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Florian Grisel

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Introduction

In recent decades, lawmakers have paid close attention to tight-knit communities of fishers who use techniques in accordance with ancestral traditions. These small-scale fisheries ("SSFs") are usually defined by the length of the boats (less than 12 or 24 meters) that operate in their waters.[1] Despite their small size, SSFs are deemed to employ about 90 percent of fishers globally and to generate about one-third of the total annual catch of fish.[2] One of the key reasons why these communities have attracted so much attention relates to the traditional techniques that they use and the reduced impact that these techniques have on the environment. For instance, the rate of disposal or waste of fish is about four percent in SSFs, as opposed to 20 to 65 percent for large trawlers in industrial fisheries.[3] For this reason, SSFs are usually deemed to be more selective and protective of fish stocks than large-scale fisheries.

The importance of SSFs and their relatively low impact on the environment have prompted international organizations and national governments to look more closely into their management. In particular, lawmakers have grown increasingly attentive to the specificities of SSFs and the ways in which their communities are often grounded in ancestral systems of local governance that complement and sometimes supersede legal systems.[4]

Global regulators regularly affirm the need to safeguard these local systems of governance. In its Guidelines on Combatting Illegal, Unreported and Unregulated Fishing (2018), for instance, the Organisation for Economic

FIGURE 10.1 General view of Bonne Brise beach, Marseille, France in 2015. Licensed under the Creative Commons Attribution-Share Alike 4.0 International.

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Co-operation and Development (OECD) recently noted the importance of SSFs and the need to provide adequate regimes for their management:

> It is estimated that about two-thirds of the world's catches destined for human consumption originate from small-scale fisheries … The size of these estimates suggests the need for adequate MCS (monitoring, control and surveillance) of these activities, so that these catches do not go unreported and CMMs (conservation and management measures) are respected.[5]

The OECD specifically recognizes the "need to tailor the law to allow traditional practices and special exemptions" in these fisheries:

> rules governing small-scale fisheries are often embedded in historical and cultural contexts and it is important to recognise the local specifics of small-scale fisheries. In some cases, countries have found they need to tailor the law to allow traditional practices and special exemptions, in order to assure compliance.[6]

The emphasis placed by global lawmakers on the specific practices and norms of SSFs also appears in the recent FAO's Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries:

> States, in accordance with their legislation, and all other parties should recognize, respect and protect all forms of legitimate tenure rights, taking into account, where appropriate, customary rights to aquatic resources and land and small-scale fishing areas enjoyed by small-scale fishing communities … Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law.[7]

Similarly, the Ministerial Declaration on a Regional Plan of Action for Small-Scale Fisheries in the Mediterranean and the Black Sea lays out a series of actions to be implemented by 2028.[8] Among these actions, state parties undertake to "reinforce the analysis of legislation and institutional mechanisms which ensure the recognition of relevant small-scale fisher organizations" and to "promote participative management systems, such as co-management bodies, where fisheries management measures and accompanying socio-economic programmes may be established and implemented."[9]

Behind the proliferation of policy recommendations lies a relative consensus concerning the need to recognize and preserve governance systems that are embedded in tight-knit communities with strong cultural traditions. The agenda of global lawmakers therefore seems to be based on the assumption that SSF

actors have better knowledge of their own needs and constraints, which makes them better equipped to govern their fisheries than external regulators. This recommendation is largely in line with the prescriptions of most scholars of SSFs. For instance, Berkes et al. argue that "[o]ne of the lessons in the early common property literature was that the legal recognition of communal sea tenure could lead to sustainable resource use."[10] Benkenstein contends that "one of the key developments in fisheries governance in recent decades has been a shift towards a decentralised approach to fisheries management, particularly in the small-scale sector."[11]

It is not entirely clear, however, how the prescriptions of lawmakers can be concretely applied in the local context of SSFs. How can the objective of "tailor[ing] the law to allow traditional practices" or of "recogniz[ing], respect[ing] and protect[ing] local norms and practices" be translated into practice? Regulators seem to view the law as a device that dominates normative frameworks. In this view, norms thrive when the law gives them sufficient space to operate but perish if the legal framework becomes too comprehensive or far-reaching. Regulators therefore approach the law as a device that dominates, protects, and can eventually empower normative frameworks.

The distinction between law and social norms is one that traverses the field of socio-legal studies and, more broadly, of sociology. It appears, for instance, in the writings of Emile Durkheim and Max Weber.[12] The core idea behind this distinction is the observation that legal systems do not exhaust the modes of regulation, and that social norms play an important role that cannot be brushed aside even in modern societies. Despite some important scholarship in the field of legal sociology,[13] the full exploration of this distinction has been carried out by law and economics scholars in the past decades.[14] However, one area that has not been fully explored concerns the linkage between law and social norms. It is generally well-accepted that both types of regulatory systems coexist in society; what is less understood are the ways in which these systems coexist, and whether their coexistence is peaceful or contentious. Most authors consider law and social norms as variables that evolve in reverse order.[15] According to this view, norms thrive when the law gives them sufficient space to operate but perish if the legal framework becomes too comprehensive or far-reaching.[16] This view therefore assumes that law and social norms work best in silos,[17] with the implied understanding that the law dominates the whole normative architecture.

Another area of uncertainty concerns the ways in which global lawmaking can impact local practices in SSFs. In a recent article, Jerneja Penca advocates for an approach which she calls "transnational localism,"[18] where she defines "transnational localism" as the "reinforcement of local-specific approaches (reflecting local ecologies, values, and socio-economic specificities) within a transnational structure that provides support and recognition."[19] Penca notes that "the growing demand for SSF recognition also speaks of the significance of territory in global governance" and that her approach "upset(s) the heavy-rooted assumption of the

de-territoriality of transnational law."[20] She finally argues that the management of SSFs is a perfect place for a new approach that requires "matching the demand for the local and transnational at the same time."[21] But is it possible to match the demands for the local and transnational at the same time? Does the transnational have any impact on the local practices of SSFs and, if so, of what kind?

This chapter does not provide a blanket answer to these questions. It seeks instead to highlight different facets of this questioning by examining the interface between local norms and transnational law through a specific case study.[22] This case study focuses on an SSF in the South of France (Marseille), where fishers have elected representatives in an organization called the *Prud'homie de pêche* (herein, "prud'homie") and have entrusted this organization with the task of regulating their fishery since the Middle Ages. In this chapter, I examine the interactions between the prud'homie's social norms and the legal rules enforced by state authorities. For this purpose, I will focus on the example of the territorial delimitation of the sea, a set of rules that gradually applied as a matter of international law before gaining traction under French law, and its impact on the fishery of Marseille.

The empirical evidence used in this chapter is drawn from three sets of data. One set of data is based on archival evidence compiled from a broad range of collections over the past six years. These collections include those of the prud'homie and the national archives, allowing cross-fertilization of data based on each perspective—local/normative, on the one hand, and (trans)national/legal, on the other hand—that are at the focus of this chapter. Another set of data is based on a series of interviews that I carried out, in person or on the phone, with various actors of the fishery. These actors are situated within and outside the community of fishers and act in different capacities (fishers, state officials, activists, community leaders, et cetera), thus multiplying the vantage points for my analysis. Last but not least, I have gleaned evidence of the regulatory systems at play in the community of fishers in Marseille from ethnographic research that I have conducted over the past few years. As part of this ethnographic research, I have spent time with the local fishers of Marseille, went fishing with some of them, and attended some of their community events (notably religious ceremonies).

Based on this evidence, I argue that the legal rules concerning the delimitation of the sea shaped the community of fishers in ways that constrained social norms and affected their system of communal governance. This analysis suggests that legal rules are not mere containers for social norms, but can deeply shape the identity of close-knit communities. My findings complement those of urban sociologists who highlight the social impact of physical spaces, not as mere containers, but also, and more critically, as shapers of communities.[23] My findings also offer a counterpoint to the dominant view according to which law and social norms interact in opposite directions. My data suggests that law and social norms are part of a whole, rather than separate elements that should be examined apart from each other. To this extent, this chapter contributes to

a better understanding of what Probyn and Westholm cast, respectively, as the "jurisdictional twists of ocean legalities"[24] and the "overlap of planning competence" in coastal waters.[25] My argument will proceed in four steps. I will first present my case study and methodology. Then, I will explore the ways in which the legal definition of a three-mile territorial zone catalyzed conflicts between various categories of fishers and framed their local identities. Next, I will show that the extension of this territorial zone to 12 miles in the late 20th century did not affect this frame, which persisted until recently. Finally, I will conclude the chapter by reflecting on the social/legal redux and the need to overcome the terms of this redux.

The SSF of Marseille and its System of Communal Governance

The fishery of Marseille is a prime example of an SSF. In 2015, more than 80 percent of its fishing vessels were less than 12 meters long, and more than 90 percent were less than 25 meters long.[26] The fishers of Marseille operate their boats over an area covering approximately 20 miles of coastline, extending from the calanques of Cassis on the east side to the coastal city of Carry-le-Rouet on the west side. Before the law defined the scope of territorial sea, the outer limits of the fishery were loosely fixed by the practices of local fishers. Like many other SSFs, the fishers of Marseille have developed a system of governance embedded in longstanding traditions. Every year since 1431, they have elected some of their peers to head a special organization called the prud'homie. The four members of the prud'homie, also called the prud'hommes, are elected annually.

The term prud'homie, which comes from the Latin *probi homines*, can be literally translated by "virtuous men." This translation does not fully reflect the fact that, in the medieval cities of Europe, these "virtuous men" offered guarantees of autonomy and fairness for their communities. The prud'homie has played a key role in the regulation of the fishery of Marseille by issuing rules, adjudicating disputes among fishers, and policing their behavior. Its rules are deeply influenced by the social norms of reciprocity and cooperation that the fishers of Marseille cherish. For instance, the prud'homie ensures that fishers do not concentrate their work in the same locations (called posts), that their nets and hooks are limited in size, and that they fish in different posts at various times of the day and year depending on their target species. These rules are also deeply influenced by the fishers' goal of preserving the resources of their fishery. The fishers of Marseille frequently refer to the need to limit the harmful effects of their activities on fish stocks. In addition, the prud'homie has been relatively free from the interference of public authorities in the regulation of its fishery. For instance, even today, the losing parties are not allowed to appeal the prud'homie's judgments before French courts.

The prud'homie therefore provides a case study of a system of private governance deeply embedded in an SSF that has coexisted with a particularly

centralized and rigid legal system over the centuries. The prud'homie presents another advantage: its archives are well preserved and supply the material needed for a longitudinal study of an SFF.[27] In particular, this material can be used to examine the relationship between the law and the norms of a small-scale fisher organization. In addition to having rich archival records, the prud'homie still exists today, making it one of the oldest systems of governance in SSFs. In order to extend my historical study of the prud'homie into the present and immediate past, I carried out a series of interviews and ethnographic work among the community of fishers in Marseille, in addition to exploring archival records.[28] Based on this empirical evidence, I retraced the history of this community and the challenges that it faced when regulating the fishery of Marseille.[29] In this chapter, I focus on a historical theme that runs through the last two centuries of the prud'homie's records, namely the impact of maritime delimitations on its regulatory system.

The Three-Mile Limit: A Catalyst for Conflicts between "Grand Art" and "Small Art" Fishers

A brief overview of the legal landscape is necessary to understand the ways in which the prud'homie progressively defined the boundaries of its jurisdiction. French law did not define the scope of its territorial sea until the late 19th century. The main text of French maritime law, the Great Maritime Ordinance of 1681, only defined the "sea shores" as a territory covered by the tide, but this reference was too broad to ground a clear jurisdictional rule.[30] The prud'homie took advantage of these legal uncertainties by defining the spatial scope of its own jurisdiction in broad terms. Its main jurisdictional criterion was, in fact, more personal than spatial, as the prud'homie deemed itself to have authority over all fishers who owned a boat in the port of Marseille, irrespective of how far they operated from the coast. In a codification of its rules in 1725, the prud'homie defined its jurisdiction as extending "*from the Cap de l'Aigle near La Ciotat to the Cap de la Couronne near Martigues*."[31] This definition did not set a water limit, but instead fixed the outer boundaries of the jurisdiction along a stretch of coast centered around Marseille. The same understanding of the prud'homie's territory can be found in a decision of the *Conseil d'Etat* (the French supreme court in the field of administrative law),[32] which refers to the fishers' right to fish from "Cap de l'Aigle to the place named La Couronne."[33] What mattered for the prud'homie was that its fishers were based in Marseille and that they operated within a territory bordered by two lines starting from Cap de l'Aigle and Cap de la Couronne, but without limitations running parallel to the coast.

As shown further below, the gradual definition of the territorial seas along the three-mile limit affected the prud'homie's understanding of its own jurisdiction. The recognition of the three-mile limit under French law was the result of a long and complex process whose roots lay in discussions and conflicts concerning maritime delimitation in the North Sea. In the 17th and 18th centuries,

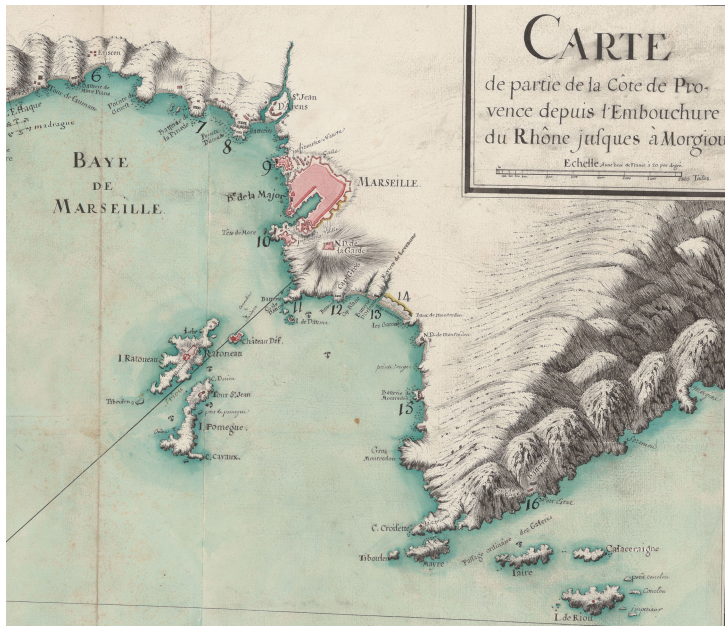

FIGURE 10.2 The Fishery of Marseille (circa 1750). Bibliothèque Nationale de France (BNF Gallica), *Carte de la Côte de Provence depuis l'Embouchure du Rhône jusques à Morgiou* (detail), c. 1750.

states such as Denmark and Norway made claims to jurisdiction over adjacent maritime areas, which resulted in negotiations with other states such as Britain, France, and Holland.[34] During these negotiations, the idea emerged that states, and their fishers, could claim jurisdiction over a three-mile zone around their coast. France recognized this rule for the first time in a treaty signed with Great Britain in 1839, which provided for an "exclusive right of fishery within the distance of three miles of low-water mark."[35] It took several more years for the rule of the three-mile limit to be concretely transposed into French law. In 1862, a decree allowed fishing within three nautical miles of the low-water mark and provided that the state could regulate fishing within this zone.[36] In 1888, a statute once again applied the same limit by prohibiting foreign vessels from fishing within three miles of the French coast.[37] Because France's territorial sea extended up to the three-mile limit, the prud'homie could no longer apply its broad rule of personal jurisdiction, but had to distinguish between fishers operating on either side of the three-mile limit. However, one should not overemphasize the speed with which the new regulatory regime produced its effects. For instance, in a leading textbook on Mediterranean fishing published more than 30 years after the adoption of the decree of 1862, the zoologist Paul Gourret did not refer to the three-mile limit.[38]

The recognition of the three-mile limit coincided with the emergence of a new fishing practice in early 18th-century Marseille. This fishing practice, called

"ox-fishing"[39] (*pêche au boeuf*), consisted of a large net dragged by two sail boats.[40] An ancestor of trawling, ox-fishing increased the dragging power of nets many times, and many feared that it would undermine the resources of the fishery of Marseille. For that reason, the prud'homie fined (albeit reluctantly) those fishers who practiced ox-fishing too close to the shores starting in the late 1830s.[41] The prud'homie's goal was to preserve areas that are usually endowed with rich fish stocks and are also traditional spawning grounds for the fish. It is also during this time (the late 1830s) that the prud'homie started distinguishing between two categories of fishers: the "small art" fishers (*petits arts*) who employed traditional techniques (typically, set nets) close to the shore on the one hand, and the "grand art" fishers (*grands arts*) who used dragnets further away from shore (at least in principle).

The distinction between "small art" and "grand art" fishing found an anchor in the three-mile limit. The historical record shows that, as the three-mile limit emerged as a rule of international law and then French law, the prud'homie tried to seclude ox-fishing, keeping it away from the shore. This might have just been a coincidence, but further developments indicate that the definition of "territorial sea" provided a reference for the prud'homie to regulate ox-fishing (and, later, trawling).

The changing legal landscape provides a useful background against which these developments can be tracked. The decree of 1862, which is the first instrument of French domestic law to refer to the three-mile limit, also defined the jurisdiction of the prud'homie in a restrictive manner. Before then, the jurisdiction of the prud'homie had been broadly defined as spreading over the "waters of

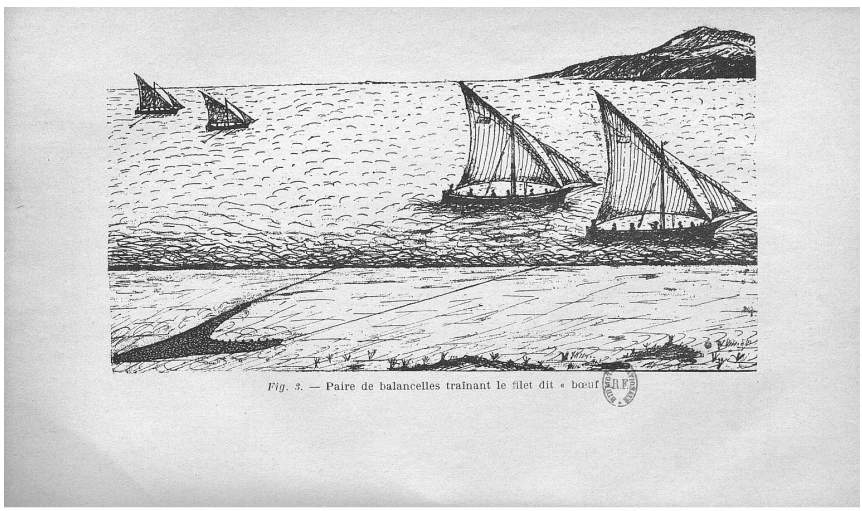

FIGURE 10.3 *La Pêche au Boeuf* (Ox-Fishing). Bibliothèque Nationale de France (BNF Gallica). V.F. Garau, *Traité de Pêche Maritime Pratique Illustré et des Industries Secondaires en Algérie* (Algiers: Imp. P. Crescenzo, 1909): 70.

Marseille"[42] or over "territorial waters" (*domaine public maritime*), without further detail.[43] The decree of 1862 filled this void by limiting the jurisdiction of the prud'homie to the seas extending until the three-mile limit.[44]

The Conseil d'Etat later confirmed the limitation of the prud'homie's jurisdiction to territorial waters. In an advisory opinion issued in 1921, the Conseil d'Etat held that the prud'homie could not require payment of membership fees from trawler fishers who operated beyond the three-mile limit, thus implying that the prud'homie lacked jurisdiction beyond this point.[45] In the words of the Conseil d'Etat, "the fishers operating in territorial waters shall participate in the prud'homies, [but] this obligation does not extend to trawler fishers who practice their trade beyond territorial waters."[46] The administrative state interpreted this advisory opinion as a confirmation that the prud'homie lacked jurisdiction over extra-territorial waters (beyond the three-mile limit). The prud'homie took some liberty in applying this jurisdictional rule. For instance, in a dispute that was decided in 1958, one fisher argued that the prud'homie lacked jurisdiction because the disputed events occurred more than three miles from shore.[47] However, the prud'homie brushed aside these jurisdictional objections, which it disregarded entirely, before ruling on the merits of the case.[48] Unsurprisingly, the administrative state was much stricter when it came to construing the prud'homie's jurisdiction. For instance, in 1965, two fishers threatened to bring a case against a trawler fisher before the prud'homie. The trawler fisher complained to the maritime administration, which stated that the prud'homie lacked jurisdiction over the dispute because the fishing incident occurred beyond the three-mile limit.[49]

The division of the community into two groups of fishers, one practicing traditional techniques within the three-mile limit in accordance with the prud'homie's rules (the "small art" fishers) and the other practicing higher-yield techniques with engine trawlers in contravention of the prud'homie's rules (the "grand art" fishers), generated major conflicts within the community and deeply shaped its identity. Even today, most fishers that I interviewed define themselves as "grand art" or "small art" fishers, a strong marker of identity within their community.[50] Most of the conflicts between "grand art" and "small art" fishers arose from the fact that, while they refused to abide by the rules of the prud'homie, "grand art" fishers (typically operating large and powerful trawlers) regularly trespassed on its territory. These increasingly powerful trawlers (200 horsepower on average in the 1960s, 400 horsepower on average in the 1980s, with some trawlers reaching more than 1,000 horsepower) operate within the three-mile limit in order to exploit the rich fish stocks that can be found in coastal areas, and occasionally destroy the smaller set nets used by "small art" fishers.

The fact that Italian immigrants operated most trawlers starting in the 1920s did not help, as ethno-national differences generated additional conflicts with local fishers.[51] In 1927, 200 fishers demonstrated in the streets of Marseille against trawler fishers who operated within the three-mile limit in contravention of the prud'homie's rules.[52] These conflicts persisted for a long time, peaking between the 1960s and the 1980s. In 1980, for instance, the

prud'homie sent a letter to the Préfet (the local representative of the central government) denouncing the behavior of trawler fishers who constantly trespassed on the three-mile zone.[53] One of my interviewees, a former member of the prud'homie, who defined himself as a "small art fisher," told me that trawlers did not hesitate to operate as close as one mile to the shore, and that the prud'homie had enormous difficulties in policing their behavior. To illustrate the intensity of the conflicts that arose between the prud'homie and trawler fishers, this former prud'homme told me of the misadventures of a fellow prud'homme who was attacked with an axe while trying to board a trawler operating within the three-mile limit. In a decision from 1973, the Court of Appeal of Montpellier captured the tensions between trawlers and "small art" fishers in a criminal case that was brought by the state against a fisher who trawled in the three-mile zone:

> the goal of the prohibition on trawling within three miles is to shelter from a potentially dangerous technique fish stocks that are located in coastal areas, which shall be essentially exploited with much more limited and restricted means than those of trawlers, that is the small art fishing that is allowed to operate in it … the concurrent presence within this coastal area [the three miles] of trawlers and small art fishers causes harm to the latter fishers, because there are set nets, on the one hand, and dragnets, on the other hand, two incompatible techniques."[54]

The transplantation of the three-mile limit in the fishery of Marseille illustrates how a legal rule cascades down from the global to the local level, and constrains a communal system based on social norms. In particular, the definition of the prud'homie's jurisdiction in terms of the area within the three-mile limit had unintended consequences for the community of fishers. This new territorial boundary redefined their community, significantly weakening its local system of governance and generating important social conflicts within its fishery. One would think that the extension of the territorial sea from three to 12 miles offshore could have solved these conflicts. However, these conflicts, often framed in terms of "grand arts" (trawling) versus "small arts" (traditional techniques), have left deep traces in the community of fishers that persist to this day.

From the Three-Mile Limit to the 12-Mile Limit: Lost in Boundaries

After World War II, several states wished to extend the limits of their territorial sea beyond three miles. This international movement in favor of a wider territorial zone led to the adoption by France of the 12-mile limit in 1971[55] and to the recognition of the same limit in the United Nations Convention on the Law of the Sea in 1982.[56] One could hypothesize that a wider territorial zone should have led to the extension of the prud'homie's jurisdiction and to the resolution of disputes between hostile groups of fishers that operated on either side of the three

miles. In fact, the prud'homie's jurisdiction did expand into the 12-mile territory. However, this expansion did not resolve the conflict between "small arts" and "grand arts." In addition, it did not affect the importance of the three-mile limit, which remained a reference point in the heated debates that frequently arose in the fishery. In 1977, for instance, the prud'homie wrote to the maritime administration to complain about the frequent incursions of trawlers within the three-mile zone and their frequent conflicts with "small art" fishers.[57] The prud'homie expressed its fear that "the situation will escalate" and that "young fishers, when facing ruin and the impossibility of working, will retaliate physically against other fishers and their boats."[58]

While in the 1920s trawlers tried to escape the jurisdiction of the prud'homie (and the prud'homie tried to assert its jurisdiction over these trawlers), the situation was reversed in the 1970s. The trawlers decided to increase their political power by gaining influence within the prud'homie. One of the key political elements at stake was the possibility for "grand art" fishers to participate in the election of the prud'homie and be elected as prud'hommes (even though they had not paid the prud'homie's fees since 1921). The position of "grand art" fishers was vindicated by the fact that the prud'homie could arguably exercise its powers beyond the three-mile limit (since the territorial sea extended to 12 miles).[59] This was potentially an opportunity for the prud'homie to regain control over trawler fishers, by integrating them within its jurisdiction. But the jurisdiction of the prud'homie was now deeply embedded in the three-mile zone, sometimes called the prud'homie's *waters* (*les eaux prud'homales*).[60] Conflicts between the two groups (the "small arts" gathered around the prud'homie, on the one hand, and the "grand arts" gathered around the trawlers, on the other) were so shrill that the prud'homie could not embrace the integration of trawlers within the community.

The prud'homie made the choice to reject the trawlers from its jurisdiction, in order to thwart what was seen as a putsch on their part. The community had excluded the trawlers and there was no turning back. During a meeting held at the prud'homie in 1980, the conflict was described by a representative of the trawler fishers as "open warfare" (*guerre ouverte*).[61] Shortly thereafter, the same representative sent a letter to the prud'homie requesting an authorization for trawler fishers to run in the prud'homie's elections. Unsurprisingly, his request was swiftly turned down. Although the "grand art" fishers have almost entirely disappeared from the fishery of Marseille,[62] the conflicts have persisted up until today, framing the identity of the community in terms that cannot be easily overcome.

Conclusion

The empirical study of the prud'homie suggests that the legal apparatus of French and international law, crystallized in the three-mile limit, had strong and unintended effects on the life of the fishery of Marseille. The prud'homie redefined itself along the three-mile limit, casting the groups operating on either side of this limit under a different name and identity. This limit, however, did not significantly affect the social practices of the SSF, as suggested for instance

by the constant efforts of trawler fishers to trespass on the three-mile zone. Once the legal definition of "territorial sea" was extended to 12 miles, the conflicts between "grand art" and "small art" fishers persisted in ways that the prud'homie could not easily overcome. The law had introduced a social rift that left a deep imprint on the community.

The social/legal redux on which most of the current policy prescriptions are based fails to capture the huge potential impact of the legal on the social (and vice versa). In other words, policy prescriptions that focus on the distinction between legal rules and social norms might disregard the regulatory challenges raised by the interface between both spheres. The example of the prud'homie and the difficulties raised by the definition of "territorial sea" shows the importance of the link between the legal and the social. Rules that emerge globally can affect local communities in ways that are often invisible, but no less concrete. This link is not unidirectional, however, but can also operate from the local to the global. In the case of the SSF of Marseille, the three-mile limit resulted in longstanding conflicts that redefined in-depth the identity of a community and the powers exercised by the prud'homie over this community. The extension of this limit to 12 miles did not reverse this process. The global rule setting universal limits on territorial seas deeply affected a system of social governance that had prevailed for centuries in the fishery of Marseille, but it could only do so to the extent that it redefined social practices in ways that would be accepted by local communities (as indicated by the contrasting examples of the three-mile and the 12-mile limits). Paradoxically, global policymakers now call for the preservation of a local specificity as shaped and reshaped through legal rules.

The fishers of Marseille have never ceased to be subject to the influence of legal rules when developing their social norms. The case study presented in this chapter therefore encourages one to consider the limits of the social norms/legal rules redux. It also pinpoints the artificial barrier, skillfully maintained by lawmakers, between the legal and the social. The goal of recognizing the autonomy of social norms through legal means might be premised on a fragile, albeit widespread, distinction between the legal and the social. Any efforts to perpetuate this distinction might prove elusive, as illustrated by the case study presented in this chapter. The analytical frame that seems to underlie the work of global policymakers needs to urgently incorporate tools that allow for a better understanding of the interface between social norms and legal rules.

Notes

1 See U. Rashid Sumaila, "Small-Scale Fisheries and Subsidies Disciplines: Definitions, Catches, Revenues, and Subsidies," International Centre for Trade and Sustainable Development, September 2017, https://www.greengrowthknowledge.org/sites/default/files/downloads/resource/Small-scale%20Fisheries%20and%20Subsidies%20Disciplines_Definitions%2C%20Catches%2C%20Revenues%2C%20and%20Subsidies.pdf. Other tests have been developed to define SSFs. See Hillary Smith and Xavier Basurto, "Defining Small-Scale Fisheries and Examining the Role of

Science in Shaping Perceptions of Who and What Counts: A Systematic Review," *Frontiers in Marine Science* 6, no. 236 (2019): 1–19.

2 The World Bank, "Hidden Harvest: The Global Contribution of the Capture Fisheries," Report No. 66469-GLB (May 2012), 22.

3 European Parliament, "Small-Scale Fisheries and the Zero Discard Target" (2015), 15, 23.

4 See, e.g., the example of the fishery of Alanya mentioned by Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), 18–21.

5 "Combatting Illegal, Unreported and Unregulated Fishing: Where Countries Stand and Where Efforts Should Concentrate in the Future," OECD, November 2018, https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/FI(2017)16/FINAL&docLanguage=En.

6 Ibid.

7 Food and Agriculture Organization of the United Nations, *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* Article 5.4, 2015.

8 Food and Agriculture Organization of the United Nations, *Ministerial Declaration on a Regional Plan of Action for Small-Scale Fisheries in the Mediterranean and the Black Sea*, https://www.fao.org/3/cb7838en/cb7838en.pdf.

9 Ibid., paras. 32–33.

10 Fikret Berkes et al., *Managing Small-Scale Fisheries: Alternative Directions and Methods* (International Development Research Centre, 2001), 177.

11 Alex Benkenstein, "Small-Scale Fisheries in a Modernising Economy: Opportunities and Challenges in Mozambique," *South African Institute of International Affairs* (2013): 1–53, 17. These policy recommendations are also consistent with the conclusions of the broader scholarship concerning the social benefits associated with governance based on social norms. See, e.g., Robert C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (Cambridge: Harvard University Press, 1992); Lisa Bernstein, "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," *Journal of Legal Studies* 21 (1992): 115–157; Edward P. Stringham, *Private Governance: Creating Order in Economic and Social Life* (Oxford: Oxford University Press, 2015); Barak D. Richman, *Stateless Commerce: The Diamond Network and the Persistence of Relational Exchange* (Cambridge: Harvard University Press, 2017).

12 Emile Durkheim, *The Division of Labor in Society* (Chicago: The Free Press of Glencoe, 1960), 211; Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press, 1978), 311, 312.

13 Stewart Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," *American Sociological Review* 28, no. 1 (1963): 55–67.

14 See, e.g., Robert C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (Cambridge: Harvard University Press, 1992); Lisa Bernstein, "Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," *Journal of Legal Studies* 21 (1992): 115; Edward P. Stringham, *Private Governance: Creating Order in Economic and Social Life* (Oxford: Oxford University Press, 2015); Barak D. Richman, *Stateless Commerce: The Diamond Network and the Persistence of Relational Exchange* (Cambridge: Harvard University Press, 2017); Eric A. Posner, *Law and Social Norms* (Cambridge: Harvard University Press, 2000).

15 See, e.g., Edward P. Stringham, *Private Governance: Creating Order in Economic and Social Life* (Oxford: Oxford University Press, 2015), 194; Bernstein, "Opting Out," 156–157.

16 This view is fully explored in Florian Grisel, *The Limits of Private Governance: Norms and Rules in a Mediterranean Fishery* (Oxford: Hart Publishing, 2021), Chapter 5.

17 Paradoxically, this view still underlies much socio-legal scholarship. See Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Cambridge: Polity

Press, 2010), 262: "One of the main research programmes of the sociology of law, according to which a relationship has to be established between the corpus of rules on the one hand and society on the other, does not withstand examination: law is already of the social, of association; alone it processes more of the social than the notion of society from which it is in no way distinct since it works on it, kneads it, arranges it, designates it, imputes it, makes it responsible, envelops it."

18 Jerneja Penca, "Transnational Localism: Empowerment through Standard Setting in Small-Scale Fisheries," *Transnational Environmental Law* 8, no. 1 (2019): 143–165.
19 Ibid.
20 Ibid., 161.
21 Ibid., 165.
22 Transnational law can be defined as "all law which regulates actions or events that transcend national frontiers." See Philip C. Jessup, *Transnational Law* (New Haven: Yale University Press, 1956), 2.
23 See, e.g., Karin Aguilar-San Juan, "Staying Vietnamese: Community and Place in Orange County and Boston," *City and Community* 4, no. 1 (2005): 37–65.
24 Probyn, this volume.
25 Westholm, this volume.
26 Comité Régional des Pêches Maritimes et des Elevages Marins de Provence-Alpes-Côte d'Azur, "Etat des Lieux et Caractérisation de la Pêche Maritime et des Élevages Marins en PACA," March 2015, 40.
27 The prud'homie donated its archives to the local administration (*Archives départementales des Bouches-du-Rhône*) in 1933. I have supplemented the review of these materials by consulting other sources, such as the national archives of France, the municipal archives of Marseille, the archives of the French Navy, private archives, et cetera.
28 I conducted more than 30 interviews with community stakeholders. Most of these interviews were open-ended. I also spent significant time with the fishers, attending events in their community and occasionally going fishing with some of them.
29 Florian Grisel, "Managing the Fishery Commons at Marseille: How a Medieval Institution Failed to Accommodate Change in an Age of Globalisation," *Fish and Fisheries* 20 (2019): 419–433; Florian Grisel, "How Migrations Affect Private Orders: Norms and Practices in the Fishery of Marseille," *Law & Society Review* 55 (2021): 177; Florian Grisel, *The Limits of Private Governance: Norms and Rules in a Mediterranean Fishery* (Oxford: Hart Publishing, 2021).
30 *Ordonnance de la Marine* (August 1681), Book 4, Title VII, Article 1.
31 *Description des Pesches, Loix et Ordonnances des Pescheurs de la Ville de Marseille*, Archives départementales 250E2, 2.
32 See Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Cambridge: Polity Press, 2009).
33 Decision of the *Conseil d'Etat*, dated November 30, 1622, MA HH370.
34 This process is retraced in H.S.K. Kent, "The Historical Origins of the Three-Mile Limit," *American Journal of International Law* 48, no. 4 (1954): 537–553. See also Claudio Baldoni, "Les Navires de Guerre Dans Les Eaux Territoriales Étrangères," *Recueil des Cours de l'Académie de Droit International de La Haye* 65 (1938): 185–303, 202 et seq.
35 Convention between Her Britannic Majesty and the King of the French, defining and regulating the limits of the Exclusive Right of the Oyster and other Fishery on the Coasts of Great Britain and of France (August 2, 1839), in *Commercial Tariffs and Regulations of the Several States of Europe and America together with the Commercial Treaties between England and Foreign Countries*, Part 4 (London: Charles Whiting, 1842), 51, 54 (Article 9).
36 See *Décret Impérial Sur la Pêche Côtière*, May 10, 1862.
37 See *Loi Ayant Pour Objet d'Interdire La Pêche aux Étrangers dans Les Eaux Territoriales de France et d'Algérie*, March 1, 1888.
38 See Paul Gourret, *Les Pêcheries et les Poissons de la Méditerranée (Provence)* (Paris: JB Baillière et Fils, 1894).

39 Ox-fishing already existed prior to the 1800s. It was strictly regulated throughout the 17th century, but really took off in the 1830s. See, e.g., Decision of the *Conseil du Roi*, September 25, 1725 (prohibiting ox fishing).
40 The term ox-fishing probably owes its name to the fact that two sailboats dragged a net that "plowed" the sea bottom like a pair of oxen in a field.
41 These events are evidenced in the archives of the prud'homie. See *Archives Départementales des Bouches-du-Rhône*, Archives départementales 250E126.
42 Decision of the *Conseil d'Etat*, dated May 16, 1738, Archives Chambre de Commerce et d'Industrie E/159.
43 Decree of November 19, 1859, Article 17.
44 Article 1(2) of the imperial decree implied that the prud'homie could not regulate any type of fishing beyond the three-mile limit.
45 Conseil d'Etat, opinion dated May 11, 1921, No. 178042.
46 Ibid.
47 *Antoine di Mase v. Gabriel Mir*, Decision of the prud'homie dated August 1, 1954, Private Archives.
48 Ibid.
49 Note for the *Administrateur Principal de Martigues*, dated December 1, 1965, Archives départementales 2331W287.
50 I have come across fishers who practiced "grand art" fishing for decades before turning to "small art" fishing when they grew older. This shift in their practice can be explained by age, but also by the fact that "grand art" fishing has become less profitable in recent decades.
51 See Florian Grisel, "How Migrations Affect Private Orders: Norms and Practices in the Fishery of Marseille," *Law & Society Review* 55, no. 1 (2021): 177–202.
52 Letter from the *Commissaire central de Marseille* to the *Préfet des Bouches-du-Rhône*, dated February 17, 1927, Archives départementales 4M2333.
53 Letter from the prud'homie to the *Préfet des Bouches-du-Rhône* (c. 1980), Archives départementales 2331W279.
54 Decision of the Court of Appeal of Montpellier, dated June 20, 1973, *Di Mario*, Archives départementales 2331W268.
55 *Loi no. 71-1060 du 24 Décembre 1971 relative à la délimitation des eaux territoriales Françaises*.
56 United Nations Convention on the Law of the Sea, Article 3.
57 Letter from the prud'homie to the *Directeur Général des Affaires Maritimes de Marseille*, undated (c. 1977), Archives départementales 2331W279.
58 Ibid.
59 See *Note de l'Administrateur en Chef*, dated September 18, 1974, Archives départementales 2331W272; Minutes of the *Comité local des pêches*, dated January 19, 1990), Private archives.
60 Letter from the *Préfet* to the *Directeur des Affaires Maritimes pour la Méditerranée*, dated January 25, 1980, Archives départementales 2331W279.
61 Minutes of the prud'homie, dated January 15, 1980, Private Archives.
62 The reasons why trawler fishers have almost entirely disappeared from Marseille are unclear. The EU's regulating of fishing techniques in the past 20 years is one reason. Another reason is that intensive fishing techniques, such as trawling, are less profitable than in the past due to the exhaustion of fish stocks.