"Amphibious Power": The Law of Wreck, Maritime Customs, and Sovereignty in Richelieu's France

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The precise length of territorial waters, the swath of sea along the coast over which a state extended sovereign control, remained an object of debate during the seventeenth century. Some authors still adhered to the 100-mile boundary established by medieval glossators, whereas others embraced the so-called cannon-shot rule that set the limit to the reach of a shot fired from the land.[1] But no one disputed the existence of territorial waters. Even Hugo Grotius (1583–1645), then Europe's greatest champion of the freedom of the sea, followed Roman law in conceding that a state could exert its sovereignty over littoral waters or inlets in a shoreline

1. René-Josué Valin, *Nouveau commentaire sur l'ordonnance de la marine, du mois d'août 1681* (New Commentary on the Ordinance on Seaborne Trade, of August 1681), 2 vols. (La Rochelle: Chez Jerôme Legier, Chez Pierre Mesnier, 1760), 2:638; Domenico Alberto Azuni, *Sistema universale dei principi del diritto marittimo dell'Europa* (General System of the Principles of European Maritime Law), 2 vols. (Florence: Gaetano Cambiagi, 1795–96), 1:57–58; and Sayre A. Swarztrauber, *The Three-Mile Rule Limit of Territorial Sea* (Annapolis: Naval Institute Press, 1972), 10–35. The measure of one "mile" varied across time and place and information about ballistics in this time period is imprecise, but reliable estimates put at 1.5–2.5 kilometers the maximum reach of long-range cannons of the Spanish Armada: Colin Martin and Geoffrey Parker, *The Spanish Armada* (New York: W.W. Norton, 1988), 197; Garrett Mattingly, *The "Invincible" Armada and Elizabethan England* (New York: Cornell University Press, 1963), 14.

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Law and History Review November 2015, Vol. 33, No. 4
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doi:10.1017/S0738248015000437

(*diverticula maris*).[2] This rare point of agreement between theorists of *mare liberum* (the free sea) and defenders of *mare clausum* (the closed sea) did not eliminate all controversies concerning the governance of coastal waters. Particularly contentious were domestic and international disputes over the property rights on the cargo of sunken ships. What sources of law governed the assignment of ownership of salvaged wreckages? Who was entitled to compensation for assisting in the recovery efforts? And how did legal claims square with political maneuvering in domestic and interstate disputes over wreckages?

All of these questions are part of heated scholarly debates about the status of customs in maritime law, the making of absolutism, and the formation of a new international legal order during the seventeenth century. This article intervenes in these debates by way of an analysis of an episode that exposes the ambiguous legal bases that governed the adjudication of the property rights over flotsam and jetsam in Richelieu's France, and the political problems that this ambiguity generated at home and in foreign policy. The sinking in January 1627 of the *São Bartolomeu* and *Santa Helena*, two enormous Portuguese cargo ships, as well as six armed galleons that escorted them, off the coast of Guyenne, in the southwest of France, set in motion intense diplomacy between France and Spain (at the time Portugal was under Spanish rule) about the goods reclaimed from the sea, which included precious Asian merchandise and several cannons. The rulers of France, and its chief minister Cardinal Richelieu in particular, ordered the conduct of wide-ranging inquiries in Bordeaux and its surroundings that exposed the intricate customs and decrees governing wreckages and the conflicts that existed on the ground. In reconstructing the local, national, and international dimensions of this incident, I highlight the hybrid nature of the regulations over ship wreckages, which existed at the crossroads of medieval collections of maritime law, French regional customary law, and a more recent body of French royal decrees and ordinances. In so doing, I address questions that are central to a growing Anglophone literature about legal pluralism in the making of early modern European sovereignty at home and overseas.[3]

2. Hugo Grotius (trans. Richard Hakluyt with William Welwod's critique and Grotius' reply; ed. and with an introduction by David Armitage), *The Free Sea* [1608] (Indianapolis: Liberty Fund, 2004), 25–30; Grotius (ed. and with an introduction by Richard Tuck; from the edition by Jean Barbeyrac), *Rights of War and Peace* [1625] (Indianapolis: Liberty Fund, 2005), 459–70 (book II, ch. 3.7–12). Here and whenever they exist, I cite from contemporary or modern English translations. All other translations are mine.

3. For an introduction to these scholarly debates and further bibliographical references, see Lauren Benton and Richard J. Ross, "Empires and Legal Pluralism: Jurisdiction,

The magnitude of the 1627 seafaring disaster was such that two survivors penned an account of the misadventure that they had lived through.[4] For our purposes, however, the best guide to the protracted negotiations that followed the shipwreck of the Portuguese royal vessels in the Gulf of Biscay and the legal claims advanced by multiple parties is a little-known but genuinely extraordinary book, written by an obscure provincial lawyer and first printed in Bordeaux in 1647, which was to meet with considerable success in the decades and centuries to come: Étienne Cleirac's *Us et coustumes de la mer* (Usages and Customs of the Sea).[5] In the

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Sovereignty, and Political Imagination in the Early Modern World," in *Legal Pluralism and Empires, 1500–1850*, eds. Benton and Ross (New York: New York University Press, 2013), 1–18.

4. The most senior admiral to survive the 1627 tragedy published an account in Portuguese in that very same year. It is a fairly technical text meant to exculpate the author, chief general of the Portuguese navy after 1622 and official historian and cosmographer of the crown after 1618. See Dom Manuel de Meneses, *Relacion de la perdida de la armada de Portugal del año 1626* (Account of the Loss of the Portuguese Navy in the Year 1626) (Lisbon: Pedro Craesbeeck, 1627). Another survivor followed suit three decades later: Dom Francisco Manuel de Melo, "Epanáfora trágica segunda," ("Second Tragic Anaphora") reprinted in his *Epanáforas de vária história portugueza* (Anaphoras of Various Moments in Portuguese History), 3rd ed. (ed. Edgar Prestage) (Coimbra: Imprensa da Universidade, 1931), 118–209. Two modern studies discuss this disaster. The earliest one is written by a scholar of Old Regime France and examines it in relation to French politics and law: Yves-Marie Bercé, "L'affaire des caraques échouées (1627) et le droit de naufrage," ("The Case of the Sunken Carracks (1627) and the Law of Wreck") in *État, marine et société: Hommage à Jean Meyer* (State, the Maritime World, and Society: Studies in Honor of Jean Meyer), eds. Martine Acerra et alii (Paris: Presses de l'université de Paris-Sorbonne, 1995), 15–24. The second one, by a marine archeologist and an independent scholar with extensive knowledge of the subject, assembles long excerpts and translations from primary sources: Jean-Yves Blot and Patrick Lizé, eds., *Le naufrage des portugais sur les côtes de Saint-Jean-de-Luz et d'Arcachon (1627)* (The Shipwreck of the Portuguese Ships along the Coasts of Saint-Jean-de-Luz and Arcachon [1627]) (Paris: Chandeigne, 2000). Anthony R. Disney makes a passing reference to this shipwreck in his recent synthesis: *A History of Portugal and the Portuguese Empire*, 2 vols. (Cambridge: Cambridge University Press, 2009), 1:214.

5. Estienne Cleirac, *Us et coustumes de la mer, divisées en trois parties: I. De la navigation. II. Du commerce naval & contracts maritimes. III. De la iurisdiction de la marine. Avec un traicté des termes de marine & reglemens de la nauigation des fleuves & rivieres* (Usages and Customs of the Sea, Divided in Three Parts: I. On Navigation; II. On Overseas Trade and Marine Contracts; III. On the Jurisdiction on Seaborne Trade. With a Treatise on Maritime Terminology and the Regulation of River Navigation) (Bordeaux: Guillaume Millanges, 1647). A revised edition appeared in 1661 in two versions with identical pagination: a more ornate one (printed "En la Boutique de Millanges Chez Guillaume Taupinard, Marchand Libraire") and one in black-and-white (printed "Par Iacqves Mongiorn Millanges, imprimeur ordinaire du roy"). Because the 1661 edition is more easily accessible than the 1647 one, from now on I will give all page references from both editions and cite them as *UCM 1647* and *UCM 1661*, respectively. "Estienne" is the archaic spelling of Étienne.

seventeenth and eighteenth centuries, it was often away from Paris, and in the Atlantic port cities in particular, that French political economy found its real testing ground and some of its most acute observers.[6]

The shipwreck arguably provided the catalyst for the composition of Cleirac's treatise, even if the latter's importance goes beyond what it has to say about this event. Cleirac's involvement in the recovery efforts and his attempt to attract the attention of royal authorities prompted him to assemble a book that had virtually no precedent in early modern Europe: an annotated transcription or translation of medieval and more recent collections of maritime norms from different countries and regions.[7] The texts and commentaries in *Us et coustumes de la mer* help bring the early modern perspective on maritime law to bear on current scholarly debates and, more specifically, place the law of wreck in relation to a broader spectrum of private contracts that affected the procedures for salvaging sunken goods and distributing compensation. In late antiquity, the *Lex Rhodia de iactu* (Digest XIV.2.9) introduced rewards for those who helped salvage goods from a storm, but its primary objective was to protect the property rights of shippers. During the Middle Ages, most coastal lords across Europe and the Mediterranean appealed to this text as well as to established practice in order to seize a portion of the recovered goods that landed on their territories. Half usurpation, half incentive to aid wrecked ships, the right to compensation varied greatly in rates and forms across time and place.[8] By the early seventeenth century, the French crown had sought to replace these customs with royal decrees attributing to itself and other parties clear titles of ownership and compensation, but in effect it still struggled to curb the prerogatives of feudal lords in this area of the law.

In what follows, I emphasize three interrelated points. First, the administration of the law of wreck was inseparable from the norms governing private marine contracts (such as marine insurance, freightage, average, and jettison). They all varied so considerably from one place to another that they did not offer clear standards on the basis of which to resolve complex disputes swiftly and equitably across political borders. Second, the law of wreck presumed the involvement of political authorities in the assignment of ownership and reparation of the recovered debris. It follows that this sphere of maritime law was not the subject of private self-governance by

6. Emma Rothschild has made the case that in the last quarter of the eighteenth century, "some of the greatest of the economic writings were the products of provincial setting": Rothschild, "Global Commerce and the Question of Sovereignty in the Eighteenth-Century Provinces," *Modern Intellectual History* 1 (2004): 3–25.

7. For an earlier similar but less comprehensive effort written in Dutch, see note 27.

8. Rose Melikan, "Shippers, Salvors, and Sovereigns: Competing Interests in the Medieval Law of Shipwreck," *Journal of Legal History* 11 (1990): 165–82.

merchants alone.[9] Therefore, and finally, it is not surprising that the consolidation of absolutist sovereignty in France and increased interstate competition for maritime supremacy in the seventeenth century also required a reordering of the law of wreck. This reordering on the part of central authorities, then, entailed an assault less on merchants' customs than on feudal privileges and aimed, among other things, to give the crown greater autonomy in settling disputes.[10] However, Richelieu was reactive more than proactive in addressing these issues. Politics, in short, was part and parcel of the making of maritime law. The fact that ships often sunk outside of the territorial waters of the states whose flags they flew only intensified the political and diplomatic arm wrestling around legal disputes about ownership and salvage compensation.

1. A Tragedy at Sea

Starting in the 1500s, annual convoys sponsored by the Portuguese crown sailed between Lisbon and Goa, capital of the Portuguese viceroyalty in India, carrying bullion and merchandise on the way to South Asia and a

9. In spite of repeated and convincing criticisms, the idea that commercial and maritime law across late medieval Europe and the Mediterranean was first and foremost a private-order and transnational normative system dies hard. Among its most vocal advocates are Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), 333–46 and "The Law of International Commercial Transactions (*Lex Mercatoria*)," *Emory Journal* of *International Dispute Resolution* (1988): 235–310; Leon E. Trackman, *The Law Merchant: The Evolution of Commercial Law* (Littleton, CO.: Fred B. Rothman, 1983); and Bruce L. Benson, "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal* 55 (1989): 644–61, reprinted in *Reputation: Studies in the Voluntary Elicitation of Good Conduct*, ed. Daniel B. Klein (Ann Arbor: The University of Michigan Press, 1997), 165–90. Their thesis continues to appeal to large segments of the academy and the broader public in spite of the convincing evidence brought by its detractors, among whom are Charles Jr. Donahue, "Medieval and Early Modern Lex Mercatoria: An Attempt at the Probatio Diabolica," *Chicago Journal of International Law* 39 (2004): 21–36; Albrecht Cordes, "Auf der Suche nach der Rechtswirklichkeit der mittelalterlichen Lex Mercatoria (Searching for the Legal Reality of the Medieval Lex Mercatoria)," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 118 (2001): 168–84; Emily Kadens, "Order within Law, Variety within Customs: The Character of Medieval Merchant Law," *Chicago Journal of International Law* 39 (2004): 9–65; and Emily Kadens, "The Myth of the Customary Law Merchant," *Texas Law Review* 90 (2012): 1153–206. Proponents of the existence of a so-called universal *lex mercatoria* do no always distinguish between commercial and maritime law, a lack of distinction that was characteristic of some early modern European writers on these subjects but that came to be progressively clarified during the seventeenth century. I discuss this issue elsewhere.

10. For the view of maritime law as inscribed in a trajectory from medieval universal and private customs to early modern national codes, see Trackman *The Law Merchant*, 17, 21, 23–27 and Berman, "The Law of International Commercial Transactions," 42.

dazzling assortment of spices and luxury goods on the way back. For their majestic size, early modern authors often described the Portuguese carracks (*nãos*) ferrying these routes as "floating cities."[11] Those who opposed the construction of such gigantic vessels called them *bestas* (monsters).[12] The *São Bartolomeu* and *Santa Helena* were built in 1623; two years later, they reached India, where they were inspected and deemed ready for the return voyage.[13] As they approached the end of their homebound journey in January 1627, bad weather forced them toward the Basque coast, where the convoy was overtaken by an even worse tempest lasting 22, which finally pushed them all the way to the coast of Bordeaux. The human and material loss was enormous; however, marine currents helped salvage some of the crew and the precious cargo.

Had the *São Bartolomeu* and *Santa Helena* offloaded at La Coruña, which was located within the Spanish kingdom and where they could have landed safely, they would have been spared the horrible fate they met with. But at the annexation of Portugal to the Spanish crown in 1580, Philip II consented to respect the independence of the administration of the Portuguese overseas empire. Therefore, all ships returning from India continued to disembark their cargo in Lisbon, as those returning

11. This characterization is repeated by the biographer of the governor of Guyenne who oversaw the recovery efforts in 1627, who also emphasizes the horrific spectacle of a wreck that resembled a city in ruin: Guillaume Girard (trans. Charles Cotton, Esq.), *The History of the Life of the Duke of Espernon, the Great Favourite of France* (London: Printed by E. Cotes and A. Clark, for Henry Brome [etc], 1670), 441 (citation), 445; and Girard, *Histoire de la vie du duc d'Espernon* (The History of the Life of the Duke of d'Espernon) (Paris: Chez Augustin Courbeé, 1655), 420, 424. Some historians call such descriptions of Portuguese ships "exaggerated." For example, Filipe Vieira de Castro, *The Pepper Wreck: A Portuguese Indiaman at the Mouth of the Tagus River* (College Station, TX: Texas A&M University Press, 2005), 148. Portuguese *nãos* were gigantic ships with four decks. Some documents refer to the *São Bartolomeu* and *Santa Helena* as *naus* (Blot and Lizé, *Le naufrage*, 252 n), whereas others call them *navetas*, suggesting they were of a smaller variant (Jean-Yves Blot, "Postface," in Blot and Lizé, *Le naufrage*, 177, 198–99). This terminological instability is typical of the primary sources of the time.

12. Thus in Duarte Gomes Solis, author of two important works on Portuguese political economy and overseas trade in the 1620s, cited in Blot, "Postface," 197.

13. In 1624, the crown paid 45,740 cruzados and 206 reis for the construction of the *São Bartolomeu* and *Santa Helena*. Houghton Library, Harvard University, *Ataíde, Colleção*, vol. 1, unpaginated folios. This source is also cited in Charles R. Boxer, "The Naval and Colonial Papers of Dom António de Ataíde," in his *From Lisbon to Goa, 1500–1750: Studies in Portuguese Maritime Enterprise* (London: Variorum Reprints, 1984), IX:33. Information on the ships' conditions and a dispute between the pilot and vice-pilot of the *Santa Helena* can be found in Arquivo Histórico Ultramarino, *Conselho Ultramarino: Oriente, Índia*, caixas 14.41, 14.51, and 15.176; Arquivo Nacional da Torre do Tombo, *Livros das monções*, livro 22, fol. 138r and livro 25, fol. 258r.

from the Spanish Americas unloaded it in Seville.[14] In the framework of early modern composite monarchies, this lack of centralized coordination was nothing new. Jurisdictional fragmentation was a matter of fact as much as a means for local elites to assert power over segments of territories or resources. However, this fragmented sovereignty intensified conflicts in both domestic and international disputes in matters of control over the sea and its spoils.

To the astonishment of local villagers, enormous quantities of spices, ivory, ebony, ceramics, wax, coconut, silk, Chinese wooden cabinets, Indian cotton textiles, precious stones, ambergris, bezoar, and other prized imports from Asia, Ethiopia, and the interior of Africa turned up along the beaches stretching between Bordeaux and the Spanish border. Some diamonds and a few pieces of heavy artillery also survived. Exact figures for the 1627 disaster differ from one source to the other, but the numbers are staggering. Perhaps as many as 2,000 men perished, including high-ranking noblemen, and only 215 members of the crew survived.[15] The *São Bartolomeu* and *Santa Helena* were between 1,500 and 2,000 tons each. The admiral ship measured approximately one third in size. The total cargo of this convoy was valued at between 6,000,000 and 8,000,000 ducats: an extraordinary sum that equaled the official value of all annual imports from the Spanish America in that same year.[16] No less than 250 cannons were lost. Made of heavy metal, cannons were the first to sink. But if the vessel was carried ashore, artillery pieces were also the least likely items to be damaged and the most valuable prizes for public authorities. Cannons, therefore, became highly contested objects in the recovery efforts.[17]

Looking back at this event, a survivor called it the greatest loss Portugal sustained since the time of King Sebastian, and the Portuguese historian Manuel de Faria e Sousa (1590–1649) repeated this characterization.[18]

14. Cleirac stresses that the Iberian legislation departed from the prevailing norm according to which, in case of a tempest or enemy's interference, ship captains were not obliged to bring the vessel back to the port of origin—a rule over which the Judgments of Oléron (art. 18), the Laws of Wisby (art. 31 and 35), and the French ordinance of 1584 (art. 35) were in accord: Cleirac, *UCM 1647*, 472; and *UCM 1661*, 455–56.

15. Blot and Lizé, *Le naufrage*, 7, 18.

16. Huguette and Pierre Chaunu, *Séville et l'Atlantique (1504–1650)* (Seville and the Atlantic [1504–1650]), 8 vols. (Paris: S.E.V.P.E.N., 1955–59), 6.1: 474; Carlos Álvarez Nogal, *El crédito de la monarquía hispánica en el reinado de Felipe IV* (The Credit of the Spanish Monarchy during the Reign of Philip IV) ([Spain]: Junta de Castilla y León, 1997), 384.

17. Blot and Lizé, *Le naufrage*, 28, 33.

18. The survivor is de Melo, *Epanáforas*, 202. Manuel de Faria e Sousa, *Ásia Portuguesa* (Portuguese Asia), 3 vols. (Lisbon: H. Valente de Oliueira, 1666–75), 3:399 (part IV, ch. 2,

The vanishing of King Sebastian in Morocco and the successive incorporation of Portugal into the kingdom of Castile and Aragon from 1580 to 1640 had been so profoundly traumatic that the comparison was not meant lightly. This was the single largest shipwreck suffered by the Portuguese crown, and it came at a difficult moment for its system of royal capitalism.[19] In France, too, the tragic event had broad reverberations. A contemporary historian relayed that the news of the shipwreck had spread immediately across the kingdom, and offered a succinct account of the astounding losses that it involved.[20]

2. Jurisdictional Fragmentation between Domestic and Foreign Challenges

The affair of the sunken Portuguese ships was of such significance that it demanded the personal intervention of Armand du Plessis, Cardinal and Duke of Richelieu, Chief Minister of France from 1624 to 1642. The shipwreck impinged on three areas central to his political designs: the diplomatic relations with Spain, the promotion of commerce and navigation, and the consolidation of royal power across the kingdom (and in a region with a large Protestant presence, most importantly). Richelieu was thus confronted with two thorny and interrelated issues: the law of wreck revealed the extent to which the control that the French crown wielded over domestic territories remained partial; the incompleteness of domestic sovereignty, in turn, had repercussions on the crown's ability to conduct its foreign policy.

Whether Richelieu was intent on pursuing a comprehensive reform of French political economy or, as some historians have recently argued, reacted primarily to external circumstances, the timing and location of the seafaring disaster exacerbated the challenges he faced. In October 1626, Richelieu had attributed to himself the title of *Grand-maître, chef et surintendant général de la navigation et du commerce de France* (Grand Master, Head, and Superintendent of the Navy and Commerce of

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no. 13); John Stevens, trans., *The Portuguese Asia*, 3 vols. (London: Printed for C. Brome, 1695), 3:339.

19. On the conditions of Portuguese trade in the Indian Ocean in the 1620s, see Charles R. Boxer, "On a Portuguese Carrack's Bill of Lading in 1625," now in his *From Lisbon to Goa*, VII:176; and A.R. Disney, "The First Portuguese India Company, 1628–1633," *Economic History Review* 30 (1977): 242–58.

20. Scipion Dupleix, *Histoire de Louis le Juste, XIIIe du nom, roy de France et de Navarre* (History of Louis the Just, Called Louis XIII, King of France and Navarre) (Paris: Chez Claude Sonnius, 1635), 444.

France), effectively putting himself at the helm of the kingdom's commercial and naval administration. The following January, he abolished the office of the admiral of France, then occupied by his rival, the Duke Henri de Montmorency. As grand master, the cardinal was now directly in charge of the admiralties of Guyenne, Bordeaux, and Bayonne. Meanwhile, he was also intent on promoting the more aggressive presence of his country in overseas trade in an arduous attempt to compete with the Dutch and the English, and he sought, albeit unsuccessfully, to introduced new measures to encourage the nobility's participation in French overseas trade.[21] Furthermore, in the very weeks of January 1627 when peasants and villagers along the coast of Guyenne began looting the Portuguese vessels, Richelieu was deploying his diplomatic skills to enlist the Spanish crown to counter English naval power and the Huguenots at La Rochelle.[22] Although treated as a mere wrinkle by the vast scholarship on the Franco-Spanish diplomacy on the eve of the War of the Mantuan Succession (1628–1631), this maritime disaster engendered lengthy negotiations between the highest French and Spanish authorities. Finally, the

21. The specific reference is to the failed attempt to pass a comprehensive reform known as Code Michau: Jourdan, Decrusy, and Isambert eds., *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789* (General Collection of Ancient French Laws, from the Year 420 until the Revolution of 1789), 29 vols. (Paris: Berlin-Le-Prieur [etc.], 1821–33), 16:223–344. Boiteux suggests that Richelieu was antagonistic to the implementation of many of those reforms solely because of his rivalry with Marillac, the Code's principal author: Louis-Augustin Boiteux, *Richelieu grand maître de la navigation et du commerce de France* (Richelieu Great Master of French Navigation and Commerce) (Paris: Ozanne, 1955), 110. By contrast, in Hauser's neo-Marxist interpretation, Richelieu is the leader of a bourgeois transformation, who played an important role in advancing the agenda of the Code Michau: Henri Hauser, *La pensée et l'action économiques du cardinal de Richelieu* (The Economic Thought and Action of Cardinal Richelieu) (Paris: Presses Universitaires de France, 1944), 48–73. John H. Elliott follows Hauser in this respect: Elliott, *Richelieu and Olivares* (Cambridge: Cambridge University Press, 1984), 81–82. For Lauriane Kadlec, the opposition came from the *parlements*, the sovereign regional courts charged with ratifying royal decrees: Kadlec, "Le 'Code Michau': La réformation selon le garde des Sceaux Michel de Marillac (The 'Code Michau': The Reform According to the Keeper of the Seals Michel de Marillac)," in *Les Dossiers du Grihl: La Vie de Michel de Marillac et les expériences politiques du garde des sceaux* (2012) http://dossiersgrihl.revues.org/5317#ftn1 (August 6, 2014). A revisionist take that emphasizes the contingency of Richelieu's commercial politics is presented in Erick M. Thomson, "Chancellor Oxenstierna, Cardinal Richelieu, and Commerce: The Problems and Possibilities of Governance in Early-Seventeenth Century France and Sweden" (PhD diss., Johns Hopkins University, 2004).

22. Girard, *Histoire de la vie du duc d'Espernon*, 427; *The History of the Life of the Duke of Espernon*, 447. The Spanish–French alliance against the Protestant powers was signed on March 20, 1627. For the background, see Elliott, *Richelieu and Olivares*, 89–96 and *The Count Duke of Olivares: The Statesman in an Age of Decline* (New Haven: Yale University Press, 1986), 326.

location of the maritime disaster meant that Richelieu's envoys had to contend with the all-powerful Governor of Guyenne, Jean-Louis Nogaret de La Valette, duc d'Épernon (1544–1642), who claimed many of the spoils for himself by appealing to the ancient law of wreck (*droit de bris et naufrage*). A prolonged battle ensued between royal and provincial authorities, which exposed the patchwork nature of French customs and legislation in matters of wreckages along the Atlantic coasts.

As historians have become increasingly interested in the overseas dimension of Old Regime France, their attention has turned primarily to the eighteenth century, when the French Caribbean was an economic powerhouse and Franco-British imperial rivalries extended across the Atlantic and Indian Oceans. The seeds of that expansion, and the concurring transformations that it brought to the life of major French cities, however, were planted earlier on.[23] Legal historians interested in commercial and maritime law, for their part, have focused on the seventeenth century only for what pertains to the 1673 *ordonnance de commerce* (Ordinance on Commerce) and the 1681 *ordonnance de la marine* (Ordinance on Seaborne Trade), both orchestrated by Finance Minister Jean-Baptiste Colbert (r. 1665–1683), the first national codifications of these areas of law issued in Europe.[24] Although the precise itinerary that led to the formulation of these two major compilations is poorly documented, neither one sprang out of nowhere. As will be discussed, Atlantic France in particular had its own tradition of maritime laws. However, neither maritime customs nor public law afforded firm standards to settle disputes over wreckages, ensuring that the 1627 disaster turned into a knotty political and diplomatic imbroglio.

3. A Provincial Observer with Broad Vistas

A contemporary protagonist, the Bordelais lawyer Étienne Cleirac (1583–1657), offers an invaluable point of entry into the legal and political

23. André Lespagnol, *Messieurs de Saint-Malo: Une élite négociante au temps de Louis XIV* (Gentlemen of Saint-Malo: A Commercial Elite at the Time of Louis XIV) (Saint-Malo: l'Ancre de marine, 1990); Guy Saupin, *Nantes au XVIIe siècle: Vie politique et société urbaine* (Nantes in the Seventeenth Century: Political Life and Urban Society) (Rennes: Presses universitaires de Rennes, 1996); and Gayle K. Brunelle, *The New World Merchants of Rouen, 1559–1630* (Kirksville: Truman State University Press, 1991).

24. A general ordinance on maritime law had already been issued in Sweden in 1668, although it did not have the same resonance across Europe. Johannes Loccenius, *Sveciæ regni jus maritimum, lingua suetica conscriptum* (The Maritime Law of the Kingdom of Sweden, Translated from the Swedish Language) (Stockholm: Typis Nicolai Wankivii, 1674); and Azuni, *Sistema universale*, 1: 255.

entanglements associated with the crisis that unfolded along the shores of Guyenne.[25] Today virtually unknown outside of a small circle of historians of maritime law, Cleirac was highly influential in the formation of the canon of texts that constituted early modern European maritime law. Educated at Bordeaux's humanist school, the *Collège de Guyenne*, and then at the faculty of law, he ventured far from the subjects of his training to publish the first book in vernacular French to assemble, translate, and comment on norms regulating overseas trade issued at different times and in different places. His *Us et coustume de la mer* included every major European medieval compilation of maritime law, as well as more recent French and foreign statutes, with the exception of Barcelona's *Llibre del consolat de mar* (Book of the Consulate of the Sea), composed in 1340 or thereabouts, and first printed in Catalan in 1494, likely because it had already been translated into French.[26]

The hefty volume is divided in three sections. The first comprises the Judgments of Oléron, the Laws of Wisby, and a regulation of the Hanseatic League issued in Lübeck in 1591 (but incorrectly dated 1597); the second section reproduces the *Guidon de la mer* (The Standard of the Sea), a collection of norms concerning primarily marine insurance emanating from Rouen in the late sixteenth century, followed by the norms on marine insurance at the Antwerp Exchange promulgated by Philip II in 1563 (inaccurately dated 1593), and an ordinance on marine insurance published in Amsterdam in 1598;[27] finally, the third section consists of a redacted and copiously annotated version of the 1584 royal edict on the jurisdiction of the Admiralty of France over internal and seaborne navigation in times of war and peace, the so-called "Code Henry," after King Henry III (r. 1574–1589). This last section offered readers the most extensive repertoire of French maritime

25. On Cleirac and his scholarship, see Adrienne Gros, *L'oeuvre de Cleirac en droit maritime: Thèse pour le doctorat* (The Works of Cleirac Concerning Maritime Law: A Doctoral Thesis) (Bordeaux: Imprimerie de l'Université, 1924).

26. François Mayssoni, trans., *Le Livre du Consulat… nouvellement traduict de language espaignol & italien en françois* (The Book of the Consulate… Newly Translated from Spanish and Italian into French) (Aix-en-Provence: Pierre Roux, 1577). The translation was conducted upon instigation of a merchant from Marseilles, Guillaume Giraud, and first printed in 600 copies. It was then reissued in a second edition: François Mayssoni, trans., *Le Consulat… traduict de language espaignol & italien en françois* (The Consulate… Translated from Spanish and Italian into French) (Aix-en-Provence: Estienne David, 1635). Cleirac references the *Consolat* in his commentary on multiple occasions.

27. The sections on the Law of Wisby, the imperial ordinance on marine insurance of 1563, the orders of the Hanseatic League of 1591, and the Amsterdam regulation of marine of 1598 appear to be translated from *Handtvesten, ofte Privilegien, Handelingen, Costumen, ende Willekeuren der Stadt Aemstelredam* (Charters, or Privileges, Acts, Customs, and Dispositions of the City of Amsterdam) (Amsterdam: Jacob Pietersz Wachter, 1639).

laws issued from 1400 to the mid-seventeenth century. As an appendix to the entire volume, Cleirac reissued his earlier and minor work, *Explication des termes de marine* (Explanation of Maritime Terminology, 1636), a rudimentary vocabulary of terms pertaining to maritime trade and contracts, followed by a description of flags used by ships of different nationalities.[28]

Us et coustumes de la mer was a publishing success, and until Jean-Marie Pardessus' compilations of the mid-nineteenth century, it provided the single most comprehensive collection of European maritime and commercial laws.[29] A second, expanded edition, over which Cleirac himself labored, appeared posthumously in 1661, followed by four more editions, each with minimal variations, one printed in Paris in 1665, two printed in Rouen in 1671 and 1682, and one in Amsterdam in 1788. The first section of *Us et coustumes de la mer* was also translated into English in 1686 with the title of *The Ancient Sea-laws of Oleron, Wisby and the Hanse-towns still in force* and was included later in reprints of another bestseller, Gerard Malynes's *Consuetudo, vel, Lex Mercatoria*.[30]

The loss at sea of the Portuguese ships returning from India early in 1627 looms large in Cleirac's work.[31] From his writings, important details

28. The booklet had previously appeared separately as Estienne Cleirac, *Explication des termes de marine employez dans les edicts, ordonnances, & reglemens de l'Admirauté. Ensemble les Noms propres des Nauires, de leur Parties, & l'vsage d'icelles, l'Artillerie Navale, les liurees ou couleurs des Estendards & Pauillons de ceux qui voguent sur les Mers* (Explanation of the Maritime Terminology Employed in the Edicts, Ordinances, and Regulations of the Admiralty, Together with the Norms concerning Ships, their Parties and their Usages, Naval Artillery, the Colors of the Sails of those who Travel by Sea) (Paris: Chez Michel Brunet, 1636).

29. Jean-Marie Pardessus, *Collection de lois maritimes antérieures au XVIIIe siècle* (Collection of Maritime Laws Issued before the Eighteenth Century), 6 vols (Paris: Imprimerie royale, 1828–45); Pardessus, *Us et coutumes de la mer, ou Collection des usages maritimes des peuples de l'antiquité et du Moyen Age* (Usages and Customs of the Sea, or, Collection of the Maritime Usages of Peoples from Antiquity to the Middle Ages), 2 vols. (Paris: Imprimerie Royale, 1847).

30. Guy Miege, *The Ancient Sea-laws of Oleron, Wisby and the Hanse-Towns Still in Force: Taken out of a French Book, Intitled, Les us & coustumes de la mer* (London: Printed by J. Redmayne for T. Basset, 1686). Starting in 1686, Malynes's *Consuetudo, vel lex mercatoria* (first printed in 1622) was issued together with a number of other "tracts." The Cleirac-Miege text thus replaced the earlier English translation of the Judgments of Olérons derived from Pierre Garcie, *Le grant routtier* (The Great Rutter) (Poitiers: au Pellican, 1520), rendered in English by Robert Copland, *The Rutter of the Sea* (London: John Waley dwellyngin Foster lane, 1557). See David W. Waters, ed., *The Rutters of the Sea: The Sailing Directions of Pierre Garcie; A Study of the First English and French Printed Sailing Directions, with Facsimile Reproduction* (New Haven: Yale University Press, 1967), 38–39.

31. In *Usance du négoce* (Business Customs), a treatise on private banking and usury, Cleirac refers to the 1627 shipwreck in the preface, where he also describes his *UCM* as

about his life that connect him to this event can be gleaned. In the aftermath of the 1627 shipwreck, Cleirac served as "procureur du roy," in this context a high-ranking legal officer of the Admiralty of Bordeaux, and lent assistance to Richelieu's envoys, first François de Fortia and then Abel de Servien, members of the King's Council.[32] In this capacity, he participated in the extensive reconnaissance aimed to establish the property rights over the debris recovered from the sunken Portuguese carracks. As a result, he became interested in the legal grounds on which disputes concerning overseas commerce could be resolved, and had access to a wealth of published and unpublished documents, including depositions made by surviving mariners before Fortia in Bordeaux in January 1627.[33] His entire book can, therefore, be read as reflecting on the catastrophe at sea that tested Richelieu's domestic and international politics and on the ability of existing norms to settle explosive controversies over maritime affairs, and over the property rights of wrecked cargos in particular.

In his writings, Cleirac also reveals his political allegiances. *Us et coustumes de la mer* is dedicated to Anne of Austria, regent Queen of France from 1643 to 1651 (after Richelieu's death and during the minority of Louis XIV), and is peppered with eulogistic praises of the cardinal.[34] To espouse the monarchic cause in the divided the southwest of France in those years was not a given. As the national Fronde (1648–1653) pitched the French monarchy against large segments of the nobility, Bordeaux and its region were ravaged by the Fronde's local, radical arm, the urban revolt

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a work devoted to "le droict de coste," as the law of wreck was then known in French: Cleirac, *Usance du négoce* (Paris: Chez Charles Angot, 1656), 3–4.

32. Cleirac, *Usance du négoce*, 4. See also Marcel Gouron, *L'Amirauté de Guienne depuis le premier amiral anglais en Guienne jusqu'à la révolution* (The Admiralty of Guyenne from its First Admiral until the Revolution) (Paris: Sirey, 1938), 262–63. What survives of the archives of the admiralty in Bordeaux does not allow verification as to what role Cleirac played more specifically.

33. Cleirac, *UCM 1647*, 42; and *UCM 1661*, 40. Elsewhere (*UCM 1647*, 124; and *UCM 1661*, 122), he cites a report about the conflicts between royal officials and local lords contained "in a green book of Bordeaux's comptroller, call number C, fol. 221."

34. Cleirac, *Usance du négoce*, preface, 7. Already the first edition of *Explications des termes de la marine* was dedicated to the archbishop of Bordeaux, Henri d'Escouleau de Sourdis, who followed his older brother François in this charge and became a leading figure of the Catholic party as well as the commander-in-chief of the royal navy fighting the Huguenots and an opponent of the all-powerful governor of Guyenne, duc d'Épernon. See Robert Boutruche, ed., *Bordeaux de 1453 à 1715* (Bordeaux from 1453 to 1715) (Bordeaux: Fédération historique du Sud-Ouest, 1966), 376–79; and Alan James, *The Navy and Government in Early Modern France 1572–1661* (Suffolk, UK: The Royal Society and Boydell Press, 2004), 11.

known as the Ormée (1651–1653).[35] During what he called a period of "disordered movements," Cleirac found himself marginalized because of the actions of his son, a fervent partisan of the Ormée, and sought refuge from the surrounding conflicts in his countryside dwelling, where he concentrated on scholarship.[36] That his scholarly pursuits were geared, at least in part, to gain the favors of royal authorities is less important to this analysis than the fact that by wishing to offer Richelieu the legal weapons to succeed in his bid for the salvaged cargo, Cleirac mapped the range of legal sources that informed all disputes over shipwreck and other aspects of maritime law.

Isolated and ahead of his time, Cleirac poured his existential sorrows and frustrations into his writings and, in the process, left a portrait of a society in turmoil and rapid transformation. He states that he was moved by two goals: the desire to make the doctrine of navigation laws available to civil judges of appeals courts, who might need them for their deliberations, and to elevate the reputation of all people who work at sea (*fils de Neptune*) so that they would no longer be regarded as unrefined and loathsome (*grossiers et méprisables*) but could acquire the dignity accorded to those who work the land (*fils de la Terre*).[37] Both goals reflected the growing role and prestige that overseas trade occupied in the port cities of seventeenth-century France. For a practicing lawyer such as Cleirac, the intellectual project of conferring dignity on commerce and navigation was inseparable from the effort to establish predictable legal rules on the basis of which those activities could be performed. The shipwreck of 1627 was an early test for the shaky legal grounds on which France was building its aspirations as a commercial society, an absolutist monarchy, and an overseas imperial power.

4. The Law of Wreck and the Making of French Absolutism

Through the inquiry into the fate of the sunken ships returning from India, Cleirac became acutely aware of a double challenge: the impossibility of relying on ancient customs alone to resolve disputes over salvage, and the ambiguities of existing French laws on the subject. Adding to the

35. Alexander Westrich, *The Ormée of Bordeaux: A Revolution during the Fronde* (Baltimore: Johns Hopkins University Press, 1972); Christian Jouhaud, *Mazarinades: La Fronde des mots* (Mazarinades: The Fronde in Words) (Paris: Aubier, 1985); and William Beik, *Urban Protest in Seventeenth-Century France: The Culture of Retribution* (Cambridge: Cambridge University Press, 1997).

36. Cleirac, *Usance du négoce*, 4.

37. Dedication in Cleirac, *UCM 1647* and *UCM 1661*. In the 1671 and subsequent editions, this dedication is replaced by one to the president of the *parlement* of Normandie.

discrepancies between legal sources were entrenched political tensions that pitted municipal, feudal, and royal forces against each other. The texts reproduced in *Us et coustumes de la mer* and the commentaries that accompany them show that in early seventeenth-century France, disputes over saved goods were regulated by three different bodies of law: medieval collections of maritime customs (such as the Judgments of Oléron), French regional *coutumiers* (collections of customary law) registering seigniorial privileges, and royal decrees and ordinances that French kings had begun to issue after the early sixteenth century.[38] The hierarchy between these three jurisprudential sources, Cleirac reminds us, had already been established since antiquity, when the emperors Augustus (r. 27 BCE–14 CE) and Antoninus (r. 138–161) issued the *Lex Rhodia de iactu*. The Judgments of Oléron, as other statutory customs of commerce and navigation, belonged to the law of nations (*le droit des gens*) and, as such, were subordinated to Roman law, to royal edicts, and to the decrees passed by sovereign courts, such as the French *parlements*.[39]

Had matters been this straightforward, there would have been no need for Cleirac and others to enumerate the discrepancies among existing norms. French royal decrees were too vague to provide uncontested standards: they had not suppressed regional customs conferring rights to coastal feudal lords, and only addressed the division of the recovered

38. Between the late fifteenth and the late sixteenth centuries, the French crown oversaw a broad process that led to the writing down of regional *coutumes*, many of which regulated feudal prerogatives: Martine Grinberg, *Écrire les coutumes: Les droit seigneuriaux en France, XVIe-XVIIIe siècle* (To Set Customs in Writing: Seigniorial Law in France from the Sixteenth to the Eighteenth Centuries) (Paris: Presses universitaires de France, 2006); and Anne Zink and Jacques Poumarède, "Du ressort du parlement de Paris à celui de Bordeaux: Les procès-verbaux de coutumes d'Auvergne (1510) et des Lannes (1513)," ("The Deliberations of the Parlement of Paris and Bordeaux: The Inquiries about the Customs of Auvergne [1510] and Lannes [1513]") in *La coutume dans tous ses états* (Customary Law in all its Conditions), eds. Jacqueline Vendrand-Voyer and Florent Grenier (Paris: La Mémoire du Droit, 2013), 79–110. Although Old Regime France is often described as being divided between the northern regions of customary law and the southern regions of Roman law, medieval *coutumiers* formed one of the sources of law in the south, as well.

39. Cleirac, *UCM 1647*, 6; and *UCM 1661*, 6. In those years, other commentaries on the Roman law on shipwreck appeared in Claude-Barthélemy Morisot, *Orbis maritimi, sive, Rerum in mari et littoribus* (On the Sea, or, Matters of the Sea and Littorals) (Dijon: apud Petrvm Palliot, 1643), 200–210 (book I, ch. XX); and Pieter Peck, *In titt. Dig. & Cod. ad rem nauticam pertinentes, commentarii* (Commentaries on the Titles Pertaining to Navigation in the *Digest* and the Justinian's *Code*) (Amsterdam: Adrian Wyngaerden, 1647), 188–297 (*Lex Rhodia de iactu*) and 330–341 (Antoninus). Animated debates about the dating and the textual accuracy of the Roman *Lex Rhodia de iactu* and the Byzantine *Lex Rhodia* ensued soon after but are not relevant here.

spoils, that is, the end point of what was a more complex set of legal norms pertaining to wreckages, which started with jettison (the sequence according to which mariners were to throw goods at sea in the hope of limiting the damages of inclement weather) and extended to the payment of freightage and marine insurance. Rules governing all these matters varied enormously across time and place.[40] Implicit in Cleirac's work is that Bordeaux followed the Judgments of Oléron in all these matter. Elaborated in the southwest of France during the twelfth and thirteenth centuries, the Judgments assembled norms about freight contracts, sailors' salaries, ship captains' rights and obligations, rules of behavior on board a ship, and more, including some pertaining to jettison (arts. 3, 4, 8, 32, and 33) and others relating specifically to the law of wreck (arts. 26, 30, 31, 36, and 37).

The commentaries on the different rules governing jettison and the law of wreck in *Us et coustumes de la mer* are the longest in the section devoted to the Judgments of Oléron, and also appear elsewhere in the book.[41] Cleirac proudly asserts the French origins of the Judgments of Oléron against competing claims about their authorship by the English rulers of Aquitaine.[42] At the same time, his annotations also demonstrate that these customs could not be reconciled with others. In glossing article 8, he pauses upon the depositions made by mariners who survived the storm in the Gulf of Biscay in January 1627. According to Portuguese law, seafarers were expected to discard the portion of the cargo owned by private merchants first and to keep pepper (a royal monopoly) on

40. On the intractable variety of norms regarding freightage, jettison, and salvage across medieval Europe and the Mediterranean, see Melikan, "Shippers, Salvors, and Sovereigns"; Olivia Remie Constable, "The Problem of Jettison in Medieval Mediterranean Maritime Law," *Journal of Medieval History* 20 (1994): 207–20; Hassan S. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden: Brill, 1998), 88–97, 109–115; and Edda Frankot, *"Of Laws of Ships and Shipmen": Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh: Edinburgh University Press, 2012), 27–52.

41. The count and bibliographical references here are taken only from the expanded, 1661 edition. On jettison: *UCM 1661*, 15–22, 35–47, 117–18. On the law of wreck, *UCM 1661*, 94–102, 108–16, 120–35. Cleirac's version of the Judgments of Oléron counts 47 articles. It is derived from Garcie, *Le grant routtier*. But unlike Garcie, Cleirac failed to note that the Judgments' last section, the one concerning the law of wreck and jettison, did not belong to the original compilation: Pardessus, *Collection de lois maritimes*, 1:312–20.

42. In contending that Eleanor of Aquitaine (d. 1204) rather than her son Richard, Duke of Guyenne and King of England as Richard I, sponsored the drafting of the Judgments of Oléron, Cleirac (*UCM 1647*, 3; and *UCM 1661*, 2) borrowed from Morisot (*Orbis maritimi*, 457 [book II, ch. 18]) and refuted John Selden (*Mare clausum seu de domino maris libri duo* [The Closed Sea, or, Two Books on the Sovereignty of the Sea] [London: W. Stanesbeius pro R. Meighen, 1635], 254–55 [book II, ch. XXIV]).

board for as long as possible.[43] In this as in other cases, a foreign national law encroached on maritime customs and the resolution of disputes across political borders. Similarly, the criteria according to which the salvaged goods were returned to those who helped recover them were multifarious. Following Cleirac, in antiquity, those rescuers who went to sea for the purpose of salvaging the merchandise of a sunken ship could receive either half, one third, or one tenth of the recovered goods as a reward (the depth of the sea from where they recovered them was one of the factors determining the proportion due to them). In 1543, a new royal edict issued for the French Admiralty (to which I will return below) still allowed adjustments to saviors' compensation made "in the name of justice, with reason and proportion." Only in 1548 were rescuers assigned one full third and only a third of the unclaimed salvaged goods, even if protracted litigation suggests that the norm did not go uncontested.[44]

Cleirac's annotations to the Laws of Wisby are considerably briefer, and the articles pertaining to jettison (20, 21, and 38) are succinct and vague, but they highlight the connection between this practice and another contract, marine insurance, because in the event that a ship survived the storm and made it to its destination, the ship captain was accountable for any goods that did not arrive intact. The connection between jettison and marine insurance is spelled out with specific reference to the 1627 shipwreck in the commentary to the *Guidon de la mer* (ch. 2.12, 5.32–33, and 8.1).[45] In this respect, too, maritime customs did not provide universal standards. For example, they diverged on whether or not ship patrons were authorized to sell salvaged goods without the insurer's knowledge (a practice known in France as *barat*).[46] Similarly, the Judgments of Oléron (art. 4) and the Laws of Wisby (art. 16) mandated different compensation for freight contracts of ships that did not complete their itineraries because of a shipwreck.

By 1627, French kings had gone a long way toward regulating an obscure and neglected subject: the *droit de bris et naufrage*, as they referred to the law of wreck. However, the power dynamics within the kingdom and the loopholes in existing norms tied Richelieu's hands. Francis I (r. 1515–1547) had amended this area of law as part of his efforts to strengthen royal power and impose a more uniformed set of rules across the kingdom. Since 1231, when Saint Louis had relinquished the rights over sunken

43. With a touch of irony, Cleirac notes that the type of packaging, more than the jettison sequence, accounted for what came to shore more or less intact and what was lost: Cleirac, *UCM 1647*, 41–42; and *UCM 1661*, 40–41.

44. Cleirac, *UCM 1647*, 22; and *UCM 1661*, 21.

45. Cleirac, *UCM 1647*, 244, 275–76, 301–2; and *UCM 1661*, 239–40, 267–68, 288–89.

46. Cleirac, *UCM 1647*, 301–3; and *UCM 1661*, 289–91.

merchandise that reached the shore to the duke of Brittany, the crown had essentially handed over the issue to the feudal lords of the coastal regions. Once Brittany was incorporated into the French kingdom, however, its dukes lost this prerogative as well.[47] Because the right to confiscate wrecked goods had the indirect effect of encouraging the looting of sunken ships, in the peace treatises of the 1490s the king of France and the duke of Brittany stipulated that all recovered goods be placed under protection of a crown official. They also allowed survivors to claim any goods for which they could prove ownership within 1 year and 1 day. In the edict issued in 1543, Francis I incorporated this principle and established that the unclaimed goods be divided equally between three entities: one third went to those who retrieved them, one third to the admiral of France, and one third either to the king or to the local rulers to whom the king had conceded his rights.[48] The phrasing of this last clause—conceding one third *either* to the king *or* to local rulers designated by him—and the abrogation of the office of the admiral of France in 1627 were sources of considerable ambiguity and ensured that conflicts would continue to emerge. In 1576, France's foremost theorist of royal absolutism, Jean Bodin, maintained that "many" list the ability to seize vacant properties, including wrecked ships and cargoes, among a sovereign's prerogatives, but admitted that "almost everyone" attributed this prerogative to local lords.[49] Half a century

47. Brittany resented this and other encroachments in its autonomy. In the 1580s, a Huguenot writer and defender of the royal prerogatives over the office of the admiral and the law of wreck could still list the duke of Brittany as a "sovereign" ruler alongside the Holy Roman Emperor and the kings of Spain, England, and Portugal: Lancelot-Voisin La Popelliniere, *L'amiral de France et par occasion, de celuy des autres nations, tant vieiles que nouuelles* (The Admiral of France and, in Passing, the Admiral of Other Nations, both Old and New) (Paris: Chez Thomas Perier, 1584), 72.

48. Compare Jourdan, Decrusy, and Isambert, *Recueil général*, 12: 854. In the version of the 1543 edict ratified by the *parlement* of Paris and in later ones of 1576 and 1584, the period to claim the recovered goods was restricted to 2 months. Cleirac explains that the *parlement* of Bordeaux observed the term of 1 year and 1 day even if royal decrees only allowed for a span of 2 months. His account is largely derivative of a treatise by a nobleman from Brittany, de la Thoisse, but also cites specific norms not included in it: the 1543 decree (art. 11–12), the 1584 decree (art. 20–21), and the *Coutume de Normandie au titre de Varech* (art. 597 ff) (Customs of Normandy with Regard to Wrecks). The word "varech" (originally a term to indicate seaweed) is an archaic synonym for "brit" and referred to anything that the sea returns to the shore after a storm: Cleirac, *UCM 1647*, 440; and *UCM 1661*, 412. Christophle du Bois-Gelin sieur de la Thoisse, *Traité des droits royaux de bris et de brefs ou seaux, leur causes, effets, origine, & autres singlaritez concernantes ceste matiere* (Treatise on the Royal Rights over Wrecks, their Causes, Effects, Origin, and Other Singularities Concerning this Subject) (Dinan: Iulien Aubiniere, 1595), 43–73.

49. Jean Bodin, *Les six livres de la république* (The Six Books of the Commonwealth) (Paris: Chez Iacques du Puys, 1576), 215 (book 1, ch. XI).

after Bodin, the events of 1627 only confirmed that, if the law of wreck was a building block in the institutional architecture of French absolutism, that architecture remained wobbly.

5. Crisis on the Shores of Guyenne

The spoils of the *São Bartolomeu* and *Santa Helena* turned up along the beaches of Guyenne, near Arcachon, Vieux Boucau-les-Bains, Saint-Jean-de Luz, and Ciboure. The coastal lands between Bordeaux and the Spanish border, like much of the rest of the French kingdom at the time, fell under a patchwork of political authorities and jurisdictions. Some goods went ashore in territories belonging to feudal lords, such as the vicecount du Mayne or the baron d'Arès; others in areas over which the governors of Guyenne and the Basque countries, the duke d'Épernon and the count de Gramont, respectively, ruled in the name of the French monarchy. Some of these parties collaborated with the royal emissaries overseeing the rescue mission, whereas others proved recalcitrant. D'Épernon was especially stubborn in his noncompliance. Appointed governor of Guyenne in 1622, he went head to head with Richelieu. Through his marriage, he had acquired a large castle on the Garonne with coastal properties along the Médoc area over which he exerted seigniorial rights. This property gave him a personal stake in the recovery process.[50]

Upon learning of the disaster, the *parlement* of Bordeaux put all the people and the goods that had made it ashore under the protection of the king, and issued harsh punishment for those caught pillaging. Guards and physicians were dispatched and an all-encompassing legal inquiry (*procès-verbal*) was set in motion.[51] Mistrusting d'Épernon, Richelieu sent his own envoys to work alongside the officials of the admiralties of Bayonne and Bordeaux.[52] A triangular conflict of jurisdictions erupted

50. Archivo General de Simancas, Spain (hereafter AGS), *Secretaría de Estado (Francia)* (hereafter *SEF*), K.1443, no. 106: Diego de Irarraga to Count Duque Olivares (Bordeaux, 15 June 1627).

51. *Mercure de France*, January 18, 1627, transcribed in Blot and Lizé, *Le naufrage*, 21–22.

52. The negotiations conducted by various royal envoys (including de Fortia, Le Plessis, and Servien) with the governor of Guyenne and the coastal lords are documented throughout vol. 2 of Pierre Grillon, ed., *Les papiers de Richelieu: Section politique intérieure, correspondance et papiers d'État* (Richelieu's Papers: Section on Domestic Politics, Correspondence, and Various Papers Concerning the State), 6 vols. (Paris: Pedone, 1975–1997). Servien replaced Fortia in April 1627 and was nominated *intendant* of the region the following year. He proceeded to have a stellar career. In June 1630 he was appointed *président* of the *parlement* of Bordeaux, but soon after he was called back to Paris

among the governor of Guyenne, the crown's envoys, and the *parlement* of Bordeaux (which retained the power to approve or reject royal orders and envoys). Ecclesiastical authorities were also drawn in because, following standard practice, Richelieu asked the archbishop to threaten those who hid any debris with excommunication.[53] But the real duel was between Richelieu and d'Épernon. When the cardinal asserted that his newly acquired title of grand master entitled him to two thirds of the spoils that were recovered (one third as representative of the king and one third as heir to the admiral of France), d'Épernon demanded that Richelieu prove his claims in writing and, in turn, showed evidence of his own rights over the coast of Médoc.[54]

Jurisdictional conflicts at the local level generated international aftershocks because Spain pressured France for the restitution of the salvaged goods at the very moment, in January 1627, when Richelieu was seeking to enlist Spanish military support to defeat the Huguenots and the English at La Rochelle. So high were the stakes at play that the two countries' highest authorities became directly involved in negotiating the property rights over the recovered wreckages.[55] The Spanish had mistrusted d'Épernon since the beginning.[56] In February 1628, Richelieu agreed to relinquish

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as secretary of war and later to other important posts. As a leading French diplomat and close collaborator of Cardinal Mazarin, he negotiated the Treaty of Westphalia in 1648 (ibid., 2:225–26).

53. Ibid., 2:107–8.

54. The governor resented Richelieu's intrusion and maintained that the king had relinquished his portion of the local rights over wreckages to the feudal lords of Candalle, in the region of Aquitaine. Richelieu was displeased with the young royal commissioner Fortia for having taken cognizance of the papers submitted by d'Épernon and replaced him with the more experienced Servien. Eventually, d'Épernon conceded that all sequestered goods be put under the administration of two burghers of Bordeaux. See Girard, *Histoire de la vie du duc d'Espernon*, 425–26; and *The History of the Life of the Duke of Espernon*, 446–47. In his study of Richelieu's economic policies, Hauser cites a letter of May 16, 1627 with which the cardinal transferred his prerogatives as grand master to the *procureur général* of Bordeaux with the request that the city's *parlement* ratify the order: Hauser, *La pensée et l'action économiques du cardinal de Richelieu*, 26–27. The letter assumes new meaning in light of Richelieu's clash with d'Épernon.

55. The king of Spain wrote to his peer in Paris to invite him to follow closely the recognizance of the coasts of Guyenne and informed him that two Spanish envoys had been dispatched to the region: Jordan de Freytas and Diego de Irarraga. Archives diplomatiques du ministère des Affaires étrangères, Paris, *Correspondence politique: Espagne*, 15, fol. 67r. Spain later appointed an extraordinary ambassador, Don Ambrogio Spinola Doria (1569–1630), First Marquis de los Balbases, a Genoese aristocrat and former commander of the army in Flanders, to travel to Paris and negotiate the release of all salvaged goods and pieces of artillery.

56. AGS, *SEF*, K.1434, no. 53: report from the Council of State to the king (Madrid, February 27, 1627).

his portion of the rights to Spain,[57] but the Spanish ambassador in Paris remained somewhat perplexed at what the cardinal was entitled to and how he could deliver his promise.[58]

His diagnosis of the problem was accurate: the power struggle on the ground compounded the murkiness of French law. For the Spanish ambassador in Paris, d'Épernon clung to his "absolute power" more than to the law. None of the legal advisors whom the Spaniards consulted found evidence of the governor's claims, but they also recognized that Richelieu lacked the authority to force d'Épernon's hand.[59] To make things worse, a diffuse anti-Spanish sentiment obstructed the recovery efforts. The Spanish envoys described being met with hatred and revulsion (*odio y*

57. In the *Mémoires du Cardinal de Richelieu*, a collection of documents written by him and his aides, the shipwreck is described with grandiloquence as metaphorical evidence that Spanish maritime power had chosen to pay homage to the nascent commercial power of France, but the transfer of Richelieu's rights over the wreckages is recognized in more prosaic terms as a bargain. *Mémoires du Cardinal de Richelieu: Publiés d'après des manuscrits originaux pour la Société de l'histoire de France sous les auspices de l'Académie française* (The Memoirs of Cardinal Richelieu, Published on the Basis of Original Manuscripts by the Society for the History of France and under the Auspices of the French Academy), 10 vols. (Paris: Librairie Renouard, H. Laurens successeur, 1907–1931), 7:25. According to an anonymous commentator of Richelieu's *Political Testament*, the negotiations that followed the 1627 shipwreck left the cardinal with meager economic gains and a sense of sourness: *Observations historiques sur le testament du Cardinal de Richelieu* (Historical Observations on the Testament of Cardinal Richelieu) (Amsterdam: Janssons a Waesberge, 1738), 203.

58. AGS, *SEF*, K.1481, no. 28: letter of the Marquis de Mirabel, Spanish Ambassador in Paris, to the king of Spain (Paris, March 11, 1628). On Mirabel's embassy in Paris, see Michel Devèze, *L'Espagne de Philippe IV (1621–1665)* (Philip IV's Spain [1621–1665]), 2 vols. (Paris: Société d'édition d'enseignement supérieur, 1970), 1:128–40.

59. D'Épernon's prerogatives "se fundan mas en su poder absoluto que en leyes ni derechos justos de Francia porque ninguno de los platicos de mar, de los letrados de mar, delos letrados que ha communicado dizen aya razon para ello y que lo es el dar sus haziendas aquienes perteneze como es notara aviendo las pedido en tempo competente. Este Rey ni sus ministros no tienen authordad para forçar al de Pernon y es de creer que por cortesia no le obligaremos . . . Vm.es bien platico del pays y conoze la gente y assi juzgara que tengo razon de dudar de la utilidad que sacaremos de nuestro travajo." ("are rooted more in his absolute power than in the just laws of France, because none of the sea captains, none of the maritime lawyers, none of the lawyers with whom he has consulted say that there is any grounds for it [i.e., for him to keep the goods] and that what is reasonable is for him to give the goods to those to whom they belong, as is well known, since those people have requested the goods within the appropriate time. Neither this king nor his ministers have the authority to force d'Épernon, and it is presumable that, out of courtesy, we will not compel him. . . Your Majesty is well acquainted with that country and knows its people and so will judge that I have reason to doubt the benefit that we might gain from our troubles.") AGS, *SEF*, K.1443, no. 108: Marquis de Mirabel to Diego de Irarraga (Paris, June 20, 1627).

aborrecimiento) by the humblest residents of the coastal areas who supplemented their meager living by looting and sequestering shipwrecks.[60]

Among the most contested debris, two sets of items stood out: cannons and diamonds. Pressing needs added to the perennial military value of artillery. In May 1627, France began to prepare for the siege of the Huguenot bastion of La Rochelle, which was attacked through the summer and capitulated in October of the following year. Royal envoys eyed all military equipment in the region, while the local population felt aggravated by the mobilization. With the cooperation of some local lords but not others, Richelieu's emissaries succeeed in recovering approximately fifty cannons. Now that they had to negotiate with Spain to retain them, d'Épernon appeared to have only his personal interest at stake. Although he seconded the efforts to recover various cannons, he was accused by the Spanish envoy of hiding a large number of diamonds in his castle.[61]

Diamonds raised different but no less delicate challenges. Shipwrecks eroded what one historian calls the "wall of secrecy" that Portguese diamond merchants built around this intercontinental trade, in which New Christians were involved in great numbers and which spilled easily into contraband.[62] According to an official list, diamonds and precious stones made up 18.5% of the declared value of the total cargo of the *São Bartolomeu* and *Santa Helena*.[63] Unlike pepper and other spices, which belonged to the Portuguese crown's monopoly, the vast majority of uncut diamonds imported from Goa to Lisbon were the legitimate property of private merchants, many of whom were *conversos*, that is, descendants of those Iberian Jews forced to convert to Catholicism in the 1490s.[64] At the time of the disaster

60. AGS, *SEF*, K.1443, no. 105: Diego de Irarraga to Juan de Villale (Bordeaux, June 15, 1627). In another letter, Irarraga writes that Spanish officials are so despised by the people ("tan odiados del pueblo") that they can hardly leave their homes; AGS, *SEF*, 107: Irarraga to Juan de Villale (Bordeaux, June 20, 1627).

61. AGS, *SEF*, K.1443, no. 105: Irarraga to Juan de Villale (Bordeaux, June 15, 1627). Perhaps to downplay the duke's infringement, d'Épernon's biographer maintains that little more than 7,000 or 8,000 small rough diamonds of modest value were recovered and dutifully placed in the hands of the merchants administering the salvaged goods. Girard, *Histoire de la vie du duc d'Espernon*, 426; *The History of the Life of the Duke of Espernon*, 447.

62. James C. Boyajian, *Portuguese Trade in Asia under the Habsburgs, 1580–1640* (Baltimore: Johns Hopkins University Press, 1993), 136. The entire book is the most informative on the subject.

63. Blot and Lizé, *Le naufrage*, 53–57, 261 n. 3.

64. Only one diamond on board was a gift to the Spanish queen from the king of Bijapur: Blot and Lizé, *Le naufrage*, 19. In Boyajian's estimation, diamonds and other precious stones made up on average 14% of the declared value of the cargos returning from India on board Portuguese vessels from 1580 to 1640, and in 1630 "Lisbon's principal New Christian merchant families yet controlled about 80 percent of registered private cargo" (as opposed to the cargo that belonged to the royal monopoly); Boyajian, *Portuguese*

in the Gulf of Biscay, both the French and Spanish authorities had reasons to keep the involvement of New Christian traders and financiers under wraps while also protecting the interests of this group. Since 1551, the French crown had encouraged Iberian refugees to settle in Bordeaux, but only under the guise of "Portuguese merchants," that is, only as long as they renounced all traces of their Jewish identity, at least outwardly. For his part, Spain's Chief Minister, Count-Duke Olivares, was particularly eager to assuage Portuguese *conversos*. Shortly after the shipwreck, on January 31, 1627, he announced the bankruptcy of the state's coffers: he suspended payments to long-standing Genoese creditors of the crown and signed a loan of 2,104,000 ducats with Portuguese bankers.[65]

With the Spanish Inquisition lurking in the background, it is not surprising that the New Christians' ownership of the diamonds on board the sunken ships and their possible role in the recovery operations has left only an opaque paper trail. Unfortunately, private business records have not survived. Official documents, however, contain sparse mentions of a host of Iberian *conversos* from Bordeaux and Paris, including the "Portuguese" Diego da Costa and the Jewish diamond dealer and cutter Alphonse Lopez, a client of Richelieu, who acted as intermediaries in transmitting information and anticipating the sums needed for the ransoming of the merchandise.[66]

Trade, 44, 206. Jean-Yves Blot calls Portuguese New Christians "the most secret protagonists, and possibly the most powerful ones," of the 1627 naval disaster ("Postface," 184).

65. James C. Boyajian, *Portuguese Bankers at the Court of Spain, 1626–1650* (New Brunswick, NJ: Rutgers University Press, 1983), 205. In order to entice *conversos*, Olivares offered them several guarantees, including the assurance that the capital they lent to the crown would be shielded from the Inquisition; Boyajian, *Portuguese Trade*, 213. Soon after, however, the king and the Inquisition put strains on these guarantees.

66. AGS, *SEF*, K.1445, no. 57: Irarraga to his king (La Rochelle, June 10, 1628); AGS, *SEF*, K.1481, no. 74: Irarraga to his king (La Rochelle, July 29, 1628); ADG, C.3877, fols. 44v–45r; and ADG, C.3904, fols 55r-v, 57r-v, 116. The intermediation of "the Portuguese merchants who reside in Bordeaux" is also mentioned in a report of the Council of State to the Spanish king dated July 8, 1628: AGS, *SEF*, K.1434, no. 60. Lopez often claimed to be a Morisco, and as such he is represented in a letter sent by Jordan de Freytas to his king from Bordeaux on September 29, 1627: AGS, *SEF*, K.1435, no. 68; however, French documents identify him as Jewish. See Françoise Hildesheimer, "Une créature de Richelieu: Alphonse Lopez, le 'Seigneur Hebreo'" ("A Creature of Richelieu: Alphonse Lopez, the 'Jewish Sir'"), in *Les Juifs au regard de l'histoire: Mélanges en l'honneur de Bernhard Blumenkranz* (Jews in Historical Perspective: Studies in Honor of Bernard Blumenkranz) (Paris: Picard, 1985), 293–99; and Mercedes García-Arenal and Gerard Wiegers, *A Man of Three Worlds: Samuel Pallache, a Maroccan Jew in Catholic and Protestant Europe* (Baltimore: Johns Hopkins University Press, 2002), 116–19.

6. Unfinished Business

In 1627–28, the Franco-Spanish alliance was still strong, even if Richelieu had to nourish it by accommodating the Spanish demand for the restitution of all salvaged merchandise and artillery. All the while, d'Épernon's defiance prompted the cardinal to dig deeper into the intricacies of the *droit de bris et naufrage*. In January 1628, before his agents were able to reach a final deal in the southwest, he recruited a learned member of the Parisian republic of letters, Théodore Godefroy (1580–1649), to assemble all the existing doctrine and jurisprudence on the subject. After two years of intensive research, Godefroy delivered his report to the cardinal. It spanned a broad range of legal texts, from Ulpian to the customs of Brittany and Normandy, as well as the decrees issued by France and other European powers.[67] As Richelieu had demanded of him, Godefroy demonstrated that the rights over the wreckages recovered from the sea were "royal and completely inalienable" and "that it is an abuse to think that they can be patrimonial as some particular lords would like to pretend."[68] He accomplished the task with considerable skill, aided by the Parisian library collections and his ties to a network of men of letters that far exceeded those that Cleirac commanded. But of the two, it was the provincial lawyer who published his work on wreck (although Godefroy was considerably more prolific and respected as a published author).[69] Without any comparable incident at sea in the years to come, and with the opening of multiple military fronts, Godefroy's report was filed away together with any ambition to draft a code of commercial and maritime law.[70]

67. Theodore Godefroy's manuscript, "Du droit de naufrage et que c'est un droit royal," ("On the Law of Wreck, which is a Royal Right") is in the Archives Nationales, Paris, AB XIX, 3192, dossier 3. More papers by Godefroy are preserved in the library of the Institut de France. See also Bercé, "L'affaire des caraques échouées," 22 and especially Erik M. Thomson, "Commerce, Law and Erudite Culture: The Mechanics of Théodore Godefroy's Service to Cardinal Richelieu," *Journal of the History of Ideas* 68 (2007): 407–27.

68. I cite from the translation of Richelieu's words in ibid., 418.

69. Godefroy's younger brother, Jacques (1587–1652), a jurist of international stature who did not abandon the family's Calvinist persuasion and remained in his native Geneva, published a commentary on the law of wreck in Roman law that may be owing to Théodore's influence: Jacques Godefroy, *De imperio maris deque jure naufragii* (On the Sovereignty of the Sea and the Law of Wreck) (Geneva: Stamp. Ioannis Antonis & Samuelis de Tournes, 1637). Cleirac cites from it, although he does not appear to be aware of Théodore's unpublished work.

70. Another close aide of the cardinal and later Governor of New France, Jean de Lauson, urged Richelieu to implement a new code of commercial and maritime law. He held a manuscript copy of the Judgments of Oléron, which he regarded as an ideal blueprint for such

Less systematic than Godefroy's dossier and conceived independently from it, *Us et coustumes de la mer* surveyed essentially the same material and reached the same conclusions. In his commentary to article 26 of the Judgments of Olérons, Cleirac describes an ancient "iron age," before Roman and Byzantine codifications, when "cruel" and "inhuman" norms provided perverse incentives for coastal villagers to loot the victims of natural disasters.[71] Consistent with his regional patriotism, he hails the rulers of Guyenne: there, ancient norms were always practiced "in more civil and less cruel terms" than in Bretagne and, when ruling over Guyenne, King Henry III of England (r. 1216–1272) had already reformed them.[72] In a thorough rejection of the law of nations in favor of positive law (he spoke of "la cruauté de ce droit de Bris, comme d'un droict des Gens"), Cleirac praised those regulations that over time had curbed the "barbarism" of ancient times.[73] One hundred years later, Montesquieu repeated this view, referring to the ancient law of wreck as "senseless" (*insensé*) and praising the Romans for devising "humane" laws that "restrained in that regard the banditry of those who inhabited the coasts."[74] Both authors

code because it had the added advantage of being French. In spite of the material that he had accumulated on the subject and against Lauson's advice, in the end, Richelieu did not implement a new code of commercial and maritime law: Thomson, "Chancellor Oxenstierna, Cardinal Richelieu, and Commerce," 565–70. Instead, the cardinal took an easier route: he worked tirelessly to make sure that only friendly governors be appointed in the strategic provinces of coastal France: James, *The Navy and Government*, 72.

71. Cleirac, *UCM 1647*, 98; and *UCM 1661*, 94.

72. Cleirac, *UCM 1647*, 100–101; and *UCM 1661*, 96–97.

73. Cleirac, *UCM 1647*, 98; and *UCM 1661*, 94–95. On the "cruelty and unnatural" quality of the ancient law of wreck, see also Cleirac, *UCM 1647*, 122; and *UCM 1661*, 120. On the French positive law of wreck, see articles XV and XVI of the Jurisdiction of the Admiralty in *UCM 1647*, 438–42; and *UCM 1661*, 401–14. D'Épernon's biographer referred to the villagers who pillaged the ships that survived the 1627 tempest as "a barbarous and inhuman people": Girard, *The History of the Life of the Duke of Espernon*, 442; and *Histoire de la vie du duc d'Espernon*, 421.

74. Montesquieu (Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone, eds.), *The Spirit of the Laws* (Cambridge: Cambridge University Press, 1989), 386 (book 21, ch. 17). On the "barbarism" and "inhumanity" of ancient customs concerning ship wreckages, see also Valin's authoritative eighteenth-century commentary of the 1681 ordinance, *Nouveau commentaire*, 2:535. On the persistance of pillages by local populations in spite of laws seeking to prevent them, see also Pierrick Pourchasse, "Le naufrage, un événement conflictuel au XVIIIe siècle: L'exemple de l'Amirauté de Cornouaille (Shipwrecks, a Source of Conflict During the Eighteenth Century: The Example of the Admiralty of Cournouaille)," in *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* (A Frontier on the Move: Private and Public Law in Matters of Commerce and Navigation), eds. Albrecht Cordes and Serge Dauchy (München: R. Oldenbourg Verlag, 2013), 141–54.

rejected idealized views of the state of nature and praised royal authorities instead, against contemporary natural law theorists who resented any claims by the state over goods that nature alone had protected from the ravages of the sea.[75]

Although not commissioned by Richelieu and published five years after the latter's death, *Us et coustumes de la mer* sided unequivocally with the cardinal's positions.[76] Article 36 of the Judgments of Oléron maintained that if those who retrieved wreckages were recognized as indigent, they should be allowed to keep what they had recovered. This was, in Cleirac's words, a natural law ("droit de nature"), which over the centuries, the law of the coast ("droit de coste") had already altered significantly by expanding the rights of local lords. Now, in the wake of the 1627 disaster, Cleirac took stock of the edicts the Richelieu had issued revoking the rights of local lords and provincial admiralties in favor of the crown, even though he was all too aware of the pains that royal emissaries had gone to in order to defend the king's prerogatives against d'Épernon.[77] The first French author to edit a large number of medieval collections of maritime customs, Cleirac extolled Richelieu as "the great genius of France" and "the miracle of his century" for realizing that only new laws emanating from the king could counter rights considered as belonging to natural law.[78] What he failed to articulate, modern scholars cannot miss: the extent to which the law of wreck remained imbricated in local, national, and international political conflicts more than it provided a means of seamless resolution of those conflicts.

75. Cleirac's account echoes a certain ambivalence present in his main source, de la Thoisse, who defends the law of wreck as a royal prerogative but also condemns it as a "tyrannical, unreasonable, brutal, and cruel" right that defies "Christian charity" and "natural, mutual, and reciprocal obligations" among "the community of men": de la Thoisse, *Traité des droits royaux de bris et de brefs*, 58. De la Thoisse resolves this ambivalence by praising the 1543 decree and especially local norms issued by the rulers of Brittany. For example, the latter had "mitigated" this "cruelty" by offering neighboring powers to pay a tax in return for which the wrecked goods of any of their ships would not be "confiscated," even though Spain and England had refused the offer (ibid., 68–69). Uninterested in praising Brittany, Cleirac follows de la Thoisse only in commending the process of codification.

76. In 1656, Cleirac described *Us et coustumes de la mer* as a work compiled for Richelieu's benefit: *Usance du négoce*, preface, 7.

77. Cleirac reports in full the relevant decrees issued by the Council of State on December 13, 1629 and May 7, 1644; in the second edition, he adds one of March 4, 1654. Cleirac, *UCM 1647*, 126–33; and *UCM 1661*, 125–34. He also relays the challenges met by the royal emissaries (*UCM 1647*, 124; and *UCM 1661*, 122).

78. *UCM 1647*, 125–26; and *UCM 1661*, 124.

7. Conclusion

The coastal beaches along which the ocean returned the spoils of sunken cargoes were not only geographical boundaries between the land and the sea; they were often also political and jurisdictional frontiers. The norms that governed issues of ownership and salvage compensation had a similarly liminal quality, located as they were at the intersection of multiple sources of law and subjected as they were to political impulses that responded to contingent situations. The consequences of the sinking of the Portuguese carracks off the coast of Guyenne in 1627 bring these practical and theoretical dilemmas to the forefront. They thus expose crucial connections in the dual process of rationalization of territorial and international public law in the decades leading up to the Peace of Westphalia (1648), and invite us to dig deeper into a subject, the law of wreck, that, in spite of its obvious importance in the context of mounting European competition for the control over the sea, has received little attention.

The raging controversies between advocates of *mare liberum* and those of *mare clausum* exploited the ambiguity in Roman law and the glossators between definitions of the juridical status of the sea alternatively as *res communis omnium*, therefore belonging to everyone, and as *res publicae*, belonging to the state. The law of wreck was only a minor chapter in these controversies, in part because most wreckages occurred within territorial waters, whose legitimacy was rarely questioned; however, it still divided jurists along predictable lines. Natural law theorists saw it as an encroachment by rapacious fiscal rulers, whereas defenders of royal prerogatives heralded it as a pillar of a ruler's absolute power. But neither side offered systematic treatment of the subject during the seventeenth century. Grotius, who barely survived a shipwreck in the Baltic, simply denounced the injustice of those "civil laws" according to which "all shipwrecked Goods are confiscated."[79] His German follower Samuel von Pufendorf (1632–1694) barely expanded on the point when he decried that "there is a certain flavour of piracy about those civil laws which appropriate to

79. Grotius, *Rights of War and Peace*, 579 (book II, ch. 7). Already in 1612, the Italian jurist and émigré Alberico Gentili, an early theorist of the freedom of the sea, had condemned as "unjust" the French and English law of wreck, which permitted residents of coastal areas to confiscate goods that came ashore: Gentili (Thomas Erskine Holland, ed.), *De iure belli libri tres* (Three Books on the Law of War) (Oxford: Clarendon, 1877), 87 (book 1, ch. 19). In England, in the 1620s the crown sought to claim half of any recovered wreckage for itself: David D. Hebb, "Profiting from Misfortune: Corruption and the Admiralty under the Early Stuarts," in *Politics, Religion and Popularity: Early Stuart Essays in Honour of Conrad Russell*, eds. Thomas Cogswell, Richard Cust and Peter Lake (Cambridge: Cambridge University Press, 2002), 105–11.

the fiscus, or to those who live along the coast, the goods of shipwrecked men even after they have been recognized by their owners."[80] By contrast, according to Swedish legislation, the spoils of natural wreckages (*derelicta bona naufragis*) belonged to the *jus fisci* (the opposite of *jus populi* and here the royal treasury), and Johannes Loccenius, writing at the behest of the Swedish court, defended that prerogative.[81]

Polarized pronouncements of this sort were less of a defining feature of the debate in seventeenth-century France, where the law of wreck remained enmeshed in political and jurisdictional battles. In January 1627, Richelieu awoke to the existence of multiple municipal, regional, and international stakeholders with competing, and mostly legitimate, legal claims to France's coastal waters. The cardinal sought to exploit the potentially explosive consequences of this dramatic disaster at sea in order to strengthen the arm of the state, but by doing so, he put the weakness of his state on display. Legal and jurisdictional fragmentation was a salient trait of Old Regime France, where, as David Parker once noted, "absolutism was always in the making but never made."[82] Richelieu's institutional design had begun to erode the autonomy of old feudal hierarchies in the oversight of maritime affairs, but the cardinal was far from able to exercise the power of the crown in all French ports.[83] In addition to the resistance mounted by some local lords, lingering legal loopholes bounded the crown's ability to extend its sovereignty over the entirety of its territories and, by implication, its ability to settle disputes with foreign powers.

More importantly, formal legal titles need political backing. Cleirac had no doubts: Richelieu, as heir of the office of the admiral of France and as representative of the crown, extended his "amphibious power over both the

80. *The Elements of Universal Jurisprudence* (1660), book I, def. V, no. 28, in William Abbott Oldfather (trans.), revised, edited, and with an introduction by Thomas Behme, *Two Books of the Elements of Universal Jurisprudence* (Indianapolis: Liberty Fund, 2009), 83. The condemnation of the law of wreck is expanded in Jean Barbeyrac's rendering of Pufendorf's arguments in *Discourse on the Benefits Conferred by the Laws*: Samuel Pufendorf (trans. Andrew Tooke, eds. Ian Hunter, and David Saunders), *The Whole Duty of Man According to the Law of Nature* with Jean Barbeyrac (trans. David Saunders), *Two Discourses and a Commentary* (Indianapolis: Liberty Fund, 2003), 477–81.

81. Loccenius, *Sveciæ regni jus maritimum*, 214–39 (book I, ch. 7, no. 10).

82. David Parker, *The Making of French Absolutism* (London: E. Arnold, 1983), xvi.

83. Alan James, "Les amirautés à l'époque de Richelieu" ("The Admiralties at the Time of Richelieu"), in *Pouvoirs et littoraux du XVe au XXe siècle: Actes du colloque international de Lorient, 24, 25, 26 septembre 1998* (Powers and Littorals from the Fifteenth to the Twentieth Centuries: Proceedings of the International Conference at Lorient, 24–26 September 1998), eds. Gérard Le Bouëdec and François Chappé, with Christophe Cérino (Rennes: Presses universitaires de Rennes; Lorient: Université Bretagne Sud, 2000), 145–50.

sea and the land."[84] A verse from the Latin poet Statius was borrowed to adorn the allegory of the French crown on the frontispiece of the first edition of *Us et coustumes de la mer*: "potent over sea and land" (*undarum terraque potens*).[85] Cleirac's own familiarity with the events on the ground, however, should have cautioned him against excessive confidence in this triumphalist image. Even the grand 1681 *ordonnance de la marine* simply repeated the provisions outlined in 1543 with regard to the law of wreck. Such normative inertia accounts for why, in 1760, the *ordonnance*'s most authoritative commentator and a defender of royal prerogatives, René-Josué Valin, could still write that feudal lords routinely usurped the crown's rights in matters of shipwreck.[86]

In short, the law of wreck in Old Regime France remained very much part of those "uneven legal geographies" that Lauren Benton has shown to be a defining element in the construction of early modern European sovereignty.[87] In France, "uneven legal geographies" coexisted within the kingdom and also animated purposefully conflicting theoretical arguments marshaled by the jurists hired to defend the crown's interests in the Mediterranean, the English Channel, and the Atlantic. When confronted by rival powers on their northern and southern shores, French jurists at the service of the king devised a peculiar Gallican synthesis of Grotius and Bodin bent on defending the principle of free navigation in the name of protonational interests. Thus, in 1628–29, at the very same time as they faced the crisis along the shores of Guyenne, French authorities rebutted the fiscal demands made by the Savoy rulers of the port of Villafranca after a tempest forced into that harbor a group of French ships heading to Marseilles. Confronting their Savoy and English neighbors, French jurists affirmed the right to free transit over the sea.[88] In

84. Cleirac stressed that other European sovereigns did not share this power, which was already visible in France in sixteenth-century ordinances that ordered the inhabitants of the coastal regions up to half a league from the shore to obey to the admiral in times of war and peace: *UCM 1647*, 543; and *UCM 1661*, 547.

85. Statius (ed. and trans. D. R. Shackleton Bailey), *Thebaid*, Loeb Classical Library 207 (Harvard: Harvard University Press, 2004), 40–41.

86. *Ordonnance de la marine d'août 1681*, book IV, tit. 9, art. 26 and 27. Valin cites several fourteenth-century royal concessions granting the rights over wreckages to Spanish merchants in the southwest of France as evidence that the crown had then already acquired tenure over those rights, but he also laments the persistent usurpations of those rights by coastal lords in his own days (*Nouveau commentaire*, 2:579–81).

87. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), xii and passim.

88. On the rebuttal of English claims over the Channel, see Morisot, *Orbis maritimi*, 446–71 (book II, ch. 18–19). Cleirac (fn. 42) was an admirer of Morisot (*UCM 1647*, 3; and *UCM 1661*, 3). On the Villafranca episode and its jurisprudence, see Guillaume Calafat, "Une mer

dealing with the feudal lords of the Atlantic coast, by contrast, Richelieu reached for a royalist doctrine that was closer to Bodin than to Grotius.

Once again, it is clear that it would be not only difficult, but also futile, to seek to disentangle political from theoretical considerations in evaluating the early modern European governance of the sea. As the race among great powers intensified, maritime law became more and more central to the process of state building and the creation of an international legal order. Rather than a departure from a medieval past in which merchants governed their own trade, this process was an extension of prior forms of involvement by political entities. If the point still needs reiteration, Cleirac's *Us et coustumes de la mer* reveals to modern readers that norms regarding the recovery of wreckages in the Middle Ages were far from standardized and universal, and thus offers yet another basis on which to counter many of the misconceptions that undergird the notion of an autonomous, self-enforcing, and private-order *lex mercatoria*. Here it has been shown how the law of wreck came to the limelight less as an abstract conundrum than as the result of the need to reach a compromise in a shipwreck that involved very large fortunes and embroiled both domestic and foreign entities. Comparative studies might be able to illustrate how other sovereign authorities governed this matter, and what consequences the settlements of large-scale incidents had in the development of subsequent norms devised in the international arena.

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jalousée: Juridictions maritimes, ports francs et régulation du commerce en Méditerranée (A Sea of Jealousy: Maritime Jurisdictions, Free Ports, and the Regulation of Commerce in the Early Modern Mediterranean) (1590–1740)" (PhD diss., Université Paris I and Università di Pisa, 2013), 215–38.