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Eighteenth Century 'Prize Negroes' and the Law of Nations: The *Prince Frederick* Cases before the Vice-Admiralty Court of Rhode Island

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Abstract

Far too little scholarly attention has been devoted to the analysis of eighteenth-century prize systems, and to their integral role in the dynamics of the slave trade. Colonial vice-admiralty courts perpetuated the cession, acquisition, and transfer of slaves as commodities, and the enslavement of black mariners on the grounds of blackness as presumption of slavery. Researching the forgotten histories of 'prize negroes' would allow international legal scholarship to uncover one of the most racialised aspects of the laws of nations in the modern age. At the intersection of war, trade and slavery, the history of 'prize negroes' represents one of the absences from the history of international law which would desperately need more scholarly attention to be compensated for. Unlike many others among the numerous *dark sides* of the history of the discipline, the 'inglorious past' of prize law is still there, either mostly submerged or largely overlooked.

Keywords: prize law; laws of war; slavery; vice-admiralty; colonies

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'Question: "What did your cargo consist of?"

Answer: 'Sugar, Cocoa, Coffee, Rice and Negroes'[1]'

I Introduction

Henry was a black man, boarded on a French ship en route to the Caribbean colony of Martinique. He was the only black person on board, and was probably employed as a mariner, deckhand or cook. In 1746, while France was at war with Britain, the ship was captured by British privateers in the Atlantic. Henry, together with the ship's cargo, was brought before the British vice-admiralty court of Rhode Island to be judged as prize and sold. He claimed to be free, but his blackness, together with the absence of evidence and documents confirming his version condemned him, -, to remain in the hands of his captors. The judge gave him three years of time to provide evidence of his freedom, in the absence of which, he would be - won as a prize and sold as slave. Unfortunately, there is no further knowledge of his fate.

Henry's story is just one of many showing how, over the eighteenth century, prize law and colonial vice-admiralty courts significantly contributed to reinforce and legitimise slavery and the slave trade, then also surviving abolition laws in the nineteenth century as a means of continuing the importation of de facto slave labour in the Southern Atlantic. Far too little scholarly attention has been devoted to the legal, economic, and historical aspects of eighteenth-century prize systems, and their integral role in the dynamics of the slave trade. Vice-admiralty prize adjudication continuously perpetuated the cession, acquisition, and transfer of slaves as marketable commodities, and more than

[1] Excerpt from the examination between a British judge and a French mariner in the proceedings of the *Prince Frederick v. St. Pierre* case (1744), collected and published in Towle, Dorothy S. *Records of the Vice-Admiralty Court of Rhode Island, 1716-1752* (1936), 283.

occasionally, the enslavement of free black mariners was justified on the grounds that blackness entailed a strong presumption of slavery. In the exercise of prize adjudication, vice-admiralty courts applied the law of nations or, more specifically, the traditional laws of war at sea, which included the long-established customary right of belligerents to capture enemy ships and property in times of war. The roots of those laws and practices stretched as far back as the thirteenth century, then following a centuries-long process of crystallisation, theorisation and codification which involved the work of controversial figures, such as Hugo Grotius and Travers Twiss. Notwithstanding that, the topic is still largely absent from the radar of international legal scholarships. This paper therefore aims at opening a window to one of the most overtly racialised aspects in the history of the law of nations. Firstly, the broader historical context of colonial vice-admiralty courts will be investigated as well as the histories of the men and women who were condemned and sold as prize. Secondly, the aforementioned connections between their histories and the one of the law of nations will be explored. The following section consists of a mainly historical analysis of the system of vice-admiralty courts in the British colonies, their procedures, powers and jurisdiction. Moreover, this part of the paper will locate the reasons behind the system's establishment and success at the intersection of three of the crucial macro-phenomena shaping Atlantic history in the modern age: maritime war, privateering and the slave trade/slavery.

The third section is devoted to the examination of three particularly explicative prize cases in terms of facts, procedure, and legal substance. These cases have several elements in common, beyond having been decided before the colonial vice-admiralty court of Rhode Island. They all involved the presence of slaves or black seamen captured by British privateers on enemy ships, then condemned as lawful prizes to be won in vice-admiralty courts and sold or re-sold into slavery ('prize negroes'). Furthermore, all cases had the same privateer

ship (the *Prince Frederick*) as the captor and had been filed with the court in the space of just two years. The cases are present in the records of the vice-admiralty court of Rhode Island regarding the years between 1716 and 1752.

Unfortunately, no cases that involve the condemnation of ships transporting exclusively slaves have been collected in the volume in question[2]. However, cases such as the selected ones, in which different kinds of goods, as well as people with different backgrounds and nationalities were present on board, are much more interesting to look at, as those were the cases in which most legal and/or diplomatic issues would arise. In those cases, the nature of the relationship between the treatment of goods and the treatment of slaves becomes evident, as well as the use of evidence and testimonies to establish one's freedom or unfreedom in case of uncertainty.

The fourth and last section is thought as a bridge between the dimension of historical-archival research and the one of the history and theory of international law, with the aim of exploring the implications of eighteenth century prize slavery in colonial vice-admiralty courts on the diachronic study of prize law, the laws of war and the law of nations in general. Uncovering the central, legitimising role that prize law and colonial vice-admiralty courts had in the broader dynamics of slavery and of the slave trade is crucial in understanding why it might be worth, for international legal scholarship, to rediscover the forgotten histories of 'prize negroes'.

II. War, Privateering and Slavery: the British Colonial Prize System

On April 7, 1697, Sir Charles Hedges, judge of the High Court of England, was authorised by king William III to grant special commissions under the seal of the Court to empower governors in the colonies to establish vice-admiralty

[2] See footnote n.1.

courts, appoint judges, advocates, registers and marshals, all subject to the approval of the Admiralty. This move found its rationale in the framework of a broader policy aimed at the centralisation and consolidation of the control of the Crown of England over its colonies, especially in matters of trade and war. By the beginnings of the eighteenth century, vice-admiralty courts were already present in roughly all colonial seaports on the Atlantic[3].

The powers of these courts were extensive and diversified. Resting their authority on parliamentary acts, these institutions had jurisdiction on cases of 'ordinary marine causes' (usually linked to wages, salvages, collisions, wrecks, contracts, furnishment, shipbuilding, bottomry), prize cases, cases arising from breaches of the acts of trade, 'defrauding of the king's revenues' (including revenue and customs cases), interloping and breaches of treaty arrangements (though very rarely subject to legal process or enforced, given that such arrangements did not possess the binding force of statutes)[4], petty theft and petty mutiny[5]. Piracy and robbery on the high seas constituted separate matter which were provided for in the colonies by special commissions, sometimes designated as special courts of vice-admiralty, authorized under an act of William III and entrusted with full power, whether on land or on shipboard, to hear and adjudge cases of piracy and robbery on the high seas and to give sentence and judgment of death according to the civil law and the methods and rules of the Admiralty[6].

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[3] Jamaica, Barbados, Bermuda, the Bahamas, the Leeward Islands, New York, Pennsylvania, Maryland, Virginia, North Carolina, Massachusetts, New Hampshire, New Jersey, Rhode Island and South Carolina, organised in eleven districts. Towle, *Records* 1936 (n.1), 13-14.

[4] Towle, *Ibid.*, 24-25.

[5] Towle, *Ibid.*, 3. 'Petty theft and what might be construed as petty mutiny —as, for example, assaulting the master on the high seas were often tried in the colonial vice-admiralty courts and the defendent, if found guilty, was sentenced to pay a fine to the king. This payment constituted one of the king's casual revenues. A case of this kind, based on the pretended brutality of the captain which ended in the death of two seamen, was considered as coming within the jurisdiction of the vice-admiralty court of South Carolina'.

[6] Towle, *Ibid.*, 4.

Focusing on prize cases, particularly the ones arising from the capture of enemy ships in times of war, it can be observed that the systematisation of the British colonial prize system emerged in the first decade of the eighteenth century, in response to precise necessities arising from the features of a determinate historical context[7]. The legal systematisation of prize adjudication and jurisdiction ensured a significant degree of speed, cost-effectiveness and predictability to the adjudication of prizes. Fixed allowances for the court officers were established, depending on the tonnage of captured ships, and libellants were granted a right of appeal to the Privy Council. More than a third of all cases before colonial vice-admiralty courts in North America and the West Indies consisted, between 1702 and 1763, of prize cases. One has to consider that, during the eighteenth century, global powers such as Britain pursued an almost continuous state of war with one another[8]. Continuous fighting, coupled with the lack of large standing navies, produced a situation in which maritime powers chiefly relied on private 'men of war' and their ships, authorised with letters of marque to capture enemy vessels. The 'business model' of privateering represented a quick, low-cost and effective solution for increasing the naval military power of a nation. After capturing an enemy ship on the high seas, privateers brought the vessel and its goods back to a friendly port to be judged and condemned before a vice-admiralty court. If the vessel and goods were judged as lawful prizes, they were sold, with the ship's crew receiving the lion's share of the revenues, then to be divided along the lines of predetermined schemes. Writes Foy: 'This system rewarded successful risk-

[7] With the 'American Act' of 1708 and the suppression of all 'prize offices' and 'prize agents' in the colonies, writes Towle: 'the sole interest and property right in every prize taken by a ship of war was vested, after condemnation in a vice-admiralty court, in the commander and other officers and seamen, subject only to the customs and duties payable to the queen'. Towle, *Ibid.*, 40-42.

[8] In the period from 1701 to 1783, Britain took part in the War of Spanish Succession and the Queen Anne's War (1701-1714), the War of the Quadruple Alliance (1718-1720), the War of Austrian Succession (1740-1748), comprising the so-called War of Jenkins' Ear and King George's War in the North American theatres, the Seven Years' War (1756-1763) and the American Revolutionary War (1775-1783).

taking. The willingness of private investors and seamen to gamble their money and lives was the foundation of privateering'[9].

The golden age of privateering overlapped with the heyday of the transatlantic slave trade. Slaves of African descent were treated as marketable commodities and could therefore be adjudicated and sold as prize if captured on enemy ships by privateers. Indeed, over the eighteenth century, the capture, prize condemnation and re-selling of slaves, together with the abduction of free black mariners condemned as slaves in prize courts, became one of the pillars of a determinate scheme of naval economic warfare[10]. - As a matter of fact, Foy reports that the number of 'prize negroes' adjudicated only in North American vice-admiralty courts between 1721 and 1783 alone was over 500[11]. Furthermore, the issue of 'prize negroes' fitted into the wider pattern of legal questions that vice-admiralty courts had to address with regard to prize. In the order of usual procedure, the courts had to establish whether captured ships belonged to an enemy power or a neutral one, after which the captor initially filing the libel with the court had to prove that the captured ship itself, its cargo, or both belonged to the enemy.

Further issues included the determination of distribution rights to 'assisting ships', attack under the rightful flag by the privateer in question, the prohibited

[9] Charles R. 'Eighteenth Century 'Prize Negroes': From Britain to America'. *Slavery and Abolition* 31(3) (2010), 379-393, 380.

[10] Foy, *Ibid.*, 381. 'In a world where slavery was ubiquitous, people of African and mixed racial descent were potential targets for Anglo-American ship captains, merchants and seamen looking for easy profits. Ship captains regularly took black men from on land and from vessels of all kinds, and sold them into slavery. Just as privateers profited from the capture of whole slaving ships, they benefited by seizing vulnerable individuals – none more so than persons of African descent – throughout the Atlantic world. In wartime in particular, the propensity to see blacks as "marketable commodities" critical to "military success" intensified. Ships of all nations regularly raided enemy settlements to take away slaves; and, in response, naval ships patrolled coastlines to prevent such incursions. Ship captains kidnapped black men either to sell them into slavery or to coerce them into becoming mariners. Kidnappings of black mariners were the subject of London plays, commentary by Samuel Johnson and appeared in an early novel'.

[11] Foy, *Ibid.*, 381.

capture of ships under flags of truce and after royal proclamations announcing the end of wars, the passage of property to third subjects of non-adjudicated prizes and investigations on the forgery of passports, ship papers, invoices, and conflicting testimonies. As remarked by Towle '...every capture presented its own combination of incidents and the judge was often called upon to use with considerable freedom what he knew of law in general, without much regard for the traditions of the admiralty as followed in England'[12]. 'Prize negroes', whether captured slaves or abducted free black mariners, were oftentimes part of this infinite variety of combinations.

Far too little scholarly attention has been devoted to the legal, economic, and historical aspects of this phenomenon, which stood exactly at the intersection of two of the largest and most profitable businesses of that time: privateering and slavery. Concerning privateering, customs officials, naval officers, seamen, prize agents, vice-admiralty court judges and employees, newspaper publishers, and maritime vendors received considerable benefits from the sale of prizes, not to talk about ship owners, privateer captains and their crews[13]. As to slavery

[12] Towle, *Records* 1936 (n.1), 42.

[13] Foy, *Eighteenth Century 'Prize Negroes'* 2010 (n.9), 380. 'Prize systems not only enriched individuals but also played a significant role in supporting local economies. Western Atlantic ports often relied on plunder obtained by their privateers. For example, during King George's War, New York's privateers captured seventy-nine ships resulting in prizes totalling £615,000'. Another striking example that illustrates the impressive volume of affairs which gravitated around privateering and the colonial prize system is the one of the extraordinary captures of the *Royal Family* squadron during the War of the Austrian Succession. Joel accurately describes the capture of two French ships by these privateers: 'the *Marquese d'Antin* and the *Louis Erasme* – returning home from Lima loaded with an extraordinarily rich cargo comprising 1,093 chests of silver bullion, along with large quantities of gold and silver plate and many other valuables. When the privateers and their prizes made port at Bristol on 8th September, the captured treasure was quickly assessed and then transported to London in forty-five wagons guarded by armed sailors on horseback. Arriving at the Tower, the treasure was officially valued at £700,000 (some estimates put it as high as £1 million) which the owners promptly loaned to the Government to finance the operations to put down the Jacobite Rebellion; when the proceeds were finally divided, even the most humble sailor received £850'. Then again, the operation conducted against the Spanish: '…the next year (1747) saw the capture of another extremely valuable prize, the Spanish 74-gun *Glorioso* whose cargo was valued at £700,000. This seizure took place in October 1747, after which the 'Royal Family' returned home for the winter prior to being disbanded following the end of the War in 1748'. Joel, David. *Charles Brooking 1723-1759*

and the slave trade, as emphasised by the research of scholars such as Eric Williams, it constituted one of the backbones of the economic development of colonial powers in the eighteenth century and, as remarked by Williams himself 'one of the greatest migrations in recorded history'[14]. The value of the triangular trade in the Atlantic between Britain, its American colonies and West Africa has been estimated to be around £492 million in imports from the colonies and around £730 million in exports to the colonies, just in the 1714-1773 period[15]. The legal system of colonial vice-admiralty courts and prize adjudication therefore emerged in response to the interplay of three historical factors: continuous wars between European colonial powers, privateering as the preferred method of naval warfare in the absence of large standing navies and a burgeoning transatlantic commerce sustained by the slave trade, and slave labour in the colonies.

III. The Vice-Admiralty Court of Rhode Island and the *Prince Frederick* Cases

As stated previously , the legal substance of prize cases before colonial vice-admiralty courts has received very little scholarly attention, even less so when it comes to the cases concerning 'prize negroes' and their implications. Notwithstanding its deep connections with some of the great historical themes

and the eighteenth Century British Marine Painters (London: Antique Collectors Club, 2000), 165. To give an idea, £1 million around 1750 would be equivalent to the purchasing power which £116,669,200 would have in 2017, covering approximately 10,000,000 days of work of an average skilled tradesman (calculations made with the historical currency converter of the UK National Archives, available at: https://www.nationalarchives.gov.uk/currency-converter/#).

[14] Williams, Eric. *From Columbus to Castro: the History of the Caribbean* (1970), 144. It has been estimated that around 760,000 slaves were imported just in the British colonies of Jamaica (1700-1786) and Barbados (1708-1735 and 1747-1766), while around 800,000 just in the French colony of Saint-Domingue (1680-1776). In the first half of the eighteenth century, average annual importations in Jamaica oscillated around 10,000. See: Williams, *Ibid.*, 145.

[15] Williams, *Ibid.*, 151.

of the modern age, this is still a critically under-researched subfield. Most of the secondary literature refers to similar cases in a cursory or anecdotical manner, without necessarily engaging in an in-depth analysis of primary sources. Even in that occurrence, the stories of 'prize negroes' and related cases remain at the margins of the narration in the form of anecdotes, if included at all.

One invaluable contribution in this regard has been edited by Dorothy S. Towle and published in 1936, bringing together more than a hundred of cases of the British vice-admiralty court of Rhode Island, issued between 1716 and 1752. At that time, the colony of Rhode Island was one of the principal hubs of privateering in the Atlantic, and the records of its vice-admiralty court are riddled with prize cases[16]. The names of then well-known privateer ships are recurrent in the names of cases, with one figured no less than eleven times in the records of the court, within the span of four years (from 1744 to 1748): the *Prince Frederick*. The *Prince Frederick* was a 500-ton, 30-gun sloop-of-war which formed part of the *Royal Family*, probably the most famous privateer squadron active in the Atlantic theatre of the War of Austrian Succession, under the command of commodore George Walker[17].

[16] Even though, as reported by Towle in her long and detailed introduction to the records of the court: 'Each court of vice-admiralty in the colonies had jurisdiction over much the same kind of cases, but the character of the cases in each individual colony varied just as did the methods of procedure. Because the privateering activities of Rhode Island were so spectacular, it has been assumed that the adjudication of prizes formed the bulk of her admiralty business. This is not true. The conduct of ordinary marine business in time of peace furnished the majority of the cases in Rhode Island, as far as the evidence goes to show, just as it did in all the other colonies. To assume that the prize jurisdiction of the Rhode Island court was more important than any other phase of its activity is perhaps natural, the documents relating to the prizes are much more numerous than those for any of the other types of cases. *Not only are they more numerous, but the interrogatories are much more detailed. This was necessary for diplomatic as well as economic reasons. At the same time many complaints were brought against Rhode Island as a colony because condemnations were made on very scanty evidence* (emphasis added)' (Towle, *Records* 1936 (n.1), 95).

[17] 'George Walker served in the Dutch navy during his youth, and later owned a merchant ship. Between 1739 and 1742 he patrolled the Carolina coast on behalf of the colonial American government in the WILLIAM against Spanish privateers. In 1744-1745 he commanded two private ships of war and, although taken prisoner from the MARS in

Amongst the eleven prize cases in which saw the *Prince Frederick* as the captor before the vice-admiralty court of Rhode Island, three at least involved 'prize negroes'. In chronological order: *Prince Frederick v. St. Pierre* (1744), *Prince Frederick v. Postilion* (1746) and *Prince Frederick and Dolphin v. St. Jacques* (1746). These cases have been included in the records of the court, but they do not appear to have been treated or analysed in the secondary literature. This paper will do precisely that, on the basis of the original records collected in the 1936 volume edited by Towle.

The first case, *Prince Frederick v. St. Pierre* (1744)[18], illustrates the capture by the *Prince Frederick* of a French ship, the *St. Pierre*. The proceedings are extremely interesting, since they involve the interrogations of officers from both ships, captor and captured. The two sworn 'preparatory exams', as they are referred to in the records, were conducted by judge Leonard Lockman. The first one involved the party who filed the libel in prize, represented by John Sweet, second lieutenant of the *Prince Frederick*. The questions posed by

January 1745, he captured five French ships and sank another in the BOSCAWEN. His conduct led a London syndicate to offer him the command of a squadron of privateers – the KING GEORGE, the PRINCE FREDERICK, DUKE and PRINCESS AMELIA, collectively known as 'the Royal Family' – which was commissioned to attack French and Spanish cargo ships in the Atlantic. The 'Royal Family' undertook two eight-month cruises, from April 1746 - March 1747 and Jul 1747 - April 1748, capturing £400,000 worth of prizes, including the 70-gun Spanish GLORIOSO. (…) Walker and his crews struggled to reclaim their expenses and share of the prizes from the Royal Family's owners, and some of the sailors filed a bill in Chancery against the owners in 1749. In the same year Walker applied to the owners for an advance from the sums owed to him, in order to finance his fishery concerns, and signed a bond assigning his share of the interest on the prize money and money he had advanced to the officers and crew to the owners as a surety. (…) An anonymous account of Walker, 'The Voyages and Cruises of Commodore Walker', was published in 1760, and appears to have been written by someone who accompanied Walker on the majority of his cruises (a copy of a 1928 edition is available in the Caird Library's printed book collections). Walker died in 1777. The Royal Family's crews and the heirs were still trying to reclaim their share of the Royal Family's prizes into the early nineteenth century until the matter was dropped on technical grounds in 1810'. Biographical details from the website of the Royal Museums, Greenwich, *Papers of Commander George Walker, privateer*, available at: https://collections.rmg.co.uk/archive/objects/573594.html. The personal letter book of George Walker and the papers relating to the distribution of the prize money of his squadron are stored in the archives of the National Maritime Museum in Greenwich, on loan from a private lender.

[18] Towle, *Records* 1936 (n.1), 282-284.

Lockman concerned who the French ship had taken as prize and when; how many people were on board at the time of capture and of which nationality; and which documents were found on board and were being produced before the court as relevant proofs[19].

Sweet declared that there were 'seven Frenchmen and eleven negroes' on board, and the documents produced were a French passport, a cocket[20] and a 'role equipage'[21]. The second set of questions was instead directed at Jean Bazil, captain of the *St. Pierre*. In some form of cross-examination, the judge asked questions similar to the ones of the other party. Bazil declared that the ship had been captured on the route to the French colony of Martinique, that on board there were 'seven Frenchmen and eleven negroes'[22] and that the ship and its cargo belonged to Monsieur Lussy, inhabitant of Martinique and 'subject of the French King' and other 'several French gentlemen at the Granadas'[23].

He further stated that his cargo consisted in 'sugar, cocoa, coffee, rice, and negroes'. Lockman's last question was: 'are the negroes all slaves', to which Bazil answered: 'Yes, they are all slaves. Bazil further declared: 'They all belonged to Monsieur Lussy excepting a negro woman'[24]. The prizes were adjudicated later on the following day by Lockman, who concluded that the *St. Pierre* and its cargo, including the eleven slaves, were to be considered 'property of the French King Vassals and Subjects, enemies to our Sovereign

[19] 'Without any fraud, subduction, addition or embezzlement', read the formula used in these cases with regard to the production of evidence and documents in general.

[20] A 'cocket' is defined as a seal of the king's customhouse, a certificate given to merchants warranting that goods have been duly entered through customs and all duties paid. (from the Merriam-Webster dictionary, available at: https://www.merriam-webster.com/dictionary/cocket).

[21] Probably referring to the French 'rôle d'équipage', namely the list of the members of the crew.

[22] Towle, *Records* 1936 (n.1), 282.

[23] Towle, *Ibid.*, 283.

[24] Towle, *Ibid.*, 283.

Lord the King'[25], therefore condemning them as lawful prize to the captors and owners, to be sold and divided among themselves as they had agreed.

The libel of the second case, *Prince Frederick v. Postilion* (1746)[26], was filed directly by John Dennis, captain of the *Prince Frederick*, against the French ship *Postilion*. From the documents produced and the testimony of the French boatswain, it emerged that the captured ship was owned by Monsieur Romanel, and that, as by the warrant of search from the customhouse at Grandterre, its cargo belonged to several French inhabitants of Martinique. Therefore, judge William Strengthfield condemned it as a lawful prize with the usual formula, as 'property of the French King Vassals and Subjects, enemies to our Sovereign Lord the King', with the exception, as already described in the beginning, of 'one negro named Henry who pretends to be free'[27]. In the uncertainty, often dictated by the ubiquitous risk of forgery and false testimony, the judge gave the man three years 'to prove his freedom'. In the absence of 'credible' evidence, he would have been condemned as a prize. In the meantime, he was sentenced to remain in the custody of captors.

The third case, *Prince Frederick and Dolphin v. St. Jacques* (1746)[28] is probably the most complex one of all three. Peter Marshall, then captain of the *Prince Frederick*, filed a libel for a prize to the court and was therefore subject to an examination by judge Strengthfield. The originating fact was the capture of a French ship (the *St. Jacques*) near the island of Hispaniola, by the *Prince Frederick* and another privateer ship, the *Dolphin.* Marshall declared that on board of the captured ship there were 'about fifty of sixty persons, all of whom were French men, saving one or two negroes'[29]. The following questions addressed the engagement with the *St. Jacques*, adding that Jonathan Jonson,

[25] Towle, *Ibid.*, 283.
[26] Towle, *Ibid.*, 397-398.
[27] Towle, *Ibid.*, 398.
[28] Towle, *Ibid.*, 377-380.
[29] Towle, *Ibid.*, 378.

captain of the *Dolphin*, received a mortal wound and had to be left on shore. His version of the facts was confirmed by the testimonies of Philip Webster of New York, mate on the *Dolphin* and of Ebenezer Trobridge of Newport, lieutenant on *Prince Frederick*.

The 'cross-examination' was directed at Jean Rolan, member of the crew of the captured ship. Once ascertained the route of the *St. Jacques*, its place of construction (Saint-Malo) , and the identity of its owner (a merchant of Saint-Malo), the judge asked whether the commander of the ship was in possession of any letter of marque and therefore, himself authorised by the French monarch to capture enemy (in this case English) vessels, receiving a positive answer. According to Rolan, the cargo of the ship consisted in 'wine, oil, dry goods and cole, etc.'[30]. Other two mariners of the *St. Jacques*, Jean Julien and Pierre Mouchel, confirmed the version of Rolan. Several days after, judge Strengthfield re-examined Rolan. It might be helpful at this point to report the brief exchange in full:

Question: "What knowledge have you of those two negroes, libelled against as aforesaid?"

Answer: "One of them is named Emanuel, who I understood had been a soldier six months amongst the Portuguese, and some time among the French. I always understood he was free and was hired by the Captain as 10 Crowns per month to perform a voyage to the Cape. The other, whose name was Peters, was taken out of an English vessel by a French privateer and was carried to the Cape to be sold"[31].

After Rolan's second examination, the records state that Mr Honeyman, 'advocate for the captors', made a motion to the court with respect to settling the shares of prize to be received by each of the two privateer ships (the *Prince*

[30] Towle, *Ibid.*, 379.
[31] Towle, *Ibid.*, 380.

Frederick and the *Dolphin*). It was then agreed by the parties, and authorised by the court, that the two should 'choose two gentlemen and the judge a third'[32] to settle the quantum. The court was therefore set to adjourn to the morning after. Unfortunately, the final decree of condemnation is missing.

In conclusion, it might also be relevant to consider several additional factors. When analyzing the proceedings and judgments of the eighteenth-century vice-admiralty courts not only from the historical but also from the legal point of view, one must be mindful of their logistic, organizational and procedural elements. To start with, vice-admiralty courts were not common law courts, but rather civil ones. Their jurisdiction and powers derived from acts of parliament (statutes), their procedure did not envisage juries and there seems to be no trace of the use of precedents in their jurisprudence (no *stare decisis*). Furthermore, most of the colonial vice-admiralty courts were staffed by people without formal legal training[33] and did not have permanent seats. It could be said that the driving force behind the success of vice-admiralty courts in the colonies was time and cost effectiveness[34]. Libellants, petitioners, and advocates as well as judges and court personnel relied on quantity rather than quality, on

[32] Towle, *Ibid.*, 380. The names of those agreed upon by the captors and the judge followed: Benjamin Wickham, Wat Cranston and William Mumford.

[33] Towle, *Ibid.*, 91. It was, indeed, not considered as a requirement. For example, only two judges in the history of the vice-admiralty court of Rhode Island had previously received any form of formal legal training.

[34] 'The final decree might be a simple judgment, or it might be a summary of the evidence and contain a reasoned opinion. The decrees were in most cases brief and to the point (…) Time was a very important factor in any admiralty case, for if the vessel or goods involved should be tied up in any way, the merchant as well as the seamen suffered (…) The time required for the trial of a case varied from one day to several weeks (…) In all probability the vice-admiralty court in Rhode Island would not have been as successful as it was had it not settled all cases speedily (…) Long delays in port meant loss of wages as well as loss of cargo, a situation advantageous to no one (…) the average cost in marine causes was between £15 and £20 (…) The costs in prize causes were usually higher, but even those were not unreasonable (…) This freedom from complexity was designed to save both time and money(…) Though such simplicity was largely the result of a lack of training on the part of the officials, it was based on honesty and common sense and to it the court owed much of its success' Towle, *Ibid.*, 94-95.

the overall volume of cases adjudicated rather than on the legal accurateness achieved in the single case.

4 Vice-Admiralty Courts, 'Prize Negroes' and the Law of Nations

In conclusion, which laws did these courts apply? For what concerned prize cases, principally the ancient laws of maritime warfare and the British rules on the distribution of prize[35], together with local, customs and usages developed over time by each court and simple common sense. Regarding the traditional laws of war at sea, according to Clapham:

In addition to the Belligerent's Right to capture and keep the enemy property, such as warships (booty of war), maritime warfare has traditionally included a Belligerent Right to capture enemy merchant (civilian) ships (...) Property passes to the capturing state after adjudication by a Prize Court. The origins of the idea of Prize Law are related to the idea of *seizing* enemy property, so, as Kraska explains, the 'English word 'prize' or French '*prise*' is derived from the Latin verb '*prehendere*', which means to seize[36].

The traditional belligerent right to prize in maritime warfare goes back to the medieval right of *reprisal*, originally conceived as a practice aimed at righting wrongs done to one's own national by a foreigner or by a foreign government. Victims of wrongs were conceded *letters of reprisal* by sovereigns, which entitled them (absent the possibility of obtaining direct satisfaction) to seize property belonging to any fellow-national of the wrong-doer. At that point,

[35] As reported by Clapham: 'The British rules on distribution have been traced back to early in the reign of Henry VIII (1511) when, for one expedition, they were divided between the King and the Admiral. The rules reach a consolidated form under Queen Anne, in 1708, when they are transferred completely to the captors (with nothing left to the sovereign). Those rules can be summarized as providing for a Captain 'actually on board at the time of the prize' would be allowed 3/8^{ths}; Lieutenants 1/8th; gunners, carpenters, surgeons and chaplains 1/8th; gunner's mates, surgeon's mates etc 1/8th; trumpeters, barbers, cooks etc 2/8^{ths}' (Clapham, Andrew. *War* (2021), 25).

[36] Clapham, *Ibid.*, 23.

the history of prize intertwines with the one of privateering since letters of *reprisal* authorised the capture of goods *within* national jurisdictions. However, letters of *marque* authorised capture *beyond* borders. These rights also found space in Hugo Grotius' *Commentary on the Law of Prize and Booty* (1603) in which, as remarked by Clapham 'the idea of seizing and acquiring enemy property goes to the very purpose and rationale of just war'[37].

It is not by accident that in *Prince Frederick and Dolphin v. St. Jacques*, one of the first questions that judge Strengthfield asked to one of the testimonies was the following: 'Had your commander any commission or letter of marque reprisal to take English vessels?'[38]. With the consolidation of nation-states, the acquisition of prize under the authorisation of letters of marque as 'reprisals beyond borders', gradually became systematised as a fundamental part of international warfare, evolving from a method of 'private law-enforcement' to a 'sovereign right of a Belligerent State at War'[39].

The decentralised strategy of privateering utilised by maritime powers proved to be a flexible and economically efficient model of naval war-making until the 19th century[40]. A fundamental component of this model, which also permitted its economic sustainability, was the decentralisation and "delegation"

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[37] Clapham, *Ibid.*, 23 with reference to the following passage from the *Commentary*: 'But war is just for the very reason that it tends toward the attainment of rights; and in seizing prize or booty, we are attaining through war that which is rightfully ours. Consequently, I believe those authorities to be entirely correct who hold that the essential characteristic of just wars consists above all in the fact that the things captured in such wars become the property of the captors: a conclusion borne out both by the German word for war, [*krieg* from Middle High German *kriec(g)* , which means 'exertion,' 'endeavour to obtain something,'] and by the Greek word for Mars, since Ἄρης, ['Ares,' i.e. 'Mars,'] is apparently ἀπὸ τοῦ ἄϊρειν, 'derived from ἀείρειν,' [which means 'to take away,' 'to seize']. Therefore, the seizure of spoils of war is necessarily just on some occasions; and furthermore, it must be just in regard to the same persons and by that same criterion of all law, embraced in our demonstration of the justice of war'. van Ittersum, Martine, ed. *Hugo Grotius, Commentary on the Law of Prize and Booty* (Indianapolis: Liberty Fund, 2005), 68-69.

[38] Towle, *Records* 1936 (n.1), 379.

[39] Clapham, *War* 2021 (n.35), 24.

[40] See Kyriazis, Nicholas, Metaxas, Theodore and Economou Emmanouil M. L. 'War for profit: English corsairs, institutions and decentralised strategy'. *Defence and Peace Economics* 29(3) (2018), 335-351.

of sovereign rights to private subjects. In the British case, for instance, privateering resembled much to a business activity which was sanctioned, sponsored, and facilitated by the state[41].

The rise and expansion of modern state navies properly understood accompanied the centralisation of sovereign rights in maritime war, and the consequent decline of decentralised models such as privateering. There is an extensive literature on the use of state-sanctioned private violence in maritime war, and also regarding its legal terminology, for instance, as to the distinctions between the categories of privateers and pirates. However, it would greatly exceed the scope of this article to focus on these related themes[42].

The rules that eighteenth-century colonial vice-admiralty courts applied were therefore part of the traditional law of nations regarding maritime warfare, a product of centuries of normative stratification in both codification and practice. The implications of prize cases such as the ones illustrated above, however, went well beyond the laws of war pure and simple. The presence of privateering and vice-admiralty courts in the colonies was ubiquitous, leaving almost no aspect of public, social, and economic life untouched. As already mentioned, the unceasing frequency of interstate wars during the eighteenth century extended the relevance of prize adjudication to trade, slavery, race, diplomacy, society, and also issues that today would probably fall under the scope of private international law.

Prize adjudication itself constituted an integral part of the slave trade, by continuously reproducing the cession, acquisition, and transfer of slaves as

[41] See Mabee, Bryan. 'Pirates, privateers and the political economy of private violence'. *Global Change, Peace & Security* 21(2) (2009) 139-152.

[42] See, among others: Starkey, David J. 'Voluntaries and Sea Robbers: A review of the academic literature on privateering, corsairing, buccaneering and piracy'. *The Mariner's Mirror* 97(1) (2011), 127-147; Rodger, N. A. M. 'The Law and Language of Private Naval Warfare'. *The Mariner's Mirror* 100(1) (2014) 5-16; Hallwood, Paul and Miceli, Thomas. 'Piracy and Privateers in the Golden Age: Lessons for Today'. *Ocean Development & International Law* 49(3) (2018), 236-246.

property[43], and more than occasionally, the enslavement of free black mariners[44]. Beyond that, the condemnation of 'prize negroes' at times caused diplomatic tensions between colonial powers[45]. One should not forget that all legal proceedings in prize cases involved ships, owners, captains, officers, and mariners of different nationalities. The owner of the cargo, or part of the cargo, could even be of a third nationality, different from both; the one of the owners of the ship and the one of the captain. Among the crew, there could be different nationalities as well, and so it could be if the ship and cargo had multiple owners. The determination of nationalities, as well as the determination of freedom or unfreedom, was crucial to the condemnation of the prize, and that required the hearing of sworn testimonies, the employment of interpreters, the examination of documents and various forms of evidence, including goods themselves, flags, and pieces of equipment.

Enslaved people were, as commodities that could be seized, deprived of any nationality. The only nationality which mattered about them was, as in the case of the rest of the cargo, one of their owners. The question was different

[43] Interestingly enough, slaves figured both in the list of the people found on board at the time of capture and in the list of goods found on board at the time of capture and liable of condemnation as prize.

[44] For an accurate account of the condemnation as prize (and therefore of the enslavement) of free black or mixed-race mariners in the colonial vice-admiralty courts of North America see again: Foy, *Eighteenth Century 'Prize Negroes'* 2010 (n.9).

[45] As reported by Foy: '…in 1746 when Newport ship captain William Dennis had 22 Spanish prisoners sold as slaves based on their skin colour, Havana's Governor protested. The Governor not only exchanged acerbic letters with his counterpart, but also had 19 of Captain Dennis' men taken hostage. Officials in Rhode Island, New York and Pennsylvania scrambled to recover the Spanish black sailors so that Dennis' seamen could be freed. Contacting Spanish governmental officials was usually critical to obtaining freedom, but it was not failsafe. As Santiago, a free Spanish black man, captured by a British vessel and sold in Rhode Island found out, sometimes a slave owner's connections could trump Spanish governmental authority. In the same year as the nine 'Spanish Negroes' in Rhode Island gained their freedom through the intercession of the Governor of Havana, a Rhode Island master sent Santiago on a voyage to the West Indies. He attempted to escape in Havana. Unfortunately for Santiago, his master's business associate in Cuba had him recaptured and sold, despite evidence that 'he [wa]s a Free Man'' (Foy, *Ibid.*, 385). For a more detailed account of the episode involving the intercession of the Spanish governor of the Havana see: Greene Arnold, Samuel. *History of the State of Rhode Island and Providence Plantations* Vol. II (1859) (Carlisle, Massachusetts: Applewood Books, 2010), 153-154.

when, as in the case of Henry in *Prince Frederick v. Postilion*, someone 'pretended to be free' even though, in vice-admiralty courts, blackness entailed an extremely strong presumption of slavery. Even in the presence of documents. proving one's freedom could amount to an exceptionally difficult task in the absence of intercessions or testimonies of employers.

Writes Foy: 'Although black seamen were condemned as Prize Negroes during the Seven Years War, the numbers of such enslaved mariners was but a fraction of those who lost their freedom in previous wars. This was largely due to the fact, that in response to the numerous freedom suits filed in the 1740s and 1750s, Vice-Admiralty courts began to place the burden of proof on libellants and not captured seamen as to whether the sailors were free or enslaved subjects of their native lands. Unfortunately for black mariners, this change was not to be adopted by American admiralty judges[46].

5. Conclusions

A notable exception to the surprising lack of scholarship addressing this theme from more of a legal perspective (especially an international legal perspective), and not exclusively from the historical one, is Clapham's recent work on the laws of war. It is extremely interesting how he uses the history of 'prize negroes' to support the definitive dismissal of what remains of prize law and related practices in the international law of the 21st century, also highlighting how prize law provided slavers with an opportunity to get around anti-slavery laws even after the emergence of abolitionist legislation[47]. At the end of his chapter on the laws of naval warfare, he remarks:

[46] Foy, *Ibid.*, 385

[47] Clapham, *War* 2021, 50. 'even where states were legislating against the importation of slaves, Prize Law was used to get around such restrictions with slaves being sold on after condemnation as good prize captured in war'. On the histories of 'prize negroes'/'recaptives'/'liberated Africans' in the post-abolition/emancipation period (mainly

I suppose some will argue for a continuing general customary right for states to capture enemy merchant ships, and it is for those who no longer believe in the right of capture to show that it has fallen into disuse or been overtaken by the laws which outlaw war and prohibit the use of force. When we recall the longstanding of this co-called right to capture rule, we might remember that enemy goods in the past included slaves being transported on enemy ships or belonging to the enemy. In fact, in the eighteenth-century members of the crew on any captured ship that was Black or mixed-race would be presumed to be slaves even where they might have evidence, they were free. Captured and sold as prize, such crew members proved useful to captains either as income or as additions to the crew. Prize Law has an inglorious past[48].

Studying the forgotten histories of 'prize negroes' would allow an international legal scholarship to uncover one of the most overtly racialized aspects of the laws of nations (more specifically, the laws of war) in the modern age. During eighteenth-century interstate wars, prize systems played a decisive

in the nineteenth century) see van Niekerk, J.P. 'Judge John Holland and the Vice-Admiralty Court of the Cape of Good Hope, 1797-1803: Some Introductory and Biographical Notes (Part 1)'. *Fundamina* 23 (2017), 176-210; Benton, Lauren. 'Abolition and Imperial Law, 1790–1820'. *The Journal of Imperial and Commonwealth History* 39(3) (2011), 355-374; Watson, R.L. 'Prize Negroes and the Development of Racial Attitudes in the Cape Colony, South Africa'. *Southeastern Regional Seminar in African Studies (SERSAS)* (14-15 April, 2000); Saunders, Christopher. 'Between Slavery and Freedom: The Importation of Prize Negroes to the Cape in the Aftermath of Emancipation'. *Kronos* 9 (1984), 36-43; Saunders, Christopher. 'Liberated Africans in Cape Colony in the First Half of the Nineteenth Century'. *International Journal of African Historical Studies* 18(2) (1985), 223-239; Richards, Christopher Jake. 'Anti-Slave-Trade Law, 'Liberated Africans' and the State In The South Atlantic World, C.1839–1852' *Past and Present* 241 (2018), 179-219. Most of the existing literature on post-abolition/emancipation 'prize negroes' is focused on the Cape colony in South Africa, in a period which usually covers the first half of the nineteenth century. Saunders describes the phenomenon of post-abolition 'prize negroes' in following way: 'Just as a ship seized in time of war and kept by the captor was called a 'prize', so those Africans captured at sea after the abolition of the British slave trade in 1807 and released in British colonies were known as 'Prize Negroes' (…) By the time the European wars came to an end in 1815, over two thousand such slaves had been freed at the Cape. But they were not released unconditionally: as 'prizes', they were then 'apprenticed' for periods of fourteen years, and there is a lot of evidence to suggest that the restrictive conditions in which they lived and worked were little, if any, different from those of the slaves…' (Saunders, *Ibid.*, 36-37).

[48] Clapham, *Ibid.*, 50.

role in the conduct of warfare, while enriching seamen, naval officers, governments, functionaries, and ship owners. As observed by Foy, colonial prize systems were also 'highly organized enterprises for the provision of coerced labour', reinforcing colonial slave labour and extending it beyond colonies themselves[49].

As already stated, prize law and vice-admiralty courts significantly contributed to reinforcing and legitimise slavery and the slave trade, before and after the emergence of abolitionist legislations[50]. Standing right at the intersection of war, trade, and slavery, the history of 'prize negroes' still represents one of the many absences from the history of international law, which would desperately need more scholarly attention to be compensated for. Unlike many others among the numerous *dark sides* of the history of the discipline, the 'inglorious past' of prize law is still there, either mostly submerged or largely overlooked.

This article has been an attempt, albeit in its very limited scope, to promote an approach to the study of the legal issues in the history of maritime warfare which gives appropriate weight to micro-histories such as the ones examined in the previous sections. As seen in the case of the registers of the Vice-Admiralty Court of Rhode Island, recollecting, analysing, and systematising accounts of individual episodes can be a much useful exercise to complement the macro-history of interstate politics and law-making in international systems. Focusing on particular geographical regions and their micro-histories allows us to give "names and faces" to the protagonists of these histories, hence gaining a deeper understanding of the wider phenomena.

[49] Foy, *Eighteenth Century 'Prize Negroes'* 2010 (n.9), 379-380.
[50] See footnote n.43.

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