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FRAMING 'PIRACY': RESTITUTION AT SEA IN THE  
LATER MIDDLE AGES

by

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degree of

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## **Abstract**

The focus of the thesis is the diplomatic and legal implications of the capture of ships at sea in the later Middle Ages. It challenges key assumptions in much secondary literature concerning the definition of piracy, seeking to explore several major themes relating to the legal status of shipping in periods of war or diplomatic tension in this period. The thesis draws primarily on diplomatic, legal and administrative records, largely those of English royal government, but also makes use of material relating to France, Holland and Zealand, Flanders and the Hanse. The majority of studies on this subject stress the importance of developments which occurred in the fifteenth century, yet I have found it necessary to follow the development of the law of prize, diplomatic provisions for the keeping of the sea and the use of devolved sea-keeping fleets back to the start of the thirteenth century. This thesis questions the tendency of historians to attach the term ‘piracy’, with its modern legal connotations, to a variety of actions at sea in the later Middle Ages. In the absence of a clear legislative or semantic framework a close examination of the complexity of practice surrounding the judgement of prize, the provision of restitution to injured parties, and diplomatic mechanisms designed to prevent disorder at sea, enables a more rounded picture to emerge.

A detailed examination of individual cases is set within the broader conceptual framework of international, commercial and maritime law. Chapter 1 provides a study of the wartime role of devolved fleets by means of a case study of Henry III’s Poitou campaigns of 1242-3. It demonstrates that private commissioned ships undertook a variety of naval roles including the transport of troops, patrolling

the coast and enforcing blockades. Further, it argues that it is anachronistic to criticise private shipowners for seeking profit through attacks on enemy shipping as booty was an integral incentive in all forms of medieval warfare. Chapter 2 provides a detailed examination of the application of letters of marque, one of the principal means of obtaining redress for injuries suffered at the hands of the subject of a foreign sovereign. It demonstrates that far from being a justification for 'piracy' letters of marque were highly regulated legal instruments applied in the context of an internationally accepted body of customs. Chapter 3 examines the concept of neutrality and the relationship between warfare and commerce through a study of Anglo-Flemish relations during the Anglo-Scottish wars between 1305 and 1323. It argues that universal standards of neutrality did not exist in this period and that decisions on prize took place within the context of an ever-changing diplomatic background. Chapter 4 focuses on the provision of restitution once judgement had been made through an examination of a complex dispute between English merchants and the count of Hainault, Holland and Zeeland spanning the opening decades of the fourteenth century. It emphasises the *ad hoc* nature of restitution with a variety of means devised to compensate the injured parties and the difficult and often inconclusive process undergone by litigants against a backdrop of competing interests, both local and national. The thesis concludes that the legal process surrounding the capture of shipping was civil rather than criminal in nature. The plaintiff's need to obtain restitution was the driving force behind such actions rather than the state's desire to monopolise the use of violence at sea. The reliance of the English crown on devolved shipping made such a policy fiscally impractical.

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## ABBREVIATIONS

<b><u>B.B.A.</u></b>	<i>Black Book of the Admiralty</i> , ed. T. Twiss.
<b><u>Bronnen</u></b>	<i>Bronnen tot de geschiedenis van den handel met Engeland, Schotland en Ierland, 1150-1485</i> , ed. H.J.Smit.
<b><u>C.C.R.</u></b>	<i>Close Rolls and Calendar of Close Rolls</i> .
<b><u>C.D.S.</u></b>	<i>Calendar of Documents relating to Scotland</i> .
<b><u>C.F.R.</u></b>	<i>Calendar of Fine Rolls</i> .
<b><u>C.I.M.</u></b>	<i>Calendar of Inquisitions Miscellaneous</i> .
<b><u>C.L.R.</u></b>	<i>Calendar of Liberate Rolls</i> .
<b><u>C.P.R.</u></b>	<i>Patent Rolls and Calendar of Patent Rolls</i> .
<b><u>Early Chancery Proceedings</u></b>	<i>Calendar of early chancery proceedings relating to west country shipping, 1388-1493</i> , ed. D.A. Gardiner.
<b><u>Foedera</u></b>	<i>Foedera, conventiones, literae et cuiuscunque generis publica</i> , ed. T. Rymer.
<b><u>Hanseakten</u></b>	<i>Hanseakten aus England. 1275- 1412.</i> , ed. K. Kunze.
<b><u>Law and Custom-</u></b>	<i>Documents Relating to the Law and Custom of the Sea</i> , ed. R.G. Marsden.
<b><u>Medieval Diplomatic Practice</u></b>	<i>English Medieval Diplomatic Practice, Documents and Interpretation</i> , ed. P. Chaplais.
<b><u>P.P.C</u></b>	<i>Proceedings and Ordinances of the Privy Council of England</i> , ed. N.H. Nicolas.
<b><u>P.R.O.M.E.</u></b>	<i>The Parliament Rolls of Medieval England</i> , ed. C. Given-Wilson et al. CD-ROM.
<b><u>Rot. Parl</u></b>	<i>Rotuli Parlimentorum</i> , ed. J Strachey et al.
<b><u>Statutes</u></b>	<i>Statutes of the Realm, from original records and authentic manuscripts</i> , ed. A. Luders et al.

## **1.Introduction:The perception of ‘piracy’ in the Later Middle Ages**

The safeguard of the sea emerged as a matter of crucial importance in England in the later Middle Ages with frequent formal and informal episodes of Anglo-French conflict existing alongside a range of peripheral conflicts involving various northern European powers. What is often termed ‘piracy’ was a direct result of the state of war. Due to its status as both a highway and a border, non-belligerent third parties were more likely to suffer collateral damage at sea than elsewhere. A fourteenth century petition from the Channel Islands of Jersey and Guernsey complaining about their burden of defence stated that they were “enclosed by a great sea in the march of all nations.”<sup>1</sup> Continuing conflict with France focused the attention of the English royal government on the matter. The need to defend the coastal areas of England during periods of war and the need to prevent breaches of truce in periods of peace, along with the need to maintain diplomatic alliances, all contributed to raise the profile of sea keeping in this period. In the later Middle Ages terms such as ‘keeping the sea’ or the ‘safeguard of the sea’ did not imply exclusive control, for clearly systematic sea keeping was not possible at this time given the limitations of medieval naval technology and organisation. Writing in 1442, John Capgrave illustrated the two key features of sea keeping, “to give a safe conduct to our merchants and the quiet of peace to the inhabitants of the kingdom.”<sup>2</sup>The two

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<sup>1</sup> Havet, J., *Les cours royales des Iles Normandes; depuis le Treizième Siècle jusqu’à nos jours* (Paris, 1878), p. 231.

<sup>2</sup> *Liber de Illustribus Henricis*, ed. F. C. Hingeston (London, 1858), p. 134, translated in C. Richmond, ‘English naval power in the fifteenth century’, *History*, 52 (1967), pp. 1-2.



essential elements of sea keeping were thus, the protection of sea borne trade and the English coast, which elements could on occasion run contrary to each other.

The majority of English historiography on the subject has concentrated on the opening years of the fifteenth century with the *de facto* renewal of the Anglo-French conflict, a time when the English crown was compelled to fall back on devolved sea keeping fleets in the face of renewed French hostility. It was not just conflict with France that shaped attitudes to maritime policy. The dependence of the English economy on the revenues of coastal trade, allied to the increasing reliance of the government on loans from the merchant community, was a strong motivation in providing security at sea for the mercantile marine. The emergence of commercial treaties such as the *Trève Marchande* of 1407, which sought to protect trade between English and Flemish merchants in the event of war between England and France, provides cogent evidence of the increasing influence of merchants in diplomacy.<sup>3</sup> Yet similar protections were outlined as early as the thirteenth century in a perpetual safe conduct granted to Flemish merchants in 1236, which was also to hold good in the event of war between the kings of England and France.<sup>4</sup> Over the course of this period there were a growing number of complaints on the part of the commons over the state of the navy and the need to ‘keep’ the sea.<sup>5</sup> Increasingly, merchants were

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<sup>3</sup> *Foedera, Conventiones, Literae et Cujuscunque Generis Acta Publica inter Reges Angliae et alios ...*, e.d. T. Rymer, 20 vols, (London, 1727-1735), VIII, pp. 469-476, S. Pistono, ‘Flanders and the Hundred Years’ War: the quest for the *Trève Marchande*’, *Bulletin of the Institute of Historical Research*, 49 (1976), 185-97.

<sup>4</sup> *Calendar of Patent Rolls preserved in the Public Record Office (1232- 1509)*, 52 vols. (London, 1891- 1916), 1232-47, pp. 170-1.

<sup>5</sup> M. Ormrod, ‘Edward III: Parliament of October 1339’ in *The Parliament Rolls of Medieval England* (henceforth P.R.O.M.E), ed. C. Given-Wilson et al, items 9 and 15 CD-ROM (Leicester: 2005), M. Ormrod, ‘Edward III: Parliament of September 1346’ in P.R.O.M.E, item 21, M. Ormrod, ‘Edward III: Parliament of February 1371’ in P.R.O.M.E, items, 20, 44, M. Ormrod, ‘Edward III: Parliament of November 1372’, items 28-29, G. Martin, ‘Richard II: Parliament of October 1377’, in P.R.O.M.E, Item 17, G. Martin, ‘Richard II: Parliament of October 1378’, items, 67, 68, 72, C. Given-Wilson, ‘Richard II: Parliament of November 1381’, in P.R.O.M.E, item 13, C. Given-Wilson, ‘Richard II:

consulted on measures of naval defence, such as in 1406<sup>6</sup>, 1413<sup>7</sup> and 1442<sup>8</sup>, when some appeared before the king's council as technical advisors on the keeping of the sea. The mercantile role in maritime defence was strong from an early stage despite an emphasis in the historiography on the early fifteenth century. As early as March 1226 the barons of the Cinque Ports were ordered to deliberate amongst themselves as to the best measures to adopt for securing safe passage of the sea.<sup>9</sup>

This study focuses on the diplomatic, legal and military implications of what have been termed acts of 'piracy' in the later Middle Ages. It questions the tendency of historians to attach the name 'piracy', with its modern legal connotations, to a variety of actions at sea. In the absence of a clear legislative or semantic framework, a study of the process surrounding the judgement of prize, the provision of restitution to injured parties and diplomatic mechanisms designed to stem disorder at sea, enables a more rounded picture to emerge. The fifteenth century has been identified by a number of historians as a crucial stage in the development of the regulation of the sea. However, I have found it necessary to trace the development of the law of prize, diplomatic provisions for the keeping of the sea and the use of devolved sea-keeping fleets back to the start of the thirteenth century. By tracing back the roots of later developments, a picture emerges which is neither static nor entirely linear challenging the traditional narrative of increased governmental control of violence as

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Parliament of January 1393', item 24, C. Given-Wilson, 'Henry IV: Parliament of November 1411', in *P.R.O.M.E.*, item 21.

<sup>6</sup>C. Given-Wilson, 'Henry IV: Parliament of March 1406', in *P.R.O.M.E.; Foedera*, VIII, pp. 437-38, p. 449.

<sup>7</sup>*Proceedings and Ordinances of the Privy Council of England*, (1386-1542), e.d., N.H. Nicolas, 7 vols, (London, 1834-1837), II, pp. 131-132.

<sup>8</sup>Curry, A., 'Henry VI: Parliament of January 1442, Introduction', in *P.R.O.M.E.*

<sup>9</sup>*Patent Rolls of the Reign of Henry III Preserved in the Public Record Office*, 1224-1232 (London, 1903), pp. 25-6.

a function of the process of state formation between the thirteenth and fifteenth centuries.<sup>10</sup>

The thesis draws on a range of published material from England, including patent rolls and close rolls (a series of letters, writs and mandates issued under the Great seal, open and closed respectively), *Foedera* (including, but not restricted to, a varied collection of treaties, agreements and diplomatic correspondence between the English Crown and a range of European powers), in addition to other published material from France, Germany, and the Low Countries, supplemented where possible with unpublished material from the National Archives. The wealth of published material alone testifies to the importance of the capture of shipping to the English Crown in the later Middle Ages. Whilst the majority of material survives only as isolated examples, the trail dying out after its initial mention, on certain occasions it has been possible to follow a case from its origins to its ultimate resolution, allowing the construction of an administrative narrative.

The frequency of complaints from friendly sovereigns seeking redress on behalf of their ‘injured’ subjects has led many historians to conclude that the sea in the later medieval period was a lawless domain. N.A.M. Rodger states,

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<sup>10</sup> Thomson, J.E., *Mercenaries, Pirates, and Sovereigns: State-Building and Extra Territorial Violence in Early Modern Europe* (Princeton, 1994), Mollat, M, ‘De la piraterie sauvage à la course réglementée (XIVe-XVe siècle)’, in: *Course et piraterie: études présentées à la commission internationale d'histoire maritime*, 2 vols, ed M.Mollat (Paris, 1975), I, pp. 162-184.

“The word piracy has to be applied with caution in the medieval context, when the sea was widely perceived as a lawless realm beyond the frontiers of all nations, where neither law nor truce nor treaty ran.”<sup>11</sup>

But rather than indicating lawlessness, such complaints were indicative of an expectation of legal protection; the sea was not considered to be beyond law, and the merchant petitions support that idea. Whilst we must be wary of such documentation as potential special pleading, it is possible to glean from these petitions and letters of complaint certain expectations of justice centred on the custom and the law of the sea, a series of assumptions rather than a codified law. Often specific treaty provisions would be adduced within these pleas forming the legal basis of the claim. Although treaties did not create law, they were taken as indications of diplomatic intent. Of course it was not expected that treaties would be inviolate, but it was expected that when breaches occurred all efforts would be made to correct them. The provision of restitution to injured subjects was a central element in the diplomacy of the age. However, the domestic response to such claims of breach did not take place within a vacuum and could not be divorced from their specific political context. These were essentially political decisions taken with reference to the specific diplomatic context, which as ever was subject to change. A Flemish merchant seeking restitution of captured cargo under the Bedford regency in the 1420s would surely have higher expectations of justice than his fellow citizen making a similar claim in the immediate aftermath of the treaty of Arras. Essentially the same act could be adjudged good prize in 1436 having not been considered so only a year before. Therefore, without any formal change in the legal relationship between

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<sup>11</sup> Rodger, N.A.M., ‘The naval service of the Cinque Ports’, *The English Historical Review*, 111 (1996). p.646.

England and Flanders, we would be compelled to classify one act as ‘piracy’ and the other as lawful capture.

Historians frequently apply the term piracy when writing about disorder at sea in the later Middle Ages; it is ascribed to a variety of actions primarily, but not exclusively, related to the capture of shipping at sea. In the majority of cases the label is applied with a presumption of inherent, universal and consistent meaning without reference to the specific legal context or the conventions of medieval warfare. Alfred Rubin, Professor of International Law, in *The Law of Piracy* states,

“ The word ‘pirate’ does not appear with precise meaning in English legal literature until the sixteenth century and attempts to trace the law regarding ‘piracy’ back beyond that time all seem to assume that other legal words carried the identical meaning.”<sup>12</sup>

The literature to which Rubin refers, the Offences at Sea Act of 1536, made piracy a felony and an offence under English common law for the first time but the statute does not define what constitutes ‘piracy’. Subsequent definitions have ranged from robbery at sea to any violence at sea not considered to be a lawful act of war.<sup>13</sup>

The failure to subject the term to sufficient critical analysis has given rise to tautologies such as “unlicensed piracy” and oxymorons such as “sanctioned maritime

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<sup>12</sup> Rubin, A.P, *The Law of Piracy* (New York, 1998) p.44.

<sup>13</sup>‘In re Piracy Iure Gentium’, *Lloyd’s List Law Review* (1934), p.411-419 provides a concise synopsis of the history and definition of piracy under English law. Rubin deals with the topic in greater depth in *The Law of Piracy*, pp.43-130. Sundberg, J.W.F., ‘Piracy: Air and sea’, *DePaul Law Review*, 20 (1971), p.341. Constantinople, G.R., ‘Towards a New Definition of Piracy : the *Achille Lauro* Incident’, *Virginia Journal of International Law*, 26 (1986), p.730.

theft.”<sup>14</sup> Indeed, Emily Tai, writing in a Mediterranean context, even goes so far as to state that not all acts of piracy were illegal in the later Middle Ages.<sup>15</sup> The subject has been studied by legal scholars without grounding in historical research or awareness of historical context, and historians who pay insufficient attention to the legal ramifications of the capture of shipping.

The term ‘pirate’ is used less frequently in late medieval English documentation than one might imagine, used sparingly even within letters of request and petitions seeking redress. Generally its application in the vernacular is imbued with no specific legal meaning, a calumny with a strongly pejorative tone designed to convey the essence of an action rather than a specific legal sense. It is a descriptive noun employed as a rhetorical device to emphasise the unjust nature of the offence or to distance a sovereign from the actions of one of his subjects; an assertion that the offence was not of their commission. It was used alongside terms such *raptores*, *malefactors* and *praedones*, and conveys no more legally defined meaning than a term such as “sons of perdition”.<sup>16</sup>

Initially, the term does not appear to have been universally negative; there are several examples prior to our period of its use merely to describe those who fight at sea, as a synonym for mariner. In Asser’s life of Alfred we learn that in 877

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<sup>14</sup> Tai, E.S., ‘Restitution and the definition of a pirate: The case of Sologrus de Nigro’, *Mediterranean Historical Review*, 19, (2004), p.36, 37.

<sup>15</sup> Tai, E, *Honor Amongst Thieves: Piracy, Restitution and Reprisal in Genoa, Venice and the Crown of Catalonia-Aragon, 1339-1417* (Harvard University PhD. Thesis, 1996), p .634.

<sup>16</sup> *Lettres de rois, reines et autres personages des cours de France et d’Angleterre*, ed., M. Champollion Figeac, 2 vols. (Paris, 1847), I, pp. 418-420, the term is used in a 1295 letter of marque from 1295 to describe various Lisbon sailors of Lisbon accused of pillaging a ship from Bayonne.

“king Alfred ordered ‘cymbas’ and galleys, that is the long ships, to be made through the kingdom, so he might meet in naval battle the enemies, and placed in them pirates (*piratis*) entrusted to guard the sea routes.”<sup>17</sup>

There is no sense here that that the term pirate is in any way pejorative; the pirates are engaged in defensive action resisting pagan invaders. Roger of Howden, writing in the late twelfth century, uses the term to describe the sailors employed by William Rufus to repel an invasion by Robert Curthose, duke of Normandy,

“Then he furnished the sea with his pirates (*suis piratis*) who killed and drowned in the sea all those coming into England.”<sup>18</sup>

Pirate continues to be used as a synonym for mariner into the fourteenth century. In July 1324, an order to various ports throughout England stated that,

“The king of France has gathered a great army to conquer Us in our duchy of Aquitaine: and We and the Lands, Men, and People, subject to Us, which he struggles to harm, both by land and sea; to this placing Admirals and Pirates (*Piratas*) upon the sea and gathered together a large fleet and a multitude of ships.”<sup>19</sup>

No distinction is made in the mandate between ‘admirals’ and ‘pirates’. The only pejorative sense here is that these ‘pirates’ have been put to sea to attack English ships, but they have been commissioned to carry out this act by their lawful sovereign during a period of declared war between England and France. Such action

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<sup>17</sup> *Asser's Life of King Alfred*, ed. W.H.Stevenson, (Oxford, 1959), p.39.

<sup>18</sup> Nicolas, Sir N.H., *A History of the Royal Navy from Earliest Times to the Wars of the French Revolution*, 2 vols, (London, 1847), I, p. 98, Nicolas cites the Latin text of Roger of Howden.

<sup>19</sup> *Foedera*, IV, p.73.

does not to fit any modern definition of piracy. A similar description is employed by Mathew Paris a century earlier when describing various French sailors defending their coast in the face of hostile incursions by English fleets during the 1242 Poitou campaign of Henry III.<sup>20</sup>

An essential element of ‘piracy’ is that capture had no legitimate basis; it was not sanctioned by sovereign authority. In 1327, the English Crown used the term ‘pirate’ in reference to ‘malefactors’ of Sandwich and Winchelsea accused of capturing a Nieuport ship. It was stated in a letter to the burgomasters and *échevins* of Bruges in response to their complaint,

“It is not fitting as a result of the said crime, if such has been perpetrated, that the existing truce should be broken, since it is not easy to provide security against these assaults of pirates (*incursus piratorum*) and responsibility will rest with us that attempts against the truce will be duly corrected.”<sup>21</sup>

The use of the term in this context ties in with the notion that ‘piracy’ was something unsanctioned, against the will of the Crown. The absence of sovereign authority, either explicitly stated or implied, would be an essential characteristic of all subsequent English legal definitions of ‘piracy’. Whilst on the face of it the use of the term approximates to this notion, in reality it appears to have been a rhetorical device used to distance the king from the actions of his subjects rather than the

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<sup>20</sup> See chapter 2. This thesis does not draw heavily on chronicle evidence. We are interested in the legal consequences of such acts rather than the subjective judgements of observers whose grasp of such matters was necessarily limited.

<sup>21</sup> *Foedera*, IV, p.228.



expression of any specific legal conception. In 1404, the envoys of Henry IV requested that the duchess of Burgundy “ought not to defend the robbers and pirates (*larrons et pirates*), who rob our men, nor to hide their acts, or to participate in their robberies.”<sup>22</sup> The alleged involvement of a *de facto* sovereign did not prevent the use of the term ‘pirates’ to describe the men involved in unlawful captures.

The term ‘pirate’ conveys an even stronger sense of stigma in a clause contained in the 1403 indenture supplementary to the Truce of Leulinghem in which it was stated that

“anyone, banished from the aforesaid kingdoms, or Pirates, Plunderers, or Robbers upon the sea (*Depraedatores, Piratae, Praedones supra Mare*) will not be received in any port or vessels, indeed, if they happen to be discovered in any of the said ports or elsewhere, they will be captured at once by the Admirals or Warden of the Cinque Ports (if discovered in their jurisdiction) or their lieutenants, or, in the absence or negligence of them, by the justices of the place..... And it will be proclaimed in all ports of both Realms that none of the Banished, Pirates nor Robbers will be received, nor sustained or otherwise granted any necessity, nor helped, counselled or favoured; And this under pain of the forfeiture of their bodies and goods.”<sup>23</sup>

Such a clause ties in closely with our ‘modern’ perception of a pirate as essentially ‘stateless’; an idea linked closely to that of banishment. A similar clause

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<sup>22</sup> *Royal and Historical Letters During the Reign of Henry IV*, ed. F.C. Hingeston, 2 vols, (London, 1860), I, p.3 61.

<sup>23</sup> *Foedera*, VIII, p. 306.

contained in the indenture of 1402 only used the terms *Depraedatores* and *Robatores supra Mare*.<sup>24</sup> It may be that the identification of ‘pirates’ as those likely to cause harm to the truce and peace at sea was a step towards a more precise use of the term. In a similar clause contained in a 1417 commercial treaty between England and Flanders it was stated that,

“no pirates, or armed men, labouring upon the sea will be permitted to enter into the ports, havens, river banks or whichever other places of the parts of Flanders, or to leave the same and vice versa, to make war on the king of England or the said Lord of Flanders, unless by strong winds the same will be compelled to do so, which case they will be held to leave at the first suitable breeze.”<sup>25</sup>

This case is more ambiguous. Similar clauses refer to sea rovers (*escumeurs*) and the prohibition was simply on the use of the port of one party to attack the shipping of another. It is not clear that these ‘pirates’ are in themselves considered to be noxious. Similarly petitions lodged in both the September parliament of 1429 and the January parliament of 1431 requested that men called ‘sea rovers’ (*roverses sur le mere*) who attacked English merchants at sea should be adjudged felons. Neither petition used the term ‘pirate’, rather described these ‘rovers’ as “common thieves, outlaws, fugitives, and those who have been excluded and banished from various realms.”<sup>26</sup>

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<sup>24</sup> *Foedera*, VIII, p.275.

<sup>25</sup> *Foedera*, IX, pp.483-86.,

<sup>26</sup> Curry, A., 'Henry VI: Parliament of November 1429' item 42, in *P.R.O.M.E.* Curry, A., 'Henry VI: Parliament of January 1431' item 29, in *P.R.O.M.E.*

Even if on occasion the word ‘pirate’ is applied in contemporary documentation in such a way as to fit a modern understanding of the term, there does not appear to have been any consistency of usage. It is not used to refer to a specifically defined action. Its use is subjective rather than fitting any qualified legal judgement on the act.

Historians attempting to define ‘piracy’ in the Middle Ages have largely done so by establishing the distinction between those who should be termed ‘pirates’ and the action of men considered to be ‘corsairs’ or ‘privateers’. Thus, George Friedrich von Martens, the German jurist and diplomat, writing in 1795 on the history of ‘privateering’ defined it as follows,

“One calls privateering expeditions (*armemens en course*) the expeditions of ordinary persons in time of war who, furnished with a particular permission of one of the belligerent powers, arm at their own cost one or several vessels, with the principal aim of running against the enemy and to prevent neutrals or allies from trading with the enemy in illicit commerce.”<sup>27</sup>

In von Martens’ description a privateer has a necessary context, which is a state of war; a nature, he is self-funding; and a mode of action, the capture of shipping. Having established a working definition for a privateer, von Martens goes on to contrast this definition with that of a ‘pirate’. Firstly, whilst the privateer holds a commission or letters of marque from a sovereign, the pirate possesses no such authority or licence. Secondly, whilst the privateer operates in time of war (or at least

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<sup>27</sup> Von Martens, G. F., *Essai concernant les armateurs, les prises et surtout les reprises: d’après les lois, et les usages des puissances maritimes de l’Europe* (Göttingen, 1795), p.12.

of reprisal), the pirate pillages regardless of whether there is peace or war. Thirdly, the privateer is obligated to observe the orders and instructions issued to him and as such only attack enemy vessels and 'neutral' vessels engaged in illicit commerce. The pirate, by contrast, pillages indiscriminately with no regard for the laws of war. Von Martens explains that privateers become pirates when they deviate from the prescribed boundaries of their commissions. Indeed von Martens considers this potential for privateers to fall into piracy as one of the reasons for the confusion between the two. Finally, he concedes that the two notions were less distinct in the past than they are in his own day, at the turn of the eighteenth century.

The circular definition outlined above is the model employed by the majority of historians in their discussion of privateering and pirates. Privateers or corsairs are defined by their *action* as well as their *status*. It is seen as a distinct method of warfare, rather than simply a particular manner of service. These are men on commission, working for commission. Hence Irene Katele, in constructing a working model to be employed in her thesis on Venetian Piracy in the fourteenth century is able to state,

“We will regard assaults which targeted mercantile vessels and resulted in division of spoils for the participants as corsairial. If certain operations were designed only to create havoc, to harm or injure the enemy, without clues as whether merchandise or spoils were targeted, we

will consider them as possibly corsairial in nature, especially if they sailed without the precise intent to engage in battle.”<sup>28</sup>

The definition employed by Katele rests on *action* rather than *status*; ‘corsairing’, assimilated with privateering, is seen as being a distinct form of naval warfare, the essential element being attacking merchant shipping for the purposes of enrichment, i.e. the gaining of plunder. Indeed, Katele considers that any captain of a conventional fleet engaged in attacks on merchant shipping during war time should be considered a corsair.

In contrast Katele defines a pirate as follows,

“The pirate operated outside of the law (*foris banum*), ravaging the seas of his own accord without precise sanction from any recognised government...A pirate had no national allegiance and regarded the vessels of any state as potential prey. He chose his victims more or less indiscriminately and amassed his prizes or booty only for his own (or his investors, if they existed) profit. Corsairs and pirates had similar objectives, but worked in different contexts: to some extent a corsair was a specialised form of pirate. The most important element in the definition of a corsair was that he held a license from his government.”<sup>29</sup>

The definition employed here by Katele is as rhetorical as any found in late medieval documentation. The term ‘pirate’ does not relate to a legally defined action; rather it

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<sup>28</sup> Katele, I., *Captains and Corsairs: Venice and Piracy 1261-1381* (University of Illinois, PhD. Thesis, 1988) p. 52.

<sup>29</sup> Katele, *Captains and Corsairs*, p. 47

fits the popular conception of ‘pirate’ as outlaw. This notion is common in secondary literature on the topic of ‘piracy’. Emily Tai, in her 1996 thesis on Genoese ‘piracy’, in describing a Genoese shipmaster known as Marcello, states: “Although he had been accused of unjust attacks before, it does not seem, however, as if Marcello was a pirate in the strictest sense of being a maritime robber with no allegiance to any government.”<sup>30</sup> An unjust attack was presumably not considered to be sufficient in itself to allow the labelling of an action as piracy “in the strictest sense.” We are not told what that sense is other than perhaps popular perception. Interestingly, having defined corsairs by their actions; Katele states at the end of her definition, that the main defining characteristic of a corsair was the possession of a legitimate licence, linking the definition once again to *status*.

Michel Mollat in his significant article ‘De la piraterie sauvage à la course réglementée’, argues that it was only at the end of the fifteenth century that a distinction between ‘piracy’ and ‘privateering’ emerged. This distinction was a function of the increased involvement of the state in the regulation of the sea between the thirteenth and fifteenth century. According to Mollat, by the end of the fifteenth century, “The characteristics of piracy were therefore: an expedition resulting from private initiative, attacking any ship without distinction and the appropriation of the spoils without restraint.”<sup>31</sup> He expands upon this by stating that there exist three categories of private ships that fight at sea;

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<sup>30</sup> Tai, *Honor Amongst Thieves*, p. 432.

<sup>31</sup> Mollat, M, ‘De la piraterie sauvage à la course réglementée (XIVe-XVe siècle)’, in: *Course et piraterie: études présentées à la commission internationale d'histoire maritime* ed. M. Mollat, 2 vols, (Paris, 1975), I, p. 172.

“There are prizes legitimate and illegitimate, according to whether the captor has been authorised or not to arm his ship in war and according to the nature of the victim. Shipmasters who did not respect any law, did not spare any person and escape all control, are pirates: *spoliators*, *piratae*, and *turbata navalis*. For others who go to sea in a ship equipped for war with the permission of the Admiral and who conform to agreed international regulations, the designation of corsair does not appear, but the reality is evident. Finally, in the case of masters of merchant ships, without commission of war, who do not resist the temptation of a capture, enter the domain of judicial judgement: if the prize is good, the captor is attached to the first category and we say he acts as a corsair; if the prize is declared bad, his action is ‘pillerie’, ‘roberie’ and ‘cruelte’; he is considered a pirate.”<sup>32</sup>

The above description is again somewhat circular. Initially Mollat states that a necessary pre-condition of a lawful capture is the holding of legitimate licence, that is to say sovereign authority granted by the Admiral. Men in possession of such licences should be considered ‘corsairs’, bound to follow the terms of their commission and to respect relevant agreements in place with foreign powers. This is in contrast to those who should be considered ‘pirates’; such men hold no such licence, are under no such control, and are indiscriminate in their attacks. However, despite the previous assertion of the requirement of a specific licence, Mollat goes on to identify a third category; that of the merchant ship. Mollat states that those

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<sup>32</sup> Mollat, ‘De la piraterie sauvage..’, p. 173.

shipmasters who go to sea without commission should be defined according to the judgement of their captures; if the prize is lawful then he should be considered to be a corsair: if the prize is not valid then he should be considered to be a pirate. In essence what Mollat is saying is that the matter is entirely determined by the *action* of the capture and not the *status* of the captor; whether it is good prize or not regardless of the possession of a licence. Mollat concludes, “An act of piracy is therefore any capture that is not recognised by the Admiralty. A pirate therefore is one who does not conform to the provisions of ordinances and treaties.”<sup>33</sup> In the end Mollat essentially concedes that we can only distinguish between good prize and bad prize, and ultimately that is the determinant of who should be considered a ‘pirate’. As we shall see, however, just because something is ultimately judged not to be good prize it does not automatically make the capture an act of ‘piracy’.

The problem with defining a ‘pirate’ in opposition to a ‘privateer’ or ‘corsair’ is twofold. Firstly it defines ‘conventional’ naval warfare and indeed warfare in general in a rather narrow fashion. One need only consider the *chevauchée* tactics employed by the English in France, primarily in the fourteenth century, to realise that causing havoc and economic disruption was an end in itself in the warfare of the age. Secondly, when there was no clear distinction between merchant and military shipping and the mercantile marine provided the vast bulk of the naval fleet, one cannot distinguish between naval actions on the basis purely of targets. Indeed, in the opening years of the Hundred Years’ War the French admiral Nicolas Béhuchet made a concerted effort to strike at what he rightly perceived to be the backbone of

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<sup>33</sup> Mollat, ‘De la piraterie sauvage..’, p. 174.



the English fleet. In a document presented to the French royal council in 1339, Béhuchet outlined the strategic advantages of attacking key English industries such as salt, wine and fishing, arguing that by disrupting these key industries they could reduce the pool of shipping that Edward III could draw upon and lessen the number of mariners he could call to his service. Allied to this policy was the targeting of English ports and the ships contained within them, Béhuchet specifically referring to the value of “ranging the south coast of England causing damage.”<sup>34</sup> Despite recognising that “as an element of maritime strategy raids on port towns made sense because the ships were there”, Timothy Runyan still describes these attacks as ‘piratical raids’.<sup>35</sup>

When the majority of the king’s fleet was made up of merchant shipping the distinction between public and private could be in no way meaningful. In 1346, out of a total of over seven hundred ships sailing over to France for the siege of Calais, Edward III possessed only 25.<sup>36</sup> Henry V’s personal fleet, the largest of any English medieval monarch, at its peak in July 1418 only contained 39 vessels, the majority of which were sold off at his death in order to pay his debts.<sup>37</sup> All naval fleets were in some sense devolved, all shipping private. In addition the capture of shipping and its retention as prize of war was an integral part of all forms of naval warfare, whether

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<sup>34</sup> Jusselin, M., ‘Comment la France se préparait à la guerre de Cent ans’, *Bibliothèque de l’école des Chartes*, lxxiii (1912), *pièce justificative*, p.233.

<sup>35</sup> Runyan, T. J. ‘Naval Power and Maritime Technology during the Hundred Years’ War’. in (eds) J. Hattendorf, R. Unger, *War at sea in the Middle Ages and Renaissance* (Woodbridge:, 2003), p. 65.

<sup>36</sup> *Lettres de rois, reines et autres personages des cours de France et d’Angleterre*, ed. M. Champollion Figeac, 2 vols, (Paris, 1847), II, p. 86-92.

<sup>37</sup> Allmand, C.A., *Henry V*, (London, 1992), p. 226.

carried out by salaried fleets under the direct command of the Admiral<sup>38</sup>, or by so called ‘privateers’. At the siege of Harfleur in 1416 a fleet commanded by the Duke of Bedford captured three Genoese carracks; these ships subsequently became part of the royal fleet.<sup>39</sup> Wages and plunder were not mutually exclusive in medieval fleets; the distinction between salaried and otherwise was simply that those who put ships to sea at their own expense were often entitled to retain a greater share of their captures as an inducement in lieu of wages.<sup>40</sup>

A second problematic distinction employed by the above historians is that concerning the necessity of a licence. Belligerent rights existed as a matter of course in the Middle Ages. I have found no case of prize where the issue revolves around the possession of a valid licence by the captor. The principle that such commissions were implied is asserted in a case before the parlement of Paris in 1358. Sailors from Boulogne accused of the wrongful capture of a Bruges ship asserted their right to attack the enemies of the king and to retain their captures as prize of war, “war being between any princes, their subjects can, both by land and sea, fight, injure, capture

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<sup>38</sup> *Calendar of Close Rolls* (1272-1485), 45 vols (London, 1892-1954), 1385-89, p. 251, mainprise before the council by Robert Paris for a barge of London, Robert Dawe for a ship of Bristol and William Pound for a ship of Hull to answer to the king for goods to be delivered to the owners of the said barge and ships for their share of the merchandise lately won at sea by the king’s admirals and others in their company in the said barge and ships and in other vessels, in case hereafter it shall be adjudged that the same ought to pertain to the king.

<sup>39</sup> Nicolas,., *A History of the Royal Navy*, II, p. 421.

<sup>40</sup> *The Black Book of the Admiralty*, ed. T. Twiss, 4 vols (London, 1871-1876), I, pp. 21-23. The Old Rules for the Lord Admiral provides,: ‘If it happens that under the king’s pay upon the sea or in ports enemy goods are taken by the whole fleet, or by part of the fleet, then the king shall have and take a fourth part of the said goods, and the owners of the ships another fourth part, and the other half of the said goods shall belong to those who took them, which half ought to be shared equally between them. Out of which half the Admiral shall have out of each ship two shares that is to say, as much as two mariners, if he is present at the time of the capture, and if he is absent then he shall have one share out of each ship. Conversely, If any goods be taken at sea by privateers (gallioters) or others out of the king’s pay, then the king shall challenge no matter of right nor shall have any property therein; but those who take shall have them, saving that the Admiral shall have two shares thereof in each ship as is abovesaid (that is to say) as much as two men, the one share with ‘la main’ (the hands of the ship, i.e. masters and mariners) the other with the victuallers and shipowners.

and kill reciprocally, and take goods if the goods will be those of their enemies or of a party adhering to them.”<sup>41</sup>

Of course throughout this period we see the granting of licences and the issuing of commissions for ship-owners and ship-masters to put to sea at their own expense to attack the enemies of the king. However, this does not imply that such licences were a necessary prerequisite of attacking the king's enemies. At various points licences were required to carry victuals or to even leave port in time of 'national danger'. In sea keeping terms such licences were a contract of service, often containing certain concessions to make them more attractive depending on the needs of the crown at the time. Various licences granted by Henry IV in the aftermath of the deposition of Richard II permitted shipmasters to retain the king's share of all captures. A licence issued in September 1436, in the revised diplomatic climate post the Treaty of Arras, to John Melbourne, Alan Johnson, John Sturgeon and Henry Hale, owners of a ship of London called *Marie*, stated that they were not to be held liable for any offence done to the friends of the king.<sup>42</sup>

At certain points it was required for a caution to be lodged by those wishing to take to the sea in armed ships but this proved to be the exception rather than the rule. A truce concluded between England and Castile in January 1414, primarily to provide safe passage for merchants, required all armed ships to provide a surety prior

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<sup>41</sup> *La guerre de Cent Ans vue à travers les registres du Parlement* (1337-1369), (eds.) P.C Timbal, et al (Paris, 1961), p. 262.

<sup>42</sup> *C.C.R.*, 1435-1441, p.1. Licences under similar terms were granted to the owners of at least ten other ships.

to leaving port undertaking not to attack the ships of the other party.<sup>43</sup> A similar clause was contained in a truce concluded with Brittany the same month.<sup>44</sup> The Statute of Truces enacted in the spring of the 1414 provided an administrative framework for this process. Under the statute, which declared all breaches of truce or the king's safe conduct as high treason, the names of all ships leaving port were to be enrolled along with the names of their owner and master, as well as the number of mariners on board. In addition, shipmasters were required to swear an oath not to attempt anything against the truce. Any ships which put to sea without first being enrolled were to be forfeit to the king along with any captures they had made. Special officials known as conservators were to be appointed in each port to enforce the statute.<sup>45</sup>

English scholarship on the subject of 'piracy' has been marked by an absence of scholarly discussion on the definition of the term 'pirate'; its meaning is taken as a given. English studies have focussed almost exclusively on the opening years of the fifteenth century with the *de facto* renewal of the Anglo French conflict, characterised by J.H. Wylie as a 'Pirate War'. In the face of renewed French hostility the English Crown was compelled to fall back on devolved sea keeping fleets as a result of the drastic change in the diplomatic climate brought about by the deposition

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<sup>43</sup> *Foedera* IX, pp. 108-109, That no subject or vassal, of either party will arm any ship or ships to injure or harm the adverse party. Nor will the King's officials in that place permit any armed ship to leave out of any port or to sail in any manner unless these armed ships will first have given security and bail of surety into the hands of the said officers or their lieutenants not to plunder or injure the adverse party or his subjects and vassals, by land or sea, during the time of this truce,

<sup>44</sup> *Foedera*, IX, p.84.

<sup>45</sup> *Statutes of the Realm, from original records and authentic manuscripts*, (eds.) A. Luders *et al*, 11 vols in 12, (London, 1810-1828), II, p. 180.

of Richard II. Such studies are largely based on the lists of foreign complaints submitted to the English crown in various forms at this time.

The scope of English discussion on the subject was set by C. L. Kingsford in his influential article “West Country Piracy: The school of English Seamen”. Kingsford identifies a number of fifteenth century ship-owners and masters who figure prominently in the complaints of foreign merchants in the first half of the fifteenth century. The activities of men such as John Hawley, Mark Mixtow and Richard Spicer have formed the basis of most subsequent studies of English ‘piracy’. According to Kingsford, the ‘prevalence of piracy’ in the opening years of the fifteenth century was due to the activities of licensed ‘privateers’ who were not particular about ‘prey’. Kingsford at the start of the article, in the closest we get to an attempt at definition, introduces the caveat that,

“When, however, we speak of these early seamen as pirates, it is necessary to bear in mind that the word had a wider meaning than it has today, and was applied alike to those who were at the worst unlicensed privateers and to those whose only object was plunder.”<sup>46</sup>

No evidence is provided of such contemporary application of the term. Kingsford then gives himself the freedom to attach the label ‘pirate’ freely throughout the article. Hawley and Henry Pay are said to have “played the parts of pirate and patriot in turn.”<sup>47</sup> Kingsford then states that “In the long lists of piracies during the earlier years of Henry IV there must have been many which it would have been difficult to

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<sup>46</sup> Kingsford, C.L., ‘West Country Piracy: The school of English seamen’, *Prejudice and Promise in XVth century England* (Oxford, 1925), p. 78.

<sup>47</sup> Kingsford, ‘West Country Piracy’, p. 84.

defend.”<sup>48</sup> It is not stated if those acts that were defensible would be considered ‘piracy’.

Stephen Pistono writing on piracy and Anglo-Flemish relations in the opening decade of the fifteenth century submits the term ‘pirate’ to even less critical examination than Kingsford.<sup>49</sup> The terms pirate and piracy are freely applied to a variety of captures cited in the complaints of foreign merchants contained in petitions, schedules and diplomatic correspondence. Thus, Pistono describes John Hawley being commanded to appear before the king’s council on 6 October 1402 to answer “Flemish charges of piracy on the high seas.”<sup>50</sup> Pistono uses the anachronistic phrase ‘piracy on the high seas’ to imbue the process with a false sense of criminality. In fact, the term piracy is not used in the summons or in a subsequent summons to Hawley instructing him to appear before the Flemish ambassadors at Calais, again to ‘answer charges of piracy’, a meeting at which he is only required to be represented, a privilege not usually accorded to criminal defendants.<sup>51</sup> Pistono recognises the confused and fluid diplomatic situation at the start of the fifteenth century and the open ended nature of commissions issued as result, but takes no account of this in describing the actions of men such as Hawley ‘as robbery on the high seas’ and ‘flagrant piracy’.<sup>52</sup>

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<sup>48</sup> Kingsford, ‘West Country Piracy’, p. 85.

<sup>49</sup> Pistono, S., ‘Flanders and the Hundred Years’ War: the quest for the *Trève Marchande*’, *Bulletin of the Institute of Historical Research*, 49 (1976), 185-97, Pistono, S., ‘The accession of Henry IV: effects on Anglo-Flemish relations 1399-1402’, *Tijdschrift voor geschiedenis*, 89 (1976), 465-474.

<sup>50</sup> Pistono, S., ‘Henry IV and the English privateers’, *The English Historical Review*, 90 (1975), p. 326

<sup>51</sup> C.C.R., 1399-1402, p.545, *Foedera*, VIII, pp. 303-4.

<sup>52</sup> Pistono, S., ‘Henry IV and John Hawley, privateer, 1399-1408’, *Transactions of the Devon Association*, 111, (1979), p.151; Pistono, ‘Henry IV and the English privateers’, p. 326.

Ford in his important article 'Piracy or policy: the crisis in the Channel, 1400-1403', presents a revised picture to that put forward by Kingsford and Pistono. He argues that the 'crimes' at sea up to 1403 were, in fact, the result not of 'piracy' or 'unlicensed privateering', "but of the conscious policies adopted by both the English and French governments in their pursuit of wider political objectives."<sup>53</sup> This is largely done through a quantitative analysis of foreign complaints. Ford presents a convincing picture of the English crown's tacit acceptance, if not positive encouragement, of attacks on French ships during a period of supposed truce. A central part of his argument rests on a draft treaty proposal submitted to Flemish envoys in the summer of 1403. Generally speaking it outlined certain measures designed to differentiate Flemish ships and goods from those of the enemy, identified in this document as the French and the Scots. Flemish ships were to have the arms of Flanders painted on their bow and to carry sealed letters from the ship's home port certifying the ownership of the ship and cargo. Provided Flemish ships did not contain hidden enemy goods they would not be seized under the pretext of war with Scotland and France. In addition, Flemish goods found on board captured enemy ships would be held safely on their behalf provided they were accompanied by the certifying letters. According to Ford this draft agreement was "founded on the premise that it was wholly within the power of the English government to prevent the losses of Flemish merchants."<sup>54</sup>

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<sup>53</sup> Ford, C.J., 'Piracy or policy: the crisis in the Channel, 1400-1403', *Transactions of the Royal Historical Society*, 5<sup>th</sup> Series, 29 (1979), p. 64.

<sup>54</sup> Ford, 'Piracy or policy', p.65.

Ford seems to mistake the intention for the deed, overestimating the prescriptive powers of the English Crown. Such clauses could not guarantee that Flemish shipping would be free from attack; rather, they reduced the likelihood of mis-captures and removed the possibility of plausible deniability on the part of the English commissioners. Such clauses were more important for their effect after capture, since they strengthened the case of the injured party in actions of redress. Further, the measures contained in the treaty considered to be inescapable proof of a particular reaction to a particular set of circumstances were all measures that had been previously adopted in Anglo Flemish relations.<sup>55</sup> The previous agreements had been agreed during periods of Anglo-French conflict, and clearly the purpose of the draft treaty was again to try and insulate Anglo-Flemish commerce in the event of the re-ignition of the conflict; a series of negotiations that would ultimately lead to the *Trève Marchande* in 1407.<sup>56</sup> Ford highlights the fact that, whether or not such captures were state sponsored, they took place within the context of strained and confused diplomatic relations between England and France and during a period of badly observed and enforced truce. However, in spite of this he consistently refers to such captures as ‘crimes’. In essence Ford presents us with a false dichotomy; either the captures were the result of government policy or they were ‘piracy’. No further attempt is made to define what ‘piracy’ was or what constituted ‘unlicensed privateering’. Implicit, in this view is the belief that attacks on nominally ‘friendly’

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<sup>55</sup> *Foedera*, II, p. 759, A treaty made at Bruges in 1297 regulating the conduct of English, Gascon and Flemish shipping in the midst of the Anglo-French war required ships to have on their sides the relevant coat of arms and to carry on board sealed patent letters testifying to the origin of the ship and provenance of the cargo. *Foedera*, VI, p.659, An agreement confirmed in August 1370 required Flemish ships to carry, along with the Charter Party, Patent letters with the seal of the town where the merchant is resident expressly mentioning the goods contained on board, to whom they belong and their intended destination.<sup>55</sup>

<sup>56</sup> See Pistono, S., ‘The quest for the *Trève Marchande*’, pp. 185-97; Prevenier, W., ‘Les perturbations dans les relations commerciales anglo-flamandes entre 1379 et 1407: causes de désaccord et raisons d’une réconciliation’ in *Economies et Sociétés du Moyen Age: melanges offerts à Edouard Perroy* (Paris, 1973), 477-97.



shipping, if directed by the sovereign authority, albeit covertly, would be purged of their 'piratical' character, even if such attacks were in violation of an existing truce. Ford's well-researched article highlights the danger of adopting a narrow chronological and thematic focus when examining 'piracy'.

In the absence of a clear statutory or semantic framework, the indefinite meaning of the term 'pirate' in contemporary documentation and the lack of the consistency in its application in the later Middle Ages, we must be cautious in retrospectively attaching the label 'pirate', with its modern legal connotations, to the captors of shipping in the Middle Ages. A number of questions arise in relation to this. Should the term 'piratical' be applied to all unlicensed warfare at sea? Might such disputes, often between the men of certain ports be more effectively considered within the analytical framework of private war and feud rather than a catch-all concept of piracy relating to robbery at sea? How then might one best define 'piracy'? The customary law of the sea contained in the laws of Oléron and the Consulate of the Sea concerned themselves primarily with contractual, disciplinary and freightage issues.<sup>57</sup> Such prescriptive glosses were clearly not a sufficient guide to naval prize and its regulation, failing to adequately reflect an ever-changing reality.

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<sup>57</sup> Sanborn, F.R., *Origins of early English maritime and commercial law*, (New York, 1930), Runyan, T.J., 'The Rolls of Oléron and the Admiralty Court in fourteenth century England', *The American Journal of Legal History*, Vol. 19, No. 2. (1975), 95-111, *B.B.A.*, I, pp.88-131; *Consulate of the Sea and Related Documents*, ed. S.S. Jados. (Alabama 1975).

One way to examine this issue is through a study of the diplomatic correspondence surrounding the capture of shipping. There is a great deal of this evidence in the fourteenth and fifteenth century, reflecting its growing importance. Treaty provisions designed to preserve order at sea are another means of examining priorities. Such treaties were often reflective of custom, and through such treaties customary practice was added to the body of nascent international law, or at least diplomatic expectations. Through the examination of the large corpus of documentation on the subject it may be possible to detect shared assumptions and principles fitting to notions of justice. However, one cannot deal in the universal without reference to the particular. Treaty provisions designed to combat disorder at sea were a reaction to particular circumstances, not merely the culmination of learned experience relating to best practice. In addition the domestic interpretation of such provisions took place in reference to a particular diplomatic context in an even more immediate sense.

Any study of the capture of shipping and its legal consequences in the later Middle Ages reveals a process centred on restitution. The legal response is civil rather than criminal, the priority restoration rather than punishment. Restitution was the central issue. Once restitution had been provided, the issue of contention was removed. Whilst one must show caution in asserting the distinction between public and private law in the later middle ages, these cases were dealt with in the manner of a tort rather than a crime. The Crown's role is investigative to an extent, but it is the victim who drives the process forward, the issue the compensation of the victim

rather than the punishment of the offender.<sup>58</sup> The failure or unwillingness of a sovereign to provide justice to the subjects of another sovereign frequently was the symptom or the cause of deteriorating relations. It is the intention of this thesis to examine that process in as detailed a manner as the various elements of this process allow, with the intention of providing an analytical framework to better understand those acts frequently referred to as 'piracy'. Such a study reveals a sophistication of administration and a level of accountability not previously observed in the secondary literature on the topic. It also indicates that matters of prize, that is to say what constituted a lawful capture and what did not, were not always clearly evident, and were subject to frequent and swift change.

The opening chapter deals with the naval administration surrounding Henry III's Poitou campaign of 1242-43, the first concerted use of devolved fleets since the loss of Normandy in 1204. This study demonstrates an administrative sophistication that was often lacking in later examples, demonstrating that progress was not linear in this respect as argued by Mollat in his important article 'De la piraterie sauvage à la course réglementée'. Sophistication is most evident in the control of the fleet, the treatment of captured goods, the judgement of prize and the division of plunder. It challenges the traditional narrative of the 'privateer' as merely a commerce raider, and as such always likely to fall into 'piracy'.

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<sup>58</sup> Donahue, C. "The Emergence of the Crime-Tort Distinction in England" Charles Donahue Jr, in (eds) W.C. Brown, P. Górecki, *Conflict in Medieval Europe (Changing Perspectives on Society and Culture)*, (Aldershot, 2003), pp. 219-228, Powell, E., *Kingship, law and society: Criminal justice in the reign of Henry V* (Oxford, 1989), p.86.

The second chapter seeks to make a distinction between the medieval application of letters of marque and private naval commissions that the term would later come to embody. It argues that far from being a 'justification for piracy', these were complex legal instruments applied in the context of a body of customs internationally applicable and expected. To illustrate and support this point, a comparative survey is made throughout Europe revealing a uniformity of practice. Letters of marque are a useful means of examining the early development of international law alongside developing notions of sovereignty. This chapter also provides a detailed discussion of the process of seeking restitution for damages at sea in the Middle Ages; letters of request, appraisal of damages, evidentiary requirements and the concept of denial of justice. In addition to a thematic framework two detailed complete case studies are dealt with to demonstrate the range of issues outlined in action.

The third chapter focuses on evolving concepts of 'neutrality' in the later Middle Ages. Since the majority of historical definitions of piracy rest upon the capture of 'neutral' and 'friendly' goods, it is essential to examine notions of neutrality in this period and their effect on the treatment of captured goods. We deal with this topic with specific reference to the policy of the English Crown towards Flanders during the Anglo-Scottish conflict of the early fourteenth century. It is argued that one cannot speak of universal standards of neutrality in this period, with definitions resting instead on differing conventional obligations met within a changing political background. The judgement of prize is made in the context of the negotiation between the competing rights of belligerents and 'neutral' commerce. As

a result, we will see that English Crown policy in this matter cannot be divorced from its wider political objectives.

The fourth and final chapter focuses on the crucial issue of the provision of restitution once judgement has been made. As stated, the central issue surrounding the capture of shipping is that of restitution. This chapter follows a complex dispute between English merchants and the count of Hainault, Holland and Zeeland. It allows an examination of the variety of *ad hoc* mechanisms employed to compensate merchants injured at sea. The process also sheds light on the complex relationship between the English Crown and the local communities. The case demonstrates once again an administrative sophistication with regard to the process of restitution, providing an insight into the role of local actors and the attempts of the Crown to make them accountable for their actions, shaping the developing role of the state, and demonstrate that the will of the sovereign was not always sufficient to ensure restitution was made.

This thesis is necessarily episodic, grounded in several detailed case studies. The episodes selected are designed to present as full a picture as possible, so as not to separate such cases from their particular political and diplomatic context. It will be shown that this is a more effective method than the presentation of a series of scattered examples or an abstract thematic treatment. Through these in-depth case studies we are able to trace the emergence of process, revealing a sophisticated administration not reflected in the majority of secondary literature on the subjects. It

is not the intention of this thesis to provide an overview on naval warfare in the Middle Ages, or even crown policy or diplomatic initiatives with regard to the keeping of the seas. Rather, I seek to deal with conflict management mechanisms designed to prevent disorder at sea through the process of restitution and through such a study to highlight the dangers of the retrospective ascription of the term ‘piracy’ to the capture of shipping at sea.

## 2.Devolved Sea-Keeping-‘Pirates’, Privateers and the Keeping of the Seas

Broadly speaking historians have identified two distinct means of assembling naval fleets in the later Middle Ages, by indenture or by licence. Under an indenture, “the crown would indent with a commander for a certain time; he would receive a sum of money for the wages and food of the soldiers, and the ships would be arrested by the king’s officials and their masters would sail them to the port of embarkation.”<sup>59</sup> Indentured service often contained detailed instructions with regard to objectives and was usually commanded by an admiral of the first rank<sup>60</sup>. In the second type of service, ship owners were granted a licence or commission to muster men, array ships, and to fight the king’s enemies at sea at their own cost. The ship owners or contractors were expected to recoup their expenses through the capture of enemy vessels or goods. Men on such service are commonly referred to as ‘privateers’ in the secondary literature, reflecting the use of their own resources to attack ‘private’ property in the form of foreign merchants.

The actions of these ‘privateers’, in their supposed targeting of merchant vessels and their concern for plunder, are considered in many respects to be akin to ‘piracy’ Thus Frederic Cheyette states that one of the duties of the Sicilian admiralty

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<sup>59</sup> Richmond, C.F., ‘Royal Administration and the Keeping of the Seas, 1422-85’ (D.Phil. thesis, Oxford, 1963), p. 4.

<sup>60</sup> Allmand, C.T., *Henry V* (London, 1962), p. 228, Hugh Courtenay serving ‘en deffense du royaume’ “was to stay at sea for the entire period of three months, and was to come into port only to take on fresh water or in the case of bad weather at sea; he was to patrol chiefly between Dieppe and Cherbourg, unless chasing enemy ships, in which case some of his own ships must be left to guard the mouth of the strategic river (Seine); and he was ordered to respect truces then in place.

in the thirteenth century was to “licence pirates.”<sup>61</sup> N.A.M Rodger describes the use of such licensed fleets in similar terms,

“Implicitly, the king was bidding for support from ship-owners by encouraging piracy, and medieval shipmasters required very little encouragement. Thus the decline of English sea power was accompanied by the rise of English piracy...English piracy was sanctioned or encouraged by the issue of royal licences, usually referred to by modern writers as ‘letters of marque’.”<sup>62</sup>

It is a familiar narrative of modern historiography that such commissioners, motivated by a desire for monetary gain, and subject to little control from the sovereign who issued the licence, descend into ‘piracy’. Indeed, the vast majority of cases subsequently labelled ‘piracy’ by modern historians relate to the activities of such men. Emily Tai makes this point explicitly,

“From the second half of the thirteenth century to the last decade of the fourteenth, the action of piracy had been defined principally by the misaction (*sic*) of a corsair, which is to say those most often accused of having committed acts *in more piratico* were licensed corsairs said to have broken faith with the tenor of their commissions to attack ‘friends’

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<sup>61</sup> Cheyette, F.L., ‘The sovereign and the pirates, 1332’, *Speculum*,. 45, (1970), p. 49.

<sup>62</sup> Rodger, *The Safeguard of the Sea*, p. 128.



they should not have attacked, or appropriate cargo they should not have appropriated.”<sup>63</sup>

As we shall see here to use the term ‘privateer’ of fleets at a time when all ships were private is an anachronism. Further, by the conditions and nature of medieval warfare, privateering loses its distinctness as a designated method of naval action. The line between the actions of so called ‘conventional’ naval fleets and ‘privateers’ was often thinly drawn. Both forms of naval service relied almost exclusively on merchant shipping and drew their personnel from the mercantile marine. With no regular royal naval personnel, the Crown was forced to fall back on those whose regular employment was trade. Moreover, instructions to those engaged on salaried service could at times be as vague as those contained in ‘privateering’ commissions. In 1400 William Prince, serving at sea on the Crown’s wages, was simply instructed to attack and seize Scottish shipping while refraining from attacking the shipping of France, Spain and Portugal.<sup>64</sup> Criticism of such commissioners for being motivated by profit is also misplaced. According to Allmand, “The taking of pillage, together with the booty which it produced, was an important aspect of medieval warfare.”<sup>65</sup> Such plunder acted as an enticement and a supplement to wages in all forms of military service. Indeed the majority of military

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<sup>63</sup> Tai, *Honor Amongst Thieves*, p. 591.

<sup>64</sup> *Documents Relating to the Law and Custom of the Sea*, ed. R.G. Marsden, 2 vols, (London, 1915), I, p,111.

<sup>65</sup> Allmand, C.T., *Society at War* (London, 1998), p.79. Such a statement, whilst almost a truism, is still worth stating. See also Hay, D., ‘The Division of the Spoils of War in Fourteenth-Century England,’ *Transactions of the Royal Historical Society*, Ser. 5, 4 (1954) pp.91-109.

indentures, whether on land or sea, contained clauses relating to the division of spoils.<sup>66</sup>

Additionally, throughout the Middle Ages we witness private commissioned fleets engaged in the whole range of naval activities. From sailing as a convoy to protect ships engaged in trade, to defending the coast, to maintaining a blockade, to the transport of troops. On a number of occasions we see such fleets acting in supporting roles to so-called 'conventional' naval forces. Within all those activities the lure of plunder played a role. In 1372 ships drawn from a variety of ports including Bayonne were commissioned to protect the Gascon wine fleet. As recompense they were to be paid a commission of 2s on every tun of wine safely delivered into England. In addition they were entitled to retain all they were able to earn by trade on their own behalf and all they were able to take from enemy shipping. However, the money earned from capture or trade was to be deducted from their 2s payment. This example demonstrates that the right to retain all captures could be taken in lieu of wages. It was not the purpose of the mandate to attack enemy commercial shipping but to defend the wine fleet; the capture of belligerents, although not the main aim of the expedition, was a likely outcome. The ships were placed under the orders of the two admirals, Philip Courtenay, and William Neville.<sup>67</sup> Indeed, private ships were subject to greater supervision from the Crown than has often been assumed. Such fleets would often be required to appoint a captain from

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<sup>67</sup> *Law and Custom*, I, pp. 92-4.

within their number with responsibility for the discipline of the ships and mariners and the treatment of captured goods.<sup>68</sup>

Although the picture presented of such men is in many respects anachronistic, one can find contemporary corroboration for the concept that such fleets would fall into the error of ‘piracy’ on account of their greed and the lack of a firm hand. In his account of a naval action from 1242 Mathew Paris describes a fleet drawn from the Cinque Ports in just such terms. According to Paris, Henry III in response to the capture of several castles by Louis IX, instructed the men of the Cinque Ports to take to the sea to prey on merchant shipping. In Paris’s account, in an implied act of vengeance, Henry orders the barons of the Cinque Ports to inflict harm, howsoever they are able, on merchants and others crossing from the kingdom of France.

“Yet those said men, savagely and cruelly carrying this [order] out murdered and robbed in the manner of pirates (*more piratico*), coveting booty, wildly exceeding the boundaries of the king’s orders; while they also despoiled the goods of Englishmen returning from pilgrimages, and friends and neighbours, showing no consideration of affinity or alliance, and slaughtered any of France. When the king of France heard this, he wrote to the count and inhabitants of the coast of Brittany, and the governor of La Rochelle, the sailors of Calais and

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<sup>68</sup> *C.P.R.*, 1429-36, pp. 511-12, Whereas at another time by advice of the council, commanded certain masters of ships appointed to put to sea to resist his enemies for a certain period, to elect an admiral among themselves, and whereas they have nominated John Millborne and John Scot, the king now grants to the said John Millbourne and John Scot power to lead, rule and govern.

Wissant and the guardians of the coast of Normandy, to wildly repel the attacks of the English by sea, sparing neither bodies nor goods. Thus in the face of the increasingly numerous and strong adversaries, the keepers of the Cinque Ports were a number of times shamefully defeated, and were compelled to ask for help from the archbishop of York”<sup>69</sup>

The picture presented by Paris is one familiar to historians: a devolved fleet sent to sea with the express purpose of harming sea-borne traffic, specifically merchants, classic commerce raiding. This fleet, free from supervision, exceeds the terms of its commission and descends into indiscriminate plunder. Motivated by a lust for booty, they spare neither friend nor ally even going as far as to attack English pilgrims. Mathew Paris uses the term pirate with a clear intended meaning in a sense familiar to historians. The message in the description of events at sea is that the enterprise failed as a result of the greed of the sailors. It is their ‘piratical’ behaviour that brings about their humiliating defeat and subsequent call for help to the archbishop of York, the regent. The French response in its savagery, “sparing neither body nor goods”, resembles a reprisal attack rather than a defensive action. Implicit within the text is that the use of such fleets was counter-productive and ultimately harmful to English trade; their savage action prompting an equally savage reaction.

Later historians have largely followed Paris’s relatively early description of the men of the Cinque Ports. K.M.E. Murray in his *Constitutional History of the*

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<sup>69</sup> *Matthew Paris, Chronica Majora*, ed. H. R. Luard, Rolls Series, 7 vols, (London, 1872–83), IV, pp.208-9.

*Cinque Ports* states: “it was indeed the fact that the Cinque Ports were the worst pirates of the time that gave them their great importance. Their fierceness and lack of scruple increased their efficiency as guardians of the Channel and their value to the king, and it also gave them a reputation abroad.”<sup>70</sup> Michael Weir in his article concerning the naval activities surrounding the Poitou campaign of 1242-3 repeats this charge uncritically.<sup>71</sup> Paris, despite the assertions of Murray and Weir, does not refer to the men of the Cinque Ports as pirates; rather they acted ‘in the manner of pirates’. The term is used as a clear rhetorical device, an invective designed to convey Paris’s strong disapproval of both the aims, as he saw them, and the methods employed.

The action to which Paris referred was bound up with Henry’s campaign to regain Poitou in 1242-43. Although couched in terms of a reprisal attack for the failure of the French king to repair significant breaches of the truce, renewed the previous year, the background to the conflict was in fact more complex. The campaign is worth studying in detail as it illustrates the sophistication of the administration surrounding the use of such devolved fleets at a relatively early stage in their development. The loss of Normandy in 1204 compounded by the subsequent loss of Poitou and then finally La Rochelle in 1224 had made the issue of sea-keeping live once again. Although, in many ways the campaign was marked by accommodation and improvisation, throughout we witness elements of good practice in the control of the fleet by the Crown, the treatment of captured goods and the division and allocation of prize. These actions in many ways can be seen to prefigure

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<sup>70</sup> Murray, K.M.E., *The constitutional history of the Cinque Ports* (Manchester, 1935), p. 33.

<sup>71</sup> Weir, M., ‘English Naval Activities, 1242-1243’, *Mariner’s Mirror*, lviii (1972) p. 86.

developments which were supposedly 'introduced' at a later stage. The campaign also reveals that far from being mere parasites on trade, such 'private' fleets were engaged in a variety of naval roles, often in concert with salaried fleets, and were in essence no different to 'conventional forces', contradicting the description of such men as 'licensed pirates'.

## **2.1 The Poitou campaign of 1242**

### **The Commissions**

According to the commission issued to the men of the Cinque Ports, “since by the unjust action of the king of France, we are not bound to observe the truce to him, and war between us now has begun, we have proposed to fight against him and his subjects by means of your help and counsel”<sup>72</sup>. In a series of commissions the barons of the Cinque Ports (Hastings, Sandwich, Dover, Hythe, Romney, Winchelsea and Rye) and the good men of Dunwich were ordered to prepare, equip and furnish with good men, ships to attack the coasts of Brittany, Normandy and Boulogne, by sea as by land, by fire and other injuries, to injure the king of France. They were warned that by the pretext of the commission they were not to attack the church, those of the king’s power or those holding his safe-conduct. They were to act with discretion towards other ports of the king’s power, including Bayonne, “so that between them no dissension may arise.” In recompense, the men of the Cinque Ports were to be allowed to keep all that they captured, except for a fifth share reserved to the king, “which you know belongs to us of the gains, that in our war, you will acquire.” The coda to the document suggests a service to be performed rather than a right granted: “And thus you may powerfully manage in injuring the aforesaid king and his men, that, on behalf of your good service, we must hold you dearly in perpetuity.”<sup>73</sup> The traditional obligation of two weeks service the Cinque Ports were obligated to perform the crown in return for their privileges had been met by the transport of troops at the end of March 1242.

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<sup>72</sup> *Foedera*, I, p. 406.

<sup>73</sup> *C.P.R.*, 1232-47, p. 293.

The fleet, although devolved in nature, was to have some level of supervision; the Cinque Ports were to begin their enterprise under the direction of the guardians of the realm, Walter Grey archbishop of York and Regent, Walter de Cantiloupe, bishop of Worcester and Bertram de Cryoll the constable of Dover castle. De Cryoll was to deliver their instructions to them according to the king's wishes. In addition de Cryoll was to oversee the selection of the fleet's captain, "those who are appointed to injure the said king (Louis IX) by sea should cause to be placed in charge someone discreet and faithful who will restrain and impede them from inflicting damage on anyone of the king's power or having the safe-conduct of the king; who will also answer for the king's fifth."<sup>74</sup> It was intended that these men be answerable for their actions and their captures.

Despite the assertion of Mathew Paris, the purpose of the fleet was not the indiscriminate plunder of merchant shipping in an act of vengeance: rather its activities were to form part of a wider strategy tied to other initiatives. The commission was the opening naval salvo in Henry's campaign to regain Poitou, issued prior to the official outbreak of the conflict, a pre-emptive attack designed to strike at the bases and basis of French maritime power. The instruction to attack by land and sea, using fire and other methods conveys the idea of a form of naval *chevauchée*, a tactic that would be attempted by the French in the opening years of the Hundred Years' War. The attack on ports, the destruction of shipping and the speed with which Henry sought to get the fleet to sea are perhaps indicative of an attempt to obtain some form of mastery of the sea. The control of the sea, such as

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<sup>74</sup> C.C.R., 1237-42, pp. 495-6.



could be achieved, was an essential element in maintaining lines of supply and communication between England and southwest France. On the same date as the commission issued to the Cinque Ports, Drogo Barentin, the warden of the Channel Islands, was instructed to provide as many ships as possible with sufficient arms and personnel to attack the coast of Normandy and to occupy Mont-Saint Michel. He was to inform the king of the extent of his expenses for recompense.<sup>75</sup> On 15 June a further order was issued to Barentin, instructing him to sell any wine or other merchandise captured from those of the power of the king of France, the money raised to be used in support of the fleets and mariners engaged on this service.<sup>76</sup> Such an order indicates the strong element of improvisation in funding the campaign. Further, a self-sustaining fleet under the directions of a royal officer blurred the lines between 'conventional' royal service and devolved naval forces.

Over the course of the conflict, various other mandates, commissions and licences were issued to ports and individuals to perform a variety of naval tasks; attacking the French coast, providing coastal defence and the transportation of troops and supplies. At the beginning of July 1242, perhaps in response to the plea of the Cinque Ports mentioned by Paris, Walter de Cantilupe and the archbishop of York were ordered to oversee the preparation of the king's galleys, great and small, at Bristol. Under a captain whose name might easily be taken by posterity to be that of a pirate, John 'the bearded', they were instructed to attack the coasts of Normandy, Brittany and Boulogne, just as the men of the Cinque Ports had been ordered to do. Similar orders were issued to the Justiciar of Ireland, together with the mayors of

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<sup>75</sup> *C.C.R.*, 1237-42, p. 499.

<sup>76</sup> *C.C.R.*, 1237-42, p. 504.

Dublin and Waterford, although in the case of that directed to Waterford Poitou was added to the list of targets, “grieving the king of France and other enemies of the king”. This ‘formidable naval force’ as described by Paris was dispersed by a combination of bad weather and a French naval force consisting of sailors and pirates (*nautae et piratae*) diligently guarding the coast of France<sup>77</sup>. Here the term pirate appears to have been used as a synonym for sailors engaged in warfare, with no pejorative sense beyond that of an enemy naval force under sovereign authority, with no indication that their duties or obligations differed from those termed sailor. Their involvement in repelling the attack of the English does not seem to have anything particularly ‘piratical’ about it, but was simply the duty of defence on the orders of the king of France. This force in no way fits our modern perception of a ‘pirate’.

Alongside coastal attacks on France a central plank of Henry’s naval strategy was an attempted blockade of the port of La Rochelle. Charles Bémont places the start of the blockade on 10 October 1242<sup>78</sup> but it is clear from other references that the start date was several months earlier. By the middle of June, we find that various ships had gathered off La Rochelle, presumably to begin the blockade. On 15 June, the day of Henry’s formal repudiation of the truces, the *prévôt* of Oléron was instructed to equip a boat to carry the king’s letters to the masters of the galleys and barges off the coast of La Rochelle.<sup>79</sup> At the start of July, the mayor of Bayonne was ordered to send the galleys of the town to join the blockade and to injure and inflict loss around those parts.<sup>80</sup> On 7 July, those galleys from Bordeaux remaining in the

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<sup>77</sup> Paris, *Chronica Majora*, IV, pp. 198-99.

<sup>78</sup> Bémont, C, ‘La Campagne de Poitou 1242-1243’, *Annales du Midi* V (1893), pp .289-314.

<sup>79</sup> C.C.R., 1237-42, p.504

<sup>80</sup> C.C.R., 1237-42, p.501

port were instructed to intercept and capture a Spanish ship, as information had reached the king that materiel - including horses and silken cloth - from Spain was bound for La Rochelle. The galleys were to ensure “that neither that ship nor any other is able to come to that place, strengthening the enemies of the king.”<sup>81</sup> The mayor and *jurats* of Bordeaux were ordered to send 300 crossbowmen, and all their galleys, to protect the bridge at Tannay.<sup>82</sup> The siege and blockade were still in operation in November of the same year, for on the 7<sup>th</sup> the mayor of Oléron was ordered to prepare two barges “which they are bound to find for the king, to grieve the men of La Rochelle.” Further, the mayor and the *prévôt* were ordered to equip 12 or more barges for the defence of the Isles of Oléron, Ré, and to support the galleys at the siege of La Rochelle. The blockade seems to have lasted till the last week of November, when the French crown paid off the garrison at La Rochelle.<sup>83</sup> Even though the effective blockade was over, and was indeed a failure as Bémont argued, nevertheless some sort of embargo appears to have been maintained in the months following the end of the blockade. A safe conduct issued to a merchant of Pons in Poitou on 14 March 1243 was conditional on the stipulation that “he does not enter La Rochelle with his goods or send them there.”<sup>84</sup> In spite of its eventual failure the attempted blockade of La Rochelle provides testimony of a co-ordinated naval action making use of commissioned shipping. Whilst the measures adopted to maintain such a blockade could grant the shipmasters considerable latitude, the level of control the crown attempted to exert is striking. An example of this is the intelligence provided on the Spanish ship carrying what would come to be called contraband.

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<sup>81</sup> *C.C.R.*, 1237-42, p. 502

<sup>82</sup> *Foedera*, I, p. 407-8, *C.C.R.*, 1237-42, p. 529.

<sup>83</sup> *Layettes du trésor des chartes: de l'année 1224 à l'année 1246*. II, ed. M. Alexandre Teulet, p. 483-84; Bémont, ‘La Campagne de Poitou’, p. 313.

<sup>84</sup> *C.P.R.*, 1232-47, p. 368.

Henry's hopes of recovering Poitou had all but disappeared in the aftermath of the count of La Marche's reconciliation with Louis IX at the end of July 1242. This lack of hope is reflected in changed priorities with regard to the naval commissions issued around this time. At the start of August, licence was granted to the men of Bayonne, in a number of ways the foremost maritime resource of the king at this time.<sup>85</sup> More open-ended than the previous commissions, under its terms they were to attack by land and sea, by fire and other means, the king of France, his men and others of lands hostile to the king. The licence was to last as long as the war, stipulating as that issued to the Cinque Ports had done, that no harm was to be done by the occasion of this licence to those of the king's power or who held his safe-conduct. Further, the men of Bayonne were to be indemnified, by the king, against any troubles arising from captures or forced contributions as a result of the licence in the event of truce with France.<sup>86</sup> Bayonne ships, as we have seen, were involved in the blockade of La Rochelle before this date; the new commission may have been designed to encourage more Bayonnais shipmasters to support the siege. This is reflected in the favourable terms of service.

Even during the initially offensive element of the campaign protection of the coast had been considered; indeed provisions for coastal defence had been discussed prior to the start of the conflict. On 18 May 1242, the men of the Cinque Ports were instructed to send twelve men of each of their towns to consult with the chancellor and Bertram de Cryoll at Shipway in Kent to provide counsel for the defence of the

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<sup>85</sup> Rodger, 'The naval service of the Cinque Ports', p.647, describes Bayonne as providing "an indispensable core of English naval strength in the thirteenth and fourteenth century".

<sup>86</sup> *C.P.R.*, 1232-47, p. 316.

coast. At the start of September, the men of Yarmouth were instructed to select three of their better ships, together with one galley and six of their boats, sparing no one in the selection, equipping them with men and arms to serve the king in the peace of his coasts. William Rose and William Turkill, appointed as captains of the Yarmouth fleet, were to perform an oath in the presence of the king's council to faithfully serve the king. Again, these captains were made responsible for the king's share of any plunder. Under the terms of the mandate they were to deliver all gains acquired from the king's enemies to Robert Bruman and Alexander son of Alan, "who will give the mariners their share and that belonging to the king they will keep in safe-custody."<sup>87</sup> The needs of coastal defence had to be juggled with the requirement to find ships for the transport of troops. On 19 September, the sheriff of Norfolk was ordered to go to the ports of Yarmouth, Dunwich and Ipswich to survey all ships with a capacity of 80 tuns or more to transport the soldiers and servants of the king to Gascony by the 6 October. However, within the mandate reference is made to a provision of the council at Rochester regarding coastal defence. Certain ships were to be exempt from transport duties; the number of ships as well as the names of the masters was to be sent to the king's council "so they will know how many ships to this present business the king is able to be sure of."<sup>88</sup>

Such mandates, commissions and licences, dealing with a variety of naval tasks, continued to be issued to towns and individuals up until February 1243. On 2 January, Drogo Barentin was ordered to find soldiers and servants "who are in the castles of the aforesaid Island" and mariners "who are in the galleys and other

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<sup>87</sup> *C.C.R.*, 1237-42, p.467

<sup>88</sup> *C.C.R.*, 1237-42, p.470

vessels” to attack the king’s enemies.<sup>89</sup> A mandate of 25 January 1243 ordered the *prévôt* and good men of Oléron to equip the three ships which they were bound to find for the king’s service, “as there is now an opportunity for grieving the king’s enemies”.<sup>90</sup> On 30 January, Bernard de Liposse was sent to Bordeaux to advise the *jurats* of that town on the preparation of galleys for defence of the king’s land.<sup>91</sup> On 1 February, the king requested barons of the Cinque Ports, with the counsel of Bertram de Cryoll, to provide the king with as many good galleys as they were able, “to grieve the king’s enemies by sea and land as long as the war lasts.”<sup>92</sup> Around this time, Matthew Paris reports the men of the Cinque Ports once again appealing for aid from the archbishop of York. According to his account the barons were “gravely complaining, [that] they have been repulsed three times, not without irreparable loss of many things, men and ships particularly by men of Calais who attacked them for reasons of plunder.”<sup>93</sup> Paris also reports the Cinque Ports complaint that sailors of Brittany, Poitou and Normandy, together with the pirates of Wissant and Calais were preventing pilgrims from returning home. There is a certain irony in such a complaint, particularly as Paris had earlier reported that the men of the Cinque Ports were preying upon pilgrims. The distinction between sailors and pirates is not clear in the text, or indeed if there was any. In addition, it was reported, the king of England was shut up in Bordeaux, like a prisoner, unable to receive victuals, supplies or money. Possibly as a result of this complaint, at the start of February 1243 a range of licences were issued to individual shipmasters to put to sea at their own expense. On the 7 February, William le Sauvage and Adam Bobernotte, along with their

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<sup>89</sup> *Rôles Gascons*, (eds) C. Bémont and Y. Renouard,, 4 vols (Paris and London, 1885-1964), I, p.174.

<sup>90</sup> *C.P.R.*, 1232-47, p. 359.

<sup>91</sup> *C.P.R.*, 1232-47, p. 360.

<sup>92</sup> *C.P.R.*, 1232-47, p. 400.

<sup>93</sup> Paris, *Chronica Majora IV*, p.238

associates, were granted licence to injure the king's enemies, with the last such commission prior to the conclusion of the conflict granted to Geoffrey Piper, master of a ship called *La Heyte*, on 13 February.<sup>94</sup>

Between the licence granted to Geoffrey Piper on 13 February 1243 and the conclusion of the truce on 7 April 1243, no further mandates, licences and commission appear to have been granted or issued. On 6 April, the king's council was instructed to publicly proclaim the truce through all the seaports, and to ensure that henceforth no mariners would inflict injury or loss to anyone of the king of France, coming into that land or leaving it<sup>95</sup>. On the same day, Richard Bauzan, a knight of the king's household, was ordered to return to the king and desist from making war. Bauzan had been on the king's service since at least 7 November 1242, when - along with Eudo, the king's clerk - he had joined the siege at La Rochelle with two of the king's galleys "to provide counsel and aid."<sup>96</sup> At the start of January he was granted an imprest, an advance of funds for services to be rendered, to go on the king's service in Gascony.<sup>97</sup> His specific duties are not mentioned, although they appear to have remained naval, as he is named as the captor of a ship near the isle of Oléron in March of that year.<sup>98</sup> In the mandate, he is ordered to return as "henceforth all harm and damage he causes will require the king to recompense the injured parties."<sup>99</sup> It is interesting to note the liability of the sovereign for all captures made by those men on his service after the conclusion of the conflict. Clearly, it was a

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<sup>94</sup> *Rôles Gascons*, I, p. 111.

<sup>95</sup> *C.C.R.*, 1242-47, p. 20.

<sup>96</sup> *C.P.R.*, 1232-47, p. 343.

<sup>97</sup> *Calendar of the Liberate Rolls ... Henry III, 1226-1272; appendices 1220-1267*, 6 vols, (London, 1916-1964) I, p. 166.

<sup>98</sup> *C.C.R.*, 1242-47, p. 18.

<sup>99</sup> *C.C.R.*, 1242-47, p. 19.

priority of the English Crown to inform their men of the change in diplomatic circumstances.

Starting with the initial commission of 8 June 1242 as described by Mathew Paris, there followed a series of mandates and licenses issued to ports, individuals and officials of the crown with a varying degree of detail over a period of just under ten months. Even the conclusion of a truce did not bring to an end such naval service. On 7 July 1243, in response to the count of Brittany's failure to keep the truce, the archbishop of York was ordered to put the ships of the Cinque Ports on standby. According to the commission, "From the many complaints of men of our power, coming to us, we have for certain learned that the count of Brittany is not respecting the truce entered between us and the king of France, whatever way he is able to damage our men crossing the sea, capturing their ships and despoiling their goods and merchandise killing several men". The fleet was to put to sea against the count if he was unwilling to provide correction and restitution of the losses inflicted. Paris describes the count of Brittany feigning ignorance of the truce, robbing and despoiling in the manner of pirates (*more piratico*), ships of the king's power, including a large Bayonnais merchant ship. According to Paris, the king of France, upon the request of Henry III, restrained the count.<sup>100</sup> Pirates in this case are clearly seen as truce breakers, and the reference constitutes a further use of the term - although it is unclear whether their action would have been considered 'piratical' by Paris in the sense commonly attributed to the term if it had happened before the truce.

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<sup>100</sup> Paris, *Chronica Majora*, IV, pp. 242-43.



One sees in the study of the campaign of Poitou that commissioned ships were engaged in a range of naval activities and could not be considered mere commerce raiders. Although Mathew Paris is seemingly clear in his initial use of the term 'pirate', he subsequently employs it in a more ambiguous sense. It is seen as being synonymous with sailor, as witnessed in his description of the French naval fleets engaged in coastal defence; it is also used alongside sailor when describing the French attacks on pilgrims, fitting in to the piratical requirement to prey on the innocent. Its final use is in describing the Breton truce breakers, such men acting outside the recognised boundaries of warfare, although it is not clear that it is this action that makes them 'pirates' in the eyes of Paris.

### **The Treatment of Prize.**

One of the charges made by Mathew Paris against Henry III is that his commissions, issued in June 1242, had targeted French merchants and others crossing the sea. However, apart from the blockade of La Rochelle, where such attacks are essential, no commissions or mandates specifically mention the targeting of French merchant shipping. The presence of such a large number of ships with often open-ended instruction was bound to have an effect on trade and the movement of goods. Towards the end of August 1242, the sheriff of Norfolk and Suffolk was ordered to arrest all those in his jurisdiction from the Cinque Ports who had travelled by the seacoast to plunder or disturb the king's peace.<sup>101</sup> As we have seen, later historians have asserted that it was the lack of scruples displayed by the mariners of

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<sup>101</sup> *C.C.R.*, 1237-42, p. 461.

the Cinque Ports that made them such a valuable resource. Such a mandate supports the picture painted by Paris and later historians of widespread piratical behaviour resulting from the abuse of powers too loosely granted by the king. However, the mandate also reveals that present even at this early stage was a desire to mitigate collateral damage to friendly shipping. Various other mechanisms were implemented to achieve this end. The presence of captains appointed from within the fleets with responsibility for discipline has already been noted. It is unclear how effective such men would be in restraining the excesses of the ships nominally under their control. In any case, it is clear that crown policy was directed and enforced on land through the adjudication of captured goods, whatever the powers and abilities of captains at sea.

Little consideration has been given to how such matters were dealt with in the thirteenth century. Deak and Jessup traced the machinery for the adjudication of prize back to the fourteenth century.<sup>102</sup> Marsden considered the law with regards to 'piracy', prize and war in this period as vague and tending towards lawlessness.<sup>103</sup> However, despite the absence of the office of Admiral or the court of Admiralty an examination of the documents emerging from the campaign reveals details of a well-organised administration governing the treatment of gains of war long before the fourteenth century. An examination of these documents provides evidence that a procedural hierarchy emanating from the centre through the localities into the ports was clearly present. This paper trail indicates an attempt to make the localities

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<sup>102</sup> Deak F. and Jessup, P.C., 'Early prize court procedure', part one, *University of Pennsylvania Law Review*, 82 (May, 1934), p. 679.

<sup>103</sup> Marsden, R.G., 'The vice-admirals of the coast', *The English Historical Review*, 22, (1907), p. 468.

accountable to this centre revealing a level of administrative sophistication in marked contrast to the lawlessness described by Marsden.

Prior to the creation of the office of Admiral, at the end of the thirteenth century and the emergence of the Admiralty court, around the middle of the fourteenth century, administrative responsibility for the raising of ships, treatment of prize, the settlement of disputes and the discipline of the fleet rested in the hands of a variety of royal officials. Over the course of the campaign of 1242-43, we can detect these officials involved at various levels in the issues emerging from naval action. The participation of council members, including the regent, in the preparation of shipping in the initial commission to the mariners of the Cinque Ports set the tone for the close involvement of the king's council in directing policy. Below the king's council we can detect the sheriffs of the counties, who are named in a number of mandates fulfilling the will of the council; below them, the port officials known as bailiffs possessed a day-to-day responsibility for the administration of goods brought into their port. Bertram de Cryoll emerges as a figure of some prominence in the documentary accounts of these actions. De Cryoll, as well as being a member of the king's council, held the constableness of Dover castle, was warden of the Cinque Ports and also the sheriff of Norfolk and Suffolk. A case study of the conflict, and the documents emerging from it, demonstrates a fairly developed administration containing surprisingly sophisticated aspects.

It has been noted that contained in the commissions and licences were instructions not to harm those of the king's power or protected by his safe-conduct. Implicitly included in this instruction were the shipping and merchants of friendly powers. However, such categories were far from static. A mandate of July 1242, ordering the release of certain captured goods, specifically mentioned ships of the lordship of the Empire, including Brabant, as well as Denmark and Norway, and those of the power of the count of Flanders.<sup>104</sup> Due to the volume of Flemish trade and the proximity of Flanders to the French crown, the majority of complaints of wrongful capture were made by Flemish merchants. A mandate to Bertram de Cryoll on 9 October ordering the release of Flemish ship at Gravesend states that "it is very annoying to hear so often the complaints of ships arrested of the count of Flanders."<sup>105</sup> The exemption of Flemish goods from capture was seemingly assured by a perpetual safe conduct issued under the king's patent letters in December 1236, which was to hold even in the event of war between the kings of England and France.

"If it happens that the count or countess should do their service due to the king of France in any war against the king, the peace between the king and them shall not be thereby violated, unless they move war with their lands against the land of England principally; and the count and countess shall not be able to infringe the peace or safe-conduct granted to the king and his men by them, unless the king wage

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<sup>104</sup> *C.C.R.*, 1237-42, p. 453.

<sup>105</sup> *C.C.R.*, 1237-42, p. 477.

war against their land of Flanders and Hainault with his land of England.”<sup>106</sup>

However, the situation regarding this perpetual safe-conduct changed at the start of 1243, when the count of Flanders notified the king that he was withdrawing his merchants from England, as they could no longer be maintained there, and conversely he could no longer guarantee the protection of English merchants in Flanders. As a result, on 11 January 1243, William de Cantilupe and the archbishop of York were ordered to proclaim this changed situation in every town they thought fit. In addition, if any of the king’s merchants were injured in Flanders, Cantilupe and the archbishop were to strike back with all the means at their disposal. That same day, the count of Flanders was issued a safe-conduct to transport a ship laden with wine in the king’s power.<sup>107</sup> The granting of the particular safe-conduct, along with the proclamation, indicates that from this point there would be no blanket of protection of Flemish goods. The Flemish case demonstrates that the prescriptions contained in commissions to private ship-owners on the basis of which judgement on prize were made, did not contain static categories. Agreements in place were subject to immediate and effective change, the king’s orders could be recalibrated rapidly to take account of new political or diplomatic realities, short of the formal declaration of war.

It seems that even certain French merchants were afforded some level of protection from the conflict. Safe-conducts issued to merchants from France continued to be respected even after the outbreak of the conflict. On 25 August 1242,

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<sup>106</sup> *C.P.R.*, 1232-47, p.170-1.

<sup>107</sup> *C.P.R.*, 1332-47, p.356.

the bailiffs of Southampton were ordered to release the goods of three merchants of Vermandois upon them providing proof that they held a relevant safe-conduct.<sup>108</sup> The document had been issued in May 1242 prior to the outbreak of the war, but whilst preparations were nonetheless underway for the conflict.<sup>109</sup> Safe-conducts continued to be issued to French merchants throughout the war, to towns as well as individuals, in an effort to mitigate the harmful effects of the conflict to sea-borne trade. A general safe conduct was issued to merchants of Dieppe, as “merchants of the kingdom are able to safely and securely come up to Dieppe and thence to return.”<sup>110</sup> On the 10 October, the bailiff of Southampton was ordered to release the goods and merchandise of Peter Huybard upon the testimony of the mayor of London and Walter le Fleming, a burgess of Southampton, that he was a merchant of Dieppe.<sup>111</sup> However, as stated earlier such arrangements could be subject to swift change. The arrest of English goods in Dieppe appears to have brought this relationship to an end, and on 29 October the king’s bailiffs were instructed to arrest all chattels of men of Dieppe found in Southampton until the king ordered otherwise.<sup>112</sup>

It is clear that such safe-conducts or licences were conditional with protection carrying some level of obligation. The difficulty of victualing the fleet besieging La Rochelle seems to have been the motivating factor in the granting of a licence to Breton merchants in October 1242. Under its terms, they were permitted to buy wine and salt in Oléron and to sell corn there, “provided that by the pretext of this licence no profit accrues to the men of Rochelle, St Jean d’Angély, Taillebourg or elsewhere

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<sup>108</sup> *C.C.R.*, 1237-42, p. 461.

<sup>109</sup> *C.P.R.*, 1232-47, p. 286.

<sup>110</sup> *C.C.R.*, 1237-42, p. 466.

<sup>111</sup> *C.C.R.*, 1237-42, p. 474.

<sup>112</sup> *C.C.R.*, 1242-47, p. 72.

of land at war with the king.”<sup>113</sup> Another safe-conduct issued in the midst of the siege contained further instructions. On 13 October, the Templars of Épaux in La Rochelle were granted license until the Feast of the Assumption to trade their wine and other goods throughout lands under the king’s power. By its terms they were required to notify the king’s sergeants at the siege and provide security that they would not transport the wine or goods of others under their licence.<sup>114</sup> However, less than a week after its issue the safe-conduct was cancelled. The masters and mariners of the galleys of Bayonne were instructed to no longer permit the Templars to convey goods under the letters of protection as they were “taking the wine and goods of other persons of Rochelle.”<sup>115</sup>

From the outset, then, it is clear from the documentary record that a process existed which was designed to enforce the policy of the monarchy; to retain the king’s share; and to return to their rightful owners - after a process of adjudication - those goods which were not judged to be good prize. If the sea can be described as lawless in this period, an attempt was made to ensure the ports were not. The authorities took control in the only meaningful way they could; and since all shipping of significant size had to use ports, that control, if diligently exercised, had a good chance of becoming effective. Throughout the conflict of 1242-3, as part of this policy, the English crown tried to ensure that captured and arrested goods were held in secure custody for the purposes of adjudication and preservation. Such a process of best practice was subject to some degree of supervision. On 17 July 1242,

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<sup>113</sup> *C.P.R.*, 1232-47, pp. 329-30.

<sup>114</sup> *C.P.R.*, 1232-47, p. 330.

<sup>115</sup> *C.P.R.*, 1232-47, p. 333.

the bailiffs of Southampton and Portsmouth were ordered to prepare themselves for the visit of Robert Passelewe, sheriff of Hampshire. Passelewe was charged with administering the property that the king's men of the two ports had "recently captured from the men of the king of France." The port officials were to ensure that all captured property was placed in safe-custody prior to the visit; all goods that have been moved were to be returned into their safekeeping.<sup>116</sup> A month later, on 17 August, the bailiffs of Yarmouth were ordered to ensure that all the merchandise, goods and chattels belonging to merchants of Amiens arrested in a ship belonging to Eustace Karette, were placed in safe-custody so that "nothing may perish or be moved until the king has sent someone up to inspect the merchandise and chattels aforesaid and to administer them according to the orders of the king."<sup>117</sup>

Such diligence was to apply to presumed enemy goods as well as those presumed to belong to friends and allies. At the end of July 1242, mandate was sent to the mayor and sheriffs of London instructing them, along with the treasurer Walter de Haverhill and king's clerk William Hardel, to inquire into what merchandise belonging to French merchants were currently in London. All such goods were to be placed in safe-custody awaiting further instruction, "so the great chattels that king believes to be there will not be lost or sent away by their negligence."<sup>118</sup> An essential element of holding goods in safe custody was the appraisal and inventory of the goods held. On 19 July, the prévôt of Oléron along with Iweyn the clerk, by a jury of good and lawful men were to estimate the value of

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<sup>116</sup> *C.C.R.*, 1237-42, p. 453.

<sup>117</sup> *C.C.R.*, 1237-42, p. 459.

<sup>118</sup> *C.C.R.*, 1237-42, p. 455-6.



grain and other merchandise captured off the coast of the island.<sup>119</sup> On 25 November 1242, the king's bailiffs of Bristol were instructed to hold in safe-custody "seven sacks and two peas of wool, four and half dickers of hides, six hundred lamb pelts and three hundred sheep pelts" belonging to a merchant of St. Omer captured in a cog of Flanders, until the arrival of William Cantilupe.<sup>120</sup> In this case the Flemish ship appears to have been released. The goods, if found to belong to a French merchant, would have been considered to possess enemy character, even if the ship did not.

Where the distinction between valid and invalid prize was fine and subject to change, clearly a process was required to ensure prompt judgement and swift restitution in cases where the goods were found to have been wrongfully captured. Holding captured and arrested goods in safe custody, as detailed above, was merely the first stage in that process. In the majority of cases the decision on captured or arrested goods rested on the ability of the injured merchant to prove their ownership, the lordship to which they belonged and the provenance of the goods claimed. Prior to the statute of the Staple passed in 1353, which set in place required standards of certification for claiming goods, a variety of means were used to establish ownership. In addition such processes involved a variety of royal officers. On 28 July 1242, the sheriff of Kent was ordered to bring to London a ship belonging to merchants from Ypres and Ghent held under arrest in the river port of Gravesend. Once there he was to inform the treasurer and Mayor of London William Haverhill. Haverhill was to make inquiries by a jury of local men to determine of whose lordship the

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<sup>119</sup> *C.C.R.*, 1237-42, p. 504-5.

<sup>120</sup> *C.C.R.*, 1242-47, p. 77-78.

merchandise was, those goods belonging to merchants of the king's friendship were to be released, those belonging to the king's enemies to be held in safe custody.<sup>121</sup> Interestingly, the process appears to have been pro-active in some cases, rather than solely responsive to particular complaints. On 26 August 1242, the sheriff of Norfolk and Suffolk was ordered to visit the ports in his bailiwick, and in each of them, by a jury made up of men of the port, to find out what merchandise was contained there, that had been arrested or captured since the outbreak of the conflict with the king of France. The goods of merchants of England, the Empire or Flanders, at least those able to prove ownership, were to be returned. Merchandise belonging to those of the power of the king of France was to be placed in the secure custody of the sheriff, under his seal and that of the twelve jurors, and held until ordered otherwise. The sheriff was to inform the archbishop of York of the merchandise arrested and its value, again under the testimony of his seal and those of the jurors, at the king's council held at Rochester on 8 September.<sup>122</sup> Bertram de Cryoll was issued with similar orders relating to the Cinque Ports and the county of Kent. Those goods that he was able to establish belonged to merchants of Flanders were to be released immediately; those goods he was unsure of were to be held in safe-custody and not to be moved until he was able to establish the truth of the matters. Merchants claiming ownership of the disputed goods were to be permitted to return to their lands to acquire testimonial letters from their community and the count establishing that they were indeed from Flanders.<sup>123</sup>

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<sup>121</sup> *C.C.R.*, 1237-42, p. 453.

<sup>122</sup> *C.C.R.*, 1237-42, p. 462.

<sup>123</sup> *C.C.R.*, 1237-42, p. 491.

Thinking on the issue of the treatment of captured goods appears to have evolved throughout the conflict. Indeed, efforts were made to standardise the procedure surrounding the claiming of goods, more than a hundred years before the Statute of the Staple. At the king's council held at Rochester on 8 and 9 September 1242, the procedure for the return of goods was set down in writing. Under its terms, ownership of goods and the origin of the merchant claiming them could be established either by the testimony of lawful merchants of England, or by the testimonial letters patent of the lord of the alien merchant. This was no great divergence from previous practice; various forms of proof had been employed prior to the council at Rochester. At the council itself, Jacob de Lede, a merchant of Douai, had provided sufficient proof that the 87 sacks contained in a ship of Gravelines belonged to him. The intention of the provision was seemingly to standardise procedure, to provide a working directive to simplify and speed up the process of restitution. On 11 September, Roger de Thurkilby, a justice of the king, and the sheriff of Norfolk were appointed to receive the proofs of Flemish merchants claiming ownership of goods held at Yarmouth and Blakeney, "in the form lately provided before the council at Rochester."<sup>124</sup> Within a month, on 2 October, the same sheriff was ordered to release the goods mentioned to Eustace Morell "who has sufficiently proved by the patent letters of the said uncle of the king, the count of Flanders, that eleven sacks of wool detained at Yarmouth and seven sacks of wool detained at Blakeney are his and that he is of the aforesaid count."<sup>125</sup> On 15 September 1242, Bertram de Cryoll was ordered to release wine and leather belonging to burgesses of Valenciennes, as the count of Flanders had certified to the king's council by his letters patent "according to the provision recently made at

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<sup>124</sup> *C.P.R.*, 1232-47, p. 303.

<sup>125</sup> *C.C.R.*, 1237-42, p. 475-6.

Rochester” that they were under his lordship. Forwarded with the mandate were the letters patent to enable de Cryoll to examine them.<sup>126</sup> At the start of October 1242, Bertram de Cryoll was ordered to release Flemish wool held in ports in his jurisdiction. Testimonial letters patent of the count of Flanders listed 87 sacks and 4 bales of wool captured by John Alard and held at Winchelsea and 29 sacks of wool captured by Simon Rubin and detained at Hythe. De Cryoll was further instructed to go in person to the Cinque Ports to make inquiries by means of a jury of good and discreet men at each port into the goods held there. Checks were to be made against the patent letters of the *échevins* of various Flemish towns who had submitted complaints. Those holding the Flemish goods, whether through purchase or gift, were to be compelled to return them to their rightful owner.

The cases detailed above consistently demonstrate the desire of the Crown to ensure that all captured goods were held in safe-custody prior to adjudication. As we have seen such measures in theory enabled restitution to be provided in those cases where the goods were found to belong to merchants of the king’s friendship. However, it is clear that such a policy could not be universally enforced, and there are several examples of goods leaving the custody of the port before judgement could be made. In such cases remedial measures had to be adopted. The perpetual safe-conduct granted to Flemish merchants in 1236 provided them with specific guarantees regarding the provision of justice. Merchants suffering injury at the hands of men of the king’s power were to be compensated through the distraint of the lands and goods of the perpetrators. Where this was not sufficient, the king “[would] make

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<sup>126</sup> C.C.R., 1237-42, p. 470-1.

satisfaction to the said merchants according to the custom of the land.”<sup>127</sup> The use of distraint was not restricted to the recovery of Flemish merchandise; the seizure of goods and lands was the obvious recourse of the crown to compel payment. In November 1242, the sheriff of Gloucester was instructed to visit the port of Bristol to examine by jury the contents of a Flemish cog captured by three ships, from Bristol, Waterford and Swansea. Those goods belonging to merchants from Flanders, Brabant and the Empire were to be returned to them immediately. The sheriff was further ordered that if mariners of the aforesaid ships had plundered the contents of the cog, he was to “arrest the same three ships until the aforesaid merchants have been satisfied of what has been stolen (*ablates*) from them.”<sup>128</sup> In October 1242, the sheriff of Suffolk was ordered to ensure the return of nine sacks of wool that had been plundered off the coast of Tynemouth. It has been established in the presence of the king’s council that the wool belonged to Amelis of Bruges, and was consequently not prize of war. In this case, although the king’s half-share (4 ½ sacks) had been retained in the port of Dunwich, the remainder had been carried off; inquiry was to be made into whose hands the goods now were distraining them to return the aforesaid wool.<sup>129</sup> It is noteworthy that in a case where goods had been permitted to leave the port before judgement had been made, respect appears to have been shown to the notion of the king’s share with his portion of the captured goods retained in the custody of the port officials.

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<sup>127</sup> *C.P.R.*, 1232-47, pp. 170-1.

<sup>128</sup> *C.C.R.*, 1242-47, pp. 72.

<sup>129</sup> *C.C.R.*, 1237-42, p. 480.

As we have seen in a large number of cases, goods were released upon sufficient proof being provided with no need for further process. However, not all cases were as straightforward. In those cases adjudication was made in a variety of forms. We see justices sent out from the *curia regis*, making inquiry through the instrument of a jury, deciding on whether captures were good prize or not. We see the king's council adopting a prominent role in such decision making and there appears to have been some form of appeal and oversight, centrally controlled. Such inquisitions were designed to protect the property rights of English captors, as well as those merchants, alien or otherwise, claiming to have been unjustly despoiled.

In September 1242, the royal justice Roger de Thurkilby and Hamo Passelewe sheriff of Norfolk and Suffolk were appointed to inquire into the capture of a ship of Pevensey by men of Winchelsea. The ship itself had been arrested on its return to the port of Dunwich. De Thurkilby and Passelewe were instructed to receive proofs from the barons of the Cinque Ports that the goods contained in the ship did in fact belong to merchants of Rouen, as had been claimed by the captors. Again there seems to have been a pro-active element to the process. Further inquiry was to be made by the aforementioned officials into the goods currently arrested at Dunwich, Yarmouth and Blakeney, and whether they came from lands at war with the king. Any goods that were found were to belong to the king's enemies were to be assigned to their captors, reserving the king's share.<sup>130</sup> It seems to have taken just over a month for the case to be resolved. On 22 October, the sheriff of Norfolk and Suffolk was ordered to distrain all those in his jurisdiction into whose hands the

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<sup>130</sup> *C.P.R.*, 1232-47, p. 303.

wool, skins and other goods contained in the ship of Pevensey had come. The goods were to be delivered to the king's barons of the Cinque Ports as they had been adjudged their booty (*lucrum suum*) in the king's court (*curia regis*) by Roger de Thurkilby and the sheriff of Norfolk. The king was again to receive his share.<sup>131</sup> In March the following year, the council needed to intervene in a dispute between merchants of London and barons of the Cinque Ports. Men from Winchelsea had captured a ship at the mouth of the Thames belonging to John Peche of Flanders, presumably after the breach with the count, and claimed the merchandise therein as prize of war. However, a group of merchants from London claimed that the goods contained in the ship rather than being Flemish in fact belonged to them. Bertram de Cryoll was ordered to bring the ship up to the place where it had been captured, where the archbishop of York would set a day to settle the competing claims. The judgement returned by 13 May favoured the citizens of London, who had sufficiently proved their ownership of "5 baskets of woad and a bale of pepper", which de Cryoll was instructed to return to them without delay.<sup>132</sup> Again the case appears to have been settled fairly quickly, in just under two months.

That the decision could be reversed, perhaps on appeal, is indicated by an order to Robert Passelewe, the sheriff of Hampshire, at the start of September 1242. Once again we witness the involvement of those close to the political centre involved in the process. The abbot of Evesham (Richard le Gras, keeper of the Great Seal) and Paulinus Pevyr (steward of the royal household and member of the council) informed the king's council that as a result of their inquiries at Portsmouth, it had been

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<sup>131</sup> *C.C.R.*, 1237-42, p. 480.

<sup>132</sup> *C.C.R.*, 1242-47, pp. 100-101.

established that a ship of Ireland captured by the king's galleys outside the port, was sailing overseas with materiel of war, and that it should be considered good prize. The goods were condemned on the basis of their strategic value, what from the sixteenth century would be termed contraband. As we have seen the carriage of enemy goods did not automatically convey enemy character upon a ship. The order to deliver the ship to its captors was made in spite of the fact that Passelewe's own investigation had found just the opposite. Passelewe was ordered to return to William Beaufiz, keeper of the king's ships, his portion of the capture because the ships that had made the capture had been assigned to Beaufiz. Once again we see a ship under the command of a king's officer benefitting from captures at sea. It is not stated if the second inquiry was initiated as the result of an appeal, but it seems likely this was the case. Where the king received a share of the captured booty the accusation of partiality could be made and in this case more than most, the crown could be seen to be acting as both party and judge. However, the willingness of the crown to allocate its share to other parties suggests that monetary gain was not the main motivation in cases such as the one detailed above. It seems more likely that decisions were made on the basis of the equity between the competing claims of the injured party and the need to reward the captors, and to further encourage ship-owners to put to sea in the service of the king. When the injured party was the king's subject, the scope for action on the part of the monarch was clearly greater, with no need for diplomatic concerns to be taken into consideration.

One of the main complaints made by Matthew Paris was a lack of discrimination in the targets of the men of the Cinque Ports, resulting in the



despoiling of English merchants and even pilgrims. Attacking non-enemy shipping or capturing non-enemy goods appear to be *prima facie* indicators of 'piracy'. However, in a number of cases where this seems to have happened it had involved the carriage of enemy merchandise on English ships or vice-versa. According to Reginald Marsden:

"To the thirteenth and fourteenth centuries may be traced the beginning of the dispute, hardly yet settled, as to the legality of captures of enemy goods in friends' ships, and of friends' goods in enemy ships. Down to the close of the thirteenth century no record shows that the question had arisen; probably in all cases enemy ships and goods were treated as good prize."<sup>133</sup>

Despite the claims of Marsden it is clear that such cases had arisen by the end of the thirteenth century, and indeed around the campaigns of 1242-3 there are several examples which serve to illustrate crown policy on the issue. The freighting of friendly merchandise in enemy craft was not enough in itself to lead to their condemnation as good prize, although we have already seen the condemnation of an Irish ship on the basis of carrying what would come to be termed 'contraband'. In the various inquests into the origins of goods, the arrest of enemy goods and the release of friendly goods -regardless of the origins of the ship upon which the goods were carried - were ordered. On the 26 July 1242 Drogo de Barentin was instructed to return wine captured in a Breton ship to Ranulf Pygeu, Knight Templar in Poitou, upon proof that it was his own property and that no one of another lord had a share in

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<sup>133</sup> Marsden, R.G., 'Early prize jurisdiction and prize law in England', *The English Historical Review*, 24 (96) (1909), p.678.

it.<sup>134</sup> Conversely, enemy goods carried in friendly shipping were not deemed to be protected by the ship's flag. In November 1242, a mandate to the bailiffs of Bristol referred to a quantity of wool, hides and sheep pelts arrested in a Flemish cog as 'goods of war' and ordered them to be retained, as they belonged to William Gaylard merchant of Saint-Omer.<sup>135</sup> The right of friendly powers to trade with whom they wished had to be balanced with the right of the belligerent to prevent the strengthening of his enemies. Notice has already been made of the order to intercept the Spanish ship containing horses bound for La Rochelle. The specific order reminds us that the main motivation of blockade was to deny supplies to the enemy.

The rights of non-belligerents to free trade had to be balanced with this strategic concern. In response to a request from the count of Flanders to release Flemish goods arrested in England, the following policy was outlined. Those goods belonging to merchants of the count of Flanders that had been loaded in the county of Flanders were to be released. However, in the case of goods belonging to the Flemish merchants which had been loaded in enemy territory, "the king [would] cause nothing to be released, because the king is unwilling that property and merchandise in lands of enemies of the king may be defended under the cover of men of the count."<sup>136</sup> The colouring of enemy goods would be a consistent complaint made against friendly ships in the Middle Ages. To prevent fraud, starting with the 1297 agreement with Flanders, ships occasionally would be obligated to carry additional documentation testifying that the goods on board were not enemy goods.<sup>137</sup> No such

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<sup>134</sup> *C.C.R.*, 1237-42, p.505.

<sup>135</sup> *C.C.R.*, 1242-47, pp.77-78.

<sup>136</sup> *C.C.R.*, 1237-42, p.508.

<sup>137</sup> *Foedera*, II, p.759.

requirements were in place during the Poitou campaign, although certain measures were adopted by the English crown to act as a check on the integrity of 'friendly' shipping. In July 1242 Flemish merchants whose ship had been arrested at Rochester were required to find security that the cargo on board did not belong to French merchants.<sup>138</sup>

### **The Division of Spoils.**

According to Mathew Paris, greed was the begetting sin of the 'pirates' of the Cinque Ports. A desire for plunder leads them into 'piracy' and their eventual defeat. Modern scholars have largely followed this model to suggest that a fleet subsidized by prize is less controllable as a naval force than one which is in receipt of wages. Of course the lure of plunder was an important incentive in all forms of warfare of the period, regardless of the nature of the service and as we have seen during the Poitou campaign, ships under all forms of naval service were involved in the capture of shipping and plunder. We have also seen that the division of spoils varied according to circumstance and the contractual arrangements contained in the commission, whether held by individuals, towns or other corporate bodies. The initial commission to the Cinque Ports set the king's share at a fifth, those issued the same month to the Channel Islands also set the king's share at a fifth. Denys Hay points out that as the king's share was customarily paid into the Privy Purse, it is difficult to trace the payment of his share of the booty.<sup>139</sup> However there are several references, direct and indirect, surviving from the Poitou campaign that indicates royal receipt of payment of the king's share of captures made at sea.

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<sup>138</sup> *C.C.R.*, 1237-42, p.452.

<sup>139</sup> Hay, 'The Division of the Spoils of War', p.106.

On 17 July 1242, a safe-conduct was granted to a sergeant of the king, William le Noreys, to bring to the king a ship and its merchandise captured in the war.<sup>140</sup> It has already been noted that in several of the commissions captains were appointed with responsibility for the king's share as well as the discipline of the fleet. In addition to these captains, officials were appointed on land to oversee its collection. Again the Crown seems to have adopted a pro-active approach. On the 11 September, Bertram de Cryoll and the clerk Henry Wengham were appointed to receive this share in the jurisdiction of the Cinque Ports, "taken by land and sea from the king's enemies during the war with France and brought to the Cinque Ports."<sup>141</sup> Their responsibility extended beyond the gains made by the fleet of the Cinque Ports, covering those holding individual commissions. The same month, Robert Bruman and Alexander son of Alan were appointed to receive the gains of war from the captains of the Yarmouth fleet engaged in the defence of the coast. From these gains they were to pay the mariners of the fleet and hold in safe custody the king's share<sup>142</sup>. On 2 October, the sheriff of Norfolk and Suffolk was ordered to go in person to Dunwich and Yarmouth, and with the inspection of six good and legal men of each town cause to be sold the king's share of gains of war which had been brought to those ports; the money raised was to be placed in safe-custody until further orders.<sup>143</sup> As we have seen, individual commissions to masters of ships required them to pay half of their gains to the crown. It was clearly more difficult to keep track of individuals than corporate fleets. However, on 8 October Robert Ely of

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<sup>140</sup> *Rôles Gascons*, I, p. 46.

<sup>141</sup> *C.P.R.*, 1232-47, p. 303.

<sup>142</sup> *C.C.R.*, 1237-42, p. 467.

<sup>143</sup> *C.C.R.*, 1237-42, p. 476.

Winchelsea, holding such a licence for him and his associates in a ship called *le Buzarde*, is acknowledged to have paid £20 Bordeaux to the keeper of the wardrobe, Peter Chaceporc, as the king's share of his booty (*lucro*)<sup>144</sup>. The sum was not considered to be sufficient. A week after the acknowledgement, on 20 October, Bertram de Cryoll was order to distrain the goods of Ely, as "we ought to share his gains up to a half share, yet he has subtracted almost all from us."<sup>145</sup>

Alongside the lure of prize, there are several examples of wages being paid to mariners on the king's service. For ship-owners involved in the transport of troops, opportunities for financial gain at sea were more limited. On 20 October 1242, details surrounding the payment of mariners emerge from the Gascon Rolls. Thirteen ships with a variety of mariners were paid arrears ranging from 2 ½ to 5 marks for escorting the king's treasury to Bordeaux, the amount roughly based on the number of crew. At the end of October, the masters of the galleys of Bayonne were instructed to remain in the king's service until Martinmas, with the assurance that they would receive payment before the end of their service. On 3 November, this service was extended again until 29 November; the mariners were to send two of their fellows to the king after Martinmas for payment. On 10 January 1243, masters of ships involved in a variety of tasks were paid similar amounts for three-month service of the king. Geoffrey Piper, master of a ship called *la Heyte*, received 100 shillings for arrears of wages for four months' service. The ship belonged to Walter le Fleming, a merchant of Southampton, and had been commandeered for the king's service initially in April 1242, along with 3 ships of Bayonne to bring the king's wardrobe

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<sup>144</sup> *C.P.R.*, 1232-47, p. 328.

<sup>145</sup> *Rôles Gascons*, I, p. 22.

into Gascony<sup>146</sup>. Piper is named again as master of the ship on 13 February 1243 in a licence to “grieve the king’s enemies on condition he answer for a moiety of the profit to the king.”<sup>147</sup>

The payment of wages and the right to retain prize were by no means mutually exclusive, although mariners tended to be entitled to a larger share of prize in lieu of wages. A more detailed description of the treatment of prize is contained in the licence granted to the men of Bayonne on 4 August 1242. Under the terms of the licence the first thousand marks of the king’s share was to be retained by the townsmen to fortify Bayonne. Half of the remainder of the king’s share was to be retained as payment (*stipendiis*) for the mariners. Such generous terms were reflective of the value of the ships and mariners of Bayonne to the crown and the nature of their service. The licence explicitly states “that the service to the present they have made to us coming to us from parts overseas, they make to us freely and of their grace.”<sup>148</sup> Two burgesses from Bayonne were appointed to receive and safely hold the king’s share of the gains of war with an additional mandate instructing the masters of the galleys to admit them.<sup>149</sup>

It is estimated by Stacey that the land-based military costs of the conflict between the 12 May and mid July 1242 exceeded £22,000<sup>150</sup>. In the face of such expenditure the opportunity to defray the naval costs of the campaign by means of

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<sup>146</sup> *C.C.R.*, 1237-42, p. 411.

<sup>147</sup> *C.P.R.*, 1232-47, p. 363.

<sup>148</sup> *Foedera*, I, p.408.

<sup>149</sup> *C.P.R.*, 1232-47, p. 317.

<sup>150</sup> Stacey, R.C., *Politics, Policy and Finance under Henry III, 1216-45* (Oxford, 1987), p.198.

the granting of plunder was clearly an attractive option. In addition, as we have seen with the Bayonne example, enemy goods captured at sea could be used to subsidise war expenses other than wages. On 10 September, Robert Passelewe was ordered to hand over to representatives of the Cinque Ports, six hundred spans of canvas captured from the king's enemies to provide sails for three galleys the king had ordered to be made.<sup>151</sup> It seems to have been a desire to offset costs rather than a desire to profit that encouraged the use of such fleets. On several occasions the crown was willing to forego its share in order to further reward those on royal service. On 6 November 1242, the good men of Yarmouth were granted the whole part of the king's share of a ship of Boulogne captured "through the war"<sup>152</sup> On September 11 the constable of Dover was ordered to pay the men of Winchelsea £100 from the arrest of money belonging to merchants of the king of France "as a gift for their maintenance in the king's service against his enemies."<sup>153</sup>

The records emerging from the campaign of 1242-3 reveal that at an early stage the administration surrounding naval activities and the treatment of prize were surprisingly sophisticated. Even allowing for the fact that war is a generator of records, the number of complaints of the capture of shipping dramatically rises over the course of the conflict. Such cases represent the collateral damage from the conflict. The sophisticated mechanisms represent an *ad hoc* response to the need to remedy such collateral damage. The emergence of the prize court is associated with the desire of the crown to receive its full share of all captured booty but as we have

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<sup>151</sup> *C.C.R.*, 1237-42, p. 468.

<sup>152</sup> *C.C.R.*, 1242-47, p. 73.

<sup>153</sup> *C.P.R.*, 1232-47, p. 303.

seen profit does not appear to have been the predominant motive. Except in the cases such as the La Rochelle blockade, where the purpose was specifically to deny supplies to the enemy, the goods captured represented the means rather than the end of naval operations.

### **Henry Pichepap**

From the records of the conflict of 1242-3 there emerges a figure that seems on first glance to fit our modern day conceptions of a pirate, Henry Pichepap. The numerous mentions of Pichepap over the ten months of the conflict suggest a sailor using the pretext of war and his commission to prey on merchant shipping. However, on closer inspection a more complex and nuanced picture emerges. In the months following the commissions to the Cinque Ports in June 1242, this sailor from Rye appears more frequently in the records than any other. It is unclear if Pichepap himself was involved in the initial commission of June 1242, although it seems likely; he was on the king's service no later than 24 June when we find that he was received into the king's safe conduct along with his crew "to injure the enemies of the king, as long as the war endures."<sup>154</sup> By 20 September Pichepap was in captivity in England, arrested upon the king's writ by Bertram de Cryoll on account of "various plunderings and transgressions made to men of diverse parts." Pichepap was to deliver in bail 24 good and legal men as guarantors to ensure his appearance before the king or his council on 11 November to answer for these acts. Pichepap's notoriety is further hinted at: he alleged that men were carrying out depredations and transgressions in his name, and that he was himself thoroughly innocent of these

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<sup>154</sup> *Rôles Gascons*, I, p. 42, *C.P.R.*, 1232-47, p.309.



crimes. It was ordered that these men should be arrested, along with their goods and plundered chattels, and held until further orders.<sup>155</sup>

The writ above does not provide specific details on the activities Pichepap was alleged to have been involved in, but other records from this time implicate him in the capture of a variety of ships. On 19 July 1242, William le Noreys was notified of the impending visit of Iweyn the clerk to value the grain and other goods and merchandise contained in a ship recently captured by Pichepap. The valuation was to be carried out by Iweyn in concert with the *prévôt* of Oléron and other good and legal men. Once valued, the grain was to be retained for the use of the king and the ship to be permitted to depart.<sup>156</sup> Noteworthy is the delay from capture to restitution, despite the order of restitution coming from the exchequer. By 17 August 1242, Pichepap - or at least his goods - already seem to have been under arrest. In an order to Bertram de Cryoll detailing the provision of shipping from Dunwich, Yarmouth and Dover to grieve the king's enemies, he is informed the cost is to be met from "the gains of Henry Pichepap of Rye, the chattels of those of the power of the king of France as from elsewhere."<sup>157</sup> Additional costs were to be met by the king, however, that barely two months after the initial commission, it was thought Pichepap had acquired enough goods to fund such an expedition indicates the volume of capture, legitimate and otherwise he had been involved in a short space of time. That the crown derived advantage from the captures of Pichepap is further indicated by an order dated 25 January 1243. When the guardians and regent of England were

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<sup>155</sup> *C.C.R.*, 1237-42, p.471.

<sup>156</sup> *C.C.R.*, 1237-42, p.504-5.

<sup>157</sup> *C.C.R.*, 1237-42, p.456.

instructed to fit out with suitable equipment and mariners the cog that Henry Pichepap has “gained at sea” (*lucratus est in mari*).<sup>158</sup> The ship was to be sent to Bordeaux to transit the wine bought by the king in Gascony into England.

In the week leading up to the truce between Henry and Louis concluded on 7 April 1242, Pichepap was ordered to return a ship belonging to a merchant of Barfleur in Normandy, if it had been captured before the truce was breached, i.e. before the start of the conflict, and if it had been taken in the service of the king and not for any other reason.<sup>159</sup> Whilst it was relevant to the case to establish the time of the capture, the need to establish whether Pichepap had been on the king’s service at the time was unusual. The existence of a state of war between the kings of England and France would automatically confer right of capture on their subjects, and any subsequent peace could not apply retrospectively. The initial commission was issued prior to the formal outbreak of the conflict; it may be that the capture occurred in that period. In the midst of diplomatic negotiations the attitude to the claims of French merchants had clearly softened, and Pichepap may have suffered from this changed diplomatic climate. Cases involving Pichepap remained outstanding after the conclusion of the truce. On 17 June 1243, Bertram de Cryoll was ordered to empanel a jury of 24 good and legal men of the Cinque Ports to inquire into the whereabouts of Flemish merchandise formerly contained in a ship ‘plundered’ by Henry Pichepap. On 28 July various members of the royal council were instructed to distrain all those whom Hugh le Engleis could show had received his goods from a ship ‘captured’ by

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<sup>158</sup> *C.C.R.*, 1242-47, p. 11

<sup>159</sup> *C.C.R.*, 1243-47, p. 94, This perhaps indicates that Pichepap was involved in the initial commission of 8 June issued prior to the declared outbreak of the conflict on 15 June.

Pichepap. Le Engleis seems to have waited a further six years to receive justice. On 23 August 1249, he was issued a *liberate*, authorising payment from the Exchequer, for £60 “in recompense of damages sustained by sea in the king’s last war in Gascony by the depredations of Henry Pichepap.”<sup>160</sup>

Henry Pichepap, in a sense, encapsulates in microcosm the issues surrounding the campaign of Poitou. The number of complaints lodged against his name is seemingly testament to his numerous misdeeds. If the men of the Cinque Ports were pirates, then Pichepap serves as an individual exemplar of their ‘piracy’. However, as this chapter has sought to demonstrate with reference to a particular case study, such a picture is too simplistic. Even after Pichepap’s initial arrest, the authorities did not view him in such clear terms, and such judgements brought gains as well as losses for Pichepap. On 22 October 1242, prior to Pichepap’s proposed appearance before the council, the sheriff of Norfolk was instructed to release the ship and chattels of Pichepap arrested at Orford<sup>161</sup>. On 21 January 1243, the same sheriff was ordered to pay 16 ½ marks in lieu of salt formerly contained in a ship of Pichepap which had been arrested and its contents sold.<sup>162</sup> On 8 September 1243, Pichepap was granted the king’s protection without term.<sup>163</sup> References to Pichepap in the records prior to the conflict of 1242 are scarce. In 1235, he was named as the master of a ship from Rye carrying goods belonging to merchants from Bordeaux. In 1237 he was named on a writ alongside various other men of the Cinque Ports,

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<sup>160</sup> *Liberate Rolls*, II, p. 249.

<sup>161</sup> *C.C.R.*, 1237-42, p. 480.

<sup>162</sup> *C.C.R.*, 1242-47, p. 82

<sup>163</sup> *C.P.R.*, 1232-47, p. 396.

accused of housebreaking, arson and disturbing the king's peace.<sup>164</sup> Pichepap's name is not found in connection with the capture of shipping before the war of 1242. It seems therefore that the complaints made against him resulted from his role in the conflict. Whether Pichepap exploited that role in order to attack friendly shipping is another matter. The war certainly provided the context of Pichepap's actions, and once that context was removed, we hear no more from him. It is a misrepresentation to assimilate the action of devolved fleets in the Middle Ages with that of 'piracy', in terms of both purpose and method. Their naval activities were more diverse than the supposed plundering of merchant ships, their role far more than the creation of economic havoc. In the next chapter we look at another medieval practice frequently likened to 'piracy', that of letters of marque.

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<sup>164</sup> *C.C.R.*, 1237-42, p.114, p. 131.

### 3. Letters of Marque: Seeking redress in the Later Middle Ages

Letters of marque were legal instruments through which a private individual, injured by either a foreign power or its subjects, could potentially gain compensation for his losses, through the seizure of property. They were designed to provide remedy for the king's subjects abroad, as well for the actions of foreigners in the realm, and for actions at sea where there was no sovereign jurisdiction. One can detect their emergence in fully recognisable form from the thirteenth century, perhaps as a result of the increased settlement of foreign merchant communities abroad in this period. They provided a means of addressing the potential legal issues arising from the presence of these merchant communities. Legal action against foreigners was made more difficult by the fact that as alien merchants they were not permanently based in the realm, able to leave at any time with their goods.<sup>165</sup> Indeed in certain legislation on marque, the start of the process was dependent on the author of the fault having quit the realm. Letters of marque also represented a remedy for subjects injured abroad, a guard against the potential partiality of foreign courts. Finally they provided a remedy for injuries committed at sea in time of peace and other breaches of truce.

Letters of marque authorised their holder to seize property and goods, not only from the debtor or author of the damage, but in theory from all subjects of the

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<sup>165</sup> *C.P.R* 1413-16, p. 116. In 1413 lieutenants of the Admiral were directed to seize Breton shipping and merchandise in the port of Dartmouth for the recovery of a debt relating to the purchase of salt. Richard Attewode had bought salt from various merchants of Brittany but before he could receive the remaining bulk of it "they departed secretly from Dartmouth to Brittany" without satisfying him of the residue.

same prince up to the value of his losses, together with all reasonable costs incurred. These costs could include freightage, interest accrued and legal expenses such as notarial fees. The idea of marque was essentially founded on a legal assumption of the collective responsibility of all those within the same jurisdiction and the responsibility of the sovereign for the actions of his subjects. However, marque was not always applied on the scale of the kingdom or even the lordship. Letters of marque could be restricted to a realm, a county or in some cases even individual cities. A citizen from Bruges was subject to various authorities and a part of various communities, the municipal authority of Bruges, the count of Flanders and ultimately the king of France. In 1412 Margaret of Coventry was granted letters of marque against the town of Santander in Castile; and when in execution of this marque a ship of Seville was arrested, the ship and cargo were ordered to be released despite Seville also being part of the realm of Castile.<sup>166</sup>

It is important to note that letters of marque in the Middle Ages were distinct from what have been termed ‘privateering’ commissions discussed in the previous chapter. As we will recall under the terms of these commissions, an individual was authorised to arm and equip a ship at his own expense, to attack enemy shipping in time of war, and was recompensed by the retention of the majority of his prize. In later periods such commissions would come to be called letters of marque, but the phrase does not appear in English documents in this context until 1702. Often referred to in English as letters of marque and reprisal in late medieval documents, the term reprisal is applied in its strictest sense, meaning to re-take; it does not possess the retaliatory connotations it would later come to embody in the laws of

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<sup>166</sup> *Calendar of Early Chancery Proceedings relating to West Country Shipping 1388-1493*, ed. D.A. Gardiner (Devon and Cornwall Records Society, 1978), pp. 17-18.

war. Letters of marque were in fact not an instrument of war: their application was restricted to times of peace and truce. As we have seen in the later Middle Ages no authorisation was required to seize enemy goods in war. Indeed, the outbreak of war led to the suspension of letters of marque as the goods of the object of the letter of marque would become prize of war. This is demonstrated in a case involving men of Bayonne, who petitioned for the resumption of their letters of marque in 1307 against Castile upon the completion of a treaty of peace. The men claimed they had only received partial recovery of their losses before the suspension of the letters of marque on account of the outbreak of the conflict. In this case, a new letter of request was sent to Ferdinand, king of Castile seeking damages under the terms of the recently signed treaty.<sup>167</sup> Although not welcomed by the sovereign against whom they were issued, the grant of letters of marque was not a cause or symptom of diplomatic breach. Indeed, there is frequently evidence of continuing cordial relations after their grant.<sup>168</sup>

Historians, particularly English historians, have had a tendency to make insufficient distinction between letters of marque in the medieval period and the privateering commissions that they would later come to embody<sup>169</sup>. This conflation of the terms has led to a misrepresentation of medieval letters of marque amongst even those historians who recognise the distinction. The issue is further confused by

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<sup>167</sup> SC8/286/14271, C.C.R 1302-7, pp. 527-8.

<sup>168</sup> *Royal and Historical Letters, during the reign of Henry IV*, ed. F.W. Hingeston, 2 vols, (London, 1860) p.21; A letter sent to Henry IV by the duke of Bavaria congratulating him on his accession to the throne in the immediate aftermath of the renewal of letters of marque granted against the duke of Bavaria and his subjects of Holland and Zealand, *Cotton Manuscript Galba BI*, (eds), E. Scott and L. Gilliodts-van Severen, (Brussels, 1896), *Royal and Historical Letters*, p.43. Henry's reply in which he expresses his gratitude.

<sup>169</sup> Loades, D 'The king's ships and the keeping of the seas, 1413-1480', *Medieval History*, 1 (1991), p.95; *Law and Custom of the Sea*, I, p.111. These are just two examples of historians referring to 'privateering' commissions in the Middle Ages as letters of marque.

the fact that men holding commissions to attack the king's enemy at sea often became embroiled in tit-for-tat captures at sea. On occasion ship-owners seeking such licences would cite losses they had suffered against the king's enemies as motivation for their petition adding further confusion<sup>170</sup>. Letters of marque are considered in effect to be simply an authorisation for acts of piracy, albeit sanctioned for different reasons. T.H Lloyd in contrasting letters of marque with the process of distraint, states that whereas the latter was carried out under careful supervision, the former was indiscriminate. "A letter of marque, on the other hand, was a licence issued by a ruler to a subject who had been denied justice by a foreign power and it authorised him to help himself to the goods of that power; it was, in effect, little more than legalised piracy."<sup>171</sup> Emily Tai in describing letters of marque in a Mediterranean context states, " Briefly defined, a writ of reprisal, or a *letter of marque* as it was often called, entitled a damaged party to forcibly extract an amount equal to the indemnity he claimed from the compatriots of his attacker in what was, in effect, an act of retaliatory piracy."<sup>172</sup>

Letters of marque are considered by many historians to be an example of the inadequacies of medieval administration- violent, arbitrary and very much open to abuse. The French historian Marie-Louise Charvot, writing in 1991, spoke of the dangers arising from letters of marque in the absence of regulation and control, "leading to worse abuses, making a greater harm on commerce, with goods seized

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<sup>170</sup> C.P.R., 1313-17, pp.8-9, In July 1313, merchants from -Hull were granted licence to fit out two ships to fight against the king's enemies of Scotland. The merchants claimed to have suffered over a £1000 worth of losses at the hands of the Scots.

<sup>171</sup> Lloyd, T.H., *Alien Merchants in England in the High Middle Ages* (Brighton, 1982) p. 20

<sup>172</sup> Tai, *Honor Amongst Thieves*, p.9.



through violent and irregular means.”<sup>173</sup> Yet, René de Mas-Latrie, in his seminal work on letters of marque published in the 1860s, recognised that there was a strong element of regulation in the granting of letters of marque, and warned against underestimating medieval administration, a point subsequently ignored by most English historians.<sup>174</sup> Thus N. A. M. Rodger writing in 1997, while recognising their peacetime application, considered letters of marque to be in effect simply a licence for indiscriminate plunder. In describing letters of marque he states

“They were more accurately letters of reprisal, authorizing those who had suffered from foreign piracy in peacetime, and failed to find redress in foreign courts, to recompense themselves by force. In principle they were limited to the actual value of the losses, to be taken from ships of the country if not the port which had committed the original attack. In practice the distinctions were easily and often forgotten, and reprisals almost always provoked counter-reprisals.”<sup>175</sup>

Letters of marque were not, as has often been supposed, simply a means of compensating the unauthorised capture of shipping. Caroline Meehan, in her thesis on fifteenth century ‘piracy’ considered it paradoxical that “one of the main means of granting compensation for piracy was to authorise more”<sup>176</sup> But as indicated in the introductory paragraph letters of marque could be granted to provide compensation for a diverse range of damages. There are examples of marque being issued for breach of contract, default of a debt and even the recovery of an unpaid ransom. In

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<sup>173</sup> M. Chavarot, ‘La Pratique des Lettres de Marque d’après les arrêts du Parlement (XIIIe-Début XVe Siècle)’, *Bibliothèque de l’Ecole des Chartes*, 149 (1991), pp. 53-54.

<sup>174</sup> De Mas Latrie, R., ‘Du droit de Marque ou droit de Représailles au moyen age’, *Bibliothèque de l’Ecole des Chartes*, p.529-577,(1866), p.529.

<sup>175</sup> Rodger, *The Safeguard of the Sea*, p. 128.

<sup>176</sup> Meehan, M., ‘English Piracy, 1450-1500’ (University of Bristol, M.litt thesis, 1971), p. 1.

April 1414, the earl of Kent requested letters of marque against the duke of Milan and his subjects for the recovery of an unpaid dowry.<sup>177</sup> Letters of marque could also provide remedy for more abstract wrongs. In 1337 they were granted to the key keepers of the port of Aigues Mortes against the Genoese by the Parlement of Paris, for the considerable sum of 18,466 *livres tournois*, as a result of various hostile acts in the vicinity of the port. The large sum was to cover the default of various royal rights but was also to compensate for the more intangible concept of prejudice to the commercial movement of the port as a result of various acts of violence and robbery committed by Genoese ships<sup>178</sup>. Presumably those directly affected by the robbery would also have had a claim against the Genoese wrongdoers. Such an example, however, is unusual, as it was necessary for the plaintiff seeking letters of marque to demonstrate actual losses.

### **GRANT**

Letters of marque were not as freely granted as certain authors have supposed, and they were only issued at the end of a long and involved process.<sup>179</sup> From the start of the thirteenth century it is possible to detect precise regulations with regard to the granting of letters of marque. These regulations were initially introduced through bilateral treaties, but over time they evolved into a body of customs internationally applicable and expected. These regulations, concerning the necessary conditions of their validity and execution, give letters of marque the

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<sup>177</sup> *Foedera*, IX, p.121.

<sup>178</sup> *Actes du Parlement de Paris, de l'an 1328 à l'an 1350*, ed. H. Furgeot, (Paris, 1920), p.211.

<sup>179</sup> Mas Latrie, 'Du droit de Marque', p539, A point recognised by de Mas Latrie in the 1860s, "Que les lettres des représailles ne se concédaient pas aussi facilement que l'ont dit certain auteurs",.

assurance and character of an instrument of law.<sup>180</sup> The issuing of letters of marque was in this sense not an arbitrary action as some historiography assumes, but rather a conflict-resolving mechanism in the form of a sanction, adhered to by sovereigns within an internationally recognised framework. They represent an early stage in the development of International law, their evolution coming with experience and reaction to the problems such letters could throw up. Of course, this is not to say that the story of letters of marque is one of unrelenting progress, like any aspect of administration they could be subject to abuse.

According to Alfred Rubin, “There were no judicial proceedings prior to the issuance of the letters, thus there could be, and presumably were, serious questions about the ‘wrongfulness’ of the original taking and the propriety of the supposed ‘recapture’”. However, as stated, letters of marque were only granted after the fulfilment of certain conditions. Indeed, letters of marque granted after an incomplete procedure were liable for revocation and any goods arrested released. There survive several examples of the rescinding of letters of marque after complaint by the sovereign power against which they had been issued that the correct procedure had not been followed. In 1305 Flemish goods arrested in England on account of a robbery alleged to have been committed by men from Bruges were ordered to be released after it was found by examination of the case before the king’s council that the plaintiffs had not made proper suit for the restitution of their goods and for damages “as has been usual in such cases.”<sup>181</sup> In France from the start of the fourteenth century it was necessary before the execution of a letter of marque for the

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<sup>180</sup> P.C., Timbal, ‘Les lettres de marque dans le droit de la France médiévale’, *Recueil de la Société Jean Bodin*, .X, *l’étranger*, (Brussels, 1958), p.133.

<sup>181</sup> C.C.R.,1302-1307,pp. 358-9.

concessionary to establish by legal documentation the completion of all the prerequisite formalities.<sup>182</sup> Agreements between sovereign powers concerning their regulation stipulated that letters of marque granted in the absence of correct procedure were to be revoked, and the issuing sovereign was to be held liable for all costs, expenses and losses arising out of the incorrect grant.<sup>183</sup> Contained within diplomatic correspondence surrounding letters of marque there emerges an expectation of due process. Requests for revocation were often a product of this expectation.

Due to their international implications it was of considerable importance that letters of marque were subject to control from the political centre. The granting of letters of marque was in theory a regalian right; the Milanese jurist Giovanni da Legnano, in his *Tractatus de Bello de Represaliis et Duello* completed in 1360 stated that “only one who has no superior in law and in fact, may declare reprisals, as only a sovereign may violate the remedies of law.”<sup>184</sup> In 1320 merchants from Ypres seeking exemption from marque stated in their petition that “such arrests proceed from the king’s grace and not of the right and custom of England.”<sup>185</sup> It is exercised by those seeking to assume sovereign authority. In Florence requests for marque were directed to the Podestà, in Genoa to the Doge and the Council of ancients, and in Venice to the Doge in his council.<sup>186</sup>

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<sup>182</sup> De Mas Latrie, ‘Droit de Marque’, p. 556.

<sup>183</sup> *Ordonnances des rois de France de la troisième race*, ed. E.-J. de Laurière et al., 20 vols (Paris: 1723-1849), I, p. 516. An agreement of 1313 between France and Aragon concerning future letters of marque granted between the two kingdoms.

<sup>184</sup> Giovanni da Legnano, *Tractatus de Bello, de Represaliis et de Duello*, ed T.E Holland (Washington, 1917), p. 308.

<sup>185</sup> *C.C.R.*, 1318-23, p. 38.

<sup>186</sup> De Mas Latrie, ‘Droit de Marque’, p. 552-53.

In England, letters of marque appears to have been consistently and exclusively a royal prerogative, granted under the king's great seal. In Gascony the role was performed on the king's behalf by the seneschal<sup>187</sup>; in Ireland marque was granted by the king's lieutenant.<sup>188</sup> In France, however, we can initially detect regional lords, such as the archbishop of Narbonne or the countess of Flanders, exercising this right.<sup>189</sup> With the growth of administrative centralisation such rights came to be adopted by seneschals acting as delegates of the king, subject to appeal to the *Parlement*. As the process developed it was placed under tighter royal control. In an agreement with Aragon in 1313, concluded in the aftermath of a dispute centring on the seneschal of Beaucaire, it was stipulated that in future letters of marque and requests for justice would be dealt with by the respective king, and in his absence by deputies specifically appointed by *Parlement*.<sup>190</sup> In 1358, seneschals were instructed to address all requests for letters of marque against men of the realms of Aragon and Mallorca and the cities of Genoa and Savoy to the *Parlement* of Paris.<sup>191</sup> It is not until 1443, however, that we see the right of marque exclusively reserved to the king and his *Parlement* in France. In that year, the *Parlement* revoked letters of marque granted by the seneschal of Beaucaire against the town of Avignon. It was stated that the matter of marque had to be decided by great deliberation and good council to ensure peaceful relations with foreign powers. In future, therefore, no seneschal or other judges or officers were to grant letters of marque, the right being reserved to

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<sup>187</sup> *C.C.R.*, 1313- 1318, p.617: A letter of marque granted by the seneschal of Gascony in 1318 on account of the robbery of certain goods on the sea by the coast of Brittany, from the goods of the men of Brittany, Raymond del Mays appointed with the consent of the injured merchants to levy the marque aforesaid of the goods of the men of Brittany at Bordeaux.

<sup>188</sup> *C.P.R.*, 1408-13, pp. 474-5.

<sup>189</sup> *Les Olim, ou, Registres des arrest rendus par la Cour du roi*, 1254-1318, ed. C. Beugnot, 3 vols in 4 (Paris, 1839-48) vol. I, p.914 R. de Mas Latrie, 'Du droit de Marque ou droit de Représailles au moyen age: piece justificatives' *Bibliothèque de l'Ecole des Chartes*, (1867), pp.296-7, piece justificative no.II.

<sup>190</sup> *Ordonnances*, I, p. 516.

<sup>191</sup> *Ordonnances*, III., pp. 238-40.

the king or his *Parlement*.<sup>192</sup> The importance of *marque* to international relations provided an impetus for the sovereign to reserve it to his own power.

Letters of *marque* represented the sovereign assuming responsibility for the provision of justice to his subjects; frequently contained within documentation relating to letters of *marque* is an emphasis upon this duty. This judicial responsibility provides the legal basis and also an element of rhetorical justification for the granting of letters of *marque*. The king of Aragon detailed this responsibility regarding *marque* in a letter of request addressed to Philip IV of France. He stated “we grant to him (letters of *marque*), as our subject, who in law we are held to favour, to provide for by means of royal justice.”<sup>193</sup> Henry IV, in response to a petition in Parliament from John Kedwelly of Bridgewater, stated “should the king of France not do justice to the plaintiff, the king of England will do.”<sup>194</sup>

This responsibility extended to cover foreign merchants resident in the realm, who, although not subjects of the king, were held to be under his protection. Indeed this worked both ways: letters of *marque* were on occasion granted against not only the subjects of a sovereign but denizens resident in the realm of that sovereign<sup>195</sup>. Likewise we see sovereigns grant letters of *marque* to those who are not their subjects, but for whom the king assumes a level of responsibility in the provision of justice. In 1305, Italian merchants resident in the Seneschalsy of Beaucaire were granted letters of *marque* against a merchant from Marseilles resident in Nîmes and

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<sup>192</sup> *Ordonnances*, XIII, pp. 367-68.

<sup>193</sup> De Mas Latrie, ‘*Piece Justificatives*’, p.305.

<sup>194</sup> *English Medieval Diplomatic Practice, Documents and Interpretation*, ed. P. Chaplais, 2 vols (Oxford, 1982), I, p. 377-78.

<sup>195</sup> *Foedera*, VIII, p. 773-4, Letters of *marque* granted by the English crown against the Commune and Doge of Genoa were to cover “subjects of Genoa, inhabitants or denizens of Genoa or the confines of Genoa, or their factors and agents.”

Montpellier. Interestingly in a number of complaints raised against the execution of this marque the issue of the grant to foreign subjects was not raised<sup>196</sup>. In 1410, Henry IV granted letters of marque to a merchant from Danzig in Prussia. The merchant had been despoiled by various Bretons off the coast of Brittany. The letter of marque was granted as the robbery had occurred “during time of peace between us and others of our friendship”<sup>197</sup>. It is unclear if the merchant was usually resident in England, but the offence did not take place there. The council of Genoa protested against letters of marque granted to Giacomo Biglia, a Florentine merchant resident in Bruges, by the duke of Burgundy in 1451; the council claimed that “as Biglia was not a subject of the Duke, he could not obtain letters of reprisal from him.”<sup>198</sup> However, this was just one of a number of complaints contained in the letter and does not appear to have been suggestive of a general rule.

From the late fourteenth century there are several examples of the duke of Brittany granting letters of marque to English merchants against his own subjects. The circumstances of the first grant of this type suggests why this may have been the case. In 1393 John Trenchart was granted letters of marque by the English Crown against the goods and chattels of the Lord of Beaumanoir and the burgesses of St. Malo. As Beaumanoir was a subject of the duke of Brittany, Trenchart had sued in the duke’s courts. Although part of the duchy of Brittany, St. Malo had since 1387 been in French hands, and as such the ducal writ did not run there at the time of the

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<sup>196</sup> Germain, A. *Histoire du Commerce de Montpellier* (Montpellier, 1861), I, p.111-114.

<sup>197</sup> *B.B.A.*, I, pp. 385-8.

<sup>198</sup> Paviot, J., ‘Comment avoir justice des dommages subis en mer au XVe siècle’, *Publications de Centre européen d’études Bourguignonnes*, 30, (1990) p. 124.

grant of the letter of marque.<sup>199</sup> In the letter patent it states that the duke of Brittany had also granted the plaintiff letters of marque.<sup>200</sup> These grants seem to be born from a desire to adhere to truces with England, whilst recognising the duke's inability to restore English goods by his letters patent.<sup>201</sup> In May 1422, various officials were instructed, "to enquire about and arrest all Bretons within the realm with the goods and merchandise." The grant was on account of the seizure of a Weymouth vessel at Harfleur contrary to the truce. It stated that "the duke, at the suit of the plaintiff, granted to him letters of marque on all merchants of his duchy but he has got no effect from the said letters."<sup>202</sup> The ineffectiveness of the duke of Brittany's letter of marque prompted the English Crown to order the seizure of Breton goods in England.

Letters of marque represented an attempted check on the provision of justice to aliens resident abroad. As such, a necessary prerequisite for the use of letters of marque was that the plaintiff had been unable to obtain justice from the courts of the sovereign of the offender. Legnano asserted that as reprisals were expressly forbidden by civil and canon law, they must only be resorted to when the remedies of positive law had failed.<sup>203</sup> From the earliest examples of its usage a failure to receive justice at the hands of the offender's sovereign was an essential characteristic of marque. In 1309 Edward II wrote to complain about the arrest of English merchants by the count of Flanders in the town of Ypres; "whereat the king wonders because it

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<sup>199</sup> Jones, M., *Ducal Brittany 1364-1399, Relations with England and France during the reign of Duke John IV* (Oxford, 1970), p. 121.

<sup>200</sup> *C.P.R.*, 1399-1401, p. 243.

<sup>201</sup> *C.P.R.*, 1413-16, p. 224., Philpotts, C., 'English policy towards France during the truces, 1389-1417' (Univ. of Liverpool Ph.D. thesis, 1984)p. 368.

<sup>202</sup> *C.P.R.*, 1416-22, p.444.

<sup>203</sup> Legnano, *Tractatus de Bello*, p. 308.



has hitherto been observed between the kings and their ancestors that no arrest of bodies or goods was made for debt or trespasses until the lord of the persons, for whom amends of the trespass or payment of the debt were sought, had been properly requested and had failed to do justice.”<sup>204</sup> It was not simply a matter of the decision of the court having gone against them; some default of justice had to be demonstrated. Such a formal denial of justice could in a sense be implied, for letters of marque were granted in England on account of frivolous delays and dilatory responses to the prejudice and cost of the claimant, and an unreasonable delay was also considered sufficient justification for marque to be issued<sup>205</sup>. The lack of suitable sovereign authority to appeal to, or confusion over who that sovereign was, was also considered to constitute a constructive denial of justice. In 1309 a letter of marque was granted against the men of East Frisia as a result of the capture of English goods there. Several requests had been made to the municipal authorities and when that produced no result, to the count of Holland and Zeeland. However, the count denied any responsibility asserting that the men of East Frisia were his enemies. After that, the arrest of their goods was ordered as it was not clear if they had any superior lord.<sup>206</sup> It was nonetheless an instrument of last resort, justified by necessity when all else had failed. Frequently letters of request stress the poverty that the injured party had been reduced to. An example of this is found in the grant of letter of marque by the king of Aragon, where it is stated that the claimant ‘had reached poverty and destitution in bearing the pains of prosecution.’<sup>207</sup>

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<sup>204</sup> C.C.R., 1307-13, p.341.

<sup>205</sup> C.P.R., 1408-1413, p.232, Letter of marque granted in 1411 as “the admiral of the king’s said adversary (France) and the other conservators of the treaty on the part of France, have made frivolous delays on their request for restitution”.

<sup>206</sup> C.C.R., 1307-13, pp.103-4.

<sup>207</sup> De Mas Latr ie, ‘*Piece Justificatives*’, p.305.

There are numerous examples which illustrate that letters of marque were only to be employed as a result of an established denial of justice.<sup>208</sup> In 1204, a charter of the town of Montpellier demonstrates that the idea of last resort was present from a very early stage in the administrative development of letters of marque. The charter stipulated that authorisation would only be given to seize the goods of the compatriots of offenders or debtors, “where the malefactor has retreated with his misdeed and a denial of justice is manifest.”<sup>209</sup> In an agreement between the king of Aragon and the archbishop of Narbonne in 1253, it was undertaken not to grant letters of marque until the injured party had set forth their complaint to the respective foreign power and discovered the judgement of the court<sup>210</sup>. In the English Statute of the Staple of 1353, containing the earliest English outline of the procedure, it was stipulated that no alien would be held liable for the debt of another, unless their sovereign, “duly required, fails to provide justice to our said subjects”. In the event of such a failure, “we shall have the law of *Marque and Reprisal* as has been used in times past.”<sup>211</sup>

Throughout Europe, through examples drawn from numerous cases, a general picture emerges of the procedure in seeking justice. Although there were variances from realm to realm the procedure of marque in the later Middle Ages possessed certain key common characteristics. Having experienced a failure to receive justice through foreign courts, the complainant made request to the sovereign of the

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<sup>208</sup> Lissitzyn, O.J., ‘The meaning of the term denial of justice in international law’, *American Journal of International Law*, 30 (1936), 632-646. The term is used here in the context of the failure of a sovereign to provide adequate legal recourse to an alien justifying diplomatic action by the sovereign of the injured party on his behalf..

<sup>209</sup> Germain, *Commerce de Montpellier*, . I, p.100

<sup>210</sup> De Mas Latrie, ‘Piec Justificatives’, pp.296-7, piece justificative no.II.

<sup>211</sup> *Statutes*, II, p. 339.

offender. If this proved unsuccessful then the injured party or creditor took the complaint to his own sovereign justice who would examine the case and issue letters of request to the sovereign of the guilty party in order to obtain satisfaction. At the end of such a procedure if justice still had not been received then the claimant could be granted letters of marque by his sovereign authority.

One sees in the majority of cases a peremptory summons issued in the form of royal letters to the sovereign of the author of the damage. Theoretically, as an instrument of last resort, the final denial of justice had to have been made after a request to a sovereign recognising no other superior, and from whom there was no right of appeal. Contained within letters of request to the relevant sovereign was a synopsis of the efforts previously made to obtain justice on the part of the injured party. The procedure in England was outlined in a statute of 1416 introduced as an amendment to the 1414 Statute of Truces in response to complaints regarding the difficulty of obtaining letters of marque as a result of that statute. Under the amendment, any subject of the king injured by the subject of a foreign sovereign was to address their complaint to the keeper of the privy seal. The latter, after having heard and judged the complaint, would issue letters of request to the injured party under the privy seal to be sent to the sovereign of the offender requesting the provision of justice. If the sovereign addressed did not make restitution within a convenient time to the injured party, letters of marque were to be granted in due form under the privy seal unless there already existed with the offending sovereign any agreement forbidding letters of marque and reprisal<sup>212</sup>. In this effort to further

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<sup>212</sup> *Statutes*,. II, pp. 198-99.

centralise the procedure it is noteworthy that restitution was to be made within a convenient time.

Enshrined in the municipal legislation of various powers there existed differing requirements in seeking justice. From the start of the fourteenth century the statutes of Florence required three consecutive summonses to the foreign power, with set intervals, before letters of marque would be granted.<sup>213</sup> In the previously mentioned agreement between France and Aragon, it was stipulated that two summonses requesting justice had to be sent to the respective monarch before marque would be granted. Additionally there was to be an interval of nine months between the requests.<sup>214</sup> A judgement of the *Parlement* of Paris in 1336 stated that letters of marque would only be granted after a certified denial of justice, but it was also necessary for more than one request to have been made seeking justice.<sup>215</sup>

In England there does not appear to have been specified minimum requirements in seeking justice, either legislative or contained in bi-lateral agreements, but numerous examples provide an indication of what was considered to be sufficient. Within the letters patent issuing letters of marque reference is made to the attempts to obtain justice, both by the injured party and his sovereign. Further, we see a number of examples where at least three letters are sent. In a case against Italian merchants at the start of the fifteenth century, the king sent three requests over a period of five years.<sup>216</sup> Likewise, Henry IV addressed at least three letters of

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<sup>213</sup> De Mas Latrie, 'Du droit de Marque', p. 548.

<sup>214</sup> *Ordonnances*, I, p. 516.

<sup>215</sup> De Mas Latrie, 'Du droit de Marque', p. 544.

<sup>216</sup> *Medieval Diplomatic Practice*, I, pp. 375-77.

request to the magistrates of Mechelen between 1411 and 1413 concerning the case of an English merchant who had been the victim of fraud. The third letter states that unless justice is provided promptly to the merchant, the King will be unable to deny the plaintiff letters of marque and reprisal.<sup>217</sup>

That a prior attempt at obtaining justice through the offending sovereign was internationally expected is reflected in the correspondence between sovereigns demanding revocation of marque. In 1309, Philip IV, king of France wrote to the king of Aragon asking for the revocation of letters of marque granted against the citizens of Narbonne, for no request for justice had been made to the magistrates of Narbonne “who were eager and disposed to provide justice.”<sup>218</sup> In response, the King of Aragon sent a notary who explained the various measures employed and the number of requests made to the seneschal of Beaucaire. In response to letters of marque granted against them by the Duke of Burgundy in 1450, the authorities of Genoa claimed the letters were invalid as the injured party had not looked at first to them for justice; it was stated that Genoa had an archbishop and magistrate detailed to deal with the complaints of aliens.<sup>219</sup>

Documentation on letters of marque consistently stresses the need for the provision of proof of the fault, the extent of the losses and the exhaustion of local remedies. Judicial investigation was made, with witnesses providing sworn testimony, both oral and documentary on the matter. In England evidence was frequently presented through public instruments in the Chancery. The decision on

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<sup>217</sup> *B.B.A*, I, pp. 385-88.

<sup>218</sup> De Mas Latrie, ‘Pièce Justificatives’, p. 301.

<sup>219</sup> Paviot, ‘Comment avoir justice’, pp. 123-24.

marque was taken through examinations before members of the King's council. In 1319 letters of marque were issued to Perotta Brune, a citizen of Bordeaux, against the subjects of the count of Flanders. The letters were only granted after Perrota's proctor, Arnold de Ispannia had appeared before the king's council and, in the presence of the Flemish envoys, had proved by public instruments and otherwise that Perrota's wine had been taken from Arnold's custody in Bruges by the *échevins* and consuls of Bruges, and that the count, the burgomasters, *échevins* and consuls had then neglected to provide justice to Arnold or Perrota.<sup>220</sup> Particularly with regard to the seizure of shipping, the charter party was a key document in the process of evaluating loss. The charter party was the contract of cargo and freight passed between the master of the ship and the merchant. It provided information on the nature and quantity of the goods, as well as the place of loading, the destination of the ship and the nationality of the master and the crew.

A Venetian document of 1304 sets out the procedure in greater detail. A panel of fourteen judges, together with the Doge of Venice, conducted investigations into requests for marque. Judges who had property in the territory where reprisals were sought, as interested parties, were not allowed to adjudicate on the matter.<sup>221</sup>

A surviving dossier from 1450 concerning a Genoese merchant Giovanni de Ceva, who sought a letter of marque on account of damages done to him by subjects of Florence, illustrates the thoroughness of the Genoese procedure. At the start of the procedure in 1449, the Doge hearing the complaint of Giovanni sent the testimony of the witnesses to be examined by the vice doge and two doctors of law, and ordering

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<sup>220</sup> *C.C.R.*, 1318-23, pp. 171-2.

<sup>221</sup> De Mas Latrie, 'Pierce Justificatives', p.301, p.615.

at the same time that letters seeking justice be sent to the community of Florence. Upon investigation it was ascertained that that not only had the magistrates of Florence failed to provide justice to Giovanni “but they had refused completely to give him a hearing”. Further, Giovanni di Ceva, although unable to afford the costs of a notary, had written with his own hand and demonstrated through the testimony and witness statements, “a certified denial of justice” and the violence, robbery and pillage that had been committed against him by the men of Florence. The decision having been taken to grant the letter of marque, as a result of the finding of these examinations, the matter was forwarded to the Office of Commerce who was to determine the total amount of Giovanni’s loss, together with costs and expenses to appear as a total on the letter of marque. The procedure had started with Giovanni’s initial supplication of March 1449 but the letter of marque was not issued until 10 July 1450, fourteenth months later.<sup>222</sup>

### **EXECUTION**

As stated, letters of marque were not a charter for indiscriminate plunder; they were an instrument of international law. In keeping with this, letters of marque were not executed through ‘piracy’, rather they were executed under judicial supervision with several built in checks as to their integrity in a process designed to ensure their accountability. The primary purpose of letters of marque was to bring about a settlement through negotiation before the arrest of goods was necessary. As such letters of marque were not executed immediately after their issue; a delay was built in to allow the sovereign against whom they had been issued to respond. Letters of marque would often be the starting point for negotiation, and in this respect they

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<sup>222</sup>De Mas Latrie, ‘Pierce Justificatives’, pp. 623-630.

could be considered a coercive measure. There are several examples of agreement being reached after the proclamation of marque. The stay on execution was also designed to allow those merchants who would be affected by the marque to leave the realm of the issuing sovereign, together with their goods. The delay mitigated any potential discouragement the threat of marque might have had on alien merchants settling abroad, addressing the fear that they may become economic hostages.

The length of delay before the execution of marque was often dependent on matters such as distance and ease of communication, and could also vary according to various bi-lateral agreements in place. The execution of a letter of marque issued by the seneschal of Beaucaire against a citizen of Marseille prompted complaints from the civic authorities of Montpellier where it was in part executed. They claimed it was a breach of town custom, as “according to a statute then in force any marque could not be executed before the expiration of a fixed delay to allow those affected by the marque the option to leave safe and sound with their goods”<sup>223</sup>. In 1401 merchants of Genoa complained that their goods had been seized in Nîmes, prior to the expiration of the seven-month delay stipulated in a treaty of 1337.<sup>224</sup> This treaty concerning commercial relations between Genoa and France was prompted by a desire to foster Franco-Genoese trade. It was stated that as a result of a number of outstanding letters of marque then in operation against Genoa, “for a long time the Genoese have not been visiting our realm and bringing their goods to trade.”<sup>225</sup> In England from the second half of the fourteenth century, foreign merchants were

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<sup>223</sup> Germain, *Commerce de Montpellier*, I, p.113.

<sup>224</sup> Chavarot, ‘La Pratique des Lettres de Marque’, p.84, Germain, *Commerce du Montpellier*, II, p.152.

<sup>225</sup> Germain, *Commerce de Montpellier*, II, *piece justificatives*, p.140-1.



permitted forty days after the proclamation of marque to sell their merchandise, recover debts and leave the realm, plus a further forty days if bad weather prevented their exit<sup>226</sup>. It was an option to leave rather than an expulsion, designed for the greater security of foreign merchants. One sees an analogous clause in special trading privileges granted to merchants in Berwick-on-Tweed in 1397, Newcastle-on-Tyne in 1398 and Norwich in 1401. Under these privileges in the event of war merchants were to be allowed a three-month period of grace to conclude their business and collect debts in the event of a recurrence of the war between England and France.<sup>227</sup>

Far from being indiscriminate, letters of marque were often subject to certain restrictions regarding their area of application, the type of merchandise that could be seized and the persons eligible for seizure. There was a desire on the part of sovereigns to insulate certain elements from the detrimental effects of letters of marque. The Franco-Genoese treaty mentioned in the previous paragraph demonstrated a keen awareness on the part of sovereigns that letters of marque could act as a discouragement to trade and a consequent desire to mitigate against such discouragement.

Particularly in time of war, victuals were often granted a privileged status. In 1345 in an ordonnance of Philip VI of France it was stipulated that livestock brought from overseas was not at any point to be seized in execution of letters of marque<sup>228</sup>. In 1362, due to the impoverishment of the realm as a result of the effects of the war

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<sup>226</sup> *Statutes*, I, p. 339.

<sup>227</sup> *C.C.R.*, 1399-1402, p. 530, *C.P.R.*, 1399-1401, p. 282, p. 358.

<sup>228</sup> *Ordonnances*, IX, p. 349.

with England, letters of marque granted against merchants of Marseille were revoked to allow them to bring provisions to reach Montpellier for the provision of the town.<sup>229</sup> In the same year, it was stipulated that for an initial period of one year, no wheat, grain, oats or other victuals were to be arrested in Montpellier in execution of a letter of marque.<sup>230</sup> In 1324, on the complaint of the council, Venetian authorities banned the exercise of marque on victuals, meat or other such products. Additionally, the money obtained from the sale of these victuals and any products bought from the proceeds of sale were likewise considered to be exempt from arrest.<sup>231</sup> It seems that every effort was made not to discourage merchants from bringing victuals to ports for the purpose of trade. In chapter four we will see several restrictions placed on the execution of letters of marque to protect the lucrative herring trade of Great Yarmouth. The public utility element of such essential victuals obviously led to their insulation from seizure. Such restrictions represented a compromise between the needs of the injured merchant seeking justice and those of the realm. Letters of marque were in this sense modified to protect the wider interests of the realm.

As well as commodities, certain categories of person were also granted exemptions from letters of marque. In French statutes of the 1360s, it was declared that Jews and Lombards were not to be seized for debt, unless they were the principal debtor or guarantor<sup>232</sup>. As financiers they were obviously of value to the realm, and particularly Jews could be seen to occupy a unique position within the kingdom. Students studying abroad were likewise seen to be exempt from arrest. In a

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<sup>229</sup> Germain, *Commerce de Montpellier*, II, *piece justificatives*, p.226.

<sup>230</sup> Germain, *Commerce de Montpellier*, II, *piece justificatives*, pp. 247-48.

<sup>231</sup> Mas Latrie, 'Piece Justificatives', p.615.

<sup>232</sup> *Ordonnances*, I, p.298, p. 545.

judgement of the *Parlement* in 1347 it was stated that an English student resident in Amiens was not liable to be arrested in the execution of a letter of marque. The letter of marque had been granted to compensate two burgesses of Guines whose wool valued at £250 had allegedly been robbed in Flanders by certain Englishmen.<sup>233</sup> Exemptions were also granted to individuals, towns or communities of merchants. In 1314 Edward II granted a merchant of Oléron such an exemption, “that his goods and chattels be free from arrest or marque except for his own debts or those of which he is a guarantor.”<sup>234</sup> In 1410 a Portuguese shipmaster, and any of his crew, was granted protection from arrests for marque and reprisal for a period of five years, provided he engaged in lawful trade and did nothing to the prejudice of the king or his subjects.<sup>235</sup> In a document of naturalisation granted to Genoese merchant Giovanni Picamilli, he was exempted from exactions, contribution and payments due from the Genoese and other aliens. As part of these privileges of naturalisation he was not to be “molested troubled or arrested” on account of marque or reprisal granted against the Genoese or any other foreigners.<sup>236</sup>

Restrictions could also be placed on the territories where letters of marque could be executed. A French royal ordonnance of 1339 stated that foreign merchants resident in Harfleur or those merchants visiting the port to trade were not to be arrested or pursued for the debts and trespasses they had not committed personally. This had been granted at the request of the burgesses of the town as a privilege to the

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<sup>233</sup> *Documents inédits concernant la ville et le siege du bailliage d'Amiens extraits des registres du Parlement de Paris et du Trésor des Chartes*. I, ed. E. Maugis. (Mémoires de la Société des Antiquaires de Picardie, XVII, Amiens, 1908) pp. 441-43.

<sup>234</sup> *Medieval Diplomatic Practice*, I, pp. 387-88.

<sup>235</sup> *C.P.R.*, 1408-13, p. 234.

<sup>236</sup> *Ordonnances*, VIII, p.182.

town in order to increase trade in the opening years of the Hundred Years' War.<sup>237</sup> At various times the English staple at Calais was likewise considered an area where goods were to be free from seizure in reprisal.<sup>238</sup> In 1455, a letter of marque was granted by the duke of Burgundy against any Genoese found in his territory, on the condition it was executed outside Brabant, Flanders and certain other privileged regions. This clause clearly stemmed from a desire to ensure that these key trading areas were not affected by any downturn in attendance from Genoese merchants as a result of the letter of marque. Such restrictions demonstrate that whilst the duke was willing to aid his subjects injured by the actions of a foreigner, he was unwilling that such an action should affect the wider interests of his lands.<sup>239</sup> In 1308 letters of marque granted against the commune of Florence by the *Parlement* of Paris were only to be executed against Florentine merchants resident at Nîmes. Although it is not stated, it seems likely that the letters of marque were to be executed in Nîmes as a result of the relatively large number of Florentine merchants resident there diluting the effect of the arrests.<sup>240</sup>

Those holding safe conducts were generally considered to be immune from letters of marque, a fact which is often explicitly stated in such safe conducts. Immunity extended to attendance at fairs, considered to be covered by an implicit general safe conduct. Fairs were, of course, an important source of revenue for medieval lords, and as such there was a desire not to jeopardise their popularity.<sup>241</sup> A key element was therefore a desire to promote trust in the security of goods and

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<sup>237</sup> *Ordonnances*, VIII, p. 213.

<sup>238</sup> We see this special protection afforded to Calais during the John Waghen case in the fifteenth century.

<sup>239</sup> Paviot, 'Comment avoir justice' p. 124.

<sup>240</sup> *Les Olim*, II, p. 345.

<sup>241</sup> Kim, K., *Aliens in Medieval Law: The Origins of Modern Citizenship*, (New York:, 2000) p. 24.

persons travelling to the fair. An interesting case of 1272 is worth covering in some detail due to the light it sheds on this trust, as well as other elements of marque at a relatively early stage in its development.

In our case a Welsh merchant complained that sacks of wool belonging to him had been arrested on the orders of the countess of Flanders while attending the fair at Lille. In his complaint the merchant stated that he had visited the fair on the basis of a proclamation that all those who attended would be covered by the countess's safe conduct. The Welsh merchant's wool had been seized as part of an on running dispute between Henry III and the countess of Flanders, initially sparked by the summary arrest of the goods of English merchants in Bruges and Damme sometime around the end of August 1270 on account of an unpaid debt of £1650, arrears of the *fief de bourse*, in effect a pension, dating from the baronial conflict of 1265.<sup>242</sup> The arrest was aggravated by the immediate sale of the goods by the countess, thwarting any hopes of their restoration. Subsequent arrests made by Henry III in response were considered by the Flemish to be contrary to their privileges; Henry despite several requests from the countess had failed to restore Flemish goods.<sup>243</sup> The countess justified the seizure of the wool by virtue of a custom long held between 'barons' of France. This custom permitted the capture of goods belonging to vassals on account of the fault of their lord. As such, she was able to arrest the goods of the men of the kingdom, the safe conduct notwithstanding (which they were not

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<sup>242</sup> For an outline of the case see Berben, H, 'Une Guerre Économique au Moyen Age', *Études d'Histoire Dédicées à la Mémoire de Henri Pirenne* (Brussels, 1937), pp.1-17; Bowers, R.H., 'English merchants and the Anglo-Flemish Economic War of 1270-1274', in *Seven studies in medieval English history and other historical essays: presented to Harold S. Snellgrove*, ed. R.Bowers (Mississippi, 1983), 21-54.

<sup>243</sup> *De antiquis legibus liber. Chronica maiorum et vicecomitum Londoniarum*, ed. T. Stapleton,, Camden Society, Old Series. 34 (1846), pp.126-27, C.P.R., 1266-72, p. 462.

conceding had been made) as the proclamation was not intended to vouch for enemies or adversaries to their land.

The Welsh merchant stated that the actions of Henry III had no relevance to him, as “he was not of the land of the king of England, being a burgess of the land of Lord Edward.” Particularly as “(the king) had made restitution to the English merchants of their goods seized in Flanders by the said countess, with the division of goods seized off Flemish merchants in England, none of the goods seized had been assigned to him as he was not a burgess of the above said king of England.” To this argument the countess replied that as Lord Edward and the king of England were father and son, the goods arrested by one applied to the other. Of course the issue was not the filial relationship between Henry and Edward, but rather their sovereign relationship. The king of England, as overlord of Wales, was ultimately the sovereign of the Welsh merchant and as such his goods would be considered liable for the debts of Henry III.

Unfortunately, the *Parlement* did not address these interesting albeit side issues. The relevant point was the status of the general proclamation of safe conduct. In judgement, it was decided by the *Parlement* that the seizure was invalid as “through the said proclamation not only their (Flemish) men but especially aliens should be seen to be secure, particularly as the said fair is not new”. The Welsh merchant was to have his goods returned upon the provision of proof that the proclamation had indeed been made.<sup>244</sup>

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<sup>244</sup> *Les Olim*, pp. 914-6.

Despite the claims by a number of historians that marque was a licence for piracy, letters of marque were seldom executed through the capture of shipping at sea.<sup>245</sup> Furthermore, their execution did not permit violence, and there are examples of criminal cases brought as a result of excessive force being employed in the execution of marque.<sup>246</sup>

In the majority of cases where details exist, the seizure of goods was made in fact within the realm of the issuing authority on land or in port, under the supervision of local officials. This method of execution more closely resembled confiscation and sequestration rather than the ‘legalised robbery’ portrayed in the secondary literature. Admirals, bailiffs and other port and royal officials were instructed, in the text of most letters of marque, to aid the holder in the execution of the process. In 1430 for example, the Cornishman John Mixtow instructed the deputy of the Admiral to arrest a Breton ship in the port of Penzance by virtue of letters of marque which John held against Brittany.<sup>247</sup> In 1390, under letters of marque granted to Nicholas Collyng and associates, merchants of London, as a result of the capture of their ship, the mayor and sheriffs of London were ordered to arrest all goods and merchandise of the lieges and tenants of the count of Vertus (ruler of Milan) which “had come from beyond the sea to the city or port of London to the value of £3200, customs, subsidies and other

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<sup>245</sup> *C.P.R.*, 1408-13, pp.474-51 have only found one example of the execution of letters of marque. In 1412 several Breton ships sailing to Ireland were captured at sea by various men from Dublin holding a letter of marque. In this particular case the letter of marque was subsequently rescinded as it had been granted contrary to the treaty between England and Brittany.

<sup>246</sup> Chavarot, ‘Lettres de Marque’, p. 79, n. 131, cites a case from the fourteenth century where a French sergeant-at-arms was brought before a court for excesses in the prosecution of a letter of marque.

<sup>247</sup> *Early Chancery Proceedings*, p. 24.

dues being first paid.”<sup>248</sup> Goods bought for export were to be exempt. One sees in the requirement of the payment of customs and the exclusion of export goods a desire on the part of the Crown not to diminish its revenue from trade. The initial application was restricted to London, but in 1392 this was extended to all other ports of the realm<sup>249</sup>

In England letters of marque were generally executed through a returnable writ addressed to sheriffs, bailiffs and other officers of the Crown. The writs were subsequently returned into Chancery with an attached schedule of the action taken. At times this procedure could produce swift returns. On 16 October 1443 the sheriff of Devon and Cornwall, as well as various mayors and bailiffs of towns throughout the counties, were ordered to arrest the goods of Breton merchants found in their jurisdiction. The arrests related to letters of marque granted to Robert Langist and Robert Drewe who had been robbed of their wine by men from Saint Malo. The deputy of the Mayor of Fowey returned this writ into Chancery on 3 November, less than a month later, certifying the arrest of four Breton ships found in the port.<sup>250</sup> On occasion the sums raised were allocated between several locations, with a set amount to be raised in each place.

There are several examples where goods were seized to settle several outstanding claims of damages against a foreign power. In August 1415, a commission was issued by Henry V to Mark Le Fayre and John Tybenham “ to

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<sup>248</sup> *Foedera*, vol.VII, p. 726-27, C.P.R, 1392-96, p. 38.

<sup>249</sup> *C.P.R.*, 1392-96, p. 132-33.

<sup>250</sup> C47/28/7/26.



enquire about all ships, barges, balingers and other vessels of any foreign parts in any ports within the realm and to seize without delay all those of any merchants of Flanders. “Until full satisfaction is made to diverse lieges of the king for certain goods and merchandise captured at sea by those of Flanders contrary to the form of the truces.”<sup>251</sup> Such multiple arrests tended to muddy the waters of process, taking as they did the form of a punitive action rather than being merely concerned with restitution.

In July 1403, in response to the depredations of the English at sea, Philip the Bold Duke of Burgundy ordered his maritime bailiff to arrest English goods found in the port of Sluis. In the event over £10,000 of English goods were seized. Whether these arrests should be considered to be in execution of letters of marque is unclear. As we shall see, under the treaty and subsequent indentures of Leulinghen, letters of marque were forbidden between England and Flanders. The confiscation was not prefigured by the prerequisites prior to the issuing of marque. No prior notice was given to allow the English merchants to leave Sluis with their goods. At the end of 1402, Flemish ambassadors lodged a “memoire des dommages fais par les Engleis aux habitans de Flandres sur la mer, desqueix restitution ou amende n’est encore fait”, containing an extensive list of English breaches of the truce<sup>252</sup>. Further complaints were made in the first half of 1403, with 26 seizures of Flemish ships listed for March and April alone.<sup>253</sup> Philip the Bold ordered the arrests seemingly out of frustration related to the apparent intransigence of the Crown of England to

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<sup>251</sup> *C.P.R.*, 1413-1416, p.409.

<sup>252</sup> Pistono, ‘Henry IV and the English privateers’, p. 323.

<sup>253</sup> Pistono, S., ‘The petition of Jacob de Smet: A plea for reprisals against the English, 1403’, *Bulletin de la Commission Royale d’histoire*, 142, (1976), p. 343.

control the activities of English seamen or to make prompt restitution of the goods seized. The goods arrested at Sluis do not seem to have been used to compensate the damaged Flemish merchants; they remained impounded in the hands of the duke of Burgundy. The impounded goods were a matter of contention between England and Flanders for several years after their confiscation. Indeed they were still a factor in negotiations between England and Flanders into the reign of Henry V. In 1414 Henry requested John, duke of Burgundy, to restore to Thomas Falcouner goods of his that had been arrested at Sluis in 1403.<sup>254</sup>

Letters of marque were limited in value, to the amount of the financial loss, together with interest, expenses and costs. Accordingly, holders of marque were bound to account for any goods seized. A consistent requirement of letters of marque was that property seized in execution was to be placed in the safe custody of local officials. The failure of local officials to ensure the safe keeping of the arrested goods left them liable for any damage suffered.<sup>255</sup> The goods were then inventoried and appraised by a jury consisting of merchants. Valuation, of course, was necessary to ensure that marque did not continue after the holder had received full satisfaction. This valuation tended to be made in front of the merchants from whom the goods had been arrested. In 1309 the bailiffs at Boston were ordered to re-appraise a ship and wool arrested there after complaint that the valuation had been improperly made as it

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<sup>254</sup> *Medieval Diplomatic Practice*, I, pp. 378-379.

<sup>255</sup> *Bronnen tot de geschiedenis van den handel met Engeland, Schotland en Ierland, 1150-1485*, ed. H.J.Smit, 2 vols (The Hague, 1928), I, p. 16. The arrest of certain goods belonging to merchants of Zeeland on behalf of certain London merchants whose ship had been captured at sea in 1275. The sheriffs of London, Luke de Batencourt and Henry de Frowyk were to be liable for any damages "if the said goods and merchandise from the time of their arrest by the defect of custody of the said Henry and Luke have been stolen or deteriorated."

had been done in the absence of the owners.<sup>256</sup> In a number of cases the goods were sold at a public auction under judicial supervision. In an effort to prevent fraud, record was kept of the money raised through such sales so as to deduct it from the total amount covered by the letter of marque. Any excess money raised was to be returned.<sup>257</sup>

The process in England is outlined in late fourteenth century directions issued to the Mayor and sheriff of London. All goods seized by way of marque were to be retained in the safe custody of the sheriff until further notice from the king and his council. The goods were to be inventoried and valued by a jury consisting of both English and foreign merchants elected by each party. Perishable goods were to be sold quickly, and the proceeds from the sale were likewise to be placed in the safe custody of the sheriff. An indenture was to be produced, stating which goods or merchandise had been arrested; the value of the goods; from whom the goods had been arrested; into whose custody the goods had been placed, the names of those who had appraised the goods; and finally the details of any goods sold. Four copies were made of this indenture, one for the king in his council, the second for the mayor and the sheriffs, the third for the holder of the letter of marque and the fourth for the owners of the arrested goods.<sup>258</sup>

The sequestration of arrested goods in theory enabled the restoration of goods seized in error. In 1392, a merchant of Genoa, Bartholomeo da Puteo, complained

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<sup>256</sup> *C.C.R.*, 1307-13, p. 171.

<sup>257</sup> *C.C.R.*, 1303-07, p. 40, the bailiffs of Hull were ordered to value goods arrested from various Brabantine merchants, the valuation to be made in front of the merchants with the excess returned to them.

<sup>258</sup> *C.P.R.*, 1392-96, p. 38.

that 280 bales of woad belonging to him and his associates had been seized mistakenly in the execution of letters issued against subjects of the duke of Milan. Upon proof that he was not of the jurisdiction of the Duke of Milan, port officials at London were instructed to provide full restitution. In this case the goods had been valued at £327, 3s and 5d, by a jury comprising various London grocers.<sup>259</sup> It is interesting in this case that the precise figure given in evaluation of the merchandise. No mention is made of the expenses incurred by da Puteo in his suit to obtain the restoration of his goods.

The placing of arrested goods into custody, their inventorying, public valuation and public sale represented a check against such letters of marque being used as a pretext for indiscriminate plundering. Investigation could be made into the provenance of the goods and mis-taken goods returned to their owners.<sup>260</sup> We have already seen several examples of mandates to bailiffs ordering the release of goods arrested in error when the owner had been able to establish that he was not of the lordship against whom the letter were directed.

Of course such systems were reliant on the co-operation of port and local officials. Royal control was perhaps weaker in the provinces than in London, and not all merchants fared as well as Bartholomew de Puteo when their goods had been wrongly arrested. The case of Margaret of Coventry illustrates this point. She had

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<sup>259</sup> *Foedera*, VII, p. 726-7.

<sup>260</sup> *C.P.R.*, 1408-1413, p. 110; An order to the constable of Dover castle and the warden of the Cinque Ports and his lieutenant to provide restitution to Katherine Kalewartes of Flanders of goods and merchandise to the value of £80 wrongly seized.

been granted a letter of marque for the recovery of the value of goods of her late husband John Russell that had been robbed in the port of Santander. In March 1412 admirals and other officials were directed to seize any ships and merchandise of any merchants of Santander found in any port in the realm, to the value of 1,250 marks together with costs and expenses incurred. The letter of marque was “not to trouble aliens under the protection of the king’s safe conduct.”<sup>261</sup>

In November of 1412 a commission was issued to Edmund bishop of Exeter and Thomas de Carrewe to enquire into the seizure of a ship containing wine belonging to John Rodegys of Seville of which Peter Gunsales was the master. The ship had been forced into the port of Dartmouth by bad weather on its way to London. At Dartmouth, the vessel and its cargo of wine was detained by John Hawley “proctor and attorney of one Margaret of Coventry by colour of the letter of marque granted to her by the king on the goods and people of the town of Santander in Spain, though they were not of that town”. Hawley was an important local official and it would have been in this capacity that he was able to arrest the vessel and its cargo.<sup>262</sup> The commissioners were instructed to take the ship and merchandise into their safe custody “and cause restitution to be made if the said complaint proved to

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<sup>261</sup> *C.P.R.*, 1408-13, p.389-90.

<sup>262</sup> John Hawley the younger was several times M.P for Dartmouth and held a number of local offices in Devon such as escheator and feodary for Devon and Cornwall. He is also named on various commissions acting for the Crown in the county, *C.P.R.*, 1413-16, p.35. In this commission John Hawley is instructed ironically with Thomas de Carrewe “to keep safely all ships and other vessels of Brittany laden with merchandise and other goods lately captured by certain of his lieges and in the port of the town, to enquire which of the said goods and merchandise are of the merchants of Brittany and which of the king’s enemies of France”.

be correct. If not, the wine and balinger were to be returned to Margaret or her agents.<sup>263</sup>

In January 1413, however, these instructions were countermanded and Thomas de Carrewe was ordered to make immediate restitution to John Rodegys and Peter Gunsales, “the letters of marque granted to Margery of Coventry notwithstanding.” The previous instruction to examine the provenance of the ship and return it to Margaret if it proved to be of Santander was repealed. The change in instruction was due to the truce between England and Castile, which stipulated that all prizes should cease and forbade men of either jurisdiction being arrested for marque and reprisal, with the ambassadors given power to hear, judge and decide all cases of loss. As such it was stated they did not wish “John Rodegys to be unduly burdened against the form of the truce by colour of the aforesaid marque granted to Margaret.”<sup>264</sup> The treaty with Castile had been renewed on 8 February 1412 for a year, and had been in force when the letter of marque was first issued and when the original commission had been made to Thomas de Carrewe. The treaty was due to be prorogued on 8 February 1413, and it is perhaps the impending renewal of the treaty that prompted this action.

In March of that year the matter came before the Chancery with a complaint from Peter Gunsales, the master of balinger that carried the wine. Despite the commission granted to Thomas baron of Carrewe, “John Hawley was unwilling to

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<sup>263</sup> *C.P.R.*, 1409-13, p. 474.

<sup>264</sup> *Foedera*, vol. VIII, p. 772.

make delivery of the balinger and the equipment or of the wines and was detaining them against the form of the truce and right and reason.”<sup>265</sup> In April, Thomas de Carrewe and the mayor of Dartmouth were instructed to appraise the wine held by Hawley and sell it to pay the freight to Peter Gunsales, retaining the residue in his safe keeping until further notice<sup>266</sup>. Hawley was instructed to provide recognisance of 500 marks on his property in Devon to ensure he made restitution of the balinger “before a month after Easter.”<sup>267</sup> However, the ship and cargo were still in Hawley’s hands in August that year. On August 12 1413, de Carrewe, the mayor of Dartmouth and John Tiptoft, the lieutenant of the Admiral, were ordered to immediately arrest Hawley and bring him before the king in the Chancery. We hear no more details of the case after this point and it may be the case that Hawley returned the goods; indeed in November 1413 Hawley was confirmed in the office of feodary and escheator in Devon and Cornwall, suggesting the dispute had been settled by this stage.<sup>268</sup> John Hawley is one of the ‘pirates’ covered by Kingsford in his article on West Country piracy. Hawley’s father, also called John, is even more notorious, the subject of several articles and thought to be the basis for Chaucer’s Shipman.<sup>269</sup> The repeated orders to Hawley to return the ship wrongly taken in the execution of a letter of marque would confirm many historians’ prejudices regarding marque and Hawley. Yet the circumstances surrounding these orders were more complex than the often repeated allegations of indiscriminate plunder.

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<sup>265</sup> *Early Chancery Proceedings*, pp. 17-18.

<sup>266</sup> *C.C.R.*, 1413-16, p. 8.

<sup>267</sup> *C.C.R.*, 1413-16, p. 67.

<sup>268</sup> *C.P.R.*, 1413-16, p. 256.

<sup>269</sup> Gardiner, D.A., ‘John Hawley of Dartmouth’, *Transactions of the Devon Association*, 98, (1966), 173-205. Pistono, ‘Henry IV and John Hawley’.

Once the process of *marque* had been successfully completed and the holder had been compensated for the losses suffered a letter of quittance was sent to the sovereign against whom it had been issued. Framed in the manner of a receipt the quittance covering the payment of debt absolved the sovereign and their subjects of future claims regarding the fault. An early example sent by the town of Barcelona stated “we make final agreement of non petition, and release all quarrels, all injuries; we thus make final and perpetual agreement over not demanding, requiring or petitioning with anything, which up to this day has occurred.”<sup>270</sup> A Venetian letter of quittance in 1321 contained a full inventory of the goods seized in the execution of a letter of *marque* issued against citizens of Marseilles resident in Crete. It stated that the goods had been seized by officials of the doge and had been sold at public auction under the supervision of these officials. The document contained details on the quantity and type of goods sold, the amount raised, and the name of the purchasers were listed. It stated that compensation had been remitted to the holder of the *marque*. It was presented in the form of a notarised document<sup>271</sup>.

Information regarding the capture and sale of goods was on occasion sent prior to full completion of the letter of *marque*. In 1310, the king of Aragon stated that he had sent a messenger immediately to inform the king of France that his officials had seized Flemish merchandise to compensate a citizen of Tortosa injured by merchants of Narbonne, “so your magnificence would know and order the remaining restitution to be made to the claimant.”<sup>272</sup>

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<sup>270</sup> De Mas Latrie, ‘Pièces Justificatives’, p.293.

<sup>271</sup> De Mas Latrie, ‘Pièces Justificatives’, p.313-316.

<sup>272</sup> De Mas Latrie, ‘Pièces Justificatives’, p.303.



Marque was not in itself a punitive measure, and the provision of restitution could stop the marque at any time after its issue. Indeed, the purpose of the arrests was to compel such settlement to be made. In 1351, John of France revoked letters of marque granted by the *Parlement* of Paris against the commune of Genoa, because “sufficient reparation had been provided by the commune of Genoa for the robbery made by them against subjects of the king.”<sup>273</sup> In the previously mentioned case involving Nicholas Collyng who had been issued letters of marque against the subjects of the count of Vertus in 1390, agreement was reached in 1393. The letters had been suspended in March of that year on the request of the count, “that the king may learn whether due satisfaction has been made to the said Nicholas and others damaged.”<sup>274</sup> On the 8 June it was stated “Robert Palmer, Deputy and Attorney of the said Nicholas and his associates and the afore shown lieges and subjects have made final agreement, with whatever discords and quarrels, emerging upon this matter mutually, thus as by public instrument demonstrated in our Chancery”<sup>275</sup>. The letters of marque were to be returned to the Chancery for cancellation “for the greater security of the said lieges and subjects of the count”. Details of the cancellation were to be sent to all interested parties.

### **Counter-Marque**

Letters of counter-marque could be issued by sovereigns to any of their subjects whose goods had been seized by a disputed letter of marque. They permitted one whose goods had been arrested to seize the value of the goods taken as well as any expenses incurred or suffered. The existence of such letters is considered by

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<sup>273</sup> *Recueil general des anciennes lois françaises, depuis l'an 420 jusqu'à la revolution de 1789*, ed. F. Isambert, 12 vols, (Paris, 1820), IV, p.656.

<sup>274</sup> *Foedera*, VII, p.740.

<sup>275</sup> *Foedera*, VIII, p.750.

some historians to be evidence of the counter-productive nature of marque. N.A.M. Rodger suggests that that letters of marque almost always provoked counter-reprisals<sup>276</sup>. In this sense they are considered to be ultimately futile, prompting a chain reaction of seizures degenerating into internecine conflict with resultant disruption to trade and international relations. As stated they are frequently linked to reprisal attacks at sea.

Surviving examples of letters of counter-marque are in fact rare, and their issue does not appear to have been the customary response of sovereigns to letters of marque granted against them and their subjects. Rather, the initial response to a disputed marque was an attempt at negotiation; numerous examples of letters requesting revocation either on point of law or point of fact are found. In response to a letter of marque granted by the duke of Burgundy in 1449, the commune of Genoa sent to the Duke “by letter certain allegations of law, in view of which it was intended that they must not issue the said marque”<sup>277</sup>. Contained within these allegations were appeals to the regulations of divine law, natural law, the law of nations, canon civil law, the *lex Rhodia*, a compilation of Byzantine maritime and commercial regulations, and above all to *Tractatus de repraesallis* of Bartolus de Sassoferrato.

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<sup>276</sup> Rodger, *The Safeguard of the Sea*, p.128.

<sup>277</sup> Paviot, ‘Comment Avoir Justice’, p. 123.

Described by French legal historian Pierre Clément Timbal as the immediate sanction of contested letters of marque<sup>278</sup>, it would seem more accurate to describe letters of counter marque as an ultimate or eventual sanction. They represented the final breakdown in negotiations. In 1310, Philip the Fair issued letters of counter-marque against the subjects of James II in response to the arrest of goods of Narbonnais merchants resident in the kingdom of Aragon. James had ordered the arrest on account of a letter of marque issued to Jacques Ferriers, his subject, who alleged Jean Lazari of Narbonne had robbed him of certain merchandise in the port of Aigues Mortes<sup>279</sup>. James refused Philip's request for the revocation of the marque and the restitution of the seized goods, stating the marque had only been granted following a denial of justice on the part of the seneschal of Beaucaire, who had claimed the guilty party was not of his jurisdiction. Further details were provided of subsequent attempts to achieve restitution by the king of Aragon.<sup>280</sup> However, in this case the matter was settled in 1313 by arbitration. Under the terms of the settlement, the costs of the case were set at 5,627 *livres tournois*, 1,000 *livre tournois* to be contributed by Narbonnaise merchants resident in Aragon, and merchants of Aragon based in Narbonne were to do likewise. The remaining expenses were placed in suspense, presumably until further decision was made. The letters of marque and counter-marque were likewise suspended.<sup>281</sup> In the immediate aftermath of this dispute, an agreement was reached between the two sovereigns in an effort to further regulate marque between the two realms, in the interests of peace and tranquillity<sup>282</sup>. Such an agreement was surely founded on a desire to maintain the profitable trade

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<sup>278</sup> Timbal, 'Les lettres de marque', p.120.

<sup>279</sup> De Mas Latrie, 'Pièces Justificatives', p. 300.

<sup>280</sup> De Mas Latrie, 'Pièces Justificatives', p. 301.

<sup>281</sup> De Mas Latrie, 'Pièces Justificatives', p. 306.

<sup>282</sup> *Ordonnances*, I, p. 516.

links between the two kingdoms; it was in no one's interest for the dispute to continue. In this case both the original letter of marque and the subsequent letter of counter marque provided the impetus for agreement to be reached and satisfaction to be provided to the injured parties.

Although subject to regulation, letters of marque could pose a threat to trade and to truce. This was recognised by monarchs and is reflected in the restrictions surrounding their execution and application mentioned above. They were not seen as being desirable either by either the issuing party or the party against which they were directed. In 1333 complaining about letters of marque granted against his merchants by the count of Flanders, Edward III stated that, "it is grave, innocents to be punished on behalf of the guilty, as you well know, and hardship to be the condition of merchants trading in foreign lands."<sup>283</sup> The king of Aragon stated that he was willing to revoke letters of marque at any stage if prompt restitution was provided "because of the impediment they (letters of marque) place on trade"<sup>284</sup>. In 1443, Charles VII, revoking letters of marque issued against the town of Avignon, stated that on account of the letters of marque the residents of Avignon had not entered the realm for a long time and all trade had ceased between the town of Avignon and the kingdom of France, to the great prejudice of the public good<sup>285</sup>. No one can have believed letters of marque were ideal but they were borne out of necessity. Given the sums that could be involved, (up to 34,000 pounds sterling in the case involving Genoa that follows) and the dangers of allowing plaintiffs to seek their own remedies, what else was to be

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<sup>283</sup> *Foedera*, IV, p.561-2.

<sup>284</sup> De Mas Latrie, 'Du droit de Marque', p. 296-7

<sup>285</sup> *Ordonnances*,. XIII, p.307

done? Marque was preferable to such drastic alternatives as trade boycotts or the expulsion of foreign merchant communities.

### **Alternatives**

Despite their value in controlling the exercise of reprisals, treaties of commerce and peace did in fact attempt to introduce a moratorium on letters of marque, particularly in the fifteenth century. The treaty of Leulinghem between England and France in 1396, forbade letters of marque to be issued except those previously granted and adjudged reasonable. Those who disobeyed this prohibition were to be considered truce breakers, bound to pay double the amount seized<sup>286</sup>. Subsequent indentures in 1401, 1402 and 1403 revoked all pre-existing letters of marque.<sup>287</sup> Damages would be dealt with by conservators of the Peace, and commissions were set up to hold enquiry into losses suffered, particularly at sea. Restitution for injuries was to be provided within three months to the injured party.

Any attempt to forbid the use of marque was in a large sense dependent on the provision of prompt justice; a requirement if followed that would remove any need for letters of marque. As we have seen it was a necessary precondition of letters of marque that the injured party had been denied justice, if such justice was provided then there could be no letter of marque. In instructions given to French ambassadors prior to a conference at Leulinghem in 1401 that revoked existing letters of marque, the need for restitution was made clear. The envoys were instructed to accept the clauses relating to the revocation of letters of marque, provided the English pledged

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<sup>286</sup> *Les Grands Traités de la Guerre de Cent Ans*, ed. E.Cosneau,, (Paris, 1889), pp.83-84.

<sup>287</sup> *Foedera*, VIII, pp.219-220, p.274-76, pp.310-11.

to maintain the truce, provide restitution for all damages suffered up to that point, and to deal promptly with any breaches committed in the future.<sup>288</sup>

It appears that the commissions and conservators of the truce set up to repair breaches were by no means a panacea for injured merchants. In 1401, a London merchant, Robert Ferthing, requested letters of marque against the men of Flanders. He claimed that, despite holding a safe conduct from the Duke of Burgundy, in September 1397 men of Ostend and Nieuport had robbed him at sea of cloth and wool to the value of 700 nobles. Previously he had pursued the matter through the courts of the count of Flanders but with no success, and had in fact been imprisoned by Flemish officials. He had subsequently placed the matter before the Flemish conservators of the truce, who he complained had responded “in the manner of delay”. It was on account of this “great and excessive default of justice” that he requested letters of marque.<sup>289</sup> There is no evidence that the latter were granted, and Ferthing’s grievance appears on a roll of complaints presented to French ambassadors at Leulinghen on 3 August and again in December 1401<sup>290</sup>.

Perhaps as a result of the failure of conservators to deal swiftly with complaints the period covered by this moratorium witnessed a series of tit-for tat seizures between ships of England and France. The capture of a barge belonging to Guillaume de la Hougue in 1400 provoked him to capture a ship belonging to William

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<sup>288</sup> *Choix de pièces inédites relatives au règne de Charles VI*, ed. L. Douet, 2 vols (Paris, 1963.), I, p.218.

<sup>289</sup> *Medieval Diplomatic Practice*, I, p.384-85.

<sup>290</sup> *Medieval Diplomatic Practice*, vol. II, p.596

Steere of Yarmouth. Hougue's vessel had not been returned to him as it was deemed to be legitimate prize as it was carrying supplies to Scotland.<sup>291</sup> Steere, in an effort to recoup his losses, preyed upon the fishing-fleet of Dieppe in 1401.<sup>292</sup> In October 1401 the bailiffs of the port of Yarmouth were instructed to release from custody 'La Julyan', a ship of Abbeville. The latter had been arrested and detained at the suit of William Oxeney and William Steere in reprisal for goods and chattels of theirs taken at sea by lieges of the king of France, despite the agreement banning such reprisals between England and France<sup>293</sup>. This escalating disorder spilled over into coastal attacks. After the seizure by English mariners of eleven vessels, according to the chronicle of St. Denis the "Bretons resolved to gain revenge through the use of reprisals, filled their ships with soldiers to carry the war to the shores of England". In the summer of 1403, Plymouth was attacked and burnt. In response, a fleet comprised of ships from the West Country attacked the Breton coast, burning St Mathieu a few miles inland. The Bretons attacked Dartmouth the following year<sup>294</sup>. Historians have tended to associate reprisal attacks such as these with *marque*, a chain reaction descending into undeclared warfare. However, the attacks in question were not carried out under cover of *marque*. Such revenge attacks were neither controlled nor restricted, and whilst the disorder may not have been due solely to the absence of letters of *marque* it was not as a result of their presence. Interestingly, Richard Aston in describing these events to the duke of Burgundy, referred to the Breton attacks on Plymouth and the Channel Islands as "acts of *marque*, as punishing

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<sup>291</sup> Ford, 'Piracy or Policy' p.67.

<sup>292</sup> Philpotts., 'English policy', p.337.

<sup>293</sup> *C.C.R.*, 1399-1402, p. 428-29.

<sup>294</sup> *Chronique du religieux de Saint Denis*, ed. M.L. Bellaguet, 6 vols, (Paris, 1841),.III, p.109, p. 113, p. 173.

the innocent for the deed of the guilty”<sup>295</sup>. Reprisal appear to have been a common reflex for men in this period, particularly when there existed long standing enmity as between the seamen of Brittany and Devon. In a sense letters of marque did not seek to initiate reprisal attacks but rather to control them. The prevention of a descent into disorder could be legitimately understood as a defence of the common good.

The failure to provide restitution led to the breakdown of the moratorium on marque contained in the clauses of the treaty of Leulinghem. In 1411, Henry IV granted letters of marque against the men of Harfleur and all other men of Normandy on account of seizures made of English goods contrary to the truce. The marque was justified in the eyes of the Crown by the fact “that the admiral of the king’s said adversary and the other conservators of the treaty on the part of France, have made frivolous delays on their request for restitution, and notwithstanding the treaty reprisals and marque are done by those of France on the king’s lieges”<sup>296</sup> In 1417, in an ordinance of King Henry V, it is stated in relation to the forthcoming extension of the treaty of commercial intercourse with Flanders that “no conflict between England and France and Flanders should interfere with the payment of debts, and that if in default of justice the aggrieved party should desire letters of marque in due form for the recovery of his goods, they should be granted to him”<sup>297</sup>. Indeed in the prorogation of the commercial treaty between England and Flanders in 1417, although English goods in Flanders, and vice versa, were not to be arrested for any fault prior to the signing of the treaty, the interdiction on marque would not apply

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<sup>295</sup> *Royal Letters Henry IV*, pp. 214-224.

<sup>296</sup> *C.P.R.*, 1408-1413, p. 323.

<sup>297</sup> *P.P.C.*, I, pp. 232-33.



after 31 July<sup>298</sup>. In effect therefore this treaty of commercial intercourse reintroduced letters of marque in commercial relations between England and Flanders. Previous treaties between the two powers had stipulated the continuance of trade even in the event of conflict. It seems that letters of marque were considered to be part of the normal continuance of trading relations.

An alternative to letters of marque was the provision of restitution through an *ad valorem* tax on imports and exports of the goods of the compatriots of the offender. Considered to be more equitable as it was seen to spread the burden of marque, it was often carried out through agreement between the two powers. In 1335, an agreement was reached between Genoa and France over damages suffered by merchants of Narbonne and Montpellier. Genoese goods were subject to a tax of 3 deniers on the pound.<sup>299</sup> In 1441, Philip the Good duke of Burgundy revoked a tax imposed in lieu of marque between Flanders and the kingdom of Aragon. Designed to reimburse two merchants of Bruges, the Four Members of Flanders complained that the two merchants “must not be preferred to the common good”<sup>300</sup>. However, such taxes were also considered to be detrimental to trade, raising prices and affecting the king’s customs and as such do not seem to have worked as a realistic alternative to marque. In chapter four we see the only example of such a tax being introduced in England.

Letters of marque in their granting, application and execution are a far cry from the licence for ‘piracy’ they are so often considered to be. They were subject to

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<sup>298</sup> *Foedera*, IX, pp. 476-78; *C.P.R.*, 1416-22, p.139.

<sup>299</sup> Aubert, F., *Le Parlement de Paris de Philippe le Bel à Charles VII (1314-1422) Sa compétence, ses attributions*, (Paris, 1977), Piece Justificative XV, p.286-7.

<sup>300</sup> Paviot, ‘Comment avoir justice’, p.122.

strict regulation in the procedure surrounding their issue and close supervision in their execution. Such regulation and oversight resulted in a conflict resolving mechanism adhered to by sovereigns within a framework of international expectations. They were not the 'blank cheque' as so often supposed but rather a process of law with a definite aim and end point accountable throughout to an international standard of conduct. In common with a number of legal actions in the later Middle Ages their purpose was tactical: the arrests were a means to an end rather than an end in themselves, a strategy designed to bring about amicable settlement. Two detailed English cases covering the first twenty years of the fifteenth century will further demonstrate these points. Although quite different in their nature they both share a number of key characteristics and serve to illustrate the points raised in the main chapter.

### **3.2 THE CASE OF JOHN WAGHEN**

In January 1397, merchant John Waghen of Beverley was granted letters of marque against Albert, duke of Bavaria, count of Holland and Zeeland, and his subjects for the sum of 850 ½ nobles and 22d, together with all expenses and costs.

<sup>301</sup>The sum contained in the letters of marque related to a debt owed to John over the sale of wool to a Dutch merchant. The first mention of the case is contained in a petition to the Lord Chancellor likely sometime in 1396. It was stated in the petition that Pelegrin Florenson of Leiden in Holland owed Waghen 850 ½ nobles 22d for wool which he had bought from him, and that this obligation had been recorded at the Staple in Calais. The due date had passed without payment, by which stage Florenson had returned to Leiden where he “sought callously to defraud the said John of the recovery of the aforesaid debt, as by colour of the immunities of the town of Leiden, as by other sinister means and delays.” John had pursued his case against Florenson before the municipal court of Leiden with his letter of obligation and then brought suit in the court of Albert, count of Holland and Zeeland, but with no success. To make matters worse, on his return to London Waghen had been robbed in Delft of his obligatory letters by Dederic Jacobson, who threatened to kill him if he returned. As a result of which John had lost a considerable sum of money which he would be unable to recover unless he was granted special and gracious aid. To this end he requested that he be granted a writ directed to the mayor of Calais instructing

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<sup>301</sup> The sum of 850 ½ nobles 22d appears in both the petition to the Chancellor and the initial letter of request to the count of Holland and Zeeland. Yet after this point the sum quoted was 852 ½ nobles 22d, it may be that this was an administrative lapse. Two nobles would clearly not be sufficient to cover John Waghen’s expenses in the case.

him to arrest the goods of Leiden merchants up to the due amount. Calais was where the debt had been contracted and represented the most likely place where it could be recovered due to the relative density of Dutch merchants present there.<sup>302</sup>

John's request for the arrest of Dutch goods was not granted immediately. On 18 June 1396, Richard II wrote to Albert, duke of Bavaria, to request justice on John Waghen's behalf. Waghen, it was claimed, had sued many times at great expense before the sheriff in the town of Leiden as well as the court of the count of Holland, displaying his obligatory letters. Yet despite this, he had been "prevented by frivolous delays from obtaining justice as has been demonstrated through public instrument presented in the Chancery". Reference was made to Waghen's request for a letter of marque against the men of Leiden, but "fully trusting in your friendship and especially in the exhibition of justice to our liege over his aforesaid injuries when it will have reached your notice, we have delayed to agree to this until such time we are able to be informed by you of providing remedy."<sup>303</sup>

Such trust appears to have been misplaced and letters of marque and reprisal were granted to John six months later, on 17 January 1397. The letter of marque directed sheriffs, mayors, bailiffs and various other port officials throughout England "to arrest all ships of Holland and Zealand, now in any port, or that will come to any port in the realm of England, together with their masters, mariners, goods and merchandise up to the sum claimed (852 ½ nobles, 22d plus unspecified expenses)."

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<sup>302</sup> C1/7/197, John Waghen's petition to the archbishop of York, Lord Chancellor of England.

<sup>303</sup> *Bronnen*, I, p.473.

Although the grant was against the duke of Bavaria, count of Holland and Zeeland and his subjects, the mandate of arrest was restricted in application to his subjects of Holland and Zeeland. The letter of marque named both Pelegrin Florenson and Dederic Jacobson. The port officials were to certify in the Chancery, under their own seal, the details of any goods seized.<sup>304</sup>

It did not take long for the arrests to take effect. In March 1397, the mayor and sheriffs of London were ordered to release various ships of both Holland and Zeeland containing “eels and beer that had been seized by virtue of Waghen’s marque”<sup>305</sup>. The marque was placed under a writ of suspension for examination to be made around the matter. In October of that year the bailiffs of Scarborough were instructed to release a variety of ships from Holland and Zeeland “being victuallers of salt, beer and other victuals needful to the realm”, as it was not the king’s intention that any ships from these parts containing victuals should be arrested. It was further stated that for fear of arrest, 120 other victuallers’ ships from these parts were not coming to the realm, “to the manifest decrease of the customs and subsidies.”<sup>306</sup> Specific mention was made in the mandate to the Statute of Victuals from 1382. Under the statute port officials were forbidden to hinder aliens of the king’s friendship from bringing victuals into the realm<sup>307</sup>. It seems clear it had been decided that this exemption applied in cases of marque. In the late fourteenth century, the main imports from Holland and Zeeland were foodstuffs such as beer and fish. It was not until the second half of the fifteenth century that linen cloth was

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<sup>304</sup> *Foedera*, VIII, p. 96.

<sup>305</sup> *C.C.R.*, 1396-99, p. 42.

<sup>306</sup> *C.C.R.*, 1396-99, p. 161-162. SC8/212/10560, a petition requesting the release of a ship containing salt arrested on behalf of John Waghen.

<sup>307</sup> *Statutes*, II, p. 28.

exported into England from Holland in any great quantity. Thus one of the only potential means for John to recover his debt was removed from him.

With the accession of Henry IV in 1399, the letters of marque were renewed. No additional request for justice appears to have been sent. The previous attempts by John Waghen and Richard II, which were recited in the renewal, were deemed sufficient.<sup>308</sup> There is no mention of the letters again until 7 May 1412, thirteen years later, when Henry IV once again renewed them. The death of Albert duke of Bavaria, count of Holland and Zeeland in January 1404 had brought about a suspension of the letter of marque; the English Crown had not wished the letters to be executed until Albert's successor, William had first been asked to provide justice to John Waghen. However, despite several requests on the strength of Henry's letters, John had "through several subtle and frivolous delays been sore troubled and suffered great additional cost."<sup>309</sup> It seems that the death of Albert had brought about a complete renewal of the process. It is unclear, however, why there should have been a delay of over eight years between the death of Albert and the renewed grant. In this period ships from Holland and Zeeland were permitted free passage.

By 1414, John had still not received any recompense for his loss, either through letters of marque (first issued in 1397, confirmed by a new monarch in 1399, renewed by the same in 1412), and pursued throughout by approaches to the counts of Holland and Zeeland. Following the death of Henry IV in March 1413, Henry V

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<sup>308</sup> *Foedera*, VIII, p. 96-97.

<sup>309</sup> *Foedera*, VIII, p. 733-34, *P.P.C.* II, p. 26-28.

renewed the letter of marque in May 1414, for the same amount, together with the presumably ever-growing costs and expenses, but only after he too had made a renewed request for compensation to the count of Holland and Zeeland without success.<sup>310</sup> Under the terms of the new document only the shipping and merchandise of Leiden were to be liable for arrest. Dederic Jacobson of Delft is omitted from the text. Such seizures were to take place not just within the realm of England but also “in all other parts of our lordship and power”. In July 1414 further restriction was placed on the letter of marque. In a writ of distrain, the Mayor of Calais was instructed that it was not the king’s intention that the letter of marque be executed at the staple of Calais<sup>311</sup>. This action appears to have been prompted by complaints from various merchants of the Staple that merchants of Holland “dare not come to Calais to trade, to the great loss of the king and his customs.”<sup>312</sup>

In December 1414, the letters of marque were once again altered, this time to extend their application to all merchants of Holland not just Leiden<sup>313</sup>. However, at this point Henry’s preparations for war with France, particularly his need for shipping began to have a detrimental affect on the scope of the marque. In January 1415, the mayor, sheriffs and other port officials of London were directed to release all ships and vessels of Holland seized in that port, and from that point on allow them free passage into London without arrest. Yet the letter of marque granted to John Waghen was to remain effective. In April 1415, agreement was reached with the counties of Holland and Zeeland for the supply of shipping for the transport of

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<sup>310</sup> *Foedera*, IX, pp. 125-6.

<sup>311</sup> *Foedera*, IX, p. 156.

<sup>312</sup> *Calendar of signet letters of Henry IV and Henry V 1399-1422*, ed.J. Kirby (London, 1978), p.160.

<sup>313</sup> *Foedera*, IX, p. 188.

Henry's forces into France and the keeping of the sea. Under the terms of the agreement security was given to all ships, masters and their mariners to be brought to the ports of London, Winchelsea and Sandwich. As a result of this agreement the likelihood of a successful resolution through the arrest of Dutch goods was further reduced.

However, in the meantime John Waghen had continued to pursue his case before the municipal authorities of Holland, where the renewed threat of arrests appears to have had some effect. On 4 March 1414, Waghen was paid 20s by the count's treasurer "as his long pursuit of his case had left him destitute and unable to pay his costs."<sup>314</sup> Finally, in August 1415 settlement was reached with Waghen over the resolution of his debt. It was stated that various goods had been arrested and sold as a result of Waghen's letter of marque to the detriment of Dutch merchants. Under the terms of the settlement, Waghen was to agree not to arrest or further trouble the count's subjects in England. Waghen was granted an initial payment of £9 11s 8d, this agreement lodged and recorded in the Butcher's Hall in The Hague.<sup>315</sup> After this point I can find no further mention of the case.

The case of John Waghen of Beverley illustrates many of the issues surrounding letters of marque. It demonstrates a desire on the part of three kings to see justice provided to their subject; a keen awareness of process; a willingness to make process fit changing legal and economic circumstances, and how respect for

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<sup>314</sup> *Bronnen*, I, p.572.

<sup>315</sup> *Bronnen*, I, pp.575-6.



regulation prolonged that process. However, despite this professed desire to see justice done, the efforts of the Crown to mitigate the effects of marque so as not to harm their own interests, in the case of John Waghen certainly, compromised their effectiveness. Yet, in spite of this, letters of marque appear to have played some role in bringing at least some compensation for John Waghen's considerable losses. From the point of view of the holder letters of marque appear to have been over-regulated and it is not clear if Waghen was able to raise any money directly from arrests. Certainly the amount claimed did not alter between the initial grant of the letters of marque in 1397 and their final renewal in May 1414. At any rate we are a long way from the licence for indiscriminate plunder historians are so keen to depict.

### **4.3 THE GENOESE AFFAIR**

In February 1413 various London merchants and aldermen including William Waldern and William Flete were granted letters of marque against the community of Genoa. Sometime in 1411, Waldern, Flete and others had, with the licence of the king, attempted to send wool and cloth to 'Italy' for the purposes of setting up a direct trade link.<sup>316</sup> Taking no notice of the king's letters of recommendation, the authorities at Genoa detained the ship in port and seized the merchandise, together with the factors and attorneys of the London merchants. It was stated in the complaint that the seized merchandise had been sold by the Genoese "for their own use and profit." The factors and agents were held, not permitted to contact their masters and provided with none of the proceeds for their own sustenance, thereby suffering great loss.<sup>317</sup>

It seems the seizure of the English goods was prompted by a desire on the part of the Genoese to protect their supremacy in trade between England and Italy. Commercial relations between England and Genoa had deteriorated in the two years leading up to the seizure. Concessions granted to Florentine merchants for the shipping of English wool had deprived Genoese merchants of an important source of

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<sup>316</sup> Ruddock, A., *Italian Merchants and Shipping in Southampton, 1270-1600* (Southampton, 1951), p.58.; Postan, P., 'The Economic and Political Relations of England and the Hanse, 1400-1475', in E.Power and M. Postan, (eds.), *Studies in English Trade in the Fifteenth Century* (London, 1933), p. 99.

<sup>317</sup> Foedera, VIII, p.773-4; *C.P.R* 1408-1413, p.461.

revenue, Genoese ambassadors had made protestations, and in response they had removed their shipping and merchants from English waters.<sup>318</sup>

Under the terms of the letter of marque licence was given to Waldern and others and their agents to seize “as many subjects of Genoa, denizens of Genoa or the confines of Genoa, or their factors or their agents, together with ships, vessels, goods and merchandise”. It was stated that they were entitled to retain all they captured for their own use, up to the value of the goods seized (the very large figure of £24, 000), together with expenses and costs, estimated to be a further £10, 000. In contrast to the procedure detailed above there was no stipulation for the seized goods to be placed in safe custody. Instead, Waldern and his associates were permitted “to have and to hold and present our letters of marque and reprisal to put in execution in the manner you see fit, as often as you see fit, by land or by sea.” These letters were not to be obstructed by the admirals or the lieutenants or their successors. Further, admirals and other officials within the Realm and “beyond the sea” were to help in the execution of the letters. No details were provided of the attempts to obtain restitution through ordinary judicial means demonstrating the exhaustion of local remedies, and there is no surviving evidence of requests being made by the king of England to the commune of Genoa.<sup>319</sup> The seizure of goods by the Genoese authorities “to the hindrance of our realm” was seen to be a consciously hostile action on the part of Genoa, and the English crown appears to have responded in a

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<sup>318</sup> Ruddock, *Italian Merchants*, p. 59.

<sup>319</sup> One would expect to find in the letters patent granting the letter of marque recitation of the attempts to achieve restitution from Genoa by the private individuals involved and indeed the Crown (see above the John Waghen case for example).

similar fashion. This was reprisal with no holds barred, with seemingly no restriction on the area and manner of execution.<sup>320</sup>

Alongside the letters of marque, a ban was placed on the import of Genoese goods into England, unless “such merchandise be taken for reprisal of the said merchants (Waldern et al) or to the use of the use of some other lieges for reasonable cause”. The interdiction was also to apply to the export of English goods to Genoa. This ban was “in consideration of the damages and intolerable grievances maliciously and fraudulently inflicted upon the merchants of London”, further emphasising the warlike action of the Genoese. The penalty for any breach of this embargo was to forfeit double the value of the offending merchandise. The order was sent to various ports in England such as Southampton and London, as well as to the staple at Calais.<sup>321</sup>

Obviously the ban on Genoese goods made the execution of the letter of marque in England very difficult. A ship from Seville laden with Venetian goods was arrested in Southampton in November 1413 but was released on the order of the Chancellor upon proof that the goods were Venetian rather than Genoese. There are several other surviving examples of the release of goods seized mistakenly. In May 1413, the mayor of Southampton was ordered to deliver oil and wax or the value thereof to a merchant of Lucca whose cargo had been seized in execution of the marque of the London merchants. Also in that month, the warden of the Cinque Ports

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<sup>320</sup> *Foedera*, VIII, pp. 773-4.

<sup>321</sup> *Foedera*, VIII, pp. 717-18; *C.C.R.*, 1413-19, p.60.

was directed to 'de-arrest' ships from Holland and Zealand containing wheat. The ships had been arrested in the port of Sandwich as it was thought the goods were Genoese. At the time John Waghen's letter of marque against Holland and Zealand was in force, but as we have seen victuals were not considered to be liable for seizure. However, it seems that Genoese victuals were considered to be liable for arrest, for Genoa was not considered to be of the 'king's amity'; indeed, in the mandate they were described as "the king's enemies of Genoa".<sup>322</sup>

In January 1414, a general truce with France to cover both land and sea for a year was proclaimed by the sheriffs of the counties. Interestingly, the commune and doge of Genoa were included in the truce as allies of the king of England.<sup>323</sup> Genoa had been in conflict with France since the overthrow of French rule of Genoa in mid 1409<sup>324</sup>. On his accession Henry had commissioned the bishop of St Davids and a doctor of law, Ralph Greenhurst, to investigate the grant of the letter of marque and "inform him of the truth of the matter".<sup>325</sup> In the second parliament of 1414, Henry V confirmed the grant of marque, citing the obstinacy of the Genoese ambassadors. Efforts were made to come to an agreement over the letter of marque throughout 1414. Safe conducts were issued to Genoese ambassadors in April of that year and subsequently renewed in November.<sup>326</sup> Initially, however, the Genoese ambassadors claimed that the seized merchandise belonged to their enemies the Florentines and as such were legitimate prize of war. The English merchants had offered to put the valuation of the goods to arbitration with two foreign merchants and two denizens of

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<sup>322</sup> *C.C.R.*, 1413-19, pp. 8-9.

<sup>323</sup> *Foedera*, IX, p.94, *C.C.R.*, 1413-19, p.108.

<sup>324</sup> Epstein, S., *Genoa and the Genoese, 958-1528* (North Carolina, 1996), p.326.

<sup>325</sup> *P.P.C.*, II, p.132.

<sup>326</sup> *Foedera*, vol. IX, p.120, 157, 181.

the English realm being included in the jury. Subsequently this offer was increased to four foreigners and four denizens. To this suggestion, it is claimed, the Genoese were not willing to consent, replying in “frivolous ways”. The English merchants complained that Genoese ambassadors had used the safe conducts granted to them to bring commodities into the realm, reducing the effectiveness of the letters of marque. The king was requested to cease granting safe conducts prejudicial to the execution of the letter of marque. As a coda, the petitioners asserted that despite claims made by their ‘friends’ that the Genoese had provided notable sums to the customs, in fact in the two and half years prior to their expulsion, the totals of the goods imported and exported by the Genoese did not reach £4,500, as was apparently shown in the records of the king’s exchequer. It seems clear that this was a response to Genoese lobbying.

In the confirmation of the grant of marque, Henry in response to complaints from the Genoese, stated that any seizures at sea made by virtue of marque or reprisal were to be brought back honestly and legally to the closest port within the power of the King. There the goods would be appraised and valued by port officials “according to merchant law”. The seized goods would be placed at sale or auction under the same officials, “so that the true value of the goods would be known”. Despite the complaint from Genoese ambassadors there is evidence of regulation in the treatment of seized goods in this case prior to the Parliament. In February 1414, goods belonging to a merchant of Piacenza, Laurence de Platea, were arrested ‘by colour of marque’, by agents of Waldern and others in the port of London. Upon proof that the goods were not Genoese, the mayor of London was ordered to restore

the merchandise to de Platea. The merchandise had been subject to a detailed inventory with record made of both the quantity and nature of the goods. The goods had been valued at £486.<sup>327</sup>

In 1416, Genoa entered into alliance with France agreeing to provide shipping in the renewed conflict between England and France<sup>328</sup>. Genoese goods seized therefore would be considered captures of war rather than marque. At the siege of Harfleur in August 1416 a fleet commanded by the duke of Bedford captured three Genoese carracks hired by Genoa to the French crown. In October of that year a truce was signed between England and France, covering the sea from Norway to the straits of Morocco for a period of four months. Genoa was included on this occasion as allies of the king of France, in contrast to the treaty of 1414.

On the expiration of the truce in February 1417, various people commissioned to keep the sea were empowered to make war on the men of Genoa, as well as France, Castile and Scotland<sup>329</sup>. In July 1417 the Earl of Huntingdon captured four more Genoese carracks in an engagement with the French fleet in the Bay of the Seine.<sup>330</sup> It is unclear at this stage what the status of the letter of marque was, and how open conflict affected it. However, in the commercial treaty between England

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<sup>327</sup> *C.C.R.*, 1413-1419, p.55-56. "Ten cloths and a half and 5 yards of scarlet, one cloth of 'sangwyn' with grain, nine cloths 8 yards of white cloth, four cloths of the colour called '*incarnacioun*', two cloths 17 yards of black of lyre, one cloth of other black, four cloths of plunket, eight cloths 32 yards of blue, five cloths 22 yards of 'moustredevilers', two cloths 28 yards of green, one cloth of red, two cloths of blue 'medle', 6 yards of 'medle' with grain, 13 yards of another 'medle' without grain, and one sarplere."

<sup>328</sup> Epstein, *Genoa*, p. 264.

<sup>329</sup> Nicolas, *P.P.C.*, ii, p. 208-209.

<sup>330</sup> Rodger, *Safeguard of the Sea*, p. 144; Ronciere, C., *Histoire de la Marine Francaise*, 6 vols, (Paris, 1900-32), ii, p.166.

and Flanders signed in that year, it was stated that “so long as there shall be war between the king (of England) and the city of Genoa or reprisals or marque shall last between the king and the Genoese no one of Flanders or any other nation shall put his goods or merchandise in Genoese carracks, galleys or ships but at his own peril.”<sup>331</sup> Such a clause is unusual; it is the only example of such a clause mentioning letters of marque specifically I have found. The letter of marque in this case was seemingly assimilated with a state of war. Flemish goods in Genoese carracks would not usually be considered liable for seizure in the execution of letters of marque against Genoa, providing further confirmation that the Genoese were being treated as enemies. Indeed despite this warning, later that year, Henry Beaufort, bishop of Winchester, wrote from Bruges to the bishop of Durham, the Lord Chancellor, instructing him to return property belonging to several merchants of Bruges contained in a Genoese carrack captured at Plymouth. Beaufort felt a failure to provide restitution would prejudice the interests of English merchants in the Low Countries.<sup>332</sup> Further indication that the Genoese were considered as enemies at this stage comes in a commission to various Devon men concerning a Genoese ship that had landed in the port of Ilfracombe; it stated that the crew as those of the king’s enmity pertained to him as prisoners of war.<sup>333</sup>

There were renewed attempts to come to agreement in 1419. Genoese ambassadors were once more present in London in that year to negotiate a treaty and the settlement of the English merchants’ claim for compensation for the goods seized. The Genoese ambassadors had valued the seized English goods at £7,191.

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<sup>331</sup> *Foedera*, IX, p.476-78; *C.P.R.*, 1416-22, p.139.

<sup>332</sup> *P.P.C.*, II, p. 234.

<sup>333</sup> *C.C.R.*, 1416-1422, p. 146.



After deductions for their goods seized, they offered to pay £4000 in compensation. In a statement from the London merchants to the Council it was stated that although they had valued their goods at £13,000, they would be willing for the sake of agreement to reduce this sum to £10,000 to their own considerable loss. The merchants claimed that they had received no more than £2,000 worth of Genoese goods “by way of marque”, and as such set the remnant of their claim at £8,000. The merchants asserted that just as the Genoese demanded the utmost value of their goods seized by marque in England, they wished the true value of their goods, which was the price the goods would reach in Italy. However, they were willing to put the matter before “the King’s commissioners and certain merchant denizens or strangers” and to obey the decision of the council in the interests of a settlement being reached.<sup>334</sup>

Henry V, who was in France at the time of the negotiations, wrote to the Lord Chancellor in July/August 1419, having received a schedule of the negotiations with the statements of both the Genoese ambassadors and the English merchants. Whilst leaving the negotiations to the discretion of the council he advised the merchants to accept the compensation offered as the letter of marque between England and Genoa “hath doon as wel in strengthyng oure ennemys as in hindryng of ye cours of marchandise betwixt oure reaume and yaym (Genoa)”. Acceptance of their offer and the conclusion of a subsequent treaty was however to be dependent on two conditions. Firstly English merchants were to have free access to Genoese ports for the purposes of trade in Genoa and beyond. Secondly the Genoese were to give an

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<sup>334</sup>, *P.P.C.*, II, p. 257-61

undertaking not to aid any enemies of England by land or sea<sup>335</sup>. In 1420 a counter offer was made by the Genoese ambassadors of £5000 in liquidation of the amount claimed, while the English merchants reduced their claim to £7,333<sup>336</sup>.

Negotiations in the matter appear to have continued, and in May 1421 agreement was reached, with the ratification of the treaty in the following October. Under the terms of the treaty English and Genoese merchants were assured safe passage and free trade in the commune or realm of the relevant power. The Genoese agreed not to provide aid or support to the Dauphin (the future Charles VII), or the Scots or Castilians, against England. The treaty included the settlement between the Commune of Genoa and William Waldern and his associates. The Genoese agreed to pay £6,000 in full and complete settlement with the London merchants. This money was to be paid in instalments, £1,000 payable on the feast of St. Michael, 1422, with the remainder to be paid subsequently each year until full settlement of the amount. Before the first payment the English merchants for their part, were to send to the doge and commune of Genoa, or to a stipulated public notary, a public instrument indicating full, final and absolute quittance of their letter of marque and an agreement of non petition on any other matter.<sup>337</sup>

The needs of trade appear to have brought about the eventual settlement of the case. If one takes the example of the major port of Southampton, the main trading port for Genoese merchants, we can examine the effects of the breach. In the nine

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<sup>335</sup> *P.P.C.*, II, p.255-57.

<sup>336</sup> *P.P.C.*, II, p.270-71.

<sup>337</sup> *Foedera*, vol. IX, p.117-123.

years between the grant of the letter of marque and the eventual settlement in 1421, the value of foreign goods customed at Southampton had plummeted to an average of £3, 297 per annum and export of cloths had fallen to 1,215. With the return of the Genoese to the Realm in the aftermath of treaty these figures rose to £9,051 and 4, 660 cloths.<sup>338</sup>

In this particular case the distinction between marque and war, at least initially, was clearly blurred. The letter of marque was symptomatic of a diplomatic breach, and was the starting point for conflict both official and unofficial between England and the commune of Genoa; a symptom and a cause of what appears to have been a trade war. The granting of the letter of marque was an angry reaction to a hostile act on the part of Genoa that was perceived to have been directed not just against private individuals, but rather the whole realm of England. The initial lack of restriction on the execution of the marque, allied with the ban on trade with Genoa, suggests a divergence from the usual execution of letters of marque, the confiscation of goods by port officials in English ports. Further the initial valuation of £24,000 placed on the English goods in Genoa, together with expenses of £10,000 amounted to a total value of £34,000 on the letter of marque. Such a vast amount of money, in effect meant the letter of marque was without limit. It is a combination of these elements that suggest the intention on the part of the crown was something more akin to 'privateering' than what we would consider to be a letter of marque in this period (e.g. John Waghen's case). It was in effect the authorisation for unlimited reprisal attacks against 'enemy' trade at sea. However, even in this extreme and thus far

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<sup>338</sup> H.L. Gray, 'Tables of Enrolled Customs and Subsidy Accounts: 1399 to 1482', in E. Power and M. Postan (eds.), *Studies in English Trade in the Fifteenth Century* (London, 1933), p.357, Ruddock, *Italian Merchants*, p.61.

neglected case we witness efforts at regulation, the inventory and restitution of wrongly seized goods, even prior to Henry V's instructions in the aforementioned parliament of 1414, revealing a generally accepted code of practice in the execution of letters of marque. Despite no such instructions in the letters patent granting the letter of marque, port officials followed this 'good practice' in the treatment of seized goods.

## 4.Neutrality: Commerce and War

That attacks on 'neutral', friendly and allied shipping constitutes piracy is seen to be so self evident as to almost constitute a platitude. In this respect at least there is a consensus. Michel Mollat thought that we should consider to be 'piracy' all captures of ships that are not subsequently judged good prize (that is to say all attacks on merchant shipping that were not considered to be lawful acts of war, i.e. attacks on friendly or allied vessels).<sup>339</sup> It is indeed the case that commissions to ship-owners to keep the sea contained warnings not to attack ships of the king's friendship, and to respect safe conducts. At the 1375 Inquisition of Queensborough, constituted by Edward III to clarify certain aspects of maritime law, it was stated that inquiry should be made "concerning all thieves who rob at sea any of the subjects of our lord the king or any persons of his allies, or in amity with him, or any being under his truce or under his protection."<sup>340</sup> Yet in spite of this seeming consensus the matter of neutrality is far from straightforward. Indeed there were a number of elements that needed to be considered in deciding whether a ship possessed enemy character or not. The origin of the ship, the composition of the crew, the ownership of the cargo and its ultimate destination were all factors that needed to be considered when determining the status of a ship captured at sea. As we shall see in this chapter the criteria on which such decisions rested were subject to quick and frequent change in relation to the particular circumstances against which the capture took place.

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<sup>339</sup> Mollat, 'De la piraterie sauvage', p. 174.

<sup>340</sup> *B.B.A.*, I, p. 148.

In reality there was no universal and static law of prize in the later Middle Ages. The conditions underpinning what constituted a lawful capture were subject to frequent alterations to take account of changing diplomatic and economic priorities. In 1435, for example, in the immediate aftermath of the treaty of Arras, it was declared that allied goods captured in enemy ships would from that point be considered good prize, and as such retained by their captors. It was claimed the transport of friendly goods in such a manner “greatly strengthens the navy of the king’s enemies.”<sup>341</sup> It seems this legislation was prompted by a need to encourage English mariners to put to sea at a time of renewed naval threat. The general principle, in the absence of any conventional agreement to the contrary, appears to have been that outlined in the Consulate of the Sea. The Consulate provided that friendly goods found on board an enemy ship were to be returned to their owner once proof had been provided of their ownership. In a 1351 agreement between England and Castile it was stipulated that Castilian goods found on board any French ship captured at sea would be placed in safe custody in England until the merchant was able to prove ownership.<sup>342</sup> A treaty of friendship between England and Portugal in 1353 provided similar protections.<sup>343</sup> Conversely, enemy goods found on board a friendly ship were to be retained by the captor, whilst the ship itself would be released. The Consulate also stipulated that the captor should be required to pay the freight on the captured goods.<sup>344</sup> Such a measure was designed to ensure the allied

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<sup>341</sup> *Statutes*, II, pp. 293-4.

<sup>342</sup> *Foedera*, V, p. 717.

<sup>343</sup> *Foedera*, V, p. 763.

<sup>344</sup> *Collections des lois maritimes antérieures au XVIII<sup>e</sup> siècle*, (ed) J.M. Pardessus, 4 vols, (Paris, 1828-1845) pp.304-5, “If some ship or barque, or corsair, entering in battle or withdrawing itself, meets some merchant ship or barque, the same ship being under a friendly flag, and that the merchandise which is on the ship belongs to the enemy, the commander of the vessel or of the armed barque is able to constrain the master of the ship or of the barque captured to lead where it pleases to take his vessel and the enemy merchandise loaded on board, in a place where there is nothing to fear, and where they will not be able to re-taken by the enemy. The commander pays however to the

ship-owner was not prejudiced in anyway as a result of the capture.<sup>345</sup> In a number of cases the allied shipmaster was entitled to receive his legal costs incurred in the suit for restoration of his goods.<sup>346</sup>

It follows that one cannot speak of neutrality as a default state in the Middle Ages which existed in the absence of belligerency or friendship. It was not the case that the concept of neutrality was little understood, as some commentators have supposed.<sup>347</sup> The *Trève Marchande*, which we discussed in the introduction, designed to ensure commercial peace for Flanders in the event of war between England and France, would approximate to most definitions of ‘neutrality’. Rather, it was that ‘neutral status’ was not lightly conceded. Such duty of care as was owed rested on a positive diplomatic relationship established through treaties, truces and safe conducts. Letters of request stipulated the existence of such agreements as the legal basis of their claim, in some cases adducing specific clauses.<sup>348</sup> Such agreements, as well as providing certain guarantees with regard to the safety of

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commander of the ship or barque the total of the freight that he would have been due if he had unloaded his merchandise in the place of their destination, in accordance with the enunciations of the ship’s log.”

<sup>345</sup> *C.C.R.*, 1346-49, p. 23, Order of the King that freight should be paid upon enemy (Norman) goods captured in a friend’s (Spanish) ship, and that the ship with the Spanish goods in her should be restored.

<sup>346</sup> *Law and Custom*, I, pp. 106-7, Order that freight be paid on French goods captured in a Flemish ships. In addition the Flemish merchants are to receive their damages and costs incurred.

<sup>347</sup> Ditchburn, D., ‘Bremen Piracy and Scottish Periphery: The North Sea World in the 1440s’, in I Macinnes, T. Riis and T. Pederson’s *Ships, Guns and Bibles in the North Sea and Baltic States, c.1350-c1700* (2000) p. 6, “In an era when the concept of neutrality was little understood, or at least sparingly applied, it was common for pirates to attack the ships of neutral third parties which contained goods belonging to the pirates’ principal protagonists. It was common, too, for pirates to seize goods that belonged to a neutral third party, but which had been laden in the hold of an enemy vessel.”

<sup>348</sup> *Foedera*, VI, pp. 14-15, A letter of request seeking the return of Portuguese goods captured on board a French ship. “annotated the arrangement contained in the treaty signed in 1353 whereby “, if our Men capture, in Sea or in Port, any ships of our Adversary, whatever goods of merchants of your lands may be discovered, the same merchandise will be brought back to England and will be guarded safely, and which merchants (of whom the goods belong to) will have proved them to be theirs.”

foreign merchants and the security of goods, also placed certain obligations upon which such protections were dependent. The failure to observe the latter could invalidate the effects of the agreement. A treaty between England and Flanders in 1338 granted Flemings secure passage at sea upon the provision of their letter of cocket, or charter party, as evidence of their cargo and destination. Flemings who were found to be carrying goods to Scotland were to be considered to lie beyond the treaty's protection.<sup>349</sup> Similarly, safe conducts were often conditional upon enemy goods not being carried on board the ship to which they had been granted.<sup>350</sup>

Therefore, although on the face of it the capture of a friendly ship would seem to be a 'piratical' act, the issue was in fact far more complex. Allied ships could be considered lawful prize when they were deemed to be aiding the war effort of the enemy. Such aid might include involvement in hostile acts, the supply of material with direct application to war, or the simple carriage of enemy goods. Such captures need to be viewed in the wider framework of the competing rights of belligerent and 'neutrals'. The rights of the belligerent to prevent aid reaching his adversary were countered by the rights of his ally to engage in lawful commerce.

The tension between these competing rights is illustrated in this present chapter through a study of relations between England and Flanders during the Anglo-Scottish conflict of the opening two decades of the fourteenth century, from the readmittance of the Flemings into England in 1305 up to the death of Robert of

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<sup>349</sup> *Foedera*, V, pp. 53-55.

<sup>350</sup> *Law and Custom*, I, p.97 A safe conduct granted to a Catalan galley to travel to Flanders, provided that it does carry any enemy goods on board.



Béthune in 1323. Throughout this period we witness the repeated objections of the English Crown to perceived Flemish support for the Scottish war effort. Such support was seen to take a variety of forms, ranging from harmless trade to Flemish involvement in Scottish attacks on English ships. The policy of the English Crown regarding what constituted good prize was linked to a desire to persuade the Flemings to refrain from any communication with the Scots. The case study reveals that decisions on prize rested on such changing diplomatic considerations as much as any set legal doctrine. When conditions of truce and war at sea were so ill defined and enemy goods could be freighted in allied ships, we must conclude that there existed a large grey area of debatable ground between so called 'piracy' and legitimate prize. The vagaries and inconsistency of governmental policy added further confusion. The rights and duties of friendly and allied merchants were outlined in bilateral treaties, but their application was ultimately decided in domestic courts reflecting the will of the sovereign, who constituted the final point of appeal. In this sense, decisions were made on a case-by-case basis in relation to specific diplomatic circumstances rather than to a general rule. Against such a backdrop it is therefore difficult to regard attacks on allies in the context of strict liability, still less to judge those guilty of such attacks to be 'pirates'.

## **4.2The Blockade of Scotland: Anglo-Flemish relations, 1305-**

### **1323**

The safe conduct issued to Flemish merchants on their re-admittance into England in the aftermath of the treaty of Athis-sur-Orge was on condition that they did not supply the Scots with arms or victuals. The Flemings had been expelled from England in June 1304 under the terms of the treaty of Paris of 1303 between England and France whereby the contracting parties undertook not to provide aid or sustenance to the enemies of the other. What constituted aid to an enemy was frequently a matter of debate, but the terms of the treaty of Paris provided little room for manoeuvre in this respect.<sup>351</sup> On 16 April 1305, the count of Flanders wrote to Edward I to protest about the conditional nature of the safe-conduct. He stated that it was not his intention to strengthen the Scots in their war effort, indeed he had ordered this to be publicly prohibited throughout his realm, particularly in the coastal areas; the letters patent ordering this had been delivered to English merchants as proof. However, as Flanders was sustained by trade it should be common to all merchants and as such he was unable, in good conscience, to prohibit trade with Scotland. In his letter the count sought to distinguish between what may be termed 'neutral' acts, e.g. trade, and active support for the Scottish war effort. This distinction would be debated in Anglo-Flemish diplomatic correspondence over the remaining eighteen years of Robert of Béthune's time as count of Flanders.

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<sup>351</sup> *Foedera*, II, p. 927, It is agreed that neither party will receive, sustain, comfort, nor will be comfort, nor aid to the enemies of the other; nor to suffer that he will have comfort, succours, nor aid (whether men of arms, or victuals, or of other things, whatever they will be) of his lands, nor of his power; but will forbid, on pain of forfeiture of bodies and possessions, and to strive in all his power that the enemies will not be received, nor comforted in his lands of his lordship, nor of his power: nor will they have comfort, succour or aid (whether men at arms, horses or armour), but rather they will be expelled within forty days after they have been requested.

In his request for a safe-conduct without condition the count of Flanders did not wish to leave it up to the English crown to decide whether the actions of Flemish merchants should be considered to be an aid to the Scottish war effort. The English for their part considered any form of Flemish interaction with the Scots to be harmful to the English war effort; simply travelling to Scotland with goods, or in the company of Scots, imbued their goods and men with enemy characteristics. A large part of English naval strategy during the Anglo-Scottish war was to exert pressure on the Scots in the form of a naval blockade. The need for Scotland to import certain key resources made it particularly susceptible to blockade. According to Froissart,

“There is neither iron to shoe horses, nor leather to make harness or bridles, all these things come ready-made from Flanders by sea; should these fail there is none to be had in the country”.

Limitations in naval technology and resources meant that the English fleet would be insufficient in itself to prevent supplies from reaching Scotland; it required the co-operation of allied powers to mount an effective blockade. The retention of Aberdeen, the only major port in Scots hands, provided an entry point for supplies for the Scottish war effort and a means to circumvent the blockade. Aberdeen was a town with a fairly large Flemish presence and links to the Low Countries and on several occasions it was used by Flemings as an *entrepôt* after attacks on English merchants at sea. The use of Aberdeen as a stopping off point seems to have been to custom the goods; the attachment of a cocket seal disguised their captures as goods

bought in Scotland.<sup>352</sup> Such actions undermined English confidence in Flemish claims of 'neutrality' and provided a pretext for English attacks on Flemish ships. It was therefore the opinion of the English crown that any form of trade between the Flemings and the Scots aided the Scottish war effort as such trade undermined English attempts at blockade. English requests of abstention were not limited to articles with direct application in war, a fairly broad category in itself, although it was frequently those articles that were specified. The main Scottish export in the fourteenth century was wool. The sale of Scottish wool to Flemish merchants contributed money to the Scottish economy, providing them with the means to acquire food and arms to maintain their war effort. Although it had lasted less than a year, their expulsion had surely brought home to the Flemings the fragility of their position in England and the dangers of their reliance on English wool.<sup>353</sup> Such awareness made the Flemings reluctant to give up trade with Scotland at the request of the English crown, a point reinforced when they were expelled once again in 1315 at the request of the French crown.

It was not only the Scots who suffered from the lack of resources in Scotland; the English forces were unable to live off the land, and as such provisions were continually required from England to feed English armies, fortresses and garrisons.<sup>354</sup> Conversely it was part of Scottish strategy to try and disrupt such supplies through attacks on English merchant shipping, taking these supplies for themselves. At a time of shortage there was fierce competition for limited resources.

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<sup>352</sup> Stanford Reid, 'Trade, Traders, and Scottish Independence', p. 221.

<sup>353</sup> Stanford Reid, 'Trade, Traders, and Scottish Independence', p. 211.

<sup>354</sup> Stanford Reid, W., 'Sea-Power in the Anglo-Scottish War, 1296-1328', *Mariner's Mirror*, 46 (1960), 7-23.

Holding only one port the Scots lacked the naval resources to sufficiently trouble English supply lines. It was not only the Scots who threatened the security of the English merchant fleet; over the period we see ships from Flanders, Holland and the Hanse involved in attacks on English shipping. These attacks on English shipping, particularly when they involved the Scots, compromised Flemish claims to 'neutrality' as they hindered the war effort of the English crown. Violence at sea was not a one-sided affair; Flemings were frequently the victims of such attacks. Attacks on Flemish ships were perhaps partly in response to Flemish involvement in Scottish offensive actions and Flemish merchants providing supplies to the Scots. The cases emerging from these attacks, and the failure to settle them, provided the backdrop to Anglo-Fleming relations for the next eighteen years. Diplomatic efforts to persuade Flemings to refrain from communicating with the Scots were frequently linked to attempts to settle such cases in an often circular diplomatic process.

The confusion that had existed at sea in the opening years of the fourteenth century as a result of various conflicts involving England, France, Flanders, and the counties of Hainault, Holland and Zeeland had left a legacy of unresolved cases involving merchants injured at sea. The efforts to persuade Flemings to refrain from communicating with the Scots were frequently linked to attempts to settle such outstanding cases. These cases contributed to a diplomatic tension between England and Flanders, further exacerbated by the expulsion of Flemish merchants from England in the summer of 1304. In April 1307 Edward I wrote to the count of Flanders seeking compensation of £260 for Jean Bellay, a merchant from Bayonne injured in this period. Bellay's ship had been captured by Robert's brother, Philip

count of Chieti when acting as regent, and “war then moved between the men of Flanders and the men of Zeeland.” The request was repeated by Edward II in July 1309.<sup>355</sup> In June 1309 Edward wrote to the count seeking compensation for another case dating from the regency of Philip and the war between Flanders and Holland. According to the letter of request, merchants from Melcombe and Weymouth had been robbed of wine valued at 555 marks off the coast of Portsmouth. Edward complained that despite a verdict having been reached in their favour by the *échevins* of the five villes, the merchants had still not received restitution or compensation for their wine.<sup>356</sup>

The failure to resolve outstanding cases added to, and was reflective of, the existing diplomatic tension between England and Flanders. On 16 December 1309, Edward wrote to the count of Flanders to complain over the count’s repeated refusal to provide justice for English merchants. He claimed that numerous English merchants had suffered loss at the hands of the count’s subjects, both in the reign of Edward I and since he himself had assumed the throne. It was further asserted that various letters sent to the count on these matters “had provided little reward”, and the actions of the merchants themselves had been in vain, serving only to increase their losses through the expenses incurred in pursuit of their cases.<sup>357</sup> The count of Flanders, for his part, had written to Edward I in April 1307, asserting that he was willing to provide satisfaction for all English losses that could be shown and proved, provided that justice was shown to Flemish merchants injured at ‘Craduc’ and

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<sup>355</sup> *Foedera*, II, pp.1052-1053, *Foedera*, III, p.144. As we will see Bellay was still seeking restitution for his losses fifteen years later.

<sup>356</sup> *Foedera*, III, p.141.

<sup>357</sup> *Foedera*, III, p.196.

elsewhere.<sup>358</sup> On 7 December 1310, a fleet of English ships attacked seven Flemish ships, and three ships from La Rochelle, at anchor in the Breton port of Crozon, taking their cargo of wine and salt and setting fire to the Flemish ships. The affair at Crozon remained a sticking point in Anglo-Flemish relations for more than a decade, hindering attempts at the settlement of all other cases<sup>359</sup>. It is perhaps indicative of the low point reached in Anglo-Flemish relations that the captors of Crozon sought to justify their action by claiming it was an act of war on behalf of Edward II. That is not to say that the statement by English mariners seeking to defend their actions should be read uncritically; but for it to be considered plausible is suggestive of a state of *de facto* war at sea.

Violence at sea continued over the course of 1311, hampering Edward's Scottish campaign by disrupting the supply route. Merchants from Norwich and Lynn complained that their goods valued at over £1,500 had been captured off the Suffolk coast by various Flemings on 12 September 1311. The merchants alleged that having sold their wool at Bruges and the Lille Fair, they had bought cloth, spices and wax, which they loaded in a ship from Sluys. However, that ship on its voyage to England had been followed by 'malefactors of Flanders...for the purpose of robbing her' and was captured by them by "force of arms" off the Suffolk coast between Orford and the Orwell.<sup>360</sup> In that particular case, there is more than a hint of

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<sup>358</sup> *Foedera*, II, p.1052.

<sup>359</sup> C 47/29/6/13 (Letter of complaint from Philip IV on 3 February, 1311), SC1/45/154 ( Letter of complaint from Robert of Béthune, count of Flanders, on 5 February 1311), *Foedera*, III, p.260 (A day arranged for 13 June to settle the matter), C 47/27/8/19, letters of proxy for envoys of the count to appear before the king's council to settle the affair of Crozon. *Foedera*, III, p.658, letter from the count on the matter (12 August, 1317). *Foedera*, III, p.852, agreement reached between Edward II's council and envoys of the count of Flanders, during the parliament of Michaelmas 1320, concerning Crozon.

<sup>360</sup> *C.C.R.*, 1307-1313, p. 438.

premeditation and it is possible that the Sluys ship owner, Michael Faght, was complicit in the robbery. Another case around this time was even more provocative. Burgesses from Newcastle-upon-Tyne alleged that various Flemings, including John Crabbe of whom we will hear more later, acting with ‘malefactors’ from Aberdeen, had robbed them of 89 sacks of wool. The wool, loaded in two ships, had been captured off the English coast near Scarborough *en route* to Flanders to be sold. The captors had eventually taken it to Bruges via Aberdeen.<sup>361</sup> A similar case involved men from Beverley in Yorkshire. These merchants had freighted three Flemish ships at Kingston-upon-Hull with wool and wool fells valued at over £4000. The ships had then allegedly been captured on the Scheldt by ‘malefactors of the power of the count of Flanders’ whilst travelling to Brabant. The wool had then been taken to Aberdeen and, “delivered to other Flemings who were then with the king’s enemies, by whom they were afterwards carried to Flanders.”<sup>362</sup> As stated earlier the reason for stopping off in Aberdeen seems to have been to custom the goods; the attachment of a cocket seal disguising their captures as goods bought in Scotland.<sup>363</sup> Interestingly, at this stage goods bought in Scotland were not considered by the Flemings to be liable for capture.

Attacks on English shipping, particularly when they involved the king’s Scottish enemies, compromised Flemish claims to ‘neutrality’. These attacks appear to have led the English crown to take a diplomatic hard line with Flemings, at least initially. In September 1311 Edward refused to restore three Flemish ships to the

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<sup>361</sup> *C.C.R.*, 1307-1313, p. 436.

<sup>362</sup> *C.C.R.*, 1313-1318, p.7, *Calendar of Documents Relating to Scotland*, ed. J.Bain, 5 vols (London, 1881-1988), V, p.236.

<sup>363</sup> Stanford Reid, ‘Trade, Traders, and Scottish Independence’, p. 221.



heirs of three Newport ship-owners. It was claimed that the ships had been captured off the coast of Berwick, the crew, including the three shipowners, killed and the ships taken to London. The king responded that “the ships in question were taken in war near Aberdeen in Scotland amongst the king’s enemies of Scotland as aiding his said enemies; wherefore he considers that restitution should not be made”. Edward hoped that in future the count would not give aid or counsel to his enemies.<sup>364</sup> The refusal to restore the ships was clearly an attempt to deter the Flemings from any interaction with the Scots; this stance was not maintained despite continuing attacks. In October 1311, Edward wrote to the count expressing his amazement that the count’s subjects “endeavour to ferment discord rather than peace between them and continue to lie in wait for the king’s subjects.”<sup>365</sup>

As we have seen a key part of English naval strategy was to prevent the importation of certain key resources into Scotland. To this end William Getour and his barge, the *Messenger of Berwick*, was commissioned at the king’s wages from 20 April until 7 July 1312 to intercept and arrest all ships laden with victuals and provisions passing beyond Berwick without the king’s licence.<sup>366</sup> All confiscated victuals were to be delivered to Ralph Benton, the king’s clerk and receiver of stock in Berwick. Thus what was subtracted from the Scottish war effort was added to the English one.<sup>367</sup> As indicated earlier, the success of such a blockade was reliant upon the co-operation of neighbouring princes, such as the count of Flanders. Failure to observe such a blockade would make Flemish shipping liable for capture, adding to

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<sup>364</sup> *C.C.R.*, 1307-13, p.432.

<sup>365</sup> *C.C.R.*, 1307-13, p. 438.

<sup>366</sup> *C.D.S.*, III, p.401, *C.P.R.*, 1307-13, p. 456.

<sup>367</sup> *C.P.R.*, 1307-13, p. 496.

the disputes between English and Flemish sailors. Indeed, William Getour was summoned to appear before the king's court to answer charges of robbery against certain Flemings in a case in all likelihood resulting from his commission.<sup>368</sup> It appears it was not just Flemings who suffered at Getour's hands: in a letter from Easter 1315, the count of Hainault, Holland and Zeeland complained that Gettour had perpetrated a number of homicides and robberies upon his blameless subjects.<sup>369</sup> The presence of such a fleet with orders to prevent supplies reaching Scotland was liable to affect sea-borne traffic, particularly when there was a strong suspicion that various ostensibly friendly shipping was supplying the Scots.

The settlement of cases emerging from attacks at sea ran parallel to measures designed to ensure the safe and secure passage of merchandise in future. Such issues were frequently linked to attempts to persuade the Flemings to abstain from interaction with the Scots. At the start of 1313, William Dene and the merchant Richard Stury, acting as the king's envoys, appeared before the count to discuss the settlement of the build up of cases involving English and Flemish merchants. A date was set for further discussions to reach agreement over these outstanding cases and mechanisms for their resolution. However, on 15 February, Edward wrote to the Count asking that he prohibit his subjects from supplying the Scots with arms and victuals or from communicating with the Scots in any manner: stating he doubted whether the agreement could be suitably observed,

“if your said subjects henceforth communicate with the Scots our  
enemies and rebels, as up to now they have done, and they still do not

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<sup>368</sup> *C.D.S.*, III, p.58.

<sup>369</sup> *Bronnen*. I, p.153; *C.C.R.*, 1313-18, p. 153.

omit to do, incessantly carrying victuals, arms and other necessities to the same our enemies.”

It was asserted that the Flemings, by adhering to the king’s enemies, were considered to be openly against the king, bearing “heavy unfriendliness” to him.<sup>370</sup> In other words, friends of our enemies become our enemy. The carriage of enemy goods compromised Flemish security at sea. On 1 May 1313, the king wrote again to the count of Flanders among other things about the transport of victuals to Scotland. Edward informed the count that he had heard reports that 30 Flemish ships laden with victuals and arms were currently in the port of Zwin preparing to sail to Scotland to deliver those provisions to the Scots. This was in spite of Edward’s recent request to prevent his subjects from supplying the Scots.<sup>371</sup> The count’s response was placatory but evasive; he denied any knowledge of the ships said to have sailed from the port of Zwin, but as he has forbidden the supply of arms and victuals to the Scots the ships must have sailed to Scotland to trade, which he cannot prevent.<sup>372</sup> The count once again wished to re-enforce the distinction between the supply of arms and victuals and that of ordinary trade. Whilst pleading ignorance of the specific case he was unwilling to concede the principle of free trade between Flemish and Scottish merchants.

Attacks at sea continued, bringing with them a further deterioration in Anglo-Flemish relations. At the end of July 1313, bailiffs in London and a number of eastern ports were ordered to arrest Flemish goods in response to the capture of

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<sup>370</sup> *Foedera*, III, p. 386-387.

<sup>371</sup> *Foedera*, III, pp. 402-4.

<sup>372</sup> *C.D.S.*, III, p. 126.

goods belonging to merchants from York and Malton. The arrests may have been prompted by the aggravating Scottish element to the case. According to their complaint a Flemish ship containing their goods had been captured by men from Flanders in the Scheldt Estuary, who had then taken the ships to Aberdeen. The ship's crew had been left in Scottish custody in Aberdeen; the wool had been taken on to Flanders.<sup>373</sup> The placing of English merchants and sailors in enemy hands would surely be considered active support for the Scottish war effort. Similarly, in a case concerning Richard Randolph, a burgess of Great Yarmouth, the attackers used Scotland as a base to return to with their stolen goods. Randolph's ship, laden with wine and other goods, had been captured at sea near Dover on 21 May 1313 by thirty two men from the port of Sluys. According to a subsequent inquiry by the Mayor and bailiffs of Dover, the captors had killed fifteen of the crew and the master William Barefoot; 17 of the Flemings had taken the ship to the king's enemies in Scotland, the remaining 15 of the Flemings carried wine back to Sluys in their own ship.<sup>374</sup> The count of Flanders for his part denied all knowledge of the act, but promised to make inquiries and to punish the guilty.<sup>375</sup>

As well as being expected to control the actions of his subjects, the count of Flanders was expected to take responsibility for the actions of foreign nationals in his county. A theme of English correspondence was that the count should deny the use of his territory to the king's Scottish enemies. This responsibility extended to all those who sought to use Flemish ports as bases to attack English shipping. In

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<sup>373</sup> *C.C.R.*, 1313-18, p. 7, p. 47, *C.D.S.*, V, p. 236.

<sup>374</sup> *C.C.R.*, 1313-18, p. 46.

<sup>375</sup> *C.C.R.*, 1313-18, p. 93.

November 1310 the count was requested not to receive or harbour men from Hainault and Holland, described as robbers and pirates (*praedonibus et piratis*), in his ports, who, along with the count's own men, were attacking English shipping,

“with the result that mariners, who are appointed to bring victuals to us and our army in the said parts of Scotland, fear to enter the sea, without a great fleet and many armed men.”<sup>376</sup>

Such attacks were hindering the English war effort. Over the course of 1309 Edward wrote several times to the count of Flanders to complain that sailors from the Hanse had been using Flemish ports to arm and fit out ships to attack English shipping, mainly off the Scottish coast. The king requested that action be taken by the counts against these men according to the details supplied by his envoy.<sup>377</sup> On 27 October 1309 Edward claimed to have received reports that Scots and their German accomplices were acquiring victuals and arms in Flanders to transport to Scotland, “by which they (our enemies and rebels) are supported and much strengthened”. Edward requested that the count prohibit his subjects, under threat of grave penalty, from supplying or receiving these men.<sup>378</sup>

The issue of harbouring the king's enemies extended to the use of friendly ports after attacks on English merchants. In April 1315 the English crown wrote to William, count of Hainault, Holland and Zealand to complain that two Scottish ships

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<sup>376</sup> *Foedera*, III, pp. 230-1.

<sup>377</sup> *Foedera*, III, p. 131.

<sup>378</sup> *Rotuli Scotiae in Turri Londinensi et in Domo Capitulari Westmonasteriensi Asservati. Temporibus Regum Angliæ Edwardi I. Edwardi II. Edwardi III; Temporibus Regum Angliæ Ric. II. Hen IV. V. VI. Ed. IV. Ric. III. Hen. VII. VIII.*, (eds.) D. MacPherson, J Illingworth, 2 vols, (London, 1814-19), I, p. 78.

involved in the capture and robbery of William Getour's ship and cargo, killing all but one of the crew, had then sailed to Middleburg in Zealand where they remained at the time of writing. Edward expected William to take strong action against these men. The count in his response sought to distinguish between lawful belligerents and those he considered to be robbers. The count stated that letters patent of the king of Scotland had been found on board one of the ships; these letters stated that the crew were his faithful men who had been sent to sea to attack his enemies. As a result, the count claimed that he was powerless to act: he was not at war with the king of Scotland and had not received any complaints of robberies committed by them upon any merchant, nor had goods other than their own arms been found on board. In contrast the crew of the other ship had been "punished without mercy". According to the count, these men had been guilty of many robberies and homicides at sea; English goods had been found on board, which had been returned to their owners upon production of the relevant sign indicating ownership (*intersignum*). The distinction was clear: it was not appropriate for him to intervene in wars that were not his concern; however those men who rob at sea, in terms that echoed Cicero, "the whole world knows it is useful and expedient to everyone, especially merchants, that such men be punished according to their crime."<sup>379</sup> This was an assertion of 'neutrality' on the part of the count, a position of non-interference.

As we can see from the complaints of the English crown, it was not just Flemings who were felt to be aiding the Scottish war effort. Sailors from the Hanse appear to have been responsible for a number of attacks on English ships in this

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<sup>379</sup> *Bronnen*, I, p. 153, *C.C.R.*, 1313-18, p. 227.

period, as well as supplying the Scots with arms and victuals. In January 1311 the mayor and burgesses of Grimsby petitioned the king on behalf of William Tollere whose goods had been captured by men of Westphalia. The petition does not provide the date of the robbery, but complains over the delay of the archbishop of Cologne in providing satisfaction to Tollere.<sup>380</sup> In August 1311 Sir Henry Beaumont complained that his ship and goods, valued at over £500, had been captured at sea by men from Lubeck, Staveren, Campe, Groningen, Rostock, Hamburg and Stralsund.<sup>381</sup> Beaumont, an Anglo-Scottish noble, was a significant figure in the war against the Scots. Walter of Bayeux and John Blyton, merchants from Lincoln, complained that they had been robbed of wool and other goods, valued at £1244, 10s, by men from Hamburg, Campe and Lubeck. According to the complaint the goods had been captured on 6 July 1311 after having been loaded in a ship of Sluys in Boston.<sup>382</sup> The fact that the wool had been freighted in a Flemish ship brings to mind reports that the Germans sailors were operating out of Flemish ports, including Sluys, alongside men from Flanders. Again such attacks appear to have prompted a diplomatic hard-line on the part of the English crown. In March 1312 Edward refused to compensate burgesses of Stralsund whose ship had been burnt at Berwick by the admiral of the fleet John Butetourte. Edward expressed his amazement that such a request should be made, “as they who were in the ship adhered to the Scottish rebels against the king and his father, and attacked the king’s faithful subjects, perpetrating many robberies and homicides, until the ship was captured and burnt amongst the king’s enemies by act of war.”<sup>383</sup> The involvement of ships of the Hanse

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<sup>380</sup> SC 8/219/10945

<sup>381</sup> *Hanseakten aus England. 1275- 1412.*, ed. K. Kunze. (Halle, 1891.) p.49

<sup>382</sup> *Hanseakten*, pp. 40-41, 42., *C.C.R.*, 1307-1313, p.452.

<sup>383</sup> *C.C.R.*, 1307-13, p. 451.

in attacks on English merchants may have made the crown less inclined to provide restitution.

The suggestion was clear; these attacks were in direct assistance of the Scots and had been long running. On 25 October 1314, Adam le Clerk appeared in the Guild Hall of London to make complaint that his ship, *la Plente*, carrying salt and lampreys for the supply of the king's garrison in Perth, had been captured off the Norfolk coast by men from Griefswald, Stralsund and Lübeck. According to the complaint, the goods had subsequently been sold in Aberdeen, whilst the ship was taken to Stralsund. Such attacks clearly compromised the security of the supply route. Perth had been blockaded by the forces of Scotland since 1311 and was finally captured by Robert the Bruce in January 1313 largely due to the success of this blockade.<sup>384</sup> The German mariners had inadvertently or otherwise helped to enforce this blockade by preventing the arrival of victuals. It had been the failure to supply this garrison that had led to its surrender. The offence had been further aggravated by the sale of the goods in Scotland; thus supplies intended for the king's forces had ended up in the hands of his enemies. With such supplies at a premium this registered as a double strike at the English war effort.

In light of these attacks, as well as those of the Scots,<sup>385</sup> there was a clearly felt need to protect English merchant shipping. However, as so often was the case the initiative for this came from the maritime communities themselves, rather than the

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<sup>384</sup> Rodger, *The Safeguard of the Sea*, p. 87.

<sup>385</sup> Such attacks, by their very nature, leave less trace in the records, for there were no efforts to seek restitution for enemy action.



crown. In July 1313, men from Kingston-upon-Hull and Barton-upon-Humber were granted licence to fit out two ships, at their own expense, to set out against the king's enemies. The request, it was claimed, had been prompted by their losses at sea. According to their petition five of their ships had been attacked at sea, just off the coast of East Lothian by "the king's Scottish enemies and rebels and adherents of those enemies" who killed certain crew members and "have made after the manner of thieves and pirates violently taken and carried away goods and chattels of the complainants, to the value of £1000." Under the terms of their licence the petitioners and their ships were permitted "to set out, as often as they shall see fit, against his [the king's] enemies, rebels and adherents." In addition all persons covered by the commission were required to lodge security with the sheriff of Lincoln that they will not inflict any injury upon those under the king's peace and allegiance.<sup>386</sup> In August 1314, the barons of Winchelsea were given licence to fit out two ships to guard the coast and protect English merchant shipping from Scottish attacks. The town was warned, under penalty of forfeiture, not to attack those ships under the king's friendship.<sup>387</sup>

The crown had been conscious of the potential dangers of such cruising expeditions; it had issued warnings not to attack those of the king's friendship and, in at least one case, taken a bond to attempt to keep the commissioners to the terms of their licence. However, despite this warning, within a month of the licence being granted to the men of Winchlesea, their actions were attracting foreign complaint. Merchants from the Hanse towns of Lübeck and Dortmund complained that their

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<sup>386</sup> *C.P.R.*, 1313-17, pp. 8-9.

<sup>387</sup> *C.P.R.*, 1313-17, p. 162.

ship, loaded with iron, steel, copper, fish and various other goods valued at £1,052 in the port of Zwin in Flanders, had been attacked and robbed by *The Saint John* of Rye, one of the ships fitted out by Winchelsea.<sup>388</sup> In another case, merchants from Dordrecht accused men from the same ship of boarding their ship in the port of Orwell, robbing goods which they had brought to England to sell. Similarly, merchants from Ypres granted safe conduct at the request of the French king complained that their ship had been robbed by the same men in the port of Harwich. These attacks were discouraging foreign merchants from trading in England, as “many persons, under pretence of suppressing the King’s Scottish enemies, have upon the sea attacked merchants coming with their goods to England to trade, and also in certain ports along the coast, killed some of the merchants and their servants, taken and imprisoned others, carried away wares to diverse places within his jurisdiction (the sheriffs).” Sheriffs throughout England were ordered to arrest all such “ill-doers together with the goods and wares taken from the merchants, and to detain them until the king with the council shall determine what is to be done.”<sup>389</sup>

If one of the main purposes of English naval action was to maintain supply lines, then the actions of these fleets were clearly counter-productive. At a time when victuals were at a premium, it was not in the interests of the English war effort to deter potential suppliers. Yet when one considers the case of the Hanse ship, attacked within a month of the commission being issued to the town of Winchelsea, we can perhaps detect some justification for the attack. The ship had been loaded with iron, copper and various foodstuffs, all items with potential strategic application, in a port

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<sup>388</sup> *Hanseakten*, p. 49.

<sup>389</sup> *C.P.R.*, 1313-17, p. 235.

(Zwin) previously identified as having supplied the Scots. In addition, as we have seen, ships from the Hanse had been involved in several attacks on English shipping. It is possible that under such circumstances the German ship was considered by the captors to be an adherent to the Scots and as such covered by the terms of their commission. Frequent attacks on English shipping, as well as several vessels supplying arms and victuals to the Scots, had blurred the line between friend and enemy.

Whilst the English crown expected its allies to prevent their subjects from aiding the Scottish war effort, it could not presume the obedience of its own subjects in this matter. Over the course of the Anglo-Scottish conflicts it was forced to adopt a variety of measures to prevent English merchants from providing the Scots with arms and victuals. In March 1310, two royal clerks were appointed to inquire into reports that merchants from various northern counties had been supplying arms, corn and other necessities to the Scots since mid-August, 1309.<sup>390</sup> In November 1310 sheriffs, mayors and bailiffs of ports throughout the realm were ordered to publicly proclaim that under threat of forfeiture, no “victuals, horses, arms or whatever else” were to be carried to the king’s enemies. To enforce this prohibition, sheriffs were to appoint four “discreet and legal men” in each town.<sup>391</sup> In November 1314 sheriffs were once again ordered to publicly prohibit the export of victuals to the king’s enemies. According to the mandate various people, English as well as Scots, were purchasing victuals on the pretence of supplying the king’s forces, but instead supplying the Scots. To prevent this, sheriffs were to take an oath from all merchants

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<sup>390</sup> *C.P.R.*, 1307-13, p. 256.

<sup>391</sup> *Foedera*, III, pp. 233-4, *C.C.R.*, 1307-13, pp. 377-8.

wishing to export victuals: the merchants were to pledge not to carry those victuals to the Scots. Merchants were required upon their return to provide letters from the keeper of the town where the cargo had been unloaded testifying that the victuals had been delivered to the king's men. In addition inquiries were to be made and all those found breaching the proclamation were to be arrested.<sup>392</sup>

Continued efforts were made by the crown to enforce these prohibitions: in March 1315, the justice Adam Limburg was commissioned to investigate reports that certain ships in the port of Boston containing armour and victuals were preparing to sail to Scotland. Limburg was to search these ships and establish the mariners' intentions; any goods suspected to be destined for Scotland were to be confiscated and converted to the use of the king. Limburg's initial investigation found that a ship called 'le Paschday', which belonged to two Boston merchants, was to be sent to Scotland to supply the king's enemies. The Boston merchants appealed against this verdict and on 6 April three justices were commissioned to make further inquiries into the matter. Towards the end of April the justices Robert Sandale, Thomas Playze and Nicholas Bolingbroke were appointed to inquire into allegations that diverse merchants in the counties of York and Lincoln were conveying corn, victuals, armour and other necessities to the Scots. Various indictments were laid down on the strength of this commission, with offenders arrested and held in prison. In September 1315 further measures were put in place; sheriffs, along with the earl of Chester, various justices and the warden of the Cinque Ports were ordered once again to prohibit the export of victuals throughout their jurisdictions. Two men were to be

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<sup>392</sup> *C.P.R.*, 1313-17, pp. 201-2.

appointed in each port and other places where ships could leave or return to ensure that all victuals that left the realm were consigned to Berwick and not to the Scots. Once again all ships were required to bring back patent letters from the port where their cargo was unloaded testifying to this. The king's ministers were to arrest all ships returning to port without the required documentation. Such supervision was applicable to aliens as well as the king's subjects; merchants from France were permitted to take corn and other victuals overseas, except to the Scots, provided they held the king's licence. In January 1316 Johan Witte, a merchant from Lübeck was accused of breaking the prohibition on the export of victuals, arms and commodities to Scotland. According to the charge, Witte had bought wool captured at sea and fraudulently placed his own sign over that of the lawful mark of the owners (*signa legalium mercatorum illarum lanarum (re) perta maliciose deponere suoque signo proprio fraudulenter consignare*). This wool had then been taken to Scotland and sold to the king's enemies. In this particular case the merchant was found not guilty by a mixed jury under oath.<sup>393</sup> That enemy goods were being fraudulently coloured as those of friends was a constant fear throughout the conflict; this extended to those goods captured from English merchants at sea.

Despite the best efforts of the English authorities the problem persisted: on 26 December 1315 Sandale and Playze, along with John of Doncaster, were commissioned to hear and determine cases involving the export of victuals contrary to the prohibition; they were instructed to arrest and imprison the guilty, and to levy

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<sup>393</sup> *Calendar of Letter Books preserved among the Archives of the Corporation of the City of London at the Guildhall*, p.60, *Hansisches Urkundenbuch*, ed. K. Höhlbaum et al, 11 vols (Halle and Leipzig, 1876-1939), II, p.110.

finer proportionate to the offence. It was not just in the northern counties that the problem persisted. On 16 April 1317, Simon de Montacute, John de Erle and John Merton were again commissioned to hear and determine reports that corn, victuals and arms were being exported from the counties of Devon, Dorset, Cornwall, Somerset and Gloucester contrary to the proclamation, certain men had already been imprisoned as a result of a previous commission. At the start of 1318 sheriffs were once again ordered to publicly prohibit the export of corn, meat or ale without licence: “as the king is given to understand that, notwithstanding his late prohibition to this effect, corn and other victuals are taken out of the country to his Scottish enemies.”<sup>394</sup> In April 1319, bailiffs of ports throughout England were ordered not to permit the export of victuals by alien merchants “in any wise” and to take security from any native merchants wishing to export victuals, pledging upon their oath not to supply them to the Scots. Again, they were required to return with sufficient letters testifying where they had discharged their cargo, “as the king understands that native and alien merchants, under colour of his permission that corn and victuals might be exported upon the provision of security been given that they would not be taken to Scottish rebels, carry great quantities of corn and victuals from that port to the Scots, asserting that they are carrying the same to parts beyond the sea.”<sup>395</sup>

At the start of 1315, after a series of attacks across the border by Robert Bruce in the aftermath of Bannockburn, Edward wrote to the count of Flanders in a further attempt to persuade him to refrain from aiding the Scots. After a recitation of recent atrocities committed by the Scots, Edward complained, “we are given to

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<sup>394</sup> *C.C.R.* 1313-18, p. 588.

<sup>395</sup> *C.C.R.*, 1318-23, pp. 132-3.

understand from several reports that frequently our said enemies and adherents are harboured in your land of Flanders and in that same place having great subsidy and succour of victuals, arms, iron, steel and other necessities that they take with them to the said parts of Scotland, hence much comforting and strengthening them in their wickedness.” Edward requested that the count prevent his subjects from providing shelter or supplies to his enemies in future.<sup>396</sup> Such co-operation does not appear to have been forthcoming. On 27 March 1315, more direct action was proposed; John Botetourt was ordered to organise a fleet drawn from Yarmouth to prevent thirteen Scottish ships, with arms and victuals intended for Scotland, from leaving the port of Sluys.<sup>397</sup> In the summer of 1315 the diplomatic situation was radically altered as a result of the count of Flanders’s breach with the king of France. In July 1315 the king of France requested the expulsion of Flemings from England. Sheriffs were ordered to ensure that all Flemings had quit the Realm within forty days of 14 September (24 October). In addition from this point Flemings were not to be supplied with men-at-arms, horses, arms or victuals.<sup>398</sup> Over the following months efforts were made to enforce this expulsion. On 9 November, the sheriff of Lincoln, amongst others, was ordered to inquire with two knights of his bailiwick in the cities and burghs of his county, by oath of good and loyal men into any remaining Flemings resident past the forty day limit. The sheriff was to arrest all such Flemings with their goods, making an indenture with the two knights containing the names of those arrested and the value of their goods.<sup>399</sup> Despite this policing effort, in March 1316 the constable of France complained that victuals were daily being exported from England into Flanders and that the keepers in the sea ports appointed to prevent this had been

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<sup>396</sup> *Rotuli Scotiae*, I, p.136.

<sup>397</sup> *C.C.R.*, 1313-18, pp. 218-9.

<sup>398</sup> *Foedera*, III, pp.488-9, pp. 525-8, p. 533.

<sup>399</sup> *Foedera*, III, p. 541.

negligent in their duty. In response, the English crown asserted this was not the case, and in fact English merchants had suffered at the hands of the Flemings through various attacks at sea.<sup>400</sup> Perhaps the English were realising how difficult it was to ensure their subjects followed their sovereign's conventional obligations. The Flemings had become the Scots and the English had become the Flemings.

The Flemings were permitted to return to England in December 1316 as a result of the reconciliation between the king of France and the count of Flanders. The renewal of diplomatic relations between England and Flanders brought with it a number of complaints from merchants injured at sea. In fact, as hinted at by the reply to the French constable, there had existed a state of near war at sea between England and Flanders during the year or so of the Flemish exclusion from England. Indeed, the English crown had even provided naval support against Flanders. On 13 July of 1315, Littlebury and Sturmy had been appointed captains of seven ships sent to sea "to bridle the malice of the Scots", providing for the safety of merchants.<sup>401</sup> However, on 18 September, at the request of the king of France, this fleet was re-directed against the Flemings with instructions to injure them in any way possible.<sup>402</sup>

In such circumstances it is not surprising that attacks at sea appear to have increased. Aymer de Valence, the earl of Pembroke, complained that his ship containing cloth for sails, a barrel full of helmets, habergeons and other armour, wine and wheat had been captured by three Flemish ships 'arrayed for war' on 1 August

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<sup>400</sup> *Foedera*, III, p. 555.

<sup>401</sup> *C.P.R., 1313-1317*, p. 334.

<sup>402</sup> *Foedera*, III, pp. 535-6.



1316 off the Sandwich dunes. Valence was at that time the king's lieutenant in Scotland so in all likelihood the cargo was intended for the king's army in Scotland.<sup>403</sup> In October 1316, the Flemings captured a ship belonging to Thomas de Airmyn whilst it was *en route* to Scotland with the king's victuals.<sup>404</sup> Around the same time wool belonging to merchants from Lynn was captured in a river near Gravelines; the captors claimed the wool belonged to merchants from St Omer and Calais. In August 1317 the count of Flanders was compelled to write to Edward in an effort to absolve burgesses of Ypres from claims that they had aided or perpetrated attacks on English ships during the war between France and Flanders.<sup>405</sup>

In the majority of cases the captured goods had some sort of strategic application; this was no coincidence. We will recall that upon the expulsion of the Flemings from England, it was forbidden for Englishmen to provide arms or victuals to the Flemish. This moratorium coincided with a period of famine in Flanders. In the face of these problems, the count of Flanders was forced to resort to extraordinary measures in an effort to supply his county. John Crabbe was appointed admiral of a fleet of ships put to sea on 24 February 1316 to capture victuals from the enemies of the count as prize of war.<sup>406</sup> Within a week of this commission Crabbe had captured a Yarmouth ship and its cargo of cloth, canvas, iron and nuts.

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<sup>403</sup> *C.C.R.*, 1313-18, pp. 563-4.

<sup>404</sup> SC8/31/1522.

<sup>405</sup> *Foedera*, III, pp. 660-1.

<sup>406</sup> *C.C.R.*, 1313-18, p. 448; *Calendar of Inquisitions Miscellaneous*, 7 vols (London, 1916-1969) II, no.358, According to an inquisition taken at Yarmouth Robert count of Flanders, "caused to be elected and sent to sea in the 9<sup>th</sup> year of Edward II, with the common consent of all those of his county, and at their cost, a fleet of ships with John Crabbe as admiral, under orders to acquire victuals and other necessities for the sustenance of the men of the county, where there was great need and famine, from enemies as prize of war and from others for payment." This inquisition was made by a jury of Flemish merchants resident in the town, who refused to affix their seal to the judgement for fear of death and disinheritance.

According to the complaint of the Yarmouth merchants the ship, having been loaded with the goods in Rouen, after leaving port had been attacked off the coast of Dieppe by “certain robbers and pirates of the count’s power.....with the assent of each and all of the count’s power.”<sup>407</sup> It seems the phrase “with the assent” had been used advisedly. In a similar case, Aymer Insula, a merchant of Bordeaux, complained that having loaded a ship called *Bona Navis de la Strode* with 86 tuns and 25 pipes of wine, his property had been seized off the Kent coast by John Crabbe and his accomplices, near the Isle of Thanet. According to a subsequent inquiry, the wine had found its way into the possession of the count of Flanders, who had given the ship to the lord of Meldingham.<sup>408</sup> In another case, Gauselin and Raymond Pagani two Gascon merchants alleged that their ship loaded with 22 barrels of wheat and 109 tuns of wine in the port of Bordeaux had been captured near Sandwich by certain Flemings acting with the assent and maintenance of the count of Flanders (this seems to have been in reference to the count’s recent commission to seize victuals at sea). The wine and wheat had then been taken to the port of Zwin in west Flanders.<sup>409</sup> In these cases the captured goods had been loaded in French ports at a time of Franco-Flemish conflict, and on the face of it would have fitted the terms of Crabbe’s commission. Bordeaux in particular occupied an ambiguous position under English control but nominally under French sovereignty, however one could say the Flemish position was even more ambiguous in relation to the French Crown.

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<sup>407</sup> *C.C.R.*, 1313-18, p.448; *C.I.M.*, II, no.358.

<sup>408</sup> *C.C.R.*, 1313-18, pp.387-8, pp. 456-8, p. 536, p. 591-2; *C.C.R.*, 1318-23, p. 192, pp. 262-3, p. 364.

<sup>409</sup> *C.C.R.*, 1313-18, pp.385-6.

The name of John Crabbe appears in a number of English complaints over the course of this period, frequently acting with Scottish accomplices; he would even go on to direct the Scottish defence of Berwick in 1318-19. Crabbe was a figure of some notoriety in the first half of the fourteenth century and more than any other naval figure fits the template of a sea-borne mercenary, acting in the service of a variety of lords. Indeed Crabbe would serve under Edward III in the opening years of the Hundred Years War.<sup>410</sup> The first mention of Crabbe in connection with attacks on English shipping occurs in May 1310 when he was named among various Flemish ‘malefactors’ alleged to have captured cloth, silver, gold and jewels valued at over £2000 belonging to Alice Hayles the Countess Marshall.<sup>411</sup> In May 1313, whilst in the midst of negotiations with Flanders, the king wrote to the count to complain that Crabbe and his associates were continuing to rob and kill English merchants at sea.<sup>412</sup> The count replied that he knew nothing of Crabbe’s outrages, as he (Crabbe) had been banished from Flanders as a result of murder, the count promised to break him on the wheel if he was able to capture him. Although the term is not used here such a description fits our modern day picture of the pirate as an outlaw, one for whom no sovereign is responsible. The count at various stages sought to distance himself from the activities of Crabbe, denying complicity or assent in his actions. The extent to which the count of Flanders should be considered responsible for the actions of his subjects, particularly when he claimed they had been outlawed, was a matter for debate. However, in the most recent cases it appears Crabbe had been reconciled with the count and indeed had been acting under his commission in his attempts to obtain victuals for the Flemish war efforts. The count denied all

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<sup>410</sup> Lucas, H.S., ‘John Crabbe: Flemish pirate, merchants, and adventurer’, *Speculum*, 20 (1945), p.346.

<sup>411</sup> *C.C.R.*, 1307-13, pp. 267-8.

<sup>412</sup> *Foedera*, III, p. 404.

knowledge of the attacks but promised to punish the culprits if they were found in his jurisdiction. Edward responded with astonishment, stating that Crabbe, the principal culprit, was notorious and well known to be a subject of the count.<sup>413</sup>

The resumption of diplomatic relations did not bring a halt to attacks at sea. Of particular concern was the ongoing feud between Flemish sailors and their counterparts from the Cinque Ports. In an effort to combat this problem, the archbishop of Canterbury and the treasurer, the bishop of Ely, were sent to the Cinque Ports in August 1317 to restrain their sailors from inflicting harm upon Flemish merchants. One of the more intriguing cases involved the capture of a ship containing wine, linen cloth and canvas belonging to three London merchants. According to an inquisition conducted by the sheriff of Norfolk and Suffolk the ship had been captured whilst at anchor in Margate, by various named Flemings, who had killed all on board except for a boy and a dog. The ship and the goods had then been taken to Zwin and detained there to the additional cost of the merchants of £100. The wine found in the ship had been delivered to John Tripet of Male on behalf of the count of Flanders; Tripet retained the dog and the ship's charter party. The ship's boy had remained in Flanders for nearly a year, residing initially with the ship's captors and then with the bailiff of Sluys. Perhaps most interesting of all was the fate of the ship. According to the inquiry one of the robbers, Quintin Lempescue, sold it to his brother John who repaired it in order to disguise it.<sup>414</sup> These remarkable details, if true, indicates how small the world of European trade could be. Even once a ship was returned to a Flemish port it was still felt to be necessary to disguise it. In the autumn

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<sup>413</sup> *C.C.R.*, 1313-18, p.536.

<sup>414</sup> *C.C.R.*, 1313-18, pp. 593-5.

of 1317 there were a series of discussions over such outstanding cases, including the still unresolved issue of Crozon.

During the course of these negotiations a renewed effort was made to dissuade Flemings from trading with the Scots. In a letter of September 1317, Edward requested that the count of Flanders forbid his subjects from aiding the Scots with men, arms or victuals, or from communicating in any fashion with them. However, with their most recent expulsion fresh in the mind, the Flemings were in no mood to restrict their potential markets. Agreement was reached on a general safe conduct but no undertaking was given by the count to prevent his subjects from trading with the Scots; the agreement does not appear to have been contingent on any such guarantee. It was proclaimed on 20 October 1317 that Flemings were to be permitted safely to enter England in order to trade, a reciprocal announcement having been made in Flanders.<sup>415</sup> Of course, announcing a ban on harming Flemish merchants was not enough to make it so: such a declaration was more important for its legal consequence with regard to future attempts to seek redress, rather than its prescriptive and preventative power. The effect of the agreement was put to the test within a week of its announcement. On 23 October, a ship called *Doveland* of Zierikzee in Zeeland was seized off the coast of Norfolk whilst *en route* to Zwin in west Flanders. According to an inquisition held by John Howard, the sheriff of Norfolk and Suffolk, the ship and crew had been arrested as ‘pirates, robbers and adherents to the Scots’. A further inquiry held on 21 December 1317 ‘found’ that the shipmaster William de Wolde and his crew had previously attacked and robbed a

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<sup>415</sup> C.C.R., 1313-18, p.571.

ship from Salthouse in Suffolk, killing twenty of the crew. It was also ‘found’ that the same men had attacked a ship from Cley in Norfolk, killing nineteen of the crew. In addition, it was alleged that Wolde and his companions had supplied the king’s Scottish enemies with victuals and other necessities. Outlined in the initial judgement were several grounds for condemnation of the ship, the goods had been travelling from Scotland, the crew had previously supplied the Scots with necessary goods and indeed had been involved in attacks on English shipping. The sheriff of Norfolk was ordered to keep these men in custody and have them appear at Westminster 26 January 1318.<sup>416</sup> After this point no further mention is made of the ship’s crew. It is unclear if these are the same Dutch ‘pirates’ , from Brill and Zierikzee, who were accused of capturing the *Margaret of London* on 26 May 1317 on its way to Berwick with salt, grain and malt.<sup>417</sup>

The ship’s cargo of wool belonged to merchants from Bruges, two of whom, John Hoeft and Walter Zegard, had been on board the ship at the time of capture. Also found on board was a cocket seal dated 12 October 1317 detailing the payment of custom on the wool at Aberdeen. We will recall that the payment of customs in Scotland by Flemings was apparently a means of disguising goods captured from English merchants. On 6 November 1317, the count of Flanders wrote to request the ship’s release, claiming it had been arrested for the sole reason that it had come from Scotland, “notwithstanding the recent agreement that merchants of both countries may safely enter either [place] no matter where they come from.”<sup>418</sup> According to the

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<sup>416</sup> *C.I.M.*, II, no.357.

<sup>417</sup> *Bronnen*, I, p.177.

<sup>418</sup> *C.D.S.*, V, p.244.

letter of request, the merchants had set sail immediately after the proclamation of general safe conduct trusting in its protection. Attached to the count's letter was one from the burgomasters and échevins of Bruges testifying that the goods belonged solely to merchants of their town and not to Scots or any other foreign merchants.<sup>419</sup> The count wrote again on 15 January 1318, requesting the release of the merchants and their goods; "As he understands that certain Englishmen seek ways to rob these merchants of their goods."<sup>420</sup> In the meantime John Salmon, the bishop of Norwich, sought to intercede on behalf of the Flemish merchants at the request of the authorities of Bruges. On 2 December 1317 Salmon had written to the archbishop of Canterbury requesting an audience for Nicholas de Leyke acting as proctor for the merchants. Salmon went on to advise the release of the ship and goods as they had been seized against the truce lately concluded. Salmon considered the fact the goods had been heading to Scotland (sic) should not be a bar to their restitution.<sup>421</sup>

The bishop of Norwich's involvement in the recent negotiations with the Flemings had led him to conclude that "they would never consent to refuse the Scots entry to their lands or to prevent their merchants from trading in Scotland."<sup>422</sup> It seems that the king's council, following Salmon's advice, and once it became clear that the Flemings could not be dissuaded from trading with Scotland, it was not felt to be worthwhile to press the point. On 12 December 1317, the sheriff of Norfolk was instructed to release the ship and its cargo "in order that the treaty between the king and the count for the reform of damages between their men may be proceeded

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<sup>419</sup> *C.D.S.*, V, pp.244-5.

<sup>420</sup> *C.D.S.*, V, p.245.

<sup>421</sup> The goods had in fact been heading to Zwin in Flanders from Scotland.

<sup>422</sup> *C.D.S.*, V, pp. 244-5.

with.”<sup>423</sup> Despite this order the ship was not immediately released and on 4 January the sheriff was ordered to take the ship and cargo into his custody; the sheriff was to assign a trustworthy man to oversee its safekeeping along with someone appointed by the Flemish merchants. On 26 January 1318, the sheriff was ordered to personally bring the ship and cargo to Westminster on 8 February to enable an inquiry into the arrest. The sheriff was instructed to bring the letter of cocket along with other documentation found on board to help establish the truth of the matter. Finally, on 3 March 1318, the decision was taken to release the ship, goods and merchandise by the king’s special grace in an effort to foster good relations between England and Flanders. The count of Flanders was informed that this judgement was in spite of the fact that “for cogent and probable causes we can in many different ways molest and injure their bodies and goods as pirates (*piratas*) and adherents to our enemies the Scots.”<sup>424</sup>

The English crown was not prepared to concede its right to confiscate the goods of Flemings consorting with the Scots, but did not wish to jeopardise ongoing negotiations over the resolution of outstanding disputes. Indeed this point was made in the mandate to port officials informing them of the decision. Decisions on prize were frequently caught up with wider diplomatic concerns and by releasing the goods by the grace of the king negotiations could continue without setting a binding precedent. These negotiations continued over the summer of 1318; the king’s clerks Alexander le Convers and Egidio de Hertebergh travelled to Flanders to arrange a date for further discussions on the resolution of all outstanding cases. Originally set

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<sup>423</sup> *C.C.R.*, 1313-18, p. 517.

<sup>424</sup> *Bronnen*, I, pp. 167-8.



for the 22 July the meeting was postponed until 29 September, as Edward was in the north of England “curbing the evil of the Scots.”<sup>425</sup> In the meantime, on 25 June, a prohibition was issued to various English ports upon inflicting harm on Flemish merchants; reference was made to disputes that had arisen between sailors from various English ports, including Faversham, and sailors from various Flemish ports, including Wissant. The general safe conducts were renewed on 13 July, lasting until 25 December 1318; this was proclaimed in ports throughout England and Flanders. Again, the protection afforded by the proclamation does not appear to have been conditional upon abstention from trade with the Scots. This is indicated in a case emerging soon after the issuing of the second conduct. On 10 October William Rydel and Richard Emeldon were commissioned to inquire into the complaint of several burgesses from Bruges, including Michael Crakebeen, reputed to be the nephew of John Crabbe. The merchants had stated in their petition that the ship had been captured off Newcastle-upon-Tyne, contrary to the recent proclamation. The ship contained wool, hides and other merchandise bought in Scotland. The fact that the ship had been loaded in Scotland does not appear to have been a barrier to restitution at this point in time.<sup>426</sup>

The opening months of 1319 witnessed preparations being made to campaign against the Scots once again. As part of these preparations, on 20 March the bishop of Norwich and the earl of Pembroke were appointed to organise naval support from ports and towns throughout England. The stated purpose behind this naval assignment was twofold: firstly to prevent victuals and arms reaching the Scots,

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<sup>425</sup> *Foedera*, III, p. 718.

<sup>426</sup> *C.C.R.*, 1317-23, pp. 284-5.

secondly to ensure safe passage for alien merchants wishing to enter the realm with supplies for the benefit of the king. Whilst these two aims were not mutually exclusive they frequently ran counter to each other. As we have seen various accusations had been made against friendly aliens supplying the Scots with provisions and arms. We have also witnessed a number of attacks on ‘friendly’ ships carrying such supplies. The presence of such a cruising fleet would almost inevitably lead to an increase of attacks on ‘friendly’ shipping, as was the case with the commissioners of 1314. Given their previous involvement in supplying the Scots, Flemish ships were unlikely to be given the benefit of the doubt; a point constantly made in diplomatic correspondence dealing with the matter. The difficult task of enforcing a naval blockade upon the Scots had been made all but impossible by the loss of Berwick in the spring of 1318. Now more than ever it was necessary to stop such supplies at source. To this end renewed diplomatic efforts were made to persuade various neighbouring authorities to prevent their subjects and citizens from supplying the Scots. On 25 March the English crown wrote to the count of Flanders, along with the duke of Brabant and various towns in the Low Countries including Ypres, Mechelen and Bruges. After a list of recent Scottish atrocities, attention was drawn to the recent sentence of excommunication against the Scots and their adherents. It was stated that the Scots had been “cunningly seeking support from neighbouring nations on every side.” It had, the letters continued, been reported that Scots had been received in their lands and supplied there with arms and victuals. The letter ended with a threat; previously clemency had been shown to those arrested in the company or supplying them with victuals, in future they will be unable to escape the stiff penalties of association. To demonstrate the seriousness of this threat reference was made to the recent appointment of Keepers of the Sea (*Custodes supra*

*Mare*). This appears to have been an *ad hoc* appointment rather than the creation of a new office. In this case keeping the sea seems to have referred primarily to preventing supplies reaching the Scots.<sup>427</sup>

The response to the English crown's appeal varied. The duke of Brabant responded in positive terms. He asserted that Scots were not harboured or received in his land, at least to his knowledge. To help ensure this, proclamations had been made in towns throughout his duchy warning his subjects not to receive those of Scotland or to supply them with any commodities or merchandise that would strengthen them in their war effort. It was left unsaid whether they were permitted to supply the Scots with merchandise that would *not* strengthen their war effort. It was also stated that Scots prominent in Brabant, i.e. with too much property, would be arrested.<sup>428</sup> This response was echoed by the municipal authorities of Mechelen in Brabant who added they were not inclined to aid or favour the Scots as their own citizens had suffered "at sea and elsewhere" at their hands. It was requested that as they did not trade in Scotland, special favour be accorded to their merchants in England.<sup>429</sup> The Brabantine response was interesting, demonstrating a clear desire to identify themselves with the English cause, indeed making common cause as victims of the Scots, identified here as the other.

The Flemish response was more equivocal. Whilst seeking to distance themselves from the actions of the Scots, the Flemings, in what approximated to a

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<sup>427</sup> *Foedera*, III, pp. 759-60.

<sup>428</sup> *Foedera*, III, pp. 766-7.

<sup>429</sup> *Foedera*, III, p. 766.

plea for neutrality, were only prepared to give limited assurances. The *échevins* of Ypres stated that, to their knowledge, the Scots had not been supplied with victuals or arms by any of their citizens. They added that they had not permitted any of the king's enemies or any English goods plundered (*rapta*) by the Scots to be received into their town. However, stressing that their citizens were merchants who lived by trade, the *échevins* stated that it was not within their authority to prohibit communication with the Scots: this pertained to their lord, the count of Flanders. The most they could promise was to counsel and try to persuade their citizens not to enter Scotland or communicate with the Scots, "fully informing them of the perils, temporal and spiritual, if they act to the contrary."<sup>430</sup> The count of Flanders, for his part, stated that as Flanders was common to all nations as a place to trade, to deny merchants the opportunity to trade there would bring about its desolation and ruin. Therefore, the acceptance of Scots into Flemish ports, or presence of Flemings in Scotland should not be taken as complicity in their 'crimes', rather only the need to exercise trade.<sup>431</sup> The Flemish response is interesting for its attempt to delineate actions that they considered to be acceptable and those that they considered to be unacceptable. Scots would be permitted to trade in their land, but not to bring English captures to their ports. As ever the needs of commerce were of paramount importance to the Flemings. The count's subjects, and indeed his county as a whole, subsisted through trade. It was therefore necessary that Flanders, as a staple, should be open to all. Such acts should not be held to breach Flemish claims of 'neutrality' and should not be confused with a desire to help the Scots in their war effort.

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<sup>430</sup> *Foedera*, III, pp. 771-2.

<sup>431</sup> *Foedera*, III, pp. 770-1.

The letters of March 1319 read like a unilateral declaration of a change of policy on the part of the English crown, but their immediate effect is unclear. In the months following this correspondence, Flemings continued to interact with the Scots, often to the detriment of English merchants. Indeed, Flemings were not only complicit in Scottish ‘crimes’, often they were the main offenders. One such case involved the capture of a ship with a cargo of wheat and cloth belonging to John Thorning and Thomas Melcheburn of Lynn. Thorning and Melcheburn were involved in the transport of victuals to the king’s garrisons in Scotland (although on this occasion the goods were being sent to Gascony). According to their complaint, the ship had been captured by men from Bruges, Sluys and Damme off the coast of Norfolk, killing all but two of the crew. The ship and cargo had then been taken, along with the two remaining crew members, to Berwick-upon-Tweed, now in Scottish hands. One of the captives had subsequently been sold to a merchant from Zealand for £20, the other remaining in prison in Berwick. The capture of victuals and the placing of English merchants in enemy hands would surely be considered active support of the Scottish war effort.<sup>432</sup> Such actions, alongside the equivocal Flemish response to the English request in March 1319, clearly contributed to a hardening of the English attitude towards Flemings, making a mockery of the claims of ‘neutrality’ the authorities at Bruges and the count of Flanders had made.

Towards the end of 1319 a series of writs were issued ordering the arrest of Flemish goods in those cases where justice had still not been provided to English

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<sup>432</sup> *C.C.R.*, 1318-22, pp. 216-217.

merchants.<sup>433</sup> Such arrests clearly represented a loss of patience with diplomatic negotiations on the part of the English crown. This frustration with the process surrounding the settlement of outstanding disputes, alongside continuing attacks in co-operation with the Scots, may have hardened the resolve of the English crown not to tolerate Flemish communication with the Scots. This change in policy was reflected in at least two cases subsequent to the letters of March 1319. In February 1320, the king refused the request of the count of Flanders to release Perrottus Loef, a burgess of Sluys, and his accomplices who had apparently been captured at sea in the company of “Scottish Rebels”. Sluys was a port implicated in various activities harmful to the English crown. The king referred to his previous leniency and his recent request to the count to warn his subjects of the danger not to communicate with the Scots. Perrottus, it was asserted, had notoriously communicated with the Scots after this warning. The letter concluded, “The king believes that the count would not intercede for Perrottus and his fellows if he were acquainted with the malice perpetrated by them against the king, and he therefore prays the count to hold him excused in the premises”.<sup>434</sup> A request from the count in June 1320 met with the same response. The count had written to request the release of two Flemish ships, one captured near Newcastle and the other off the coast of Hartlepool. The king replied that he was unaware of any ship having been captured near Newcastle; the ship captured near Hartlepool had been captured *en route* to Scotland containing a number of the king’s enemies on board, and as such ship and the goods contained in it were forfeit to him. Previously travelling to Scotland had not been considered sufficient grounds for capture. In this case the fact that the goods were apparently intended for the Scots was considered sufficient grounds to condemn them and the

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<sup>433</sup> C.C.R., 1318-23, p. 164, p. 165, p. 168, pp. 169-170.

<sup>434</sup> C.C.R., 1318-23, p. 224..

ship as enemy prize. This does not appear to have been the usual practice and is reflective of a renewed diplomatic hard line being adopted towards the Flemings.

This diplomatic hard-line taken towards the Flemings was also reflected in several arrests ordered in August 1320.<sup>435</sup> At least one of the arrests concerned a case that was over five years old. The arrests had been ordered in spite of the fact that on 6 August 1320, Flemish envoys had arranged a meeting for 13 October 1320 with the king's council to discuss the resolution of all outstanding disputes. After so many failed attempts at settlement, it appears the English crown had lost faith in the chances of success through such a process. The arrests were a further means to exert pressure on the Flemings. In spite of the apparent English scepticism, on 14 October 1320 at the Westminster parliament, agreement was reached in the form of an indenture on the means to settle all outstanding disputes between subjects of England and Flanders "since the king of England received the governance of his realm".<sup>436</sup> Those wishing to make a claim were to bring their suit to Westminster on 4 May, 1321. In the meantime the indenture provided safe passage for the subjects of both parties free from arrest as a result of all previous injuries. On 12 December 1320, sheriffs throughout England were ordered to suspend arrests on Flemish goods, this protection lasting until the 4 May 1321. The agreement did not contain any stipulations either restricting or permitting Flemish communication with the Scots. I have found no cases in the period covered by this safe-conduct that show the effect of the indenture on English policy. It is therefore unclear if the agreement represented another reversal of policy on the part of the English crown; whether

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<sup>435</sup> *C.C.R., 1318-1323*, pp. 256-257, pp. 257-258, p. 259.

<sup>436</sup> *Medieval Diplomatic Practice*, I, pp. 414-416, *Foedera*, III, pp. 852-53.

exemption from arrest extended to Flemish ships carrying Scottish goods or vice-versa, or indeed Flemings travelling to and from Scotland.

From at least October 1320, negotiations had been ongoing over a final peace between England and Scotland. Such an agreement would surely resolve the issue of Flemish communication with the Scots as the Scots would no longer be the king's enemies. In the event agreement over a final peace was not reached; instead in March 1321 a truce was agreed providing limited safe passage for Scottish shipping. Whilst not permitted to trade in England, any Scottish ships captured at sea, or driven into port by bad weather, were to be released along with any goods and merchandise found on board.<sup>437</sup> The clause also covered Scots and their merchandise contained in non-Scottish ships. Although short of a final peace it would be expected that such a clause would remove the main contention between England and Flanders. The effect of the clause was put to the test almost immediately but the case involved merchants from France rather than Flanders. In March 1321 a Dieppoise ship was forced into port at Ravenser Odd by bad weather. The ship contained goods belonging to several Scottish merchants including an Ivo of Haddington; the ship, goods and those found on board, including the two merchants from Dieppe, were placed under arrest by the port officials.

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<sup>437</sup> Such clauses were fairly common in Anglo-Scottish truces, stopping short of free passage but providing limited protection to Scottish merchants. *C.C.R.*, 1364-68, p.319, orders the release of a merchant from Aberdeen forced into the port of Grimsby by bad weather. The mayor and bailiff of the town had alleged that he had sold a pipe of wine and had not been forced into the port by storms.



Under the terms of the recently concluded truce, one would have expected the ship and cargo to be released without incident. On 24 March the king of France wrote to request the release of the ship and merchants, which he claimed had been arrested “for the sole reason that they were coming from Scotland.”<sup>438</sup> Philip asserted that the two French merchants had gone to Scotland trusting in the truce between Edward and the people of Scotland (*gentes Scotorum*) and as such should be compensated for their loss. The English response, when it came on 4 May, was less straightforward than might have been expected. It was stated that during the truce between England and Scotland it was forbidden for the king’s [Edward’s] subjects to associate with men from Scotland, and as such it was within his rights to punish the merchant “as adherents to our said enemies.” However, as an act of grace the king was prepared to release the men, ship and goods, but he begged Philip to prohibit his subjects from future communication with the Scots.<sup>439</sup> The release of the Scottish goods found on board appears to have been clearer cut. On 3 May, the bailiffs at Ravenser were instructed to release the goods, once it had been sufficiently demonstrated that they belonged to merchants from Scotland and that the ship had been forced into the port by bad weather. The relevant treaty clause was quoted in the mandate.<sup>440</sup> Paradoxically, due to the obligations of the treaty of perpetual alliance concluded between England and France 1303 the French had less protection than the king’s Scottish enemies. It was the ship belonging to friends and allies that was liable for confiscation and not the enemy goods carried on board, a reverse of what is usually considered the general rule. Despite the release of the ship and merchants, the attitude of the English crown revealed the matter was far from settled.

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<sup>438</sup> *C.D.S.*, V, p. 251.

<sup>439</sup> *Foedera*, III, p. 880.

<sup>440</sup> *Foedera*, III, p. 879.

Even during a period of truce with Scotland it was not prepared to concede the point of free trade with the Scots.

The moratorium on the arrest of Flemish goods was prorogued past 4 May 1321 to enable negotiations to continue between the king's council and the envoys of the count of Flanders. However, these discussions broke down when the count's envoys left the July Parliament of 1321 due to "certain disturbances within the realm".<sup>441</sup> As a result of this breakdown in negotiations a raft of arrests of Flemish goods was ordered throughout England in those cases which had been suspended during the negotiations leading to the October agreement of 1320. One of these cases, that of Jean Bellay, dated from the reign of Edward I; the value of goods to be arrested, £260, indicating he had received no restitution of any sort in the intervening fifteen years. According to the writ ordering the arrest of goods on his behalf the merits of the case had been clearly established (*clarum repubantur*) and agreed upon in a previous meeting between the king's council and the Flemish envoys.<sup>442</sup> In spite of this he had not been compensated for his losses. The strained nature of relations is further indicated by an order on 14 September 1321 to move all Flemish and Scottish prisoners to the Tower of London.<sup>443</sup> Further arrests were ordered in October and December of 1321. Relations between England and Flanders continued to be strained in the opening months of 1322. This continuing estrangement is demonstrated in writs of *claus nolumus* granted to various merchants on 6 April 1322, which continued to bracket the Flemings with the Scots. These writs of protection to deliver

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<sup>441</sup> This parliament witnessed the exile of the Despensers.

<sup>442</sup> *C.C.R.*, 1318-23, p.397,p. 398,p. 401.

<sup>443</sup> *C.C.R.*, 1318-23, p.401.

victuals to York and Newcastle-upon-Tyne were conditional upon the merchants finding security not to deliver the victuals to men from Scotland or Flanders.<sup>444</sup> The bracketing of the Flemish with the Scots suggests that relations had deteriorated to such an extent that those of Flanders were now assimilated with the king's enemies.

The defeat of the earl of Lancaster at Boroughbridge on 16 March 1322, and the consequent easing of Edward's domestic problems appears to have brought a way out of the impasse with fresh diplomatic overtures to the count of Flanders. On 12 April 1322 Edward wrote to express his willingness to enter into an agreement to resume cordial relations between the two powers, in spite of the contempt shown by the count's envoys at the previous meeting. Edward reminded the count that prior to the abrupt departure of his representatives the king was willing to confirm this agreement in order to preserve the peace and prosperity of the two powers (although the terms "had been heavy to us"). In order to foster peace, Edward prohibited once again arrests made on Flemish goods. However, Edward continued, in order for any agreement to be maintained, it was necessary for the count to prevent his subjects from supplying the Scots with arms or victuals. The implication was clear: any guarantees of protection were dependent upon abstention from communication with the Scots.<sup>445</sup> It appears that no such undertaking was received.

The deterioration in relations again manifested itself at sea; the Flemings, far from abstaining from interacting with the Scots, were felt to be actively assisting

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<sup>444</sup> *C.P.R.*, 1321-24, pp. 86-7.

<sup>445</sup> *Foedera*, III, p.947.

them in their war effort. It was reported that Flemings, lying off the coast of England, were attacking and robbing English merchants, “sparing no one of our land, the harmless and those innocent of any crime.” It was further claimed that these attacks were preventing the supply of victuals into England, necessary for the upcoming expedition into Scotland. It was asserted that the Flemings were to be considered “supporters of our enemies the Scots”. Further such support was felt to include direct Flemish involvement in attacks on the English fleet. Indeed, it was feared that the Flemings would take the opportunity of the king’s expedition into Scotland to attack from the rear. On 20 April 1322, various south-eastern ports, including those of the Cinque Ports and Great Yarmouth, were ordered to fit out a naval fleet (*navale subsidum*) and to be prepared to resist the Flemings.<sup>446</sup> This fleet does not appear to have gone to sea. At the start of May efforts to resume cordial relations with Flanders were hampered by reports that the count of Flanders had expelled all English merchants from Flanders. Edward wrote to complain to the count on the matter of the expulsions as well as continued Flemish support for the Scots. The Cinque Ports were put on standby, awaiting the count’s response.<sup>447</sup> Again the fleet does not appear to have been sent to sea, but I have found no trace of any reply from the count.

The diplomatic landscape was changed with the death of Robert III, count of Flanders, on 17 September 1322 and the accession of the pro-French Louis of Nevers. In the aftermath of his accession fresh diplomatic overtures were made by the chancellor of Flanders over the conclusion of a treaty incorporating the

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<sup>446</sup> *Foedera*, III, p. 949, *C.P.R.*, 1317-23, p.102, *C.C.R.*, 1318-23, p.540.

<sup>447</sup> *Foedera*, III, p. 951, *C.P.R.*, 1317-23, p.111.

settlement of outstanding dispute. The response from Edward was pointed; it was the actions of Robert, previous count of Flanders, and his subjects that had provided the material of the dissensions by providing support to the king's enemies of Scotland. Any agreement would be conditional upon an undertaking not to extend any aid or support to the Scots.<sup>448</sup> Agreement was finally reached at the end of February with a date set to settle all disputes. Under the terms of the agreement truce was to be proclaimed in English ports provided that by Easter 1323 the count had publicly prohibited his subject from assisting or communicating with the Scots in any manner. These conditions appear to have been met, as on 5 April the warden of the Cinque Ports and various sheriffs and bailiffs were ordered to proclaim the truce in the ports of their jurisdiction. Lasting until 29 September 1323, Flemings were to be granted secure passage into England and freedom from arrest for the transgressions and debts of others. Scots were to be expelled from Flanders; in addition Flemings were to be given until 22 May 1323 to return from Scotland.<sup>449</sup> The implication was that after that date, those Flemish ships visiting Scotland would be liable for capture and confiscation. However, the conditional terms of the truce barely had time to be tested when agreement was reached between the king of England and his Scottish counterpart on 30 May. This truce stated that, "no foreign merchant will be disturbed coming with their merchandise into either land, if they are not of a land at war with either party."<sup>450</sup>

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<sup>448</sup> *Foedera*, III, p.981, p. 997-8.

<sup>449</sup> *Foedera*, III, p.1006, p. 1007.

<sup>450</sup> *Foedera* III, pp. 1022-24.

Ironically, when the point appears to have been won by the English, it became moot as a result of the truce between England and Scotland. However, such a peace was fragile and as long as England was in conflict with Scotland the issue of Flemish assistance to the Scottish war effort remained. This was demonstrated on 7 June 1333: whilst besieging Berwick, Edward III wrote to the count of Flanders to complain that various Flemings, in alliance with the Scots, were attacking towns in England.<sup>451</sup> In September 1333, bailiffs at the ports of Hartlepool and Yarmouth were ordered to release Flemish ships and goods arrested at sea, provided the goods were not destined for Scotland.<sup>452</sup> The English were still not prepared to concede the point of free trade when it came to Scotland; the implication in the order was clear, Flemish goods destined for Scotland were liable for arrest. Under the terms of a treaty between England and Flanders in 1338 any Flemings carrying supplies to the Scots were to be excluded from its security; indeed in such cases the king and his men were to be able to injure them in any way without breach occurring.<sup>453</sup>

This most recent truce would appear to have settled the issue, at least for the time being, providing free passage for all 'neutral' merchants. Yet such 'neutrality' was by its nature required to be towards both parties. Over a period of 18 years the point at issue was the extent of permitted contact between your friends and your enemies. It was considered by the count of Flanders to be his sovereign right to engage in all activities not directly prejudicial to the king of England; it was a key aspect of sovereignty to determine the scope of your relations with a foreign power.

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<sup>451</sup> *Foedera*, IV, pp. 561-562.

<sup>452</sup> *C.C.R.*, 1333-1337, p.77.

<sup>453</sup> *Foedera*, V, p. 53.

However, the issue was complicated by the refusal of the English crown to recognise that the Scots possessed such sovereignty. In essence the English crown did not wish the Flemings to act as a neutral party but rather as a friend and ally. Of course despite the protestations of the count of Flanders there were a number of occasions when the Flemish directly contributed to the Scottish war effort; the supply of Scots with arms and victuals was one of the most frequent complaints of the English crown; the harbouring of Scots within Flanders was also a cause for complaint, particularly when the Scots were able to use Flemish ports to fit out ships to attack English shipping, or return to Flemish ports with goods plundered from English merchants. Such actions undermined the Flemish position when it came to trying to convince the English of the harmless nature of their relationship with Scotland, i.e. their 'neutrality'.

## 5. Restitution- Legal satisfaction in the Later Middle Ages

The final and crucial element in the process surrounding the capture of shipping at sea was the execution of the judgment, that is to say the provision of restitution. The issue of restitution informed all three previous chapters. The first chapter dealt with the commissioning of private fleets and the treatment of their captures to enable restitution to be provided of non-enemy goods. The second chapter looked at letters of marque, one of the main mechanisms to compel restitution to be provided. The third chapter looked at the how the provision of restitution could be used as an instrument of diplomatic leverage within the context of the competing rights of belligerents and neutrals. As we have seen in a number of cases it was the failure to provide restitution that brought about diplomatic breach as much as the original capture of the ship. The process surrounding the provision of restitution acted as a release valve for diplomatic tensions, preventing the escalation of disputes at sea that so often resulted when injured parties were left uncompensated. It is largely through the actions of injured parties seeking restitution for their losses that we owe our knowledge of the capture of shipping at sea in the later Middle Ages. Yet conversely the actual provision of restitution is an area where there is little surviving documentation. On occasion, acquittance was lodged in Chancery acknowledging the receipt of restitution and releasing the captors from all future actions of redress.<sup>454</sup> But generally, once restitution has been provided, and unless some new issue emerges, the trail in a sense dies out.

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<sup>454</sup> *C.P.R.*, 1405-1408, p. 225. Godescallus of Danzig in Prussia to Hugh Yonge, Richard Mildenhale and Thomas Thekker of England. Receipt and acquittance for £46 as amends and restitution of all goods and merchandise of his in a ship called '*le Christofore*' of Gripeswolde by them and their accomplices whatsoever taken at sea off Sandwich, and release of all actions real and personal against them, their accomplices and the subjects and inhabitants of England, the captors thereof.



The provision of restitution was most straightforward in those cases where the captured goods were held in safe custody and the issue of the validity of the capture or otherwise revolved solely around the ownership of the goods. The Statute of the Staple introduced in 1353 sought to simplify the procedure in such cases, removing the need for suit at common law. Under the statute, foreign merchants would be able to claim goods unlawfully captured at sea upon the provision of proof in the form of a charter party or letter of cocket or the testimony of his fellow merchants.<sup>455</sup> Yet the effect of such a statute clearly relied upon the cooperation of local officials who were often interested parties. In a case concerning the capture of a Genoese carrack by John Mixtow of Fowey in 1433, the goods had been shared amongst the captors and dispersed throughout the counties of Devon, Cornwall, Somerset and Wiltshire. The Genoese merchants had offered to prove their ownership of the goods before the mayor of Fowey and the said captors “by their marks, charters and cockets”, as stipulated in the Statute of the Staple but still redress was refused to the merchants.<sup>456</sup>

As we shall see in the case that follows, difficulty over restitution arose when the captured cargo had been broken up and was dispersed throughout the realm. The universal obligation requiring all captures to be returned to prize courts for judgement did not come about until the end of the sixteenth century.<sup>457</sup> Indeed the failure to submit a capture to judgement would come to be considered an essential

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Memorandum of acknowledgement at London 12 November before Master John Kyngton the king's clerk, by virtue of a dedimus potestatem which is on the Chancery file for this year.

<sup>455</sup> *Statutes*, I, p.338.

<sup>456</sup> *Early Chancery Proceedings*, p. 37.

<sup>457</sup> Neff, S., *The rights and duties of neutrals: A General History* (Manchester, 2000), p.24.

element in defining an act of piracy.<sup>458</sup> At various points in the Middle Ages certain bilateral agreements compelled armed ships to return to port and submit their captures to the relevant port officials. The 1414 Statute of Truces in operation for just over twenty years required all captures of enemy goods to be lodged with the Conservator of the port. On occasion these agreements placed an obligation on port officials to take all captures into safe custody. An agreement between England and Flanders in 1426 stipulated that port officials who failed to take any captured Flemish goods into their safe custody would be liable to provide restitution to the injured Flemings.<sup>459</sup> In the absence of such a requirement, goods were frequently dispersed before the matter had been decided upon. This made the issue of restitution increasingly difficult. In such cases the only recourse open to the Crown was the distraint of the goods of the parties into whose hands the capture had come, to compel them to provide satisfaction. To some extent it was the failure to provide restitution, rather than the original capture, that constituted the real ‘offence’ in the Crown’s eyes. In 1402, Richard Spicer was condemned for his failure to return a Flemish vessel. It was stated “that he had taken no heed of orders to provide restitution, to the shame and prejudice of the king, and for a pernicious example to others.”<sup>460</sup> John Hawley the younger was involved in the capture of a Navarrese vessel in October 1403, contrary to the truce with Castile, however it was not until the 7 March 1407 that the order was issued for his arrest. Because of his persistent refusal to provide restitution, Henry IV ordered the sheriff of Cornwall to seize all the lands, goods and chattels of John Hawley the younger, as the king was bound by

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<sup>458</sup> Rubin, *The Law of Piracy*, p. 111. The case of William Kidd hanged in 1701 for piracy; according to Rubin the crucial element in his condemnation was his failure to submit the captured goods to a proper tribunal for judgement.

<sup>459</sup> *Foedera*, X, pp. 361-2.

<sup>460</sup> *C.C.R.*, 1399-1402, p. 545.

oath to make restitution. In the period between the seizure and the arrest of Hawley, various commands were issued for his attendance at the Chancery to explain his actions.<sup>461</sup>

The failure to compel the guilty parties to provide restitution left the sovereign responsible in a diplomatic sense. Failure to provide restitution could provide the occasion of diplomatic breach, particularly in relation to a truce or treaty, often leading to disorder at sea. Given the often large sums involved in such cases, sovereigns were forced to improvise when the responsibility to provide restitution fell upon them. It was rare for such compensation to take the form of a straight monetary payment. In 1382, merchants from Catalonia were granted one mark from the subsidy on each sack of wool leaving London up to £500 in part compensation for their goods captured by the king's subjects.<sup>462</sup>

A case involving various merchants from Norfolk and Lincolnshire provides a full account of the often complex and difficult process of obtaining restitution for merchants injured at sea. Covering nearly thirty years, it demonstrates that even once the validity of the claim had been established, compensation for losses sought was still by no means certain and involved continuous and arduous legal pursuit. The case is also interesting as it is the only example I have found of the use of an import tax on foreign merchandise to provide restitution to English merchants injured at sea.

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<sup>461</sup> *C.C.R.*, 1402-05, p. 267, *C.P.R.*, 1405-08, p. 437, p. 507.

<sup>462</sup> *C.P.R.*, 1381-85, p. 102.

The case merits investigation in its entirety. The *range* of material emerging from it is testament to its complexity, and reveals sophistication and accountability to the political centre on a number of levels. The case clearly demonstrates that the *ad valorem* tax was not conceived as an alternative to letters of marque, rather it was one of a range of negotiated mechanisms designed to provide redress to the injured parties. These mechanisms formed part of a reactive process, a series of improvised *ad hoc* accommodations designed in the absence of an existing framework to provide redress in such cases. In contrast, the arrest of goods was a unilateral sanction designed to compel settlement, or at least force a diplomatic response. The case reveals a tension between the crown's obligation to obtain satisfaction for its subjects on the one hand and wider economic concerns, both local and 'national', on the other. The flow of the process was frequently interrupted by diplomatic interventions, and by the needs of private individuals caught up in the wider relationship between the king of England and the count of Hainault, Holland and Zeeland. The process also sheds light on the relationship between the crown and local communities, revealing the difficulties suffered by petitioners when they came up against the interests of the local communities, even when they themselves were drawn from those same communities. Any agreement reached was contingent upon the co-operation of local officials, subject to partiality and corruption, and was dependent upon interests in the local community. Such officials were not always likely to favour their own countrymen, or even townsmen, when it was not in the interests of that community or, more commonly, the individuals themselves.

## **4.2 Dutch Ad Valorem-1305-1327**

In July 1316, William, count of Hainault, Holland and Zeeland, seemingly with the consent of his merchants, agreed to the levying of a toll on Dutch imports to compensate various English merchants injured by his subjects. Often perceived as an alternative to the arrest of goods this sole English example of the tax is from relatively early in the procedural development of letters of marque. This *ad valorem* tax was merely the final stage in a long running case described by T.H. Lloyd as being so complex as to almost defy analysis.<sup>463</sup> Relations between English east coast ports and those of Holland and Zeeland had degenerated since the start of the fourteenth century, largely as a result of increasing disorder at sea occasioned by a series of wider conflicts involving England, France, Scotland, Zeeland and Flanders. It was from this confusion in the North Atlantic that the cases covered by the toll emerged. The count acknowledged liability for the debt at an early stage in the process; the only issue remaining was the means by which this debt would be settled. It was an issue which would span 20 years and the reigns of three kings.

### **The Origins of the Cases**

The losses covered by the tax stemmed from the capture of English goods more than ten years before its introduction, likely sometime in late 1303 or the first half of 1304.<sup>464</sup> Few details survive concerning the losses of Richard Wake and John

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<sup>463</sup> Lloyd, T.H., *Alien Merchants in England in the High Middle Ages* (Brighton, 1983), p119.

<sup>464</sup> The count's letter reveals that the capture of the ship took place at a time when Zeeland was in Flemish hands so that would place it some time. between 6 May 1303 and 10 August 1304.

Wype, both of Norfolk<sup>465</sup>, only that their claim was for £259 “on behalf of certain of their goods and merchandise seized and carried off in part of Zeeland by men of the power of the said count.”<sup>466</sup> The majority of the sum to be raised was owed to nine merchants of Lincoln represented throughout the case by one of their number, Walter le Keu. Le Keu seems to have been particularly well placed to pursue the case with connections throughout East Anglia and the Low Countries. Proof of their loss was provided by patent letters of the mayor of Lincoln, stating that wool and other merchandise belonging to these merchants valued at £896 10s had been seized by various men of Zeeland in the port of Geervliet *en route* to Brabant. Despite the repeated requests of Edward I, William, the count of Hainault, Holland and Zeeland had failed to provide justice to the merchants for their losses. In an excusatory letter, dated 12 January 1305, it was claimed by the count that the wool had been captured as Flemish goods, and by the time he had realised the mistake the goods had been dispersed. The count sought to explain the background to the capture. He explained that during the recent conflict with Flanders his men, in an effort to injure the enemy, had attempted to prevent all merchandise, including Dutch goods, from travelling into Zeeland, which was then in Flemish hands. The count claimed the English merchandise had been captured crossing the river Meuse into Zeeland on a Flemish safe conduct.<sup>467</sup> According to the count the ship’s crew had at first admitted the cargo was Flemish, and as a result of this admission they had been taken into Holland and divided amongst various unknown men as enemy goods. The count apologised that due to the disordered state of his land he had been unable to attend to the matter

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<sup>465</sup> C 241/83/3, Richard Wake (East Barsham, Norfolk) and John Wype (Dilham, Norfolk).

<sup>466</sup> *Foedera*, III, p. 651.

<sup>467</sup> Clearly English trade with Flanders continued during the Dutch-Flemish conflict, around the same time, merchants from Hull complained that various men of Middleburgh had captured their wool in ship *en route* to Flanders: *Bronnen*, I, p.104

previously, but promised to satisfy the injured merchants as soon as possible.<sup>468</sup> The goods had been captured as prize of war, the supposed admission of the crew and the possession of a Flemish safe considered sufficient evidence to condemn them as good prize. The failure to deal with the matter at the outset and the subsequent dispersal of goods to persons unknown hampered any attempts at recovering the goods themselves. It seems to have been on this basis that the count accepted responsibility for providing restitution in the form of monetary compensation to the English merchants.

In spite of the undertaking of the count of Holland and Zealand more than a year passed without any satisfaction being provided, and in March 1306 a writ of arrest, or letter of marque, was granted to the petitioners according to merchant law (*lex mercatoria*). The writ instructed various English bailiffs to arrest all goods belonging to merchants from the count's domains up to a fixed amount. The total sum sought, amounting to the large sum of £896 10s, was allocated to be collected between several Norfolk towns where merchants of the count were resident. Far from providing adequate compensation, the arrests only raised £32 13s 4d. Such a small sum was clearly not representative of the extent of Dutch trade in the county; rather it was likely indicative of a lack of co-operation by local officials in the execution of the writ, and in at least one case there were allegations of actual fraud. In a suit initiated before the King's Bench in the Trinity term of 1306, Geoffrey Drewe, outgoing mayor of Lynn, was accused of having defrauded the petitioners of over £1000 in prosecution of their writ. According to the details of their plea, on two

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<sup>468</sup> Bronnen , I, pp. 102-3.

occasions<sup>469</sup> the petitioners had presented the writ to the bailiffs of the tollbooth at Lynn, instructing those same bailiffs to arrest all goods belonging to merchants of the count found in that town up to the value of £280, Lynn's allocation of the total sum. On the strength of the writ the bailiffs had then arrested goods belonging to merchants from Zeeland and Frisia valued at £134, 17s on several different days.<sup>470</sup> Such an amount, nearly half the total to be raised in Lynn, would have represented a good initial return for the English merchants. Yet these goods had been subsequently released on the word of Drewe, who claimed them as his own property by virtue of holding a share in them.<sup>471</sup> Drewe, it was alleged, received merchants from Hainault, Holland and Zeeland in his own home, and arranged to vouch for their goods in return for a share in them. It was further claimed, "so that he might be better able to hide his malice", that he intercepted merchants from those counties *en route* to the town to warn them of the arrests. An example was provided by way of illustration; on 6 December 1306, Drewe had met at sea near Rimswell a ship from Zeeland loaded with 280 quarters of oats valued at £20. Drewe, having paid the merchants one penny as a down payment, claimed the oats as his own upon the ship's arrival in Lynn. Drewe denied the charge, and the date of 13 June 1307 was set for a jury drawn from the county to appear before the king. On that date the case was adjourned and no further mention was made of the case.<sup>472</sup>

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<sup>469</sup> Easter Week, 1306, Monday before Pentecost 1306.

<sup>470</sup> The goods, largely victuals such as beer, various types of herring and other fish and grain were arrested the Tuesday of Easter week, the Monday before Pentecost in 1306 and in the week after Easter in 1307.

<sup>471</sup> The avowing of alien goods by English burgesses by false claims of partnership was used to avoid certain customs payments; according to Postan this was fairly common in fourteenth-century Lynn so as to avoid the exceptionally high taxation of alien goods. Postan M.M., 'Partnership in English medieval commerce', reprinted in Postan, M.M., *Medieval Trade and Finance* (Cambridge, 1973) p.67.

<sup>472</sup> KB27/188, m49, KB27/189, m6, *Select cases concerning the law merchant* (Vol. 2, Central Courts, including Assizes, 1239-1633), ed.. Hubert Hall, (Selden Society, 1930) pp.73-6.



With the death of Edward I in July 1307, the letters patent authorising the arrests expired, leaving the vast majority of the debt still unpaid. Nonetheless, the accession of Edward II brought about renewed attempts to settle the cases. From at least 1 November 1306, the count had sought to deal with English requests for compensation within the broader context of losses suffered by merchants on both sides.<sup>473</sup> To facilitate settlement a day was arranged at Westminster, 25 February 1308, to reach agreement over 'reforming diverse contentions, discords and contentions that had arisen in the past'. That meeting was postponed at the count's request until 5 May 1308, due to 'a certain impediment', with the proviso that satisfaction be provided in the meantime in those cases where the circumstances were clearly known (*clara esse noscantur*).<sup>474</sup> The count's envoy Christian van Raephorst, appearing before the king's council to request the postponement, had acknowledged on the count's behalf the sums due to Walter le Keu and partners, and Richard Wake and John Wype. The meeting on 5 May passed without the English merchants receiving satisfaction for their losses, as a result the king wrote to the count, on 24 May, warning that if justice was not shown he would be required to provide his merchants with another remedy.<sup>475</sup> The count replied that he had not satisfied the English merchants on account of the refusal of the king's council to hear the complaints of his envoys regarding losses suffered by his men. The king responded on 12 December setting a final deadline of 16 February 1309 for justice to be shown to his men, "otherwise the king will no longer be able to delay providing

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<sup>473</sup> Bronnen, I, p. 113.

<sup>474</sup> *C.C.R.*, 1307-13, pp. 54-5.

<sup>475</sup> *Foedera*, III, pp. 83-4.

them with a fitting remedy.”<sup>476</sup> Clearly that remedy would be the arrest of Dutch goods in England. The king stated his willingness to satisfy the count’s envoys for all injuries shown to have been committed by his men, provided that first they make amends of the aforesaid losses clear and recognised “as equity and reason demand that those things that are clear ought to be in a better condition than those that are not.”<sup>477</sup> When the deadline passed without response, on 18 March 1309 the bailiffs at Boston were ordered to arrest the goods of Dutch merchants on behalf of Walter Fleming<sup>478</sup>, “the king being unwilling to further delay helping the said Walter to achieve restitution of his goods.”<sup>479</sup>

### **The Bond**

The threat of the arrest of Dutch goods appears to have had the desired effect, prompting renewed diplomatic overtures from the count. At his request, safe-conducts were issued on 15 May 1309 to enable his envoys to appear before the king’s council to discuss settlement in outstanding cases. In the meantime, the count was again required to provide satisfaction in those cases that were clear and acknowledged.<sup>480</sup> Finally, on 3 August 1309 at the Stamford parliament, agreement was reached upon a framework for settling all disputes concerning robberies and arrests on both sides. Under the agreement justices were to be appointed to hear all complaints, with safe-conducts granted to allow injured parties to travel to the relevant country to put their case. For increased security and greater freedom of

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<sup>476</sup> *C.C.R.*, 1307-13, pp. 133-134.

<sup>477</sup> *Bronnen*, I, p. 116-7.

<sup>478</sup> Originally bracketed with the Walter le Keu and Richard Wake and John Wype the details of his case dealt with elsewhere in the chapter.

<sup>479</sup> *C.C.R.*, 1307-13, pp.105-106.

<sup>480</sup> *Foedera*, III, p. 137, *C.C.R.*, 1307-13, pp. 153-4.

trade, henceforth all arrests were to stop and all existing arrests for losses in those cases not considered to be clear and recognised were to be revoked and the goods released.<sup>481</sup> Yet, before all else, the count's envoys were required to find security for the satisfaction of Walter le Keu and his associates, and Richard Wake and John Wype. On 5 August justices were appointed in England to hear the complaints of the count's subjects, and on 6 August, in accordance with the treaty, the sheriff of York was ordered to release three Dutch ships arrested by the bailiffs of Ravenser at the suit of two English merchants whose goods had been captured in the port of Maarland.<sup>482</sup> It was not until the start of September that steps were taken to find security for the English merchants. Robert Elys, a merchant of Great Yarmouth with trading connections to Zeeland, was to act as agent for the count with responsibility for compensating le Keu, Wake and Wype.<sup>483</sup> On 8 September 1309, a bond was made over to Elys for £1300; of that £1300, £1217 was to cover the count's obligations to Walter le Keu and partners and Richard Wake and John Wipe of £954 and £259 respectively, the remainder being due to Elys himself.<sup>484</sup> The sum was to be re-paid in six six-monthly instalments over a period of three years, the first payment of £225 due on Christmas day 1309, the next payment of £225 due the following Midsummer's day 1310. Under the terms of the bond the count pledged his

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<sup>481</sup> *Foedera*, III, pp. 150-1.

<sup>482</sup> *Bronnen*, I, p.124, *C.C.R.*, 1307-13, p.168.

<sup>483</sup> SC8/45/2222. A petition from Elys dated from 1302 requesting the arrest of goods belonging to merchants from Zeeland for the recovery of a debt of £20 owed to him for 4 lasts of herring.

<sup>484</sup> This £87 was generally attributed to sums lent to the count's ambassadors in 1309, although in a letter from May 14 1315, the count himself referred to the sum as having been granted to Robert as payment "for his efforts and costs": *Bronnen*, I, p.154. At a time when usury was illegal it was common for bonds to record a sum including both the principal and interest, the suspiciously round sum leads me to suspect this was the case here: M.M. Postan, "Private Financial Instruments in Medieval England," reprinted in Postan, *Medieval Trade and Finance* (Cambridge, 1973), p31.

goods and those of his subjects. Failure to meet any of the payment dates left those goods liable for arrest, wherever they were found, at the suit of Robert Elys.<sup>485</sup>

On the face of it the Stamford agreement appeared to have settled the cases of Walter le Keu, Richard Wake and John Wipe. The count of Holland once again accepted liability for the damages of the English merchants and agreed to a payment schedule that would provide compensation within three years. The agreement was motivated by a desire to draw a line under the backlog of cases that had been allowed to build up for want of settlement. The lifting of arrests and the granting of safe conducts were further measures in the agreement designed to ease the resumption of normal trading relations. The success of such an agreement was dependent on its obligations being met and by the start of July 1310 the count was £450 in arrears having defaulted on the first two payments. Therefore on 6 July, notwithstanding the moratorium on arrests, the bailiffs of Great Yarmouth were instructed to arrest all goods of the count's men found in the port up to the value of £300, on Robert Elys's behalf.<sup>486</sup> By the middle of February 1311, the bailiffs had returned the king's writ attached with a schedule of arrests listing goods and money arrested to the amount of £100 and 18s. The itemised inventory contained the names of what appear to be 19 fishermen from various towns in Holland and Zeeland and the details of what had been arrested attached to a valuation. The arrests consisted of ships, apparatus and nets valued at £58, 17s as well as £42 in cash held in the hands of various merchant

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<sup>485</sup> *Bronnen*, I, p.122, "we obligate all our townsmen, burgesses, merchants and all communes of our towns and of our community and lordship. Robert or his attorney or anyone he wishes to name, nominate or select, through all their goods moveable or immoveable of the jurisdiction of the illustrious kings of England, France and Germany, also of the jurisdiction of the dukes of Lorraine, Brabant and Luxembourg and also the jurisdictions of all other lords".

<sup>486</sup> *C.C.R.*, 1307-1313, p.326, the sheriff of Norfolk and Suffolk was issued a similar order for the remaining £150.

hosts of Yarmouth, including 180s in the hands of the king's bailiff Roger Gavel. On 15 February the bailiffs were instructed to deliver the ships, apparatus and money to Robert Elys and to continue the arrests on behalf of the remaining £199 2s.<sup>487</sup>

In just under six months £100 had been raised through arrests in just one port; a comparatively healthy return particularly when one compares it to the £32 raised by arrests in the reign of Edward I. According to the customs account of Great Yarmouth in those six months, £85 8s worth of goods, belonging to merchants of Holland and Zeeland, excluding herring and fish, had arrived in the port.<sup>488</sup> These goods, mainly salt and cloth, had clearly not been arrested in execution of the writ, but the threat of arrest may have acted as a discouragement on trade. It was the fishing industry, specifically the herring trade, which had been affected by the arrests, and this was clearly not desirable. Consequently, on the 10 July 1311 the bailiffs of Great Yarmouth were ordered to refrain from arresting any herring, fish or victuals during the current fishing season. All boats currently under arrest were to be released, provided their owners were not suspected of having injured any of the king's subjects; the earlier arrests mentioned in the February return of the sheriff appear to have been unaffected by this order. This restriction was imposed at the request of various burgesses of Yarmouth, who claimed that fishermen from Holland and Zeeland, "by whose fishing the fairs of the aforesaid town are wont to be principally maintained", had been avoiding the town through fear of arrest.<sup>489</sup> In the period covering 10 July to 28 September, £178 16s worth of goods, again largely

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<sup>487</sup> *Bronnen*, I, pp.130-2.

<sup>488</sup> Herring and fish were exempt from the new custom.

<sup>489</sup> *C.C.R.*, 1307-13, p.364

cloth, beer and victuals passed through the port, nearly twice the amount in less than half the time.<sup>490</sup> The increased Dutch traffic through the port is suggestive of the detrimental affect the arrests had had on trade with Holland. Although the suspension was only partial, bailiffs were instructed to continue to arrest all other Dutch merchandise, no further arrests were made in the port that year.

Whilst these letters of marque were in operation, a dispute arose between the Lincoln merchants represented by Walter le Keu and the count's agent Robert Elys, adding a further layer of complexity to the case. Despite the Stamford agreement and the count's renewed recognition of the debt, the position of the petitioners was in fact no more secure. At the start of 1311, eighteen months after the agreement, the petitioners had still not received any payment from Elys; the count had missed four payments and was consequently £900 in arrears. Walter le Keu appeared in Chancery on 26 April seeking security from Elys for the entire sum owed to him and his partners. Elys, who had agreed to appear in Chancery that day to make security to the merchants<sup>491</sup>, claimed that he had already paid a large part of the sum owed; also that le Keu had received £32 13s 4d prior to the agreement made at Stamford, the proceeds of arrests made by the writ granted by Edward I. In addition, Elys claimed that £57 10s of the £954 stipulated in the bond was money owed to Elys himself as a result of a loan made to the count's envoys at the Stamford Parliament. Le Keu responded by claiming that both the £32 13s 4d he had received from the arrests in the reign of Edward I and the £57 10s added to the original claim had been allotted to him to cover his costs and expenses in the case, and as such should not be deducted

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<sup>490</sup> *Bronnen*, I, pp.136-139.

<sup>491</sup> *C.C.R.*, 1307-13, p.343-4.

from the principal sum. Such a figure amounted to 10% of the original sum sought, representing le Keu's expenses for the first five years of the case. With the consent of the parties the Chancery Clerks Hugh de Burgh and John Merton examined their accounts of the case. They established that up to that point Walter le Keu had received £212 10s ½ d of his debt from a variety of sources, leaving £684 9s 11 ½d without dispute remaining to be paid.<sup>492</sup>

Those sums under dispute were put to the arbitration of a tribunal consisting of Merton and de Burgh along with William de Ayremynne, later bishop of Norwich and Master of the Rolls, and the senior Chancery Clerk William de Askeby. However, this panel was unable to decide on the full truth of the matter and their judgement reflected that fact. It was noted that £57 10s was the difference between the original claim of the merchants and the £954 allocated to them by the Stamford agreement. However, it was also noted that the bond made over to Robert Elys exceeded by £87 the sums allocated to cover the merchant's damages. The judgement of the panel, given on 24 May, was that Walter le Keu should retain the £32 13s 4d without deduction from the sum owed, but be ready to answer for it against any future claim. The sum of £57 10s was to be divided between the parties; therefore £28 15s was added to the previously declared unchallenged sum due to le Keu and his associates. Elys was ordered to find security for the remaining £713 4s 11 ½ within two days (26 May). When such security was not forthcoming, on 1 June, the arbitrators ordered the delivery of the bond from Elys to Walter le Keu to enable him to raise his debt through arrest of goods. The transfer of the bond was

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<sup>492</sup> *C.C.R.*, 1307-13, p.359.

conditional upon Walter levying the whole sum due, including that of Elys's debt. The arbitrators stipulated that all arrests should be made faithfully and without fraud, no ransom to be accepted in place of arrest, and all goods arrested to be subject to a true evaluation.<sup>493</sup>

On 20 July 1311 the sheriff of Norfolk and Suffolk was directed to arrest the goods of merchants of Holland, Zeeland, Hainault and Frisia up to the value of £100. In line with the stipulations of the arbitrators, the arrests were to take place under the supervision of Robert Elys or someone appointed on his behalf. The sheriff was instructed to certify to the crown the details of all goods arrested, including the names of their owners and their value. Similar writs were addressed to the bailiffs of Lynn for £100, Great Yarmouth for £200 and the sheriff of Lincoln to the value of £100 in his bailiwick, excepting all goods at or *en route* to Boston Fair.<sup>494</sup> The other parties named in the Stamford agreement, Richard Wake and John Wype, had fared even worse than Walter le Keu and his associates. Le Keu was appointed to act on their behalf in September 1311 with little or no effect.<sup>495</sup> It was not until 21 January 1313 that Elys was summoned to appear in Chancery to answer for the debt, the full amount of which was still outstanding. Elys failed to appear that day or eight days later on 29 January, despite being warned to attend by the sheriff of Norfolk and Suffolk. The court decided that as the petitioners had no grounds of action against Elys for the non-payment of the debt, the sum should be recovered through arrest of Dutch goods. As a result on 1 February 1313 the bailiffs of the Tollbooth of Lynn

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<sup>493</sup> *C.C.R.*, 1307-13, p. 359.

<sup>494</sup> *C.C.R.*, 1307-13, p. 366.

<sup>495</sup> *C.C.R.*, 1307-13, p. 433.



were instructed to arrest the goods of Count William and his men up to the value of £259 on behalf of Wake and Wype, keeping the king informed of their proceedings.<sup>496</sup> No money appears to have been raised on the strength of this writ by the autumn of 1313 when diplomatic intervention once again brought a halt to the process with renewed attempts at negotiation on the part of the count.

As well as failing to satisfy Walter le Keu and his partners, the treaty concluded at the Stamford Parliament of 1309 had failed to stem disorder at sea, and disputes between the merchants of the two lands continued to emerge in the years following. In November 1310 the king complained to the count of Flanders that he was permitting Dutch ‘robbers and pirates’ (*praedonibus et piratis*) to operate out of Flemish ports. According to the letter, Dutch sailors, acting in concert with Flemings, were lying in ambush for ships carrying victuals to Edward’s army in Scotland.<sup>497</sup> For his part, the count of Hainault complained that many of his men had been robbed, beaten and killed at sea, and their goods arrested on land by various Englishmen acting with the cooperation of royal officials, such as bailiffs.<sup>498</sup> The tit-for-tat nature of the violence at sea is indicated by a letter from the castellan of Zeeland, Gerard lord of Vorne, in which he claimed that various men of Zeeland were unable to restore goods taken from English merchants as they “are impoverished in such a manner that they have no property to restore at present”, having been robbed by the castellan of Aberdeen.<sup>499</sup> There were numerous other examples on both sides including an ongoing dispute between merchants from

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<sup>496</sup> *C.C.R.*, 1307-13, p 509.

<sup>497</sup> *Foedera*, III, pp. 230-1.

<sup>498</sup> *Bronnen*, I, p.146-7.

<sup>499</sup> *Bronnen*, I, p140-2.

Lincoln and their counterparts of Campe.<sup>500</sup> Such disputes added to the backlog of unsettled cases.

In September 1313 the count's envoys, William de Brawode and John of Tournai, were dispatched to England to discuss settlement in those cases that had emerged since the Stamford agreement. The failure of the Stamford agreement to settle previous cases had perhaps been a contributory factor in subsequent attacks on merchants at sea. Once again the king made any agreement on this matter contingent upon satisfaction being provided beforehand in those cases that had already been acknowledged, clearly those involving Walter le Keu, Richard Wake and John Wype. The count for his part stated his willingness to satisfy recognised claims, but only after he had received full allowance of all arrests up to that point, "by true proof and the law of the land". The count claimed he had received reliable reports from the merchants of his land that the sum due, or at least the greater part of it had been already raised through the arrest of Dutch goods in England. The count further claimed that the proceeds of these arrests had been retained by Elys and had not been forwarded to the petitioners. The count requested that his envoys receive acquittance of money and the value of the goods that the king's bailiffs had arrested and detained up to this point. To satisfy the concerns of the count, two commissioners, Stephen Brawode and John Merton, were appointed to make inquiry, in the presence of the count's envoys, into all arrests in the county of Norfolk since the Stamford Parliament.<sup>501</sup>

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<sup>500</sup> *Bronnen* I, p.141-2, *C.P.R.*, 1307-13, p. 567, *C.C.R.*, 1307-13, p. 373, pp. 451-2.

<sup>501</sup> *C.C.R.*, 1313-18, p.37, *C.I.M.*, II, p.44, Inquisition at Great Yarmouth 17 September 1313, similar at Lynn 2 January 1314.

The results of the inquiry were enrolled in Chancery on 31 January 1314 in the form of a composition between the count's envoys and the petitioners. According to the accounts of the commissioners, £140 17s in money and goods had been arrested at Great Yarmouth in the fourth year of Edward II's reign. From those arrests £70 17s had been delivered to Robert Elys, by the king's writ, who forwarded it to Walter le Keu. The remaining £70 was held in cash in the hands of various burgesses of Great Yarmouth, acting as hosts on behalf of foreign merchants in the town. In the same year goods valued at £111 7s had been arrested at Lynn, the proceeds of which had been delivered to Walter le Keu. In addition, it was revealed that le Keu had received £35 11s in goods and money from the men of the count's power from places unspecified. The accounts revealed that £287 4s had been arrested, of which Walter le Keu had acknowledged in Chancery that he had received £217 15s. It was agreed that Walter le Keu should have a writ to receive the £70 cash in the hands of the Yarmouth hosts, leaving a debt of £666 5s. Walter le Keu agreed to refrain from further suit or arrest, "to nourish good peace", but instead would travel to Holland with the count's envoys to appear before him to seek satisfaction. The inquiry revealed that Richard Wake and John Wipe had still not received any money in respect of their debt of £259. Wake and Wipe had been present during the inquiry but had subsequently failed to attend the king's court to hear judgement, it was agreed by the parties that Walter le Keu should continue to act on their behalf until further notice, certifying the council upon his oath in Chancery on his return.<sup>502</sup>

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<sup>502</sup> *Foedera*, III, p.37, C.C.R., 1313-17, p.37. The agreement was enrolled in the Chancery with one part delivered to the count's envoys and the other to Walter le Keu on behalf of himself, his partners and Richard Wake and John Wype.

The agreement of January 1314 had also provided for the appointment of justices to receive the complaints of merchants of injuries suffered since the Stamford parliament. Yet it was not until March 1315 that rafts of commissions of oyer and terminer were issued to various justices instructing them to inquire by jury into a range of complaints in Norfolk and Essex. Interestingly enough, one of the cases pitted two of our plaintiffs, Walter le Keu and Robert Elys, against each other. Le Keu alleged that Elys and his accomplices, John Wasselyn and John Fastolf, had forcibly taken one of his ships laden with his merchandise in the port of Great Yarmouth.<sup>503</sup> On 27 April 1315, Walter le Keu and Henry Rusebudel, a burgess of Dordrecht, were appointed as proctors and envoys by the count. The two men were to act on behalf of the count's merchants in prosecuting and defending their suits before the king's justices.<sup>504</sup>

Since the start of the negotiations in September 1313 that had led to the January agreement of 1314 all authorised arrests of Dutch goods appear to have stopped. The main purpose behind such agreements was the continuation of peaceful trading relations, considered to be hampered by the ever present threat of arrest. Despite this suspension of arrests, on 14 May 1315, the count again wrote to the king seeking full acquittance of his debt. Once again citing reliable accounts received from his merchants, the count claimed that Robert Elys had received in excess of the sum due. Further, it was alleged by the count that Elys had retained the majority of the sums levied and as a result Walter le Keu, Richard Wake and John Wipe had

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<sup>503</sup> *C.C.R.*, 1313-17, pp. 261-2.

<sup>504</sup> *C.P.R.*, 1313-17, p. 276.

continued to collect money using the bond.<sup>505</sup> The count requested that his envoys, Walter le Keu and Henry Rusebudel, should “have reliable account and reasonable allowance of such sums that the said Elys and his representatives have received from us and of such goods as they have taken and caused to be taken by the arrest of our merchants”. He also requested that the letters of obligation held by Elys, “whose strength and power are annulled for the reasons above”, be returned to the same envoys. Finally, the count requested that justice be shown to certain of his subjects whose ships and goods had been captured and brought into Great Yarmouth by the same Robert Elys.<sup>506</sup> Elys was summoned before the council on 1 June to answer the various charges in the presence of the count's envoys. At that meeting Elys attempted to deflect the charges by accusing Walter le Keu of continuing to use the bond to levy money in spite of the agreement of January 1314. He alleged that le Keu, in agreement with certain men of Great Yarmouth had exacted 3 shillings for each last<sup>507</sup> of herring brought into the port by men of the count in return for not arresting their whole catch, his proceeds amounting to £60. Le Keu denied at any point having received money or goods in the port of Great Yarmouth without warrant. On 18 July a commission of inquiry led by Norfolk justice William Ormesby was set up to investigate the matter, returning their findings into Chancery on 16 August.<sup>508</sup> No further mention is made of the claim and the £60 alleged to have been extorted by le Keu does not appear in any subsequent accounts suggesting the charge was a smokescreen on the part of Robert Elys.

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<sup>505</sup> At this time the possession of a bond, in the absence of formal acquittance, was incontrovertible proof of debt enabling the holder to continue levying money owed after the settlement of the debt. Haskett, T.S., 'The Medieval English Court of Chancery,' *Law and History Review*, XIV no 2 (1996), 245-313, Postan, “Private Financial Instruments.” p.31

<sup>506</sup> *Bronnen* I, p.154, Elys was named in at least one of the cases to be investigated by English justices in March 1315, *C.C.R.*, 1313-17, p. 261-2, concerning the capture of ships in a variety of ports including Great Yarmouth.

<sup>507</sup> A weight measurement roughly equivalent to 1000kg.

<sup>508</sup> *C.P.R.*, 1313-17, pp.406-7.

The matter of the bond was discussed further at the Hilary parliament of 1316, when the count's envoys appeared before the king's council. The accounts of the case were examined on 28 January and it was revealed that as of that day, Robert Elys had raised £240 10s 10 ½d from the count's subjects, of which £224 10s ½ d had been delivered to Walter le Keu, the remaining £16 0s 10d retained by Elys.<sup>509</sup> It was decided that as £87 of the debt contained in the bond was money owed to Elys, only when he had been satisfied for that sum could the bond legally be removed from his possession. It was agreed that the count's envoys would satisfy Elys for the £87 the following Martinmas, at which point Elys would hand over the bond. Further progress in the case was made when, on 8 May 1316, Richard Wake and John Wype appeared in Chancery to acknowledge the receipt of £259 from Robert Elys in full settlement of their debt. According to their recognizance, the count and his men should be fully acquitted of the payment of their debt and the bond and debt henceforth should be transferred to Robert Elys.<sup>510</sup> This payment appears as a bolt from the blue, as far as we are aware up to that point Richard Wake and John Wype had received no part of their debt. On 22 May the king wrote to inform the count of recent developments, requesting satisfaction for Elys in the revised amount of £359 5s.<sup>511</sup>

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<sup>509</sup> It is not clear what these sums consisted of, up to that point subsequent records reveal that £287, 15s had been raised through arrests, it is this figure that is subsequently deducted from accounts.

<sup>510</sup> *C.C.R.*, 1313-18, p.339.

<sup>511</sup> *Bronnen*, I, p.158-9, *C.C.R.*, 1313-1318, pp.340-1. This total of £359 5s, was made up of £87 as his share of the original bond of £1300, the £259 recently paid to Richard Wake and John Wype on the count's behalf and £29, 15 from the arbitration award of 1311 minus the £16, 0s, 10d retained from monies received on behalf of Walter le Keu and partners.

The Martinmas meeting proved unsuccessful in settling the issue of the bond; Robert Elys failed to appear, and the count's envoys, although present, had not brought any money with them. In a possible act of prevarication the count's envoys stated that they were unwilling to satisfy Elys due to the issue of an unpaid debt owed to Dutch merchants resident in Great Yarmouth. According to Walter le Keu, acting in his role as count's envoy, Elys had purchased various goods valued at £169 from Jan Wikmanson and Peter Dodmesson of Zierikzee but had failed to pay the sum owed on the due date, despite the offer of the merchants to deduct £87 from the purchase price in allowance for the count's debt to Elys, who would then presumably recover it from the count. It was further alleged that Elys in his role as bailiff of the town had obstructed royal mandates directed to the sheriff, thereby hindering the merchants in the recovery of their debt. On 13 January 1317 the justices John de Thorpe and John de Fitton were commissioned to establish whether Elys had bought the goods from the merchants at the terms alleged, and if those merchants had offered him allowance of the £87 due to the count.<sup>512</sup> Nothing further is heard of this investigation and certainly no deduction appears to have been made of the £169 from the money owed to Elys.

### **The Toll**

Amidst the dispute over the possession of the bond a new method of satisfying the English merchants was devised. In July 1316, possibly emerging from

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<sup>512</sup> *C.P.R.*, 1313-1317, pp. 679-80.

recent discussions surrounding Walter le Keu's alleged extortion, it was agreed, seemingly with the consent of the count's subjects, that compensation would be provided for the injured merchants represented by Walter le Keu through a tax on Dutch imports into England. Under the terms of the agreement ships carrying herring or other fish would be liable for a one off payment of 20 shillings upon their first arrival in England in that year. Ships carrying other merchandise were to be liable for a flat payment of 10 shillings as well as an *ad valorem* tax assessed on their cargo at the rate of 20d for every £1 of valuation. The count's envoys Henry Rusebudel and Walter le Keu were appointed to make the collection on his behalf, with power to arrest the goods of all those who sought to obstruct or evade the toll, such goods to remain forfeit at the will of the count. A writ of aid directed to sheriffs and bailiffs to this effect was issued on 19 July 1316.<sup>513</sup> On 27 September a mandate was sent to all sheriffs and bailiffs instructing them to proclaim throughout their bailiwick the details of the collection of the toll.<sup>514</sup>

In February 1317, the continuing war in Scotland led to restrictions being placed on the export of victuals from the Realm, in addition from February 14 all corn, wine, spices and other victuals or the ships carrying them were to be exempt from arrest "as [foreign] merchants bringing victuals into the kingdom do not come in such numbers as they were wont to do owing to the frequent arrest of their goods."<sup>515</sup> The needs of the war effort clearly took precedence over the claims of English merchants. Under the new restraints, injured parties holding outstanding

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<sup>513</sup> *Bronnen*, I, pp. 159-60, *C.P.R.*, 1313-1317, pp. 515-6.

<sup>514</sup> *C.C.R.*, 1313-18, p. 594.

<sup>515</sup> *C.C.R.*, 1313-18, p. 455.



letters of marque would be hampered in executing them and recovering their claims. This was particularly true of those holding claims against the merchants of the count of Holland and Zeeland; the import of fish and victuals including beer represented a significant percentage of those counties' trade with England. Arrests were further restricted by a truce concluded with the count of Holland on 1 June 1317.<sup>516</sup> Attacks at sea had continued since the last agreement of January 1314 and on 22 January 1317 Walter le Keu and Henry Rusebudel had been re-confirmed in their role as attorneys on behalf of merchants of Dordrecht and Delft.<sup>517</sup> The truce was designed to enable the settling of such cases and to provide for increased security of passage for merchants. To this end, a reciprocal safe-conduct was granted to last until 11 November 1317. Under the terms of the safe conduct merchants were to be free from arrest for the debts and transgressions of others, provided they were not the principal debtors nor had acted as surety. However, in spite of these restrictions bailiffs were informed that the collection of the toll was to continue unhindered, despite the fact that it concerned both victuals and the subjects of the count.<sup>518</sup>

The authorisation for the toll's collection was renewed on 6 July 1317. Despite almost a year having passed since the original agreement which had set up the toll, no money had yet been collected by the count's envoys. In the meantime agreement had been reached on the possession of the bond. It was decided that the letter of obligation would remain in safe keeping in the Chancery until Robert Elys

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<sup>516</sup> *C.C.R.*, 1313-18, p. 660.

<sup>517</sup> *C.C.R.*, 1313-17, p. 609.

<sup>518</sup> *C.C.R.*, 1313-1318, p. 660. *Bronnen*, I, pp. 165-6.

had been satisfied of the money owed to him, a sum stated as being £374, 15s.<sup>519</sup> To this end Elys was appointed to the collection of the toll along with the count's envoys. Elys was to receive an equal portion of monies collected until he was fully satisfied of the sum owed to him, at which point the toll would revert exclusively to the count's envoys for the remainder of the sum due to the merchants represented by Walter le Keu. Under the terms of the renewed writ the parties were to be bound by their oath to collect the money faithfully, providing true and honest account of all money collected in the form of an indenture. Further, neither party was to absent themselves to the hindrance of the collection. Action and suit was reserved to both Elys and le Keu in recovering all costs and expenses incurred in this matter. The toll's collection was to continue until 25 December 1317, unless, as was stated somewhat optimistically, the full amount was raised before that date.<sup>520</sup>

The writ of aid attached to the toll's renewal provided further clarification on the status of the toll in the light of recent developments. Sheriffs and bailiffs were ordered to permit its collection notwithstanding any previous order to refrain from arresting ships, herrings, wine, grain or any other victuals for a certain time at the suit of anyone.<sup>521</sup> Bailiffs were to provide aid and counsel to the parties involved in the collection as often as they were requested to do so. The toll's collection became even more complicated when, in October 1317, a breach seems to have appeared amongst the Lincoln merchants. From that date Roger Boslingthorpe, who up until

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<sup>519</sup> This is the previous sum mentioned without the deduction of £16, 0s, 10d retained from monies received on behalf of Walter le Keu and partners. It is possible that this sum had been forwarded to le Keu on behalf of him and his partners.

<sup>520</sup> *Foedera*, III, p. 650-2, 653 *C.C.R.*, 1313-17, pp. 508-9.

<sup>521</sup> *Foedera*, III, pp. 652-3.

that point had been represented by Walter le Keu along with the rest of the Lincoln merchants, began to act on his own behalf. As part of this process Le Keu appeared in Chancery and acknowledged that £116 3s 9 ½d of the total debt of £954 pertained to Boslingthorpe, presumably representing his share of the goods captured way back in 1304. However, le Keu alleged that Boslingthorpe owed him £58 1s 9 ½ d from that sum as a result of his expenses in pursuing the case as well as a loan to Boslingthorpe. On 20 October 1317, the two litigants were summoned to appear in Chancery to give full account of the dispute. In the meantime the bailiffs of Lynn were instructed to withhold £58 1s 9 ½ d of money levied in that town the money kept under the seals of the bailiffs as well as those of Boslingthorpe and le Keu, presumably awaiting the resolution of the case.<sup>522</sup>No further mention is made of this sum and it was not deducted from the amount owed to Boslingthorpe who from that point appears as a separate creditor, acting on his own behalf.

In the first six months that the toll was in effective operation, between 4 July 1317 and 25 December 1317, its receipts had amounted to £119 9s 9d. This represented a fairly healthy initial return, comparing favourably to the £100 18s raised by arrests over a six month period in 1311. However, the toll would never reach such heights again with various obstructions and manipulations over the next decade compromising its effect in providing swift compensation to the injured merchants. The sum raised was divided equally between Walter le Keu and partners, and Robert Elys as set out in the toll's renewal. Therefore at the start of 1318, Robert Elys remained to be paid £314 15s 4d, Walter le Keu and partners were still owed

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<sup>522</sup> *C.C.R.*, 1313-1317, pp.508-9.

£490 1s 9d and Roger Boslingthorpe was due £116 3s 7d<sup>523</sup>. Efforts to re-start the collection to recover the remaining sums were hampered by the continued absence of the count's envoys. It seems that Elys and Boslingthorpe had continued to sue for the remainder of their debt since the expiry of the previous writ, but le Keu and Rusebudel, despite having been expected for over a month, had not appeared to begin the levy. On 18 February 1318 Elys and Boslingthorpe were granted licence to continue the toll independent of the count's envoys, the king not wishing them to be prejudiced on account of the neglect of others. The absence of le Keu and Rusebudel, the count's representatives, led to certain alterations in the form of the collection. The toll was to be restricted to the counties of Norfolk and Suffolk within a number of named towns. In addition, for greater transparency, all collections were to be made in the company of the relevant bailiff, testimony provided in the form of an indenture with the receipts of the collection returned in Chancery as often as requested.<sup>524</sup>

The patent letters authorising the toll were to last until 25 December 1318, unless the full sum was raised before then. This optimism would again prove to be misplaced. Less than a month into the grant, however, problems began to emerge with the collection. On 2 March 1319 a mandate was sent to the sheriff and bailiffs of the counties of Norfolk and Suffolk instructing them to prevent all interference or opposition on the part of the count's subjects.<sup>525</sup> It was not only the count's subjects who provided opposition to the levy, indeed the biggest threat to the collection of the toll appears to have come from the burgesses of Great Yarmouth keen to protect the

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<sup>523</sup> Boslingthorpe does not seem to have received any part of the £119 9s 9d

<sup>524</sup> *C.P.R.* 1317-21, pp. 106-8, In Norfolk, Lynn, Burnham, Thornham, Blakeney, Cromer and Great Yarmouth, in Suffolk, Kirkley Road, Dunwich, Orford and Ipswich.

<sup>525</sup> *C.P.R.*, 1317-21, p. 171-172

trading interests of the town. On 7 March, at their petition, the collection was suspended in that port whilst the ships brought in the 'new herring'.<sup>526</sup> The majority of the money raised up to that point, by arrest or toll, appears to have come from this port and indeed from the fishing trade and such a suspension represented a major setback to the recovery of the debt. The suspension appears to have had an effect on efforts to collect the toll at other ports. On 16 May 1318 the bailiffs at Great Yarmouth were ordered to enforce the collection of the toll from a Dutch ship loaded with £80 worth of goods. It was alleged that the ship's master, John Wykemannesson, had resisted the attempts of Boslingthorpe and Elys's attorney and the bailiff Laurence Gobb to collect the toll in the town of Ipswich. It was claimed that after successfully resisting the attempts of Gobb et al, Wykemannesson had then taken the ship to the port of Great Yarmouth where the toll was not in operation.<sup>527</sup> Further problems arose elsewhere, this time implicating some of the plaintiffs themselves. In June 1318, Elys and Boslingthorpe complained that various merchants, fishermen and mariners were refusing to pay the toll on the strength of certain letters of quittance they claimed to have received as a result of agreeing a settlement with Walter le Keu and Henry Rusebudel.<sup>528</sup> At that time le Keu and Rusebudel did not possess licence to collect the toll in the ports of Norfolk and Suffolk although they may have held licence to collect the toll in other counties. As the toll was only payable upon a ship's first entry in the realm in any year so it is possible that merchants having visited ports elsewhere in the realm had travelled to Norfolk after paying the toll elsewhere. On 22 June the sheriff and bailiffs of Norfolk and Suffolk were ordered to assist Elys and Boslingthorpe with their collection,

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<sup>526</sup> *Bronnen*, I, p.168, *C.P.R.*, 1317-21, p. 112.

<sup>527</sup> *Bronnen*, I, p.169, *C.C.R.*, 1318-21, p. 178.

<sup>528</sup> *Bronnen*, I, p. 169.

“notwithstanding any letters of acquittance alleged to have been made in times past by Walter le Keu and Henry Rusebudel, the count’s envoys”.<sup>529</sup>

The problems with the toll’s collection continued into the following year. The writ authorising the collection was re-issued on 6 February 1319, Walter le Keu being named alongside Elys and Boslingthorpe in the writ of aid, as well as a memorandum attached to the same, reserving him suit for his costs in the matter.<sup>530</sup> As a precaution and in response to the events of the previous collection sheriffs and bailiffs were ordered to arrest all merchants and mariners of the count seeking to prevent, hinder or defraud the collection. Over the course of the year all three offences would be alleged; resistance to the toll again coming from a variety of sources. On 3 April the sheriff and bailiffs of Norfolk and Suffolk were ordered once again to proclaim prohibition to interference with the toll. The repeat of the proclamation had been prompted by a series of complaints on the part of the litigants. Firstly, it was alleged that merchants, fishermen and mariners from Maarland and Brill were attempting to evade the toll by claiming not to be subjects of the count. The second allegation involved more sophisticated attempts at evasion; the petitioners complained that certain towns in East Anglia “were devising to impede the aforesaid collection and levy” through the practice of transshipping. In clear echoes of the case against Geoffrey Drew, it was alleged that ships from certain towns and ports were intercepting ships from Holland and Zealand at sea and buying their cargo, or otherwise under colour of purchase claiming the goods, placing them in their ships so that when the goods arrived and were unloaded at port they were not

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<sup>529</sup> *C.P.R.*, 1318-1321, p. 184.

<sup>530</sup> *C.P.R.*, 1317-21, p. 306.

liable for the toll. The allegations, if true, demonstrate that this particular form of fraud was adaptable. Once again the sheriff and bailiffs were to make it known that the toll must not be undermined in any way, and that all violations would be strictly punished.<sup>531</sup>

In spite of the repeated prohibition and threats of punishment, claims of interference with the toll continued, this time involving the king's officers. On 29 August 1319, a commission of justices was instructed to inquire into allegations of collusion, fraud and neglect of the king's writ made against the bailiffs of Great Yarmouth. It was complained that Henry Rose, John Ocle and Roger Gavel<sup>532</sup> had levied a reduced toll upon the ships of the count's power entering the port. According to the accounts of Robert Elys and Roger Boslingthorpe lodged in Chancery, it was reckoned that up to that point 162 ships from the count's power carrying herring and fish had landed in the port, which by the terms of their allocation should have raised £162, that is 20s for each ship. Yet, it was alleged that the bailiffs, in contravention of the provision of the grant, had only collected 6s 8d from each ship making a total of 81 marks. It was further alleged that the proceeds of the toll had not been delivered to the plaintiffs, but rather had been 'maliciously retained' in the hands of the bailiffs and certain of their fellow burgesses of Great Yarmouth. The bailiffs were ordered by the king's writ to immediately deliver the 9 marks apparently in their possession to Robert and Roger, paying the remainder on the 11 August. The bailiffs, appearing in Chancery on the appointed day, countered that the reduced charge had been set with the consent of Boslingthorpe and Elys in order to attract the

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<sup>531</sup> *Bronnen*, I, p. 172.

<sup>532</sup> We encountered Gavel in 1311, already a bailiff for Great Yarmouth, when he was found to be in possession of £9 belonging to Dutch fishermen arrested on behalf of the petitioners.

fishing fleet, then at sea, to land at Great Yarmouth during the time of the market for the benefit of the whole Realm. Further they claimed that the toll had only been collected from 28 ships bringing a total of 14 marks, and that this sum had been lodged in the custody of a certain William Malke of the town, and after his death in the hands of executors. The bailiffs denied withholding any of the money collected and claimed that they had delivered 9 marks to the plaintiffs in obedience to the king's writ. In response, Boslingthorpe and Elys denied they had at any time consented to a reduced charge; indeed it was their opinion that a reduced charge would prolong the duration of the toll, discouraging foreign merchants from trading in the county.<sup>533</sup> The king ordered the plaintiffs and the bailiffs, along with a jury drawn from the county, to come to court to examine the truth of the allegations. No further details of the case survive, but certainly the larger two sums of £162 and 81 marks do not appear in the subsequent accounts of the collection suggesting that the issue was not resolved in favour of Boslingthorpe and Elys.

The toll is not mentioned again until 3 June 1320 when a writ of aid was issued in the names of Robert Elys, Roger Boslingthorpe and Walter le Keu attached with the customary injunction to the sheriffs to prevent any interference.<sup>534</sup> Yet, as with before, it was the actions of the crown and municipal authority that would pose the greatest threat to the toll's successful collection. On 28 July 1320, less than two months after the renewed grant, the bailiffs of Great Yarmouth were ordered not to permit Elys, Boslingthorpe or le Keu to collect any tolls from fishing vessels until Martinmas (November 11) 1320. A similar writ was sent to the bailiffs of Lynn and

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<sup>533</sup> *Bronnen*, I, pp. 174-5.

<sup>534</sup> *C.P.R.*, 1317-21, p. 481.



Blakeney on 8 September and those of Dunwich on 18 September.<sup>535</sup> The suspension was again prompted by a desire to protect the approaching autumn fishery, especially the Yarmouth herring fair held between the 29 September and 10 November.

Ironically, at a time when its collection had all but stopped, the count wrote to complain of the continued harassment of his men by the toll. Towards the end of August 1320 the count claimed that his men continued to be hindered by the toll's collection, despite the fact Walter le Keu and Robert Elys had been satisfied for the sums assigned to them. The count requested that all exactions from his men cease and for a day to be arranged to examine the accounts of the case, once again to establish if full payment had been made as had been reported. In line with the count's request, Elys and le Keu were summoned to appear before the treasurer in the exchequer on 3 November to render all receipts and memoranda concerning the collection.<sup>536</sup> The count was to ensure the attendance of his merchants to present evidence of the sums collected from them. The toll was to continue in the meantime; the king stating that as it was started with the consent of the count and his subjects it cannot be stopped until both parties are heard.<sup>537</sup> At the meeting, prorogued until mid Lent at the count's request<sup>538</sup>, it was revealed that far from having been satisfied, le Keu, Elys and Boslingthorpe were still owed the majority of their debt. It was established that since February 1318, Robert Elys and Roger Boslingthorpe had collected £94 15s 1d, leaving them out of pocket by £245 14s 1d and £90 9s 9d respectively. In the same period, Walter le Keu had collected £94 5s 6 ½ d leaving

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<sup>535</sup> *C.C.R.*, 1318-23, p. 248.

<sup>536</sup> *C.C.R.*, 1318-23, pp. 326-7

<sup>537</sup> *Bronnen*, I, p. 179.

<sup>538</sup> *C.C.R.*, 1318-23, p.341.

him and the Lincoln merchants he represented owed £395 1s 9d. From 18 February 1318, the two principal parties had held separate letters patent authorising the collection, Boslingthorpe and Elys, as we have seen, were restricted to Norfolk and Suffolk; le Keu and associates had licence to collect in all other ports of the realm. However, all the parties were named together in a writ of aid issued in February 1319. The similarities in the sums raised may suggest that from that point the toll had reverted to a joint collection with half the proceeds going to Elys and Boslingthorpe, split two thirds and one third respectively, and the other half going to le Keu.<sup>539</sup>

In the aftermath of the fresh accounting procedure the grant for the collection of the toll was renewed for a further year on 1 July 1321, and Robert Elys and Roger Boslingthorpe were re-issued a writ of aid to facilitate its collection, once again restricted to towns in Norfolk and Suffolk. Accompanying the writ was the usual mandate instructing the sheriff and bailiffs of those counties to enforce the penalties for evasion and resistance to the toll, i.e. arrest of body and forfeit of goods. Yet the main opposition again came from local communities, rather than the count's subjects. At the start of August various burgess of Great and Little Yarmouth petitioned the crown for the suspension of the toll, stating that if the toll continued into the autumn fishing season Dutch fishermen would withdraw from those towns "from fear of the aforesaid levy and collections", to the detriment of the approaching fair and the great loss of the Realm.<sup>540</sup> On 24 August 1321 the justices Walter of Norwich, John Thorpe and John Mutford were appointed to inquire and attend to the matter. On 30 September the bailiffs of Great Yarmouth were ordered not to arrest merchants

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<sup>539</sup> *Bronnen*, I, p. 207.

<sup>540</sup> *Bronnen*, I, p. 181.

bringing herring into the town until 30 November, i.e. during the herring fair. With regard to the toll, the bailiffs were order to follow the instructions of Norwich and Mutford. No further mention is made of the matter perhaps suggesting the petition was not granted. The toll had been suspended for the duration of the fishing season the previous year, but on at least two occasions when restrictions were placed on the arrest of Dutch goods, the collection of the toll was considered to be exempt from those restrictions. In the period between July 1321 and July 1322, despite the probable restriction, Elys and Boslingthorpe managed to raise a further £62 4s 10d towards their debt.

After this point the collection seems to have fallen into abeyance for nearly three years, perhaps as a result of the death of Robert Elys. On 22 March 1325, a writ of aid was issued to Roger Boslingthorpe and William and John Elys, the executors of Robert Elys. The manner of the collection appears to have altered, not by design but through a lapse in the administrative memory. According to a synopsis of the case up to that point contained in the writ of aid, the toll consisted of 10 shillings on every ship and an *ad valorem* tax on all merchandise, including fresh and salted fish, of 1 shilling in the pound. This description of the toll differed from all other references to the original agreement, all previous instructions to royal officials, and the stated expectations of the petitioners in their suit against the bailiffs of Great Yarmouth in 1320.<sup>541</sup> The collection of the toll again was restricted to the counties of Norfolk and Suffolk. Over the course of the grant, £50 19s was collected using this

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<sup>541</sup> That is a flat fee of 20s on all fishing ships and 10s on ships carrying all other types of merchandise plus an *ad valorem* tax of 20d per £ on their cargo.

revised tariff, with two parts allocated to the estate of Robert Elys and one part to Roger Boslingthorpe.<sup>542</sup>

The final mention of the toll is contained in a writ to continue its collection made to Boslingthorpe and Elys's executors on 5 October 1327. The new writ repeats the altered version of the toll contained in its predecessor, 10 shillings on every ship and a twentieth *ad valorem* tax on all merchandise including fish. As things stood on the date of the final grant, Robert Elys's estate remained to be paid £170 14s 10 ½ d for a debt that at its peak had stood at £374 15s. Roger Boslingthorpe was still owed £52 17s 11 ½ d from his original debt of £116 3s 7d. No further mention is made of the Lincoln merchants represented by Walter le Keu. The last mention of their debt in 1325 had set the remaining amount due at £395 16s 1 1/2d. It is possible that between then and 1327 they had collected full settlement of their debt. Indeed, it is possible that after this point all parties were satisfied with no further grant required. However, given the amount raised in previous grants this seems unlikely. The marriage between Philippa of Hainault, the daughter of count William, and Edward III, in January 1328, and the consequent desire to improve commercial relations between the two powers may have led to a cancellation of the toll or settlement of the debt by some other method.

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<sup>542</sup> C.P.R., 1324-27, pp. 140-1.

### **The case of Walter Fleming**

The experiences of Walter Fleming of York, from around the same time, serve as a useful comparison. His case was originally bracketed alongside those of Walter le Keu, and Richard Wake and John Wipe, considered as being clear and recognised.<sup>543</sup> According to Fleming's complaint his goods, valued at £44, had been taken by force of arms from a ship off the coast of Dunwich by Bodkin le Bower and other malefactors of Holland and Zeeland. The first mention of the case I have found dates from 1 November 1306. The count, in reply to a letter of request seeking redress on le Fleming's behalf, claimed to know nothing of the case, protesting that he has taken measures to prevent his subjects from harming English merchants.<sup>544</sup> Subsequently the count claimed that, "It did not appear to him that the robbers were of his land or dwelling in the same". However, if after diligent inquiry he found that his men were responsible, he shall provide satisfaction to Walter.<sup>545</sup> Such restitution was not forthcoming, and after testimony to that effect by the letters patent of the mayor and commune of York alongside a certificate of statute merchant<sup>546</sup>, he was granted a writ *de arresto*. On 18 March the bailiffs of Boston were ordered to arrest goods of the men and merchants of the power of count William up to £30, and to hold them in safe custody until Walter had been satisfied. The bailiffs of Wainfleet were ordered to arrest goods up to the remainder of £14.<sup>547</sup> In response to the very real threat of arrests the count wrote to the king some time between March and May. It was claimed by the count that the malefactors were of the lordship of Vorne, who

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<sup>543</sup> *C.C.R.*, 1307-1313, p.54-55, meeting prorogued upon condition that Walter le Keu and his fellows and Richard Wake and John Wype and Walter Fleming shall be satisfied for the damages and injuries inflicted upon them by men of the count's power (March, 1308);

<sup>544</sup> *Bronnen*, p.113.

<sup>545</sup> *C.C.R.*, 1307-1313, pp133-134.

<sup>546</sup> C241/63/318, an extract of formal registration of the debt registered before the borough mercantile court.

<sup>547</sup> *C.C.R.*, 1307-1313, pp105-106.

due to certain injuries committed by the lord of Vorne and his men was currently being held under siege. As a result the count was currently unable to compel him to provide compensation.<sup>548</sup> The count begged the king's patience informing him that his envoys will provide him with further details concerning the matter as soon as they were able.

In the event, Walter's writ of arrest was suspended as one of the conditions of the agreement between the king and the count made at the parliament in Stamford on the 3 August 1309. As we may recall under its terms all arrests by either of the parties were to stop and those that had been made were to be revoked and the goods released.<sup>549</sup> It was at this parliament that the suit of Fleming was detached from those of Walter le Keu et al, and Richard Wake and John Wype, those cases considered to be clear and acknowledged (although, as we have seen, the count had raised several objections against Fleming's case prior to this point). At that parliament the count's envoy Christian van Raephorst questioned the assessment of Fleming's losses, stating that the goods stolen from him were not worth £44. It was further stated that he should go to the count for justice. Fleming's renewed suit brought him no more success. It was again testified by the letters of the community of York that although Walter had gone to the count and petitioned for restitution, nothing had been done on his behalf. As a result of this most recent denial of justice the stay on the arrests was lifted. On 1 June 1312, orders addressed to the sheriff of Lincoln instructed him to arrest the goods of subjects of the count found within his jurisdiction. This initial order does not appear to have had any effect and as a result, on 30 March 1312, the

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<sup>548</sup> *Bronnen*, I, p.120-121.

<sup>549</sup> *Foedera*, III, pp.150-151.

writ of arrest was extended to cover the town of Lynn. This extended writ appears to have met with more success. On 10 January 1313, the bailiffs of Lynn were ordered to restore to Jacob of Lübeck a ship valued at £16, owned by a merchant of Dordrecht; Jacob, who had hired it, was contractually obliged to compensate the owner in the amount of £30 if he did not return it, “the king being unwilling that the said Jacob should incur loss, as he is not of the count’s dominion.”<sup>550</sup> On 15 January, the same bailiffs were ordered to sell 50 quarters of oats valued at 70s 10s that had been arrested in the town and deliver the proceeds to Fleming, and to continue the arrests until the merchant was fully satisfied.<sup>551</sup> The final mention of the case is in an undated petition from Walter le Fleming’s widow asking for the process to be continued, possibly sometime in 1313. Aubrey Fleming claimed that Walter le Fleming had been received £19 10s through arrests of Dutch goods, with regard to his debt and then the arrests had been suspended up to a certain unspecified time, by the king and council. The petition sought the granting of another writ to raise the remaining £25 10s which were in arrears according to the said process.<sup>552</sup> Arrests appear to have been suspended from September 1313 for the visit of the count’s envoys for the negotiations leading to the January agreement of 1314 whereby Walter le Keu agreed not to sue for the arrest of Dutch goods. The petition may have been lodged some time after. The sum mentioned to this point as having been raised was clearly the cost of the wheat and ship arrested at Lynn, despite the fact the bailiffs had been ordered to release the ship into the custody of the German merchant who had chartered it. No further mention is made of the case and at the time of the petition, at best, le Fleming and his estate had received just over a third of the sum

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<sup>550</sup> *C.C.R.*, 1307-13, p. 502.

<sup>551</sup> *C.C.R.*, 1307-13, pp. 502-503.

<sup>552</sup> SC8/160/7954.

sought. If his widow persisted with her suit, as we have seen she would have been hindered by various diplomatic negotiations restricting the arrest of Dutch goods making the recovery of the full sum due very difficult. Her suit would not have enjoyed the same privileged status afforded to those merchants compensated by the toll.

### **Conclusion**

The processes undergone by the litigants to obtain compensation were protracted, costly and probably ultimately inconclusive; yet, in relative terms the plaintiffs appear to have fared reasonably well. Out of a total of £1323 13s 4d<sup>553</sup> sought, representing the losses of the nine Lincoln merchants and Richard Wake and John Wype, as well as the costs allocated to Walter le Keu and Robert Elys, we have been able to account for £720 4s 2d, representing at the very least a return of just over half of their losses and expenses. Richard Wake and John Wype had been fully compensated for the injuries they had suffered, with the £259 debt transferred to Robert Elys. In the final mention of the case in October 1327, Walter le Keu and his partners were owed £448 14 ½ d out of a debt of £986 13s 4d<sup>554</sup>. The estate of Robert Elys was owed, as of the last mention of the toll, a total of £170 14s 10 ½ d for his various endeavours on behalf of the count. The perseverance and expense required to maintain such a claim would not have

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<sup>553</sup> That sum is the £1300 contained in the bond issued at the 1309 Stamford parliament, plus the £32 13s 4d raised from arrests in the reign of Edward I allocated to Walter le Keu for his expenses and not subsequently deducted from the principal sum.

<sup>554</sup> That is to say their original claim of £896 10s plus the costs subsequently allocated to Walter le Keu of £32 13s 4 and £57 10s (although this sum was divided between Elys and le Keu no deduction was subsequently made from the sum sought so the full £57 10s is retained here as part of the merchants debt.) Le Keu himself may have made nearly a £100 in expenses from the case.



been within the power of all petitioners. Indeed, Walter le Keu was allocated at least £60 on behalf of his expenses in pursuing the case. Clearly in the cases of Walter le Keu and Robert Elys we are presented with merchants familiar and comfortable with both the local and international elements of the case, serving English royal and Dutch comital administration in different ways. However, rather than these central administrations it was Elys and le Keu that drove the process forward. These men performed a variety of roles. Walter le Keu was a creditor on his own account; a proctor for his merchant partners; and finally, a representative and envoy of the count. Robert Elys enters the case as the count's agent, but becomes a plaintiff on his own behalf, and serves as a local official with influence in Great Yarmouth.

The money was raised by a variety of methods; but the majority appears to have come from the collection of the toll. Over a period of eleven years, during the toll's intermittent operation, the plaintiffs were able to raise £421 15s 10 ½ d towards their debt. Previous attempts at restitution had suffered through the machinations of Geoffrey Drewe for his own profit and through the desire of the English crown and the municipal authorities of Yarmouth to protect the herring trade. Although no less vulnerable to manipulation, opposition and corruption than the various other methods, the toll, and indeed the cases of Walter le Keu, Richard Wake and John Wype in general, appear to have enjoyed a certain protected status. Beginning at a time when diplomatic negotiations and legislation were compromising the effectiveness of arrests, the toll was granted certain exemptions from these restrictions. In February 1317 the toll was adjudged to be

exempt from restrictions placed on the arrest of victuals. In June of that year, the safe conduct granted to Dutch merchants was not to prevent the collection of the toll. From the point of view of the count of Hainault, Holland and Zeeland, this means of raising the money was clearly preferable to the payment of ready cash, particularly when the figures owed were as large as £1,300. As for the count's merchants who were subject to the tax, such a form of collection would appear to have been more attractive than the arbitrary arrest of their goods. This would be particularly true of those fishermen whose ships, gear and cash had been arrested in Great Yarmouth in 1311 to their considerable discomfort. With the toll the liability for the debt was spread in a more progressive, equitable and diffuse manner.

However, from the point of view of the local communities where the toll would be levied, there was no obvious benefit to this method of raising money, as such a toll discouraged trade. The majority of the money raised, whether through the collection of the toll or the arrest of goods, related to the fishing industry, particularly the herring trade. This was the most common point of contact between English and Dutch merchants in the fourteenth century. Yet, there is a certain paradox in that the most likely means of raising the money, the prosperous herring trade, was liable by its very prosperity to be jealously protected by the burgesses of Yarmouth. The herring fair was vital to the economy of Great Yarmouth, indeed its autumn fishing season was the *raison d'être* of the town.<sup>555</sup> The needs of such an important fair were always going to take precedence over the claims of individuals seeking damages. The

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<sup>555</sup> C.Bonnier, 'A list of English Towns in the Fourteenth Century, *English Historical Review*, 16 (1901) p.502.

crown was eager to foster such a fair, partly due to the prominence of fish in the medieval diet. Herring was a vital source of victuals for the army and the navy, particularly relevant at a time of ongoing conflict with Scotland where there was much competition for resources. The frequent suspensions imposed upon the collection of the toll compromised its effectiveness, despite its protected status relevant to arrests.

The case reveals the *ad hoc* nature of the process of restitution in the later Middle Ages, with no established framework for providing compensation it was a procedure marked by compromise, adaption and the negotiation between often competing interests. The complexity in the process to some extent resulted from the need to balance those competing interests. As the case progresses we witness the full spectrum of medieval administration from good practice to malpractice including fraud<sup>556</sup>. The count of Holland for his part raised frequent objections to a process he himself had consented to and was, to some extent, being carried out on his behalf. He obviously was required to balance his responsibility to provide compensation to the injured English merchants and the need to protect the interests of his own merchants resident in England. The English crown had to perform a similar balancing act between its responsibility towards individual merchants seeking justice and the wider needs of both local communities and those of the realm, all the time acting through local agents who were far from disinterested parties.

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<sup>556</sup> SC8/83/4130, interestingly some time in 1320 the customers of Lynn, Great Yarmouth and Ipswich, all places involved in the collection of the toll, were removed from their posts due to allegations of corruption.

**Sums Collected (Amount owed relates to the start of the stated year)**

Year	Walter le Keu et al.	Richard Wake & John Wype	Robert Elys	Roger de Boslingthorpe	Money Levied
1305	£896 10s 0d <sup>557</sup>				
1306	£896 10s 0d				£32 13s 4d <sup>558</sup>
1308	£896 10s 0d	£259 <sup>559</sup>			
1309	£954 <sup>560</sup>	£259			
1310	£954	£259			£100 18s
1311	£853 2s	£259			£186 17s <sup>561</sup>
1312	£666 5s	£259			

<sup>557</sup> The first mention of the case but the sum sought is not specified

<sup>558</sup> This sum was subsequently granted to Walter le Keu on behalf of his expenses and was not deducted from the principal sum.

<sup>559</sup> The first mention of the case I can find dates to March 1308, but by this stage their case had been established before the king's council and recognised by the count's envoy Christian van Raephorst before the same council.

<sup>560</sup> The increase of £57 10s in Walter le Keu's claim would be a matter of dispute between him and Robert Elys over the course of 1311. Le Keu claimed that the additional sum was to cover his expenses in pursuing the case. Elys asserted that the money was due to him as a result of a loan made to the count's envoys at the Stamford Parliament. As we have seen the matter was put to arbitration in 1311 where the arbitrators, unable to decide between the two claims, split the sum between the two parties. It is in the immediate aftermath of the Stamford Parliament that the revised total first appears which would tie in with Elys's account. But it is unclear why a debt owed to Elys would be added to the sum sought by le Keu.

<sup>561</sup> The arrests of 1310 and 1311 were made over the 4<sup>th</sup> regnal year of Edward II, that is to say between July 1310 and July 1311. We know that £100 18s was raised in Great Yarmouth from an arrest order of July 1310, a further £40 was raised in that port between February 1311 and July 1311.

1316	£666 5s	£259	£115 15s <sup>562</sup>		
1317	£666 5s		£374 15s		£119 19s 4d
1318	£490 1s 9d		£314 15s 4d	£116 3s 7d	
1320	£490 1s 9d		£314 15s 4d	£116 3s 7d	£94 15s 1d <sup>563</sup> £94 5s 6 ½ d <sup>564</sup> (189 0s 7 ½ d)
1321	£395 16s 2 ½ d		£245 14 1d	£90 9s 9s	£62 4 10d
1325	£395 16s 2 ½ d		£203 14s	£70 5s	£50 11s 1d
1327	£395 16s 2 ½ d		£170 10s 1 ½ d	£52 17s 9 ½ d	

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<sup>562</sup> This total was allocated to Robert Elys over the course of the year, £87 as his part of the £1300 bond of 1309, £57 10s as his half of the disputed £57 10s put to arbitration in 1311. Interestingly, this amount was not deducted from the amount owed to Walter le Keu even although the £57 10s had been added to his total in 1309.

<sup>563</sup> This sum had been collected on behalf of Robert Elys and Roger Boslingthorpe since February 1318, 2 thirds allocated to Elys and 1 third to Boslingthorpe.

<sup>564</sup> This sum had been collected since February 1318 on behalf of Walter le Keu..

## **6. Conclusion**

The issue of what constitutes piracy is still unresolved in contemporary international law. No one definition is considered to have universal validity. A recent debate surrounding the definition of piracy, for example, is whether the term should encompass politically motivated attacks, i.e. acts of terrorism, or be restricted to attacks where profit was the main or sole motivating factor.<sup>565</sup> The 1958 Geneva Convention removed State acts and those with clear political motivations from the legal application of the term, leaving the deterrent effect of piracy sanctions to apply solely to those who acted for private gain.<sup>566</sup> The issue taps into the distinction between sanctioned and non-sanctioned violence, belligerency and insurgency. Such a distinction was surely less clear in the Middle Ages than it is today. It has been argued in this thesis that those acts consistently referred to as ‘piracy’ by modern historians do not stand up to critical scrutiny, and to retrospectively label them as such is a mistake.

The first chapter has demonstrated that to define ‘piracy by its perpetrators’ does not work. Frequently within scholarly discussion on the subject, the activities of those men mistakenly referred to as ‘privateers’ is assimilated to an act of ‘piracy’, indistinguishable in methods and aims. We saw that such men were engaged in a

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<sup>565</sup> See Rubin, A.P., ‘Revising the law of “piracy”’, *California Western International Law Journal* 129 (1990-1) 129-37; Constantinople, G.R. “Towards a new definition of piracy : The Achille Lauro incident.” *Virginia. Journal of International Law*. 26 (1986) 723-753; Dubner, B.H., ‘Piracy in contemporary national and international law’, *California Western International Law Journal* 129 (1990-1), 139-49 etc.

<sup>566</sup> Crockett, C.H., ‘Toward a revision of the international law of piracy’, *DePaul Law Review*, 26 (1976-77), pp.78-9.

variety of naval roles in which the capture of 'private' shipping was but one; yet this was true of all forms of medieval naval warfare and it is a mistake to dismiss such men as authorised maritime armed robbers.

Chapter two demonstrated that 'piracy' did not result from the application of letters of marque. Far from being a licence to encourage private vengeance in the form of reprisal raids, these documents were in fact a regulated mechanism of dispute resolution within a framework of international custom designed not to encourage disputes but rather to prevent their escalation between different communities. Rather than a licence to plunder, they were in fact accountable instruments of law executed under close judicial supervision. Their purpose was to bring about settlement rather than to sanction disorder, and in this respect they represented an early development in International Law.

Chapter three showed that to define 'piracy' in terms of its victims is also problematic. One cannot label all attacks on friendly or allied shipping as 'piratical'. We have seen that even friendly shipping could be liable for capture if it carried enemy goods or visited enemy ports. Those acts retrospectively labelled 'piracy' were often perpetrated during periods of war, or in times of diplomatic uncertainty. The Middle Ages were often marked by periods of hostility short of formal conflict. Such hostility manifested itself in the wholesale arrest of goods, trade embargoes and the expulsion of alien merchants, finally culminating in attacks at sea. In dealing with the consequences of attacks the Crown was more concerned with wider diplomatic or

economic concerns than it was with the rigorous application of a well defined criminal code.

Chapter four demonstrated that the key issue surrounding ‘piracy’ was the provision of restitution. It reinforced the point that such acts were a matter for civil law rather than criminal. The legal consequences of the act centred on the need to provide restitution rather than punishment. As we saw this process was initiated at the suit of the injured party, and it was the actions of the individual litigant that drove the process on. It was the desire for the injured party to achieve justice which created the records of the process from the bottom up, rather than any assertion of the developing jurisdiction of the state from the top down.

It was not always in the Crown’s interests to adopt a highly prescriptive approach to matters at sea. At certain points the Crown could narrow or broaden the scope of what constituted good prize; there existed a dialectic between the desire to preserve order at sea, and a need to encourage private ship-owners to put to sea to defend the Realm. In this respect it is a mistake to view the treatment of the subject as a linear and evolving process centred around the state’s desire for a monopoly on the exercise of violence. The English Crown had no wish to monopolise the exercise of violence at sea, as the exercising of violence cost money.

If one seeks to define an action retrospectively, what standards should be applied? Piracy as a term has to be legally defined; such a definition cannot exist



outside its specific legal context. The legal effect of the term ‘piracy’ undergoes constant legal revision to fit changing circumstances and priorities. It is a mistake to apply terms without reference to their particular context, and to presume that they have a constant meaning. Whilst there were certainly actions involving the capture of shipping at sea that the Crown considered to be noxious in their impact upon commerce and diplomacy, to define such actions as ‘piracy’ is to impose a criminal legal framework that did not yet exist.

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