13** (2010), 93–104. For an interesting comparison with the problems posed by mercenary armies in Italy, see William P. Caferro, 'Warfare and economy in Renaissance Italy, 1350–1450', *Journal of Interdisciplinary History* **39** (2008), 167–209.

72 Russell, *Just war*, 302; Philippe Contamine, 'Les compagnies d'aventure en France pendant la guerre de Cent Ans', *Mélanges de l'École française de Rome* **87** (1975), 365–96. For an example of the royal initiatives designed to control the military, see Anne Curry, 'Disciplinary ordinances for English and Franco-Scottish armies in 1385: an international code?', *Journal of Medieval History* **37** (2011), 269–94.

73 Michael Kempe, '"Even in the remotest corners of the world": globalized piracy and international law, 1500–1900', *Journal of Global History* **5** (2010), 353–72; Peter Earle, *The pirate wars* (London, 2003), 21–2; Kenneth R. Andrews, *Elizabethan privateering* (Cambridge, 1966), 22–31.

FRENCH AND GERMAN ABSTRACTS

Loi, ordre et pillage en mer: une comparaison entre Angleterre et France au XIVe siècle

Cet article étudie la gestion du pillage en mer et les conflits intervenus dans les eaux anglaises et françaises au XIVe siècle. L'auteur soutient qu'un changement fondamental s'y est produit à cette époque. Vers 1300, tout conflit maritime était traité en recourant au strict droit civil commercial et au droit de la mer ou bien conformément à la Loi des Marches ou Frontières d'Angleterre. Cependant, dans les années 1350 et 1360, inspirés par les événements politiques contemporains et les théories de la souveraineté en mer, les rois d'Angleterre et de France ont créé des Tribunaux d'Amirauté qui remettaient en cause la compétence des juridictions antérieures. Ces initiatives ont finalement ouvert la voie à une criminalisation des conflits maritimes d'ordre privé.

Gesetz, Ordnung und Plünderung auf See: ein Vergleich zwischen England und Frankreich im 14. Jahrhundert

Dieser Aufsatz behandelt das Management maritimer Plündereien und Konflikte in den Gewässern Englands und Frankreichs im 14. Jahrhundert. Die These ist, dass in diesem Jahrhundert ein grundlegender Wandel eintrat. Um 1300 wurden maritime Konflikte bewältigt, indem man sich strikt an das zivile Handelsrecht und das Seerecht oder auf das Markenrecht hielt. In den 1350er und 60er Jahren jedoch schufen die Könige von England und Frankreich, angeregt durch zeitgenössische politische Ereignisse und Theorien der Seehoheit, spezielle Seegerichte, welche die Rechtsprechung des früheren Systems in Frage stellten. Diese Initiativen führten schließlich zur Kriminalisierung privater maritimer Konflikte.

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