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'THE SHIPWRECK OF THE TURKS': SOVEREIGNTY, BARBARISM AND CIVILIZATION IN THE LEGAL ORDER OF THE EIGHTEENTH-CENTURY MEDITERRANEAN

Shipwrecks were ubiquitous before the invention of steamboats in the early nineteenth century. Then, as now, the tragic loss of life and riches that they entailed inspired meditations on the fragility of the human condition and the rise and fall of empires, as evident in the literature of Golden Age Spain and Portugal, where collections of narratives of maritime disasters became a genre.¹ It is no coincidence that Daniel Defoe's *Robinson Crusoe*, published in 1719, cast his critique of 'progress' and 'civilization' in the form of a shipwreck narrative.² In recent years, a handful of historians have turned to shipwrecks as material and social crucibles of a coastal economy that rivalled piracy in its power to redefine notions of property, morality and legitimacy in medieval and early modern Europe.³ Most legal scholars, for their part, relegate the

¹ Luís de Camões, *Os Lusíadas* (Lisbon, 1572); Bernardo Gomes de Brito, *História tragico-marítima em que se escrevem chronologicamente os naufragios que tiverão as naos de Portugal, depois que se poz em exercicio a navegação da Índia* (Lisbon, 1735–6); C. R. Boxer (ed.), *The Tragic History of the Sea, 1589–1622: Narratives of the Shipwrecks of the Portuguese East Indiamen São Thomé (1589), Santo Alberto (1593), São João Baptista (1622), and the Journeys of the Survivors in South East Africa* (Cambridge, 1959). For a modern meditation, see Hans Blumenberg, *Shipwreck with Spectator: Paradigm of a Metaphor for Existence*, trans. Steven Rendall (Cambridge, MA, 1997).

² Defoe's *Crusoe* shares the motif of shipwreck with the other canonical eighteenth-century novel in English, Jonathan Swift's *Gulliver's Travels* (1726). See also Linda Colley, *Captives: Britain, Empire, and the World, 1600–1850* (New York, 2002), 1.

³ John G. Rule, 'Wrecking and Coastal Plunder', in Douglas Hay *et al.* (eds.), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York, 1975); Alain Cabantous, *Les côtes barbares: Pilleurs d'épaves et sociétés littorales en*

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subject to a footnote. This neglect is regrettable because, as we show, the legal, political and diplomatic conflicts engendered by shipwrecks lay bare some of the most contentious debates in the history of early modern European state-building and the creation of an international legal order.

Coastal shipwrecks in foreign territorial waters were deeply entangled with the law, in both its domestic and international dimensions. They tested the limits of a state's sovereignty and jurisdiction within its borders as well as the balance of power between sovereign states. They reveal to us the extent to which in the seventeenth and eighteenth centuries, the debate between 'free' and 'closed' seas did not exhaust the discursive and administrative practices linked to the reordering of maritime law. They also put to rest Carl Schmitt's misguided dichotomy between land and sea, if the point still needs to be hammered, and demonstrate the porosity between the legal systems governing the two.⁴ When they involved anyone who was not recognized as belonging to the Christian European community of people and nations (the so-called *res publica christiana*), shipwrecks also tested the legal and spatial boundaries of the said community. In short, large-scale shipwrecks, and those involving multiple sovereign entities in particular, have played a prominent role in the ordering processes that this volume seeks to interrogate.⁵

This article focuses on a specific case that assumed vast international proportions at the time: the shipwreck of a French vessel carrying on board 165 Muslim pilgrims along the southern shores of Sicily in

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France (1680–1830) (Paris, 1993); Tom Johnson, 'Medieval Law and Materiality: Shipwrecks, Finders, and Property on the Suffolk Coast, c.1380–1410; Medieval Law and Materiality', *American Historical Review*, cxx (2015); Julia Clancy-Smith, 'Spring Equinox in the Maghrib: Wrecks, People, and Things in the Sea', *International Journal of Middle East Studies*, xlviii (2016); Beverly Lemire, *Global Trade and the Transformation of Consumer Cultures: The Material World Remade, c. 1500–1820* (Cambridge, 2018), esp. 170–78; Claire Jowitt, 'Last Voyage of the Gloucester (1682): The Politics of a Royal Shipwreck', *English Historical Review*, cxxxvii (2022); David Cressy, *Shipwrecks and the Bounty of the Sea* (Oxford, 2022).

⁴ Carl Schmitt, *Land and Sea*, trans. Simona Draghici (Washington, DC, 1997). Among a vast literature, and on this particular point, see also Lauren Benton and Nathan Perl-Rosenthal, 'Afterword: Land-Sea Regimes in World History', in Lauren Benton and Nathan Perl-Rosenthal (eds.), *A World at Sea: Maritime Practices and Global History* (Philadelphia, 2020).

⁵ See the introduction to this volume by Renaud Morieux and Jeppe Mulich, 'Ordering the Oceans, Ordering the World: Law, Violence and European Empires'.

1716, during the interlude when the island was ruled by the Duchy of Savoy (1713–18).⁶ There are many more aspects to this event than the ones that we are able to explore here, including its economic, social, religious and military facets. In what follows we highlight the ways in which the dispute between Savoy and France that ensued contributes to our understanding of the formation of European absolutism and the law of nations in the eighteenth century.

Coastal areas were liminal spaces, both geographically and legally; as such, they became sites of intense contestation and testing grounds for competing assertions of jurisdictional prerogatives and sovereignty.⁷ Coastal regions were also inherently cultural frontiers, where the intermingling of people could soften or harden divisions. This article traces the shift toward a harsher meaning of 'barbarism' in eighteenth-century Europe and stresses the inseparable legal and cultural nature of this shift.

The time and place of the 1716 shipwreck are instructive. The Peace of Utrecht (1713–15), which put an end to the War of the Spanish Succession, is frequently regarded as a watershed moment in the history of international law, marking the transition from a law of nations imbued with supposedly universal moral principles (*ius gentium*) to a system of inter-state rules anchored on positive law and agreements between sovereign states (*ius publicum Europaeum*).⁸ The Peace of Utrecht is also generally presumed to have reached a remarkable consensus on controversial issues in maritime law, not least the status of shorelines, neutrality, the law of the flag and the law of wreck.⁹ In fact,

⁶ There exists no single narrative of this affair, which has left a voluminous paper trail in multiple archives. We will cite the most pertinent documents wherever relevant. For a short summary, see Guillaume Calafat, 'Les naufragés du *Hajj*', *L'Histoire*, 472 (2020).

⁷ On sovereignty as both an abstract principle and one grounded in place in the natural law theories of early modern European writers, see Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, NJ, 2011).

⁸ Among the earliest authors to articulate this transformation were Gabriel de Mably, *Le droit public de l'Europe fondé sur les traités conclus jusqu'en l'année 1740*, 2 vols. (The Hague, 1746); and Georg Friedrich von Martens, *Précis du droit des gens moderne de l'Europe, fondé sur les traités et l'usage* (Göttingen, 1789).

⁹ The Peace of Utrecht is the conventional term referring to a series of separate and bilateral treaties signed in Utrecht between 11 April 1713 and 6 Feb. 1715.

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as we see below, these rules were far from settled and shipwrecks continued to foment legal and philosophical battles.

Sicily in 1716 was the outpost of a quasi-landlocked European state, the duchy of Savoy, and its southern shores were part of a frontier zone between Christian Europe and Muslim North Africa.¹⁰ Compared to the Atlantic or the Indian Oceans, the Mediterranean figures only marginally in historical accounts of international law.¹¹ Its specificities nevertheless have noteworthy historical and analytical implications. Sicily was part of a composite monarchy which, like many other Mediterranean regions, was a patchwork of ancient, intricate and localized legal traditions and jurisdictional prerogatives impinging on rulers' property rights over salvaged goods. This fragmentation was all but exceptional. Prior to the French territorial conquest of Algeria in 1830, European composite empires did not conquer and rule any significant areas of the eastern and southern Mediterranean.¹² Rather, their relations with the kingdom of Morocco and the Ottoman Empire are best

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The main reference here is to the navigation treaty between France and Great Britain dated 11 April 1713. Jean Dumont, *Corps universel diplomatique du droit des gens*, 8 vols. (Amsterdam and The Hague, 1726–31), viii, 345–50, esp. 349–50 (art. XXXIII on the law of wreck). On the Peace of Utrecht more generally, among a vast literature, see Frederik Dhondt, 'The Law of Nations and Declarations of War after the Peace of Utrecht', *History of European Ideas*, xlii (2016); Lucien Bély, Guillaume Hanotin, and Géraud Poumarède (eds.), *La diplomatie-monde: Autour de la paix d'Utrecht* (Paris, 2019); Alfred H. A. Soons (ed.), *The 1713 Peace of Utrecht and its Enduring Effects* (Leiden, 2019).

¹⁰ The port cities of Nice and Villefranche granted the House of Savoy access to the sea. From 1713 to 1720, the duke of Savoy, Victor Amadeus II, also bore the title of king of Sicily. On the place of Sicily in the European physical and symbolic geography of holy war from the sixteenth century onwards, see Andrew W. Devereux, *The Other Side of Empire: Just War in the Mediterranean and the Rise of Early Modern Spain* (Ithaca, NY, 2020), esp. 29.

¹¹ For example, Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (Cambridge, 2021). On the relevance of the Mediterranean to European debates on the free and the closed sea during the seventeenth century, see Guillaume Calafat, *Une mer jalouse: Contribution à l'histoire de la souveraineté (Méditerranée, XVII^e siècle)* (Paris, 2019).

¹² The way we treat coastal shipwrecks echoes Lauren Benton's approach to rivers and other 'uneven legal geographies', but the Mediterranean location of our events leads us to explore how sovereignty was conceived, contested and enforced outside of an imperial framework. See Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010), xii and passim.

described as a mixture of contained conflict and intense cross-cultural interactions.

The early modern Mediterranean institution of slavery epitomizes this mixture: men, women and children were taken captive because of their religious affiliation, but captives also fed a ransom economy that often accelerated the signing of peace and commercial treaties between Christian and Muslim powers.¹³ During the eighteenth century, the state of persistent religious war that underpinned the captive economy acquired a secularized valence that, as the case under examination illustrates, had a twofold effect on European international law. On the one hand, the increasingly sharp boundary drawn by Eurocentrism between 'civilization' and 'barbarism' determined which people and states partook in the commonwealth to which the law of nations applied. On the other, a growing number of bilateral treaties signed between European and Ottoman polities expanded these boundaries and should be accounted for in the history of the transformation of natural law into European inter-state law.

I

THE SHIPWRECK OF THE 'TURKS': TESTS OF SOVEREIGNTY¹⁴

At the beginning of August 1716, a French vessel left the port of La Goulette or *Halq al-Wād*, in the Ottoman province of Tunis, heading to Alexandria, in Egypt. It transported 165 Muslim pilgrims (free men, women and children) travelling to Mecca with their rich possessions. For the Muslim passengers, the French flag had a double advantage: it protected them from attacks by Catholic corsairs and, following the sixteenth-century capitulations (*ahdnāme*) granted by the sultan to the French monarchy, it accorded them advantageous customs duties and tariffs in Ottoman ports. For the French, and especially for Provençal shipowners, the transport of Muslim pilgrims was a lucrative business.

¹³ Wolfgang Kaiser and Guillaume Calafat, 'The Economy of Ransoming in the Early Modern Mediterranean: A Form of Cross-Cultural Trade between Southern Europe and the Maghreb (Sixteenth to Eighteenth Centuries)', in Francesca Trivellato, Leor Halevi, and Cátia Antunes (eds.), *Religion and Trade: Cross-Cultural Exchanges in World History, 1000–1900* (New York, 2014); Daniel Hershenzon, *The Captive Sea: Slavery, Communication, and Commerce in Early Modern Spain and the Mediterranean* (Philadelphia, 2018).

¹⁴ The word 'Turk' in early modern Europe was a synonym of Muslim and as such was used liberally in reference to individuals and people who had no relation to Anatolia or the Turkish ethnicity. It also had almost invariably derogative connotations. For both reasons, we put it within quotation marks.

However, in this instance, as the French vessel had just passed Malta, it sprang a leak (subsequent investigations into the causes of the grounding revealed that the ship was old and poorly caulked). It was necessary to reach shore rapidly, but Malta was by no means a safe harbour. The Catholic religious-military order that ruled the island would have enslaved the Muslim passengers. Since France had signed a truce at Utrecht with Savoy, which ruled Sicily, the stricken ship turned in its direction, while the crew and passengers pumped out the water as best they could. On 17 August 1716, in calm weather, the dilapidated boat ran aground and came apart at Marza, a beach on the south-eastern tip of Sicily. The captain and his crew transferred the pilgrims and their goods (including jewels, silver and copper items and arms) to the ship's rowboat, on which they placed the French flag. Once on the beach, they erected a makeshift tent and hoisted the French flag again, hoping that this would give them immunity and protection.¹⁵

From that moment on, the shipwreck gave rise to an intricate international affair, which, as was often the case, involved multiple and overlapping authorities, each with competing jurisdictional claims and invoking competing legal traditions and precedents. Since neither the king of Sicily nor the duke of Savoy had signed a peace treaty with the Ottoman provinces of North Africa, the fate of the Algerian and Tunisian 'enemies' stranded on the island's shoreline under the banner of a 'friend' state was unclear. Nor was it clear who, in Sicily and beyond it, held jurisdiction over this case, that is, who literally had the right to speak the law (from the Latin etymology of *iurisdictionis*, a compound of *ius*, the law, and *dicere*, to speak).¹⁶

Sovereignty did not come fully formed: the assertion of jurisdictional privileges was one of its primary manifestations. We can therefore treat the 1716 shipwreck as a test of the sovereign power of all the state

¹⁵ Archivio di Stato, Turin (hereafter ASTo), *Sezione Corte, Paesi, Sicilia, II Inventario*, categoria 6, *Bastimenti per la Marina*, mazzo 2, 'Memoriale del capitano Guglielmo Aghiton', 4 Sept. 1716; Archives Nationales, Paris (hereafter ANP), *Marine*, B⁷ 30, *Commerce et consulats, Décisions*, fos. 189^r-192^v, letter from Consul Lépinard in Messina, 22 Sept. 1716.

¹⁶ Among medieval and early modern European jurists, the word *iurisdictionis* referred to a bundle of prerogatives, a combination of coercive power and the authority to judge. As such, it carried with it the notion of *imperium*, which was an integral concept in the theory and practice of sovereignty. Pietro Costa, *Iurisdictionis: Semantica del potere politico nella pubblicistica medievale, 1100-1433* (Milan, 2002), esp. 114-116.

entities claiming the survivors and their properties — a test of a state's capacity to enforce its rules and decisions both within its borders and in relation to rival states. The extent to which a variety of local bodies and foreign states claimed to hold personal and property rights over the survivors is evidence of the uncertain and contested nature of sovereignty and its political and legal fragmentation. This shipwreck, like others, allows us to examine the procedures by which sovereign monarchs still struggled to assert their authority over liminal spaces such as coastlines as late as the eighteenth century.¹⁷ It also highlights the uncertainty surrounding the definition of territorial waters even after the Peace of Utrecht, and the limits of the protection that a flag afforded a ship, its crew, passengers and cargo.

We begin by addressing the question of sovereignty and the proofs it required within the domestic sphere. In other words, we tell the story from the perspective of the duke of Savoy in Turin, for whom the 1716 shipwreck uncovered the myriad institutions that could legitimately put forth jurisdictional claims in his newly acquired Mediterranean island. We then turn to the demands made by French diplomats over the people and goods that survived the shipwreck as a test of Savoy's sovereignty and standing amidst the European balance of power. Because these diplomatic negotiations involved Muslim North African captives, they brought to the fore legal and moral arguments about the boundaries of 'civilization' and their application to the law of nations. For reasons of space, this article will only discuss the controversy between French and Savoyard lawyers and diplomats. The reactions and demands for justice on the part of the Muslim pilgrims and the Tunisian and Algerian rulers will be the subject of future publications.

¹⁷ Rose Melikan, 'Shippers, Salvors, and Sovereigns: Competing Interests in the Medieval Law of Shipwreck', *Journal of Legal History*, xi (1990); Pierrick Pourchasse, 'Le naufrage, un événement conflictuel au xviii^e siècle: L'exemple de l'Amirauté de Cornouaille', in Albrecht Cordes and Serge Dauchy (eds.), *Eine Grenze in Bewegung: Private und öffentliche Konfliktlösung im Handels- und Seerecht* (Munich, 2013); Francesca Trivellato, "'Amphibious Power": The Law of Wreck, Maritime Customs, and Sovereignty in Richelieu's France', *Law and History Review*, xxxiii (2015). See also, Jake Subryan Richards, 'Jurisdiction and Afro-Brazilian Legal Politics from Colonialism to Early Independence'; and Kalyani Ramnath, 'Adrift in the Andaman Sea: Law, Archipelagos and the Making of Maritime Sovereignty', both in this volume.

II

THE HOUSE OF SAVOY DISCOVERS SICILY: JURISDICTIONAL CONFLICTS

Within a few days of the shipwreck, the men and women stranded on the beach attracted the attention of numerous Sicilian magistrates and institutions, whose intervention exposed the layered coexistence of multiple jurisdictions on the island. Soldiers patrolling the coast surrounded the improvised camping ground and alerted the municipal magistrates (*Giurati*) of the nearby town of Noto of its presence. As prescribed for all vessels arriving from North Africa and the Levant, where the plague was endemic, the *Giurati* ordered a quarantine, and as part of the quarantine measures, a notary drew up an inventory of all the goods and passengers gathered under a tent on the beach. The stated purpose of the inventory was to ensure that nothing and no one escaped the attention of the health officials, but in principle, it could also be used to protect the property of the survivors from being looted by soldiers and villagers.¹⁸

Inevitably, there would be a delay of a few hours, if not a few days, between the time of the shipwreck and the arrival of the various officials assigned to manage the problems at stake. This time lag would become a bone of contention, with local lords and coastal inhabitants lamenting the inefficiency of remote sovereign authorities as a way of defending their right to intervene. The municipality of Noto soon informed its superiors, the Senate of Syracuse, which had jurisdiction over the area. The Senate took charge of organizing the quarantine of the stranded crew and passengers as well as the soldiers who had come into contact with them. They were all held in a local castle before being transported by four ships to Syracuse, where they were placed under

¹⁸ ASTo, *Sezione Corte, Paesi, Città e contado di Nizza, Porto di Villafranca*, mazzo 4, no. 24, 'Pareri, lettere e memorie riguardanti un bastimento francese comandato dal Capitano Aguiton, naufragato sulle costiere della Sicilia con numero di 165 Turchi pretesi dalla Francia perché muniti del suo padiglione, e passaporto del suo Grand Amiraglio' (hereafter 'Pareri, lettere e memorie'), 'Mémoire du consul de France à Messine, touchant un vaisseau français nommé le *Saint Pierre*... [1716]'. On the public health conditions in early modern Sicily, see Daniele Palermo, 'La Suprema deputazione generale di salute pubblica del Regno di Sicilia dall'emergenza alla stabilità', *Storia urbana*, cxlvii (2015); Daniele Palermo and Paolo Calcagno (eds.), *La quotidiana emergenza: I molteplici impieghi delle istituzioni sanitarie nel Mediterraneo moderno* (Palermo, 2017); Daniele Palermo, *I pericolosi miasmi: Gli interventi pubblici per la disciplina delle attività generatrici di esalazioni nel Regno di Sicilia (1743–1805)* (Palermo, 2018), 23–51.

a large tent outside the city so that the quarantine could be properly completed.¹⁹

News of the shipwreck reached Palermo within a week. There, the viceroy Annibale Maffei (1666–1735), a faithful servant of the duke of Savoy, heard numerous complaints about the handling of the events.²⁰ The Senate of Syracuse accused a number of soldiers of having stolen goods belonging to the 'Turkish' pilgrims, including valuable rifles, jewels and tiger skins.²¹ This was neither the first nor the last time that local magistrates confiscated, or at least tried to, some goods as part of disputes over the rescue of salvaged wrecks. As new actors became involved, further goods disappeared from the inventory. Sequestrations by lower magistrates represented a form of pragmatic resistance against the central sovereign power; they were often tolerated by the highest authorities as a necessary concession and a tacit recognition of their ultimate power over the fate of most goods.

The Senate of Syracuse threatened to confiscate the entire cargo if the French captain did not reimburse the costs associated with the quarantine. Until this issue was resolved, no member of the crew or passengers could leave the island. Meanwhile, the viceroy asked for a legal opinion (*consulta*) from the *Tribunale del Real Patrimonio* (Court of Royal Patrimony) in Palermo, an ancient and prestigious local magistrate responsible for administering matters pertaining to the king of Sicily's domains, in order to ascertain both the facts on the ground and

¹⁹ Archivio di Stato, Palermo (hereafter ASPa), *Tribunale del Real Patrimonio*, II serie, *Consulta* (hereafter *Consulta*), 45, fos. 11–14, 29 Aug. 1716; ANP, *Affaires Étrangères* B¹ 848, Correspondance consulaire, Messine, fos. 75^{r-v}, dispatch from the consul Lépinard, 13 Oct. 1716.

²⁰ On Annibale Maffei and the Savoy rule of Sicily after Utrecht, see Geoffrey Symcox, *Victor Amadeus II: Absolutism in the Savoyard State, 1675–1730* (Berkeley, 1983), 171–81; Simone Candela, *I piemontesi in Sicilia, 1713–1718* (Caltanissetta, 1996), 97–109; Alberico Lo Faso di Serradifalco, 'Piemontesi in Sicilia: La lunga marcia del Conte Maffei', *Studi Piemontesi*, xxviii (1999).

²¹ On the precious goods that Muslim pilgrims carried with them, see Gilles Veinstein, 'Les pèlerins de La Mecque à travers quelques inventaires après décès ottomans (XVII^e–XVIII^e siècles)', *Revue des mondes musulmans et de la Méditerranée*, xxxi (1981); Colette Establet and Jean-Paul Pascual, *Ultime voyage pour la Mecque: Les inventaires après décès de pèlerins morts à Damas vers 1700* (Damascus, 1998), 84–99; Venetia Porter, 'Gifts, Souvenirs, and the Hajj', in Luitgard Mols and Marjo Buitelaar (eds.), *Hajj: Global Interactions through Pilgrimage* (Leiden, 2015).

which privileges and obligations pertained to the Senate, the town of Noto and the soldiers who patrolled the shoreline.²²

The time needed to gather accurate information clashed with the urgency of preventing the spread of the plague. The threat to public health is not a minor detail in the story and sets the Mediterranean apart from the Atlantic. A ruler's duty to ensure the health of their subjects was, in the words of the judges of Palermo, 'a jealously guarded and important matter'.²³ Public health concerns were an attribute of sovereignty, a means for royal authorities to legitimize their rule over the shoreline and an ordinary instrument of power throughout the early modern Mediterranean. Sanitary control and political control, as Michel Foucault insisted, went hand in hand as part of the expansion of state surveillance over individuals and peripheral institutions.²⁴

Who owned the coastline? Ancient Roman law did not provide a conclusive answer. Marcianus and Ulpianus considered coastlines, like the sea and the air, to be a common good (*res communis*).²⁵ Celsus and Pomponius, however, declared that shores belonged to the Roman people, could be submitted to rules and required obedience to public authorities.²⁶ Most medieval and early modern commentators espoused the latter interpretation, which allowed for a coastline to be considered a public good (*res publica*) and, as such, part of the public domain (*dominium publicum*) that fell under the king's jurisdiction and

²² ASPa, *Consulte*, 45, fos. 11–14, 29 Aug. 1716, fos. 20^v–22^v, 15 Sept. 1716. On the *Tribunale del Real Patrimonio*, see Candela, *I piemontesi in Sicilia*, 114–117; Adelaide Baviera Albanese, *Diritto pubblico e istituzioni amministrative in Sicilia: Le fonti* (Rome, 1974), 79–80; Adelaide Baviera Albanese, 'L'istituzione dell'ufficio di conservatore del Real patrimonio e gli organi finanziari del Regno di Sicilia nel secolo XV (Contributo alla storia delle magistrature siciliane)', *Circolo giuridico Luigi Sampolo*, xxix (1958); Romualdo Giuffrida, 'L'archivio del tribunale del Real patrimonio e la sua funzione di archivio centrale del Regno di Sicilia alla fine del sec. XVIII', *Archivio storico italiano*, viii (1956).

²³ ASPa, *Consulte*, 45, fos. 11^v and 13^v, 29 Aug. 1716.

²⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, 1977), 195–8.

²⁵ *Dig.* 1, 8, 2, 1 (Marcianus); *Dig.* 47, 10, 13, 7 (Ulpianus).

²⁶ *Dig.* 43, 8, 3 (Celsus); *Dig.* 41, 1, 50 (Pomponius). See Percy Thomas Fenn, 'Origins of the Theory of Territorial Waters', *American Journal of International Law*, xx (1926); Jonathan R. Ziskind, 'The International Legal Status of the Sea in Antiquity', *Acta Orientalia*, xxxv (1973); Nicole Charbonnel and Marcel Morabito, 'Les rivages de la mer: droit romain et glossateurs', *Revue historique de droit français et étranger*, lxxv (1987).

sovereignty (*imperium*). In line with this interpretation, by the seventeenth century, sovereignty over territorial waters was widely accepted by jurists and legal theorists, even by champions of the 'free sea' such as Hugo Grotius and Cornelius van Bynkershoek, who commented on Celsus and insisted on the distinction between seashores (*litora*), which were susceptible to appropriation, and the sea (*mare*), which was everyone's property.²⁷

This consensus was an important step towards the spatial territorialization of sovereignty. The Court of Royal Patrimony, which had authority over public domain properties, public health and taxation, did not doubt that the king of Sicily had full sovereignty over the shores, if only for hygienic and fiscal reasons. All inferior magistrates (including the health officials in Syracuse, local feudal lords and coast-guards) had to obey the viceroy. None of them had the power to confiscate objects stranded on a shore, as some soldiers did.²⁸ Only two years after annexing Sicily as a result of the Peace of Utrecht, the duke of Savoy was thus able to strengthen his authority and assert his sovereignty over the island in response to challenges from local actors. By evoking and enforcing the rights of a sovereign over the coasts, the new ruler passed his first test of sovereignty.

III

SICILY AND THE LAW OF WRECK: PROTECTION AND LEGAL PLUNDER

A second and more challenging test lay ahead: could the duke legitimately claim his rights over all the people and property stranded in his territories? This question concerned the so-called law of wreck, which entitled a sovereign to some or all of the assets recovered along the coast as a result of a shipwreck in preference to the traditional rights granted to local lords and coastal populations. In the seventeenth and eighteenth centuries, the progressive expansion of this entitlement as part of the assertion of power by central authorities pitted theorists of natural law against theorists of absolutism.

Theorists of natural law were unanimous in condemning the law of wreck as a form of arbitrary confiscation, so much so that they often

²⁷ Hugo Grotius, *The Rights of War and Peace*, ed. with an introduction by Richard Tuck, 3 vols. (Indianapolis, 2005), 462–3 (II.III.IX.2); Cornelius van Bynkershoek, *De dominio maris dissertatio [second, 1744 ed.]*, with an English trans. by Ralph Van Deman Magoffin (New York, 1923), 99–105 (410–15).

²⁸ ASPa, *Consulte*, 45, fos. 12–14, 29 Aug. 1716.

compared it to the *ius albinatus* (or *droit d'aubaine*), by which a sovereign came into possession of the estate of any foreigner who died without legitimate heirs in their territory.²⁹ They also took it to be a measure of a society's degree of barbarism or civilization — a theme to which we shall return. In his *De iure belli ac pacis*, Grotius denounced the law of wreck and the *ius albinatus* as unjust laws permitting the looting of foreigners' goods.³⁰ For Samuel Pufendorf, 'the law of wreck had a certain flavour of piracy'.³¹ By the eighteenth century, this 'barbarian' law was considered by most to be contrary to the laws of humanity. Montesquieu wrote that the law of wreck was 'senseless' and belonged to a time when 'men thought that, as foreigners were not united with them by any communication of the civil right, they did not owe them, on the one hand, justice of any sort, or, on the other, pity of any sort'.³² Chevalier Louis de Jaucourt in Diderot and d'Alembert's *Encyclopédie* concurred.³³

By contrast, theorists of absolutism, beginning with Jean Bodin, included the law of wreck among the prerogatives of the sovereign — a position for which Grotius explicitly rebuked him.³⁴ In December 1629, following a particularly valuable and contentious shipwreck in

²⁹ For a historiographical debate about the role of the *ius albinatus* in early modern Europe, see Simona Cerutti, 'À qui appartiennent les biens qui n'appartiennent à personne? Citoyenneté et droit d'aubaine à l'époque moderne', *Annales: Histoire, Sciences Sociales*, lxii (2007); Peter Sahlins, 'Sur la citoyenneté et le droit d'aubaine à l'époque moderne: Réponse à Simona Cerutti', *Annales: Histoire, Sciences Sociales*, lxiii (2008); Simona Cerutti and Isabelle Grangaud, 'Sources and Contextualizations: Comparing Eighteenth-Century North African and Western European Institutions', *Comparative Studies in Society and History*, lix (2017).

³⁰ Grotius, *The Rights of War and Peace*, 578–9 (II.VII.I).

³¹ Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence* [1660], ed. Thomas Behme (Indianapolis, 2009), 83 (I.5.28).

³² Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws*, trans. and ed. Anne M. Cohler, Basia Carolyn Miller and Hardol Samuel Stone (Cambridge, 1789), 386 (XXI.17).

³³ Louis chevalier de Jaucourt, 'Naufrage, Droit de', in Denis Diderot and Jean le Rond d'Alembert (eds.), *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, xi, 50–51. University of Chicago, ARTFL Encyclopédie Project (Autumn 2017 edition).

³⁴ Jean Bodin, *The six bookes of a Common-weale, out of the French and Latine copies done into English*, trans. Richard Knolles (London, 1606), 179 (I.10); Grotius, *The Rights of War and Peace*, 580n5 (II.VII.I): 'I cannot imagine how it came into Bodin's Head to defend such a Practice'.

the south-western Atlantic shores of France, the Council of State issued a decree strengthening the French monarch's power in this realm.³⁵ In theory, the pertinence of the law of wreck to the sovereign responded to the need to offer 'protection' and 'safeguard' to shipwrecks' survivors against the pillaging committed by locals and included the possibility of returning the salvaged goods to their rightful owners once they had been identified. In practice, the law of wreck was part of the expansion of the royal domain in the form of control exerted over the coastline.³⁶ After mentioning a few opposing arguments to the law of wreck, the French jurist Cardin Le Bret, an epigone of Bodin and the author of a 1632 influential treatise on sovereignty, explained that only the monarch could guarantee real protection for people and property stranded on the shores and dismissed customary norms that attributed this prerogative to coastal lords and provincial magistracies.³⁷

The law of wreck rendered the effectiveness of royal rights and powers over shores visible and contributed to a broader redefinition of a sovereign's eminent domain. In an authoritative commentary of the 1681 French royal ordinance on maritime law, the jurist and admiralty judge René-Josué Valin wrote:

The domain of the sea, which serves as a boundary to the coasts of a State, a domain which, according to the first principles of law, belongs to the community, is essentially vested in the sovereign as uniting in his person all the rights and interests of the community, by virtue of the public power which resides in him alone.... Now, if the domain of the sea belongs to him, the shore of the sea also belongs to him; and by another equally necessary corollary, all that is found in the waters or all that is drawn from the bottom of the sea and all that the sea throws up on the shore belong to him in the same way, in the absence of any claim on the part of the owners of these things.³⁸

³⁵ The decree is reproduced in Estienne Cleirac, *Us et coutumes de la mer* (Bordeaux, 1647), 126–8. Articles 447 and 451 of the Code Marillac had already curbed local lords' claims over wreckages but, signed into law in Paris in Jan. 1629, this comprehensive royal ordinance was not ratified uniformly across the kingdom: Athanase-Jean-Léger Jourdan *et al.* (eds.), *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, 29 vols. (Paris, 1821–1833), xvi, 336–9. See Trivellato, "'Amphibious Power'", 923.

³⁶ Cabantous, *Les côtes barbares*, 125–40.

³⁷ Cardin Le Bret, *De la souveraineté* (Paris, 1632), 272–6.

³⁸ René-Josué Valin, *Nouveau commentaire sur l'ordonnance de la marine, du mois d'août 1681*, 2 vols. (La Rochelle, 1760), ii, 578 (IV.9.26), also cited in Cabantous, *Les côtes barbares*, 125.

In short, the conspicuous goods washed ashore by a shipwreck raised questions about the juridical status of vacant properties (goods that belonged to no one or that were no longer attached to their original owners) and the procedures for transferring property rights. This uncertainty was compounded when a foreign state made legitimate claims to the recovered people and goods. Coastal villagers, but also well-off urban dwellers and feudal lords, had the habit of plundering wares stranded on nearby beaches. A ruler's ability to curb this habit could be as much an instrument of foreign policy as a measure of their sovereignty at home.

IV

THE HOUSE OF SAVOY DISCOVERS THE MEDITERRANEAN: THE LIMITS OF THE FRENCH FLAG

It was not enough for the king of Sicily and his viceroy to have the Palermo tribunal confirm their rights over all the subordinate authorities and the local population. Now they had to face the demands of the French consul in Messina, who asked for the release of the 'Turks' at the end of their quarantine, so that they could continue their voyage to Alexandria aboard another vessel.³⁹ This request raised two thorny questions: did the flag of a friendly sovereign continue to protect a ship after it ended up involuntarily in a foreign land? And, if so, did this protection extend to passengers who were considered enemies because they were religious infidels? The economic and political stakes in this controversy were high for both Savoy and France and a lot hinged on the answers to these questions.

Once again, the Court of Royal Patrimony was tasked with offering its legal advice. The Palermo jurists recognized the friendship between the kings of France and Sicily, but rejected the French claims on the basis of various legal sources: the *ius commune*, Sicily's own laws (*iura propria*), precedents, treaties, customary uses and standard practices. They acknowledged the seriousness of the matter ('la materia è grave') in light of the friendship between the two 'crowns and nations'.⁴⁰ But they enumerated a plethora of legal arguments that Piedmontese diplomats could marshal effectively against their French counterparts in Turin and Paris. The decision on how to proceed was left to the king of Sicily: his complete dominion over the survivors allowed and required him to decide on their fate.

³⁹ ANP, *Affaires Étrangères*, B¹ 848, CC, *Messine*, fos. 56^r-57^r, 6 Sept. 1716.

⁴⁰ ASPa, *Consulte*, 45, fo. 49.

This time, the test of sovereignty had both a domestic and an international dimension. Unlike France, the duchy of Savoy, which was new to Mediterranean warfare and diplomacy, had not signed a peace treaty with any of the Ottoman provinces of North Africa (Algiers, Tunis and Tripoli). As a result, Sicily was in a state of latent war with the Ottoman Empire and could maintain that the Muslim passengers of the French ship stranded on its shores were 'enemies of our King and of our Kingdom of Sicily'.⁴¹ In addition, the duke of Savoy continued to demand the payment of a maritime toll from all ships, most of which were Genoese and French, that sailed by the coastal town of Nice ('the right of Villafranca') and used the revenues of this duty to finance his hostilities against the 'Turks'.⁴² At the same time, the duke hoped that the acquisition of Sicily would deliver him an increasing share in Mediterranean trade. With this goal in mind, the Piedmontese may have thought of the Muslim pilgrims as a bargaining chip in any negotiations for the release of their own captives in Sicily and North Africa, and possibly even for a peace treaty with Algiers and Tunis — a prospect that was highly undesirable for the French, who wished to preserve their commercial and political pre-eminence in North Africa by hampering their European rivals' activities in the region.⁴³

France derived considerable income from the freight of its cargo and transport ships on the North African coast.⁴⁴ This meant that French officials in North Africa were under pressure from the authorities in Tunis and Algiers to ensure the safe return of the 'Turks' who had

⁴¹ ASPa, *Consulte*, 45, fo. 47^v, 12 Oct. 1716. ASTo, *Paesi, Sicilia, II Inventario, Categoria 10*, Lettere originali, 3, letters from Maffei to the king of Sicily, 9 Jan. 1717, 15 Jan. 1717. The 'Turks' were considered as 'good prizes'. On prize law and jurisdiction, see Nathan Perl-Rosental, 'An Interpolity Legal Regime in the Eighteenth Century: Procedural Law of Prize'; and Jeppe Mulich, 'Prize Court Politics and Regional Ordering in the Caribbean', both in this volume.

⁴² ANP, *Marine*, B³, 'Correspondance du Levant — droit de Villefranche'; see Calafat, *Mer jalousée*, 192–226.

⁴³ ASTo, 'Pareri, lettere e memorie', 'Extrait du mémoire remis par monsieur le marquis de Prye, 10 March 1717' (hereafter 'Extrait'), fo. 5.

⁴⁴ Daniel Panzac, *La caravane maritime: Marins européens et marchands ottomans en Méditerranée, 1680–1830* (Paris, 2004).

sailed under the protection of the French flag.⁴⁵ A veritable paper war ensued, with jurists, administrators and diplomatic representatives in Palermo and Turin responding in writing to every request and assertion made by French officials. The latter first attempted to obtain the release of the Muslim prisoners in the name of a bilateral agreement concerning ship visits, which prohibited Savoy customs officials and port authorities from 'visiting' French vessels to inspect goods aboard ships moored in Sicilian ports. The Savoyard and Sicilian jurists recognized this privilege but denied that it applied to wrecked ships or lifeboats.⁴⁶ Drawing a distinction between land and sea, they claimed that legal extraterritoriality could exist on the deck and in the hold of a ship, but had no place on dry land. In their view, the French flag lost its protective mantle once the 'enemy goods' landed on 'Sicilian soil'. Only the French crew could be released.⁴⁷

Once again, the king of Sicily was served with proof of his sovereignty, this time as a rebuttal to the claims of a mighty European monarch. He emphasized the legitimacy of the Muslims' capture and believed that they could only be released by the special grace of the sovereign.⁴⁸ However, he could not risk alienating France completely at a time when Spain was trying to regain a foothold in Italy after the territorial losses in the peninsula it had incurred at Utrecht. He

⁴⁵ As late as 1720, a most able French negotiator, Denis Dusault, struggled to renew his country's treaty with Tunisia, which threatened to dissolve it if the survivors of the Sicilian shipwreck did not make it home safely: ANP, *Marine B*⁷, 'Lettres reçues', fos. 32–5, letter from the dey of Algiers Mehmed Pacha, June 1720. On Dusault's mission in North Africa, see François Comelin *et al.*, *Voyage pour la rédemption des captifs aux royaumes d'Alger et de Tunis fait en 1720* (Paris, 1721).

⁴⁶ Archives du Ministère des Affaires Étrangères et Européennes, La Courneuve (hereafter AMAEE), *Correspondance politique, Sardaigne*, 128, fos. 28^r–30^v, 'Mémoire sur la visite et procédure que le Consul de France à Messine doit faire à bord des bâtiments français'; *ibid.*, 129, fos. 48^r–50^v, 'Mémoire pour servir de réplique à la réponse que le Roi de Sicile a fait faire à monsieur de Prye sur la représentation qu'il a faite touchant la procédure à laquelle le consul de France en Sicile doit assister lorsqu'il s'agit de contrebande que l'on imputera aux français'. See also ANP, *Affaires Étrangères*, B^{III} 333, *Traité et analyses de traités de paix*, 'Mémoire sur l'exemption de la visite pour tous les bâtiments français dans les ports d'Espagne'.

⁴⁷ ASPa, *Consulte*, 45, fos. 47^r–49^r, 12 Oct. 1716. Note that in support of their opinion, the Palermo jurists also called on testimonies of Maltese captains concerning the existing practices and customs (*prattica marinaresca*).

⁴⁸ ASTo, *Sezione Corte, Paesi*, Città e contado di Nizza, Porto di Villafranca, mazzo 4, no. 24, 'Pareri, lettere e memorie', 'Sentiment de Mellarède', fo. 11.

thus agreed to hear a new round of French arguments. On 10 March 1717, the French ambassador in Turin delivered to the court a long and detailed memorandum that drew on three bodies of law: natural law, the law of nations and public law.⁴⁹ Although it ultimately failed in its intent, the significance of this memorandum consists in the way in which it framed the law of wreck as a matter not only of sovereignty but also of 'civilization'.

V

CIVILIZATION AND BARBARISM

The French sought to define the terms of their controversy with Savoy by drawing a sharp line between the just natural laws of modern and civilized nations, on the one hand, and the archaic and barbaric customs of non-European peoples, on the other. It was hardly the first time that this discourse had been mobilized, but its poignancy intensified during the eighteenth century and the law of wreck catalyzed.⁵⁰

The law of nations included a prohibition on imposing further hardship upon the unfortunate (*afflictis non est addenda afflictio*). Seraphim de Freitas, professor of canon law at the University of Valladolid, was among those who most frequently and effectively appealed to this injunction in a treatise, *De iusto imperio Lusitanorum asiatico* (1627), in which he defended the Portuguese prerogatives in the Indian Ocean against Grotius's *Mare liberum* (1609).⁵¹ Narratives of the misfortunes and cruel treatment that Iberian sailors and navigators were said to suffer at the hands of Asian populations circulated widely in pamphlets and travel accounts. These publications promoted the image of the

⁴⁹ This *mémoire* survives in several copies: ANP, *Marine*, B⁷ 31, *Commerce et consulats, Décisions*, 'Réplique à la réponse des ministres de Sa Majesté Sicilienne, au sujet du navire français le *Saint Pierre*, capitaine Aguiton, échoué sur la côte de Sicile [written on 23 Feb. 1717 and presented to the court in Turin on 10 March 1717]', fos. 131^r-143^r; AMAEE, *Correspondance politique, Sardaigne*, 129, fos. 125^r-132^r, 'Réponse'; ASTo, 'Pareri, lettere e memorie', 'Extrait'.

⁵⁰ On law as a site of conflict between alternative visions of politics and society, see Richards, 'Jurisdiction and Afro-Brazilian Legal Politics', in this volume.

⁵¹ Charles H. Alexandrowicz, 'Freitas versus Grotius (1959)', now in Charles H. Alexandrowicz, *The Law of Nations in Global History*, ed. David Armitage and Jennifer Pitts (Oxford, 2017); Mónica Brito Vieira, 'Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden's Debate on Dominion over the Seas', *Journal of the History of Ideas*, lxiv (2003).

'barbarian Chinese', who had no qualms about mistreating or even killing those unfortunate enough to be stranded on their shores.⁵²

The history of the law of wreck sketched by the French jurists and diplomats tasked with pressing the Savoy authorities for the release of the 'Turkish' captives accused the king of Sicily of seeking to 'revive' an ancient law that was contrary to 'humanity and to the spirit of the law of all nations'.⁵³ Hospitality to shipwrecked people was nothing less than a criterion of humanity, or at least of what, beginning in the mid eighteenth century, the French called 'civilization', a term designating the most advanced historical stage of social and cultural progress.⁵⁴

These statements were part of a larger narrative according to which European nations had over time abandoned the 'odious' practice of the law of wreck and for 'more than five centuries' had promulgated laws and edicts conforming to natural law. According to the French memorandum, since the Peace of Utrecht, 'almost all the Princes of Europe [now demanded] the security of persons from an enemy nation aboard a free vessel, even in the event of its shipwreck'.⁵⁵ In other words, according to the French, there was now a broad convergence between European legal systems and the *ius gentium*, and a general consensus on the need to abrogate the law of wreck, which symbolized the barbarity that survived in parts of northern Europe and on the southern shores of the Mediterranean.⁵⁶

⁵² Examples in Ordóñez de Ceballos, *Historia y viaje del mundo* (Madrid, 1614), ii, 6; Giovanni Pietro Maffei, *Historiarum indicarum libri XVI*, 16 vols. (Florence, 1588), xiv, 275. The violent fate suffered by the crew and passengers of a Spanish galleon that sank along the Chinese seashores is recounted in Timothy Brook, *Vermeer's Hat: The Seventeenth Century and the Dawn of the Global World* (London, 2009), 84–116.

⁵³ ASTo, 'Extrait', fo. 2.

⁵⁴ ASTo, 'Extrait', fos. 2^v–3^r. In the memorandum, the adverb *autrefois* (once, formerly, previously) was underlined to further emphasize that the seizure of shipwrecked goods and persons had (or ought to have) 'ceased'. On the earliest French usages of the term 'civilization', see Bruce Mazlish, *Civilization and its Contents* (Stanford, 2004), 5–8.

⁵⁵ AMAEE, *Correspondance politique, Sardaigne*, 129, fo. 129.

⁵⁶ Note that French jurists did not invoke the *ius peregrinandi* (or *ius communicandi*), the natural law right of pilgrims and travellers to expect hospitality and the principle invoked by Spanish moral theologians to justify the colonization of Central and South America. The eighteenth-century *ius gentium* had abandoned any pretence to earlier versions of 'cosmopolitanism' and had become an inter-state legal order. For the use of the term 'cosmopolitanism' to describe Francisco de Vitoria's conception of natural law as binding human beings, rather than individuals or states, in a world-wide community, see Brett, *Changes of State*, 6, 14.

The legal advisers of the duke of Savoy did not dispute this narrative: for them, too, the law of wreck was 'inhuman, odious and forbidden'. However, they exposed the hypocrisy of the French by reminding them of their own history: none other than Bodin had praised the law of wreck and Richelieu had asserted his right to seize the precious cargo of two Portuguese carracks that a storm had pushed ashore near Bordeaux in 1627.⁵⁷ The Savoyards admitted that the law of wreck had no place amongst Christian nations and even conceded that 'natural law engages all men because of the general principle which demands that we should do to others as we would have them do to us'. But they excluded from this maxim 'the Turks, who are in a state of perpetual war against the Christians' and who are 'barbarians' who should be punished 'for the inhuman treatment they inflict on Christians'.⁵⁸

The term 'barbarian' was charged with a double meaning: it referred to the customs, such as the law of wreck, that 'Barbarians' introduced in Late Antiquity at the expense of the 'just' Roman laws; it also evoked North Africa, which was called 'Barbary' in early modern European geography.⁵⁹ The Piedmontese jurists collapsed the descriptive and normative meanings of the term. A minister of the duke of Savoy observed that 'France has signed treaties with almost all of the Barbarians; the English and the Dutch have done the same, and it is these treaties that protect them from the Barbarians'.⁶⁰ Indeed, a number of medieval and early modern treaties between European and Muslim polities already included provisions for the release of goods and people surviving the shipwreck of a foreign vessel. For example,

⁵⁷ ASTo, 'Pareri, lettere e memorie', 'Sentiment de Mellarède', fo. 5; *ibid.*, 'Réponse aux mémoires de monsieur le marquis de Prye sur les Turcs pris et arrêtés en Sicile remise par le marquis du Bourg, au dit monsieur le marquis de Prye, le premier juin'; *ibid.*, 'Parere a Sua Maestà delli presidenti Ricardi, Graneri, et avvocato generale Zoppi sovra li Turchi naufragati sovra le spiagge di Sicilia' (hereafter 'Parere a Sua Maestà'), fo. 4. This 1627 shipwreck is analyzed in Trivellato, "'Amphibious Power'"

⁵⁸ ASTo, 'Parere a Sua Maestà', fo. 6^r and 'Réponse au mémoire de monsieur le marquis de Prye [par monsieur le marquis del Borgo] sur les Turcs arrêtés en Sicile remise au marquis', 14 Aug. 1717.

⁵⁹ Ann Thomson, *Barbary and Enlightenment: European Attitudes towards the Maghreb in the 18th Century* (Leiden, 1987), 11–14, 41–63; Lotfi Ben Rejeb, "'The General Belief of the World': Barbary as Genre and Discourse in Mediterranean History', *European Review of History: Revue européenne d'histoire*, xix (2012).

⁶⁰ ASTo, 'Sentiment de Mellarède', fo. 1^v.

the capitulations granted by the Ottoman sultan to the French in 1604 (art. 31) and to the English in 1675 (art. 6) stipulated that if a French or English ship was shipwrecked off the coasts of the Ottoman Empire, Ottoman officials would come to their rescue, provide them with protection and assistance, and return to them any goods that came ashore; in the event of plunder, the same officials would initiate a systematic search and return any goods they found to their rightful owners.⁶¹

What matters here is the facility with which Savoy could link the perpetual war between Christian and Muslim polities to an older religious antagonism, now clothed under the term ‘barbarism’. Faced with the invocation of natural law and the law of nations by the French, the Piedmontese lawyer Pierre de Mellarède rebutted as follows:

If we lived according to the maxims of natural law, there would be a bond of common humanity between all men. We would be safe even on the shores of Barbary. But since the Barbarians do not abide by this standard of humanity (*n’observent pas cette humanité*) and act against natural law, the law of nations has introduced the punishment of retaliation (*talion*) and the rule of reciprocity should they fall into our hands.⁶²

Against the objections of French lawyers and diplomats, the Savoyard postulated that the ‘Turks’ would not hesitate to enslave Sicilians who found themselves on their shores.⁶³ This assumption justified reciprocal treatment and explains the mention of the biblical law of talion: to ‘punish the Barbarians for their inhumanity’ was a natural imperative.⁶⁴

⁶¹ Gabriel Noradounghian (ed.), *Recueil d’actes internationaux de l’Empire ottoman* (Paris, 1897), 99 and 148.

⁶² ASTo, ‘Sentiment de Mellarède’, fo. 1. Mellarède based parts of his argument on the Dutch jurist Johannes Voet, *Commentarius ad Pandectas*, 2 vols. (Leiden, 1698–1704), ii, 1008 (*Dig.* 47, 9): ‘Cum autem *ex talionis lege* [our italics] *fiscus Hollandicus sibi posset asserere jus in bona naufraga ad tales pertinentia, quorum Principes illo utuntur jure, ut res fisci sit, ubicunque natat; hinc mutuis aliquando conventionibus inter Belgas foederatos aliosque populos id actum, ne protinus hoc jus durissimum in naufragorum bonis exerceatur*. (But because, according to the law of retaliation, the Dutch treasury could rightly seize the wrecked goods belonging to those whose rulers make use of that right, and as a result whatever floats could become the property of the treasury, by some mutual agreements signed between the confederated Belgians and other peoples, this most severe right should not be exercised with regard to the property of the shipwrecked.)

⁶³ ASTo, ‘Pariere, lettere e memorie’, ‘Sentiment de Mellarède’, fo. 11.

⁶⁴ *Ibid.*, fo. 1^v.

The same assumption also shows that the line drawn by the law of wreck between 'barbarism' and 'civilization' tested the boundary of what, by then, theorists of the law of nations had begun to call the 'public law of Europe'.⁶⁵

A French author, Jacques-Philippe Laugier de Tassy, who had witnessed first hand the political consequences of the 1716 shipwreck when he was the clerk (*chancelier*) of the French consulate in Algiers, broached this thorny subject and struck an anomalous chord by choosing to go beyond the legal bones of contention in an attempt to shake the consciousness of his European audience. His *History of the Kingdom of Algiers*, first published in French in Amsterdam in 1725, aimed to 'diminish the prejudices' of his readers through a systematic comparison of Algerian and European customs, showing that Christian nations were guilty of precisely 'the same vices [they] imputed to other Nations'.⁶⁶ The book enjoyed considerable success. In the course of the eighteenth century, it was reprinted numerous times, translated (or plagiarized) into Dutch, English, Spanish, German and Italian, and inspired sceptical philosophers of the Enlightenment such as the Marquis d'Argens.

The law of wreck figures among the examples summoned by Laugier de Tassy to demonstrate that 'a native of Barbary' had 'the same Faculties and Dispositions' as a Christian, even if 'they wear a Turban', because 'the Heart of Man is nearly the same everywhere'.⁶⁷ To prove his point, Laugier de Tassy discussed precisely the tragedy at sea that had befallen the Muslim pilgrims stranded in Sicily in 1716:

the plundering and destroying of ships stranded on their [i.e., Algerian] coasts, are, I own, execrable; but in this, they follow an immemorial custom practised by all people, of appropriating whatever a tempest throws upon their coast. But the government is not chargeable with

⁶⁵ Mably, *Le droit public de l'Europe*; Gerrit W. Gong, *The Standard of 'Civilization' in International Society* (New York, 1984), 45–7.

⁶⁶ Jacques-Philippe Laugier de Tassy, *A Compleat History of the Piratical States of Barbary Viz. Algiers, Tunis, Tripoli and Morocco* (London, 1750), vi. On Laugier de Tassy's views of Algeria compared to those of contemporary European writers, see Thomson, *Barbary and Enlightenment*, esp. 7, 14–15, 23. Laugier served in the French consulate in Algiers from Jan. to July 1718: Archives Nationales d'Outre-Mer, Aix-en-Provence, GGA 1AA14, Main courante des actes passés en chancellerie, fos. 28^v–29^r: 'Brevet de chancelier à Alger pour le Sieur Laugier'; Anne Mézin, *Les consuls de France au siècle des lumières (1715–1792)* (Paris, 1998), 381.

⁶⁷ Laugier de Tassy, *A Compleat History of the Piratical States of Barbary*, v, 280.

this, for, when it is in their power, they readily afford all foreigners, with whom they are at peace, the same assistance for the security of persons and effects, as to their own subjects. This custom, inhuman as it is, still prevails in Christian countries. In the month of September 1716, a French ship sprung a leak, and sunk in Syracuse harbour... The Sicilians immediately seized a hundred and fifty-nine Turks, twenty of their wives and children, with their effects, not sparing any thing which belonged to these Turks, justifying their violence by prescription, or long custom, and insisting that it had always been so.⁶⁸

By recounting the 1716 shipwreck in these terms, the former French clerk did not simply wish to point his finger at the behavior of the duke of Savoy. Rather, he meant to liken Algerians and Europeans for their misdeeds. At the same time, he recognized that every government, be it Algerian, French or Dutch, struggled to prevent its coastal populations from looting wrecks. Invoking the ‘wreckers’ (*naufrageurs*) of Brittany and the North Sea, he reminded his readers that ‘these practices prevail all over Europe, and every nation feels that how good soever the laws may be, and in the hands of active magistrates, they are not always sufficient to curb the licentious and wicked’.⁶⁹

Laugier de Tassy’s condemnation of European inhumanity is far from being representative of the dominant European viewpoint at the time. But his scepticism stressed the gap that existed between the just formulation of a law and its enforcement, between formal rules and human nature. For him, then, shipwrecks tested not only the limits of sovereignty, but also those of humanity.

VI

CONCLUSION

For Lauren Benton, ‘the imperial turn in the history of international law’ has produced a scholarly ‘sea change’ that ‘has moved the field away from an exclusive focus on the writings of European jurists’ and has come to include both ‘the practice of law and politics in empires and the contributions to political thought of a broader range of historical actors in places across the globe’.⁷⁰ Various academic trends have fuelled this makeover. Two have been especially conspicuous.

A revisionist literature has exposed the integral role that, since its inception in the mid nineteenth century, the discipline of international

⁶⁸ *Ibid.*, 251.

⁶⁹ *Ibid.*, 255.

⁷⁰ Lauren Benton, ‘Made in Empire: Finding the History of International Law in Imperial Locations’, *Leiden Journal of International Law*, xxxi (2018), 473.

law has played in the European 'civilizing mission' and the violence and expropriation that accompanied it.⁷¹ In the 1990s, Richard Tuck described the political theories of Grotius and John Locke as foundational to the policies of colonial dispossession.⁷² Since then, many have interpreted the early modern natural law and law of nations as justifications for European imperial expansion, although some regard the same intellectual traditions as providing the seeds of human rights theories.⁷³

A more pragmatic strand of the literature insists on the imperial dimension of early modern legal regimes, but eschews the writings of European legal theorists, focusing instead on specific moments of engagement and confrontation between European and non-European actors in order to decipher the implicit as well as explicit rules that governed these encounters. This situated approach takes for granted the finite, fragmented and contested nature of European sovereignty and makes room for the relevance of non-European learned and vernacular traditions of political thought, war-making and diplomacy. It outlines the formation of an 'interpolity law' as a defining feature of the early modern period, when geographical exploration and imperial

⁷¹ Martti Koskenniemi, 'Histories of International Law: Dealing with Eurocentrism', *Rechtsgeschichte*, xix (2011); Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge, 2002); Stefano Mannoni, *Potenza e ragione: La scienza del diritto internazionale nella crisi dell'equilibrio europeo (1870–1914)* (Milan, 1999), 103–20; Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism, and International Law* (Leiden, 2011); Luigi Nuzzo, *Origini di una scienza: Diritto internazionale e colonialismo nel XIX secolo* (Frankfurt, 2011).

⁷² Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford, 1999).

⁷³ Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge, 2002); Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge, 2003); Slim Laghmani, *Histoire du droit des gens: Du jus gentium impérial au jus publicum europæum* (Paris, 2003); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); Georg Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?', *Journal of the History of International Law / Revue d'histoire du droit international*, x (2008); Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000* (Cambridge, 2014); Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, MA, 2018).

aspirations, European and otherwise, multiplied the occasions for conflict but also the need for means of conflict resolution.⁷⁴

Both lines of inquiry grapple, from different perspectives and to different degrees, with a question that was central to the legal and cultural ordering processes of the seventeenth and eighteenth centuries: did the *ius gentium* extend only to Christian Europe and its overseas territories or did it also encompass non-European people and sovereign polities? And if it did, on what terms? The ambivalence was real and this unresolved question was particularly explosive in the eighteenth-century Mediterranean, where both close contacts and wars between Christian and Islamic polities endured and where religious and political imperatives did not always align according to a presumed ‘clash of civilizations’. The term ‘barbarism’ and its cognates had particular potency in the early modern Mediterranean, where they were used to refer to the legal customs of those who overtook the Roman Empire and the inferiority of non-Christian polities and people, but also as a seemingly normalized descriptor of the Ottoman provinces of North Africa and Morocco.⁷⁵

While the first projects for the creation of a ‘perpetual peace’ were emerging in Europe, the Mediterranean remained engulfed in a rhetoric of perpetual war, fuelled by a crusading mentality shared by Christian and Muslim polities alike. The rules of engagement in this perpetual war entailed the distinction between legitimate (*corsairing*) and illegitimate (*piracy*) violence — a distinction that was admittedly

⁷⁴ Lauren Benton and Adam Clulow, ‘Legal Encounters and the Origins of Global Law’, in Jerry H. Bentley, Sanjay Subrahmanyam and Merry E. Wiesner-Hanks (eds.), *The Cambridge World History, Volume VI, The Construction of a Global World, 1400–1800 CE, Part 2: Patterns of Change* (Cambridge, 2015); Lauren Benton and Adam Clulow, ‘Empires and Protection: Making Interpolity Law in the Early Modern World’, *Journal of Global History*, xii (2017).

⁷⁵ Thomson, *Barbary and Enlightenment*, esp. 41–63. On the opposition between ‘barbarian’ and ‘civilized’, see Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (Cambridge, MA, 1985), ch. 10, ‘The Historical-Political Semantics of Asymmetric Counterconcepts’. On the ‘barbarian’ past of Europe, see J. G. A. Pocock, ‘Barbarians and the Redefinition of Europe: A Study of Gibbon’s Third Volume’, in Larry Wolff and Marco Cipolloni (eds.), *The Anthropology of the Enlightenment* (Stanford, 2007). About a third term, ‘savage’, which appeared in the European pseudo-ethnography of the early modern period, see François Hartog, *Anciens, modernes, sauvages* (Paris, 2008).

clearer in theory than in practice.⁷⁶ This crusading mentality did not prevent belligerent parties from signing peace treaties. Those sealed by some European powers with the semi-autonomous Ottoman provinces in North Africa are directly relevant to our story and reveal the reach as well as the ambiguity of the eighteenth-century *ius gentium*.⁷⁷ On the one hand, these treaties put Europe on a pedestal as a normative standard and contained clauses that paved the way for the colonial project; on the other, they recognized, at least implicitly, that sovereignty was a universal principle rather than an exclusively European prerogative.⁷⁸

⁷⁶ The secondary literature on this topic is immense. For our purpose, suffice it to cite some works that situate the regulation of looting and booty in the theory and practice of bilateral treaties between European and Muslim powers: Jörg Manfred Mössner, *Die Völkerrechtspersönlichkeit und die Völkerrechtspraxis der Barbareskenstaaten (Algier, Tripolis, Tunis, 1518–1830)* (Berlin, 1968); Walter Rech, *Enemies of Mankind: Vattel's Theory of Collective Security* (Boston, 2013), 43–103; Walter Rech, 'Ambivalences of Recognition: The Position of the Barbary Corsairs in Early Modern International Law and International Politics', in Mario Klarer (ed.), *Piracy and Captivity in the Mediterranean, 1550–1810* (New York, 2019); Guillaume Calafat, 'Ottoman North Africa and *Ius Publicum Europaeum*: The Case of the Treaties of Peace and Trade (1600–1750)', in Antonella Alimento (ed.), *War, Trade and Neutrality: Europe and the Mediterranean in the Seventeenth and Eighteenth Centuries* (Milan, 2011).

⁷⁷ Contemporary collections of such treaties testify to their importance for both the conduct of diplomacy and the development of legal scholarship. See, for example, Frédéric Léonard (ed.), *Recueil des traités de paix, de trêve, de neutralité, de confédération, d'alliance, et de commerce faits par les Rois de France* (Paris, 1693); Jean-Yves de Saint-Prest, *Histoire des traités de paix et autres négociations du dix-septième siècle, depuis la paix de Vervins jusqu'à la paix de Nimègue* (Amsterdam and The Hague, 1725); Dumont, *Corps universel diplomatique du droit des gens*; Martens, *Précis du droit des gens moderne de l'Europe*.

⁷⁸ Charles Henry Alexandrowicz, 'The Discriminatory Clause in South Asian Treaties in the Seventeenth and Eighteenth Centuries (1957)' and 'A Persian-Dutch Treaty in the Seventeenth Century (1958)', in Alexandrowicz, *The Law of Nations in Global History*, ed. Armitage and Pitts; Karl-Heinz Ziegler, 'The Peace Treaties of the Ottoman Empire with European Christian Powers', in Randall Lesaffer (ed.), *Peace Treaties and International Law in European History: From the Late Middle Ages to World War One* (Cambridge, 2004); C. R. Pennell, 'Treaty Law: The Extent of Consular Jurisdiction in North Africa from the Middle of the Seventeenth to the Middle of the Nineteenth Century', *Journal of North African Studies*, xiv (2009); Richard Tuck, 'Alliances with Infidels in the European Imperial Expansion', in Sankar Muthu (ed.), *Empire and Modern Political Thought* (Cambridge, 2012); Saliha Belmessous (ed.), *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford, 2014); Christian Windler, 'Performing Inequality in Mediterranean Diplomacy', *International History Review*, xli (2018).

Montesquieu's works capture the schizophrenia of this formative phase of the law of nations. His *Persian Letters* (1721) crystallized the hitherto fluid notion of Oriental despotism.⁷⁹ Meanwhile, in a well-known passage of *The Spirit of the Laws* (1748), certainly written with Jean Barbeyrac and Jean Dumont's collection of treatises on his desk, Montesquieu asserted that 'All nations have a law of nations; and even the Iroquois, who eat their prisoners, have one. They send and receive embassies; they know rights of war and peace'.⁸⁰

The 'Turkish' pilgrims stranded on the Sicilian beach found themselves caught between these two paradigms. The duke of Savoy had not signed a peace treaty with the Ottoman provinces of Algiers and Tunis and refused to give in to French demands for the release of the captives. In December 1718, he confirmed their imprisonment and the seizure of their goods, which included crates full of sabres and precious stones as well as earrings, bracelets and other jewels. The men who were fit enough to row were forced to become oarsmen in Sicilian galleys; older men and women were imprisoned in Palermo; younger children were sent to Turin as 'court slaves'.⁸¹ Some remained in captivity for a decade, ferried back and forth between Sicily, Spain, Malta, Sardinia and Piedmont.⁸² It was not until 1726, ten years after their disastrous voyage, that the last surviving prisoners returned to North Africa. Even then, they were not freed in the name of humanity or hospitality, but in exchange for the better part of the Spanish hostages whom Algerian

⁷⁹ Lucette Valensi, *The Birth of the Despot: Venice and the Sublime Porte*, trans. Arthur Denner (Ithaca, NY, 1993).

⁸⁰ Slightly modified citation from Montesquieu, *The Spirit of Laws*, trans. and ed. Cohler, Miller and Stone, 8 (I.3). The same passage includes a disparaging comment on the Iroquois: 'the trouble is that their law of nations is not founded on true principles'. But for Montesquieu, nor was the European law of nations. Montesquieu owned a copy of Jean Dumont and Jean Barbeyrac (eds.), *Supplément au corps universel diplomatique du droit des gens ou histoire des anciens traités*, 5 vols. (Amsterdam, 1739): <<http://montesquieu.huma-num.fr/bibliotheque/fiche/brede/2366>> (accessed 11 Jun. 2024).

⁸¹ ANP, *Affaires Étrangères*, B¹ 848, CC, Messine, fos. 116^r–116^v, 14 Feb. 1717; fo. 217^r, 11 Mar. 1718; fo. 215^r, 25 Feb. 1718. ASTo, *Villafranca*, 4, no. 24: 'Nota de' Turchi che erano sopra la barcha naufragata nelle vicinanze di Noto'.

⁸² ANP, *Affaires Étrangères*, B¹ 121, CC, Alger, fo. 185^v; *Viaje y diario de Argel y Túnez de Francisco Ximénez de la inclita y celestial Religión de la SS. Trinidad Redempcion de Cautivos Cristianos* [1724–25], 7 vols., Real Academia de la Historia, Madrid, MS. 9-27-7^E 193–9.

corsairs had taken in retaliation and only after the 1720 Treaty of The Hague ceded Sicily to Austria and, as compensation, Sardinia to the duchy of Savoy.⁸³

The tragic fate of these men and women was the result of French diplomats' inability to succeed in their negotiations. Although the legal and cultural arguments mobilized by Savoyard lawyers may seem backward-looking today, they persisted in the age of Enlightenment. In 1795, Immanuel Kant famously called for a cosmopolitan constitution of the law of nations, but excluded from it 'the sea coastlines (for example, of the Barbary Coast), where ships in nearby seas are pirated or stranded sailors are made into slaves'.⁸⁴ Like the Piedmontese jurists discussing North Africa a few decades earlier, Kant located 'Barbary' and 'barbarity' at the Mediterranean gates of Europe, specifically mentioning the law of wreck as one of the key metrics of a people's level of (in-)humanity and civilization because, he insisted, it violated the natural right to hospitality. Mediterranean shipwrecks, as this article has attempted to show, were touchstones of the reordering of eighteenth-century European legal systems and discursive fields and evidence of the need to analyze legal and cultural changes side by side.

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⁸³ ANP, *Affaires Étrangères*, B¹ 183, CC, *Barcelone*, 5 Aug. 1721, 25 Oct. 1721, 30 Nov. 1721, 11 Oct. 1722, and 184, 3 Jan. 1723, letters from Consul Lépinard in Barcelona to the Minister of the Navy; Fr. Melchor García Navarro, *Redenciones de cautivos en África (1723–1725)*, ed. Fr. Manuel Vazquez Pajaro (Madrid, 1946), 412; ANP, *Affaires Étrangères*, B¹ 183, CC, *Alger*, fos. 185^v–186^r, 11 Jul. 1725; fol. 261^v, 30 Nov. 1726.

⁸⁴ Immanuel Kant, *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, ed. Pauline Kleingeld, trans. David L. Colclasure (New Haven, 2006), 82. For the same reason, Kant also excluded 'the sand deserts (of the Arabic Bedouins), where contact with the nomadic tribes is regarded as a right to plunder them' (*ibid.*).