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## "On Neptunes Watry Realmes": Maritime Law and English Renaissance Literature

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“ON NEPTUNES WATRY REALMES”:  
MARITIME LAW AND ENGLISH RENAISSANCE LITERATURE

A Dissertation Presented

by

HAYLEY COTTER

Submitted to the Graduate School of the  
University of Massachusetts Amherst in partial fulfillment  
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 2021

English

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MARITIME LAW AND ENGLISH RENAISSANCE LITERATURE

A Dissertation Presented

by

HAYLEY COTTER

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## IN MEMORIAM

Josephine Mele Cotter  
December 26, 1914—July 26, 2016

*Frate, la nostra volontà quieta  
virtù di carità, che fa volerne  
sol quel ch'avemo, e d'altro non ci asseta.*

(Dante Alighieri, *Paradiso*, III.70-72)

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The ascent of the scholarly mountain implies a bitter loneliness, an isolation that borders on solipsism, flashes of despair; small respite; little warmth. But when night fell and resolve waned, when my path became obscured by darkness and dejection, I could look up to a bright constellation of mentors, teachers, friends, and students and find my way again.

One could not ask for a better adviser than Joseph Black. When the face of the mountain proved too steep to scale, he guided me to manageable switchbacks and tempered my mercurial nature with his calm and measured disposition. Above all, I thank him for never permitting me to cast my pearls before the swine of scholarly mediocrity. From Adam Zucker I learned to allow my green ideas to ripen, and then to keep the good ones and discard the bad. He remains an impeccable example of how to navigate this profession. Monika Schmitter unveiled the grandeur of the Venetian Renaissance for me. Her seminars instilled the invaluable impulse to analyze a line of poetry with the rigor and percipience of an art historian. Josiah Blackmore, who graciously agreed to join my committee from afar, brought a keen appreciation for the early modern sea's scholarly potential. Many years ago, it was his translated account of the wreck of the Portuguese galleon *S. João* that opened my eyes to the subject. Robert Sullivan demonstrated magnanimity that extended beyond his role as a member of the committee. In addition to providing invaluable feedback, he taught me a bit of *Mittelhochdeutsch* and *Frühneuhochdeutsch*; shared an interest in birdwatching; exuded an affability that brightened the darkest of days; and showed me that kindness and generosity are the most important qualities a scholar can possess.

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Finally, I would like to thank my parents and brother, who have always loved and supported me unconditionally. Mom, we once climbed Tortugas Mountain and from its highest summit looked down upon the unfathomable expanse below. That ascent remains the most precious of them all.

Sey dennoch unverzagt. Gieb dennoch unverlohren.  
Weich keinem Glücke nicht. Steh' höher als der Neid.  
Vergnüge dich an dir / und acht es für kein Leid /  
Hat sich gleich wider dich Glück' / Ort / und Zeit verschworen.  
Was dich betrübt und labt / halt alles für erkohren.

—Paul Fleming, “An Sich” (1641)

My Soule, which hath seene the extremitie of Time and Fortune, cannot yet despaire.

—Michael Drayton, *Poly-Olbion* (1612)

## ABSTRACT

“ON NEPTUNES WATRY REALMES”:  
MARITIME LAW AND ENGLISH RENAISSANCE LITERATURE

MAY 2021

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This dissertation stages an unprecedented dialogue between the maritime, the literary, and the legal within the context of the English Renaissance. It positions the ocean as an essentially legal space and argues that law mediates all human-ocean interactions. Additionally, it contends that an understanding of legal conceptions of the sea is essential to developing a cultural awareness of maritime space. Therefore, my project resituates early modern literary engagements with the ocean within a complex body of legal and political discourses and argues that in an island nation such as England, knowledge of the sea was widespread. Consequently, the ubiquitous maritime references in the period’s literature were founded on real legal knowledge that literary scholars can consider in their readings of these texts. Through its synthesis of canonical literary works such as Edmund Spenser’s *The Faerie Queene* (1590, 1596) and Michael Drayton’s *Poly-Olbion* (1612, 1622) and legal texts such as William Welwood’s *An Abridgement of all Sea-Lawes* (1613), Alberico Gentili’s *Hispanicae advocacionis libri duo* (1613), and John Selden’s *Mare clausum* (1635), this dissertation offers four case studies that illuminate the rich possibilities when maritime law inhabits the same scholarly space as English Renaissance literature.

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## INTRODUCTION

A novel scholarly topic—a matter of first impression, as referred to in law—grants the scholar who sets down its path both considerable freedom and scholarly responsibility. If executed effectively, then the topic unfurls for others in the field who, too, may find themselves surveying its attendant trails. Its incipency proves its greatest asset, and its conclusions represent the starting point of additional investigations. A poor execution, however, can dissuade future prospectors by convincing them the path too serpentine, and the journey too arduous, for rewarding scholarly payoff. Any merits of the topic become entangled in weeds, and the path itself grows overcovered and forgotten. As a result of this inherent risk, a pioneering intellectual inquiry requires the employment of the full range of tools in one's scholarly arsenal.

This dissertation investigates such an issue. It stages an unprecedented dialogue between the maritime, the legal, and the literary within the context of the English Renaissance. Because of this project's unpathed waters and undreamed shores, its central argument, one that informs each chapter, is that the link between maritime law and English Renaissance literature is indeed a productive one, that it lends itself to a variety of questions, methods, approaches, and texts, and that it provides myriad opportunities for others to investigate its major themes. My project positions the ocean as an essentially legal space. It argues that all human-ocean interactions are necessarily mediated by some form of law. Additionally, it contends that a nuanced understanding of these legal conceptions of the ocean is essential to developing a cultural understanding of maritime spaces, one that extends to different historical periods and geographical locations, and

one that applies to different types of law. While my own research engages with Renaissance literature within an early modern legal and cultural framework, it more broadly demonstrates the scholarly payoff of applying a legal lens to the sea. This legal lens, I posit, transcends the needs of the legal scholar or the naval historian. It touches many branches of scholarship: the ocean has played a central role in much of human history and has touched colonialism and imperialism; the rise of capitalism; the exchange of ideas and cultures; global migration; technologies of science and navigation; political discord; and questions of territorial claims. Because the early modern period witnessed many of these paradigmatic shifts, it presents a useful site at which to begin this type of inquiry. Therefore, my research resituates early modern literary engagements with the ocean within a complex body of legal and political discourses and argues that in an island nation such as England, knowledge of the sea was widespread. Consequently, the ubiquitous maritime references in the period's literature were founded on real legal knowledge that literary scholars can consider in their readings of these works.

In the early modern period, the maritime, the legal, and the literary were each marked by an inherent tension: on the one hand, pulled forward by navigational, jurisprudential, and aesthetic innovations; on the other, pulled backward, beholden to maritime custom, legal conservatism, and literary antiquarianism. While this tension manifested itself differently in each case, the core unease remained, and this core forms the foundation of my dissertation.

During the sixteenth century, maritime expansion and advances in naval technology rendered the surface of the globe an increasingly small space. Perhaps the most striking example of these advances comes not from England, but from Spain and

Portugal. When Christopher Columbus crossed the Atlantic during the autumn of 1492, his crew commanded a carrack and caravels that had not been built for transoceanic voyages. As recently as the early fifteenth century, most piloting depended on always being within view of the coast, and the concept of sailing on the high seas for extended periods befuddled the period's mariners.<sup>1</sup> His initial voyage had earned Columbus the title of Admiral of the Ocean Sea. Less than thirty years later, when Ferdinand Magellan crossed the Pacific during his circumnavigation of the globe, he did not see land for over three months. Ravaged with scurvy and near death—nineteen men perished during the voyage—the desperate crew finally landed on the Mariana Islands of present-day Guam on March 6, 1521. In his account of the transpacific passage, Antonio Pigafetta wrote:

We sailed about four thousand leagues during those three months and twenty days through an open stretch in that Pacific Sea. In truth it is very pacific, for during that time we did not suffer any storm, and we saw no land except two desert islets, where we found nothing but birds and trees ... Daily we made runs of fifty, sixty, or seventy leagues with the wind at the windward side or at the stern, and had not God and His blessed mother given us such good weather we would have all died of hunger in that exceedingly vast sea. In truth I believe no such voyage will ever be repeated.<sup>2</sup>

Between 1492 and 1521, the seas of the world had shrunk, and European navigation had moved from pilotage beholden largely to a view of the shore to the crossing of Earth's largest ocean. This shift represents a fundamental reorientation of the European worldview, one whose effects still reverberate.

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<sup>1</sup> See G.V. Scammell, *The First Imperial Age: European Overseas Expansion c.1400-1715* (London: Unwin Hyman, 1989), 54-55; N.A.M. Rodger, *The Safeguard of the Sea: A Naval History of Britain, 660-1649* (New York: W. W. Norton, 1998), 161-62.

<sup>2</sup> Antonio Pigafetta, *The First Voyage Around the World, 1519-1522: An Account of Magellan's Expedition*, trans. Theodore J. Cachey, Jr. (Toronto: University of Toronto Press, 2007), 25.

Although England arrived rather late on the scene, the English Navy became permanent during the reign of Henry VIII and advances throughout the century led to the emergence of England as a major presence on the global ocean.<sup>3</sup> Yet with these advances came an attendant nostalgia for a nautical past. Richard Hakluyt's *The Principall Navigations, Voiages and Discoveries of the English Nation* (1589) instills in its reader the impression that England's naval prowess had existed since time immemorial. Although largely apocryphal and at times falling into the fantastic, Hakluyt's work celebrates an English maritime history that stretches back to Arthur himself. But *The Principall Navigations* did not radically reconfigure the English orientation to the sea. Long before the defeat of the Spanish Armada, the English recognized the naval advantage enjoyed by an island nation. In the mid-1430s, an anonymous poem (erroneously attributed to Adam Moleyns in the early twentieth century), *The Libelle of Englyshe Polycye*, urged the English to "cherish merchandise, keep the Admiralty / That we be masters of the Narrow Sea," and one manuscript copy is titled "An exhortation to continue the strength of the Navy of England in the Narrow Sea."<sup>4</sup> Hakluyt, accordingly, included a copy of the *Libelle* in *The Principall Navigations*. But one need not look back to the fifteenth century to locate such maritime nostalgia in early modern England. In the second book of William Browne's *Britannia's Pastorals* (1616), for example, the poet recalls the defeat of the Spanish Armada twenty-eight years earlier. Browne reminisces:

So by our heroes were we led of yore,  
And by our drums that thunder'd on each shore,  
Struck with amazement countries far and near;  
Whist their inhabitants, like herds of deer

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<sup>3</sup> See Rodger, 164-346.

<sup>4</sup> See Rodger, 152; *The Libelle of Englyshe Polycye: A Poem on the Use of Sea-power*, ed. George Frederic Warner (Oxford: Clarendon, 1926), xiv.

By kingly lions chas'd, fled from our arms.  
If any did oppose instructed swarms  
Of men immail'd Fate drew them on to be  
A greater fame to our got victory. (2.4.73-80)

But this earlier period of glory could not sustain itself, Browne opines:

But now our leaders want; those vessels lie  
Rotting, like houses through ill husbandry;  
And on their masts, where oft the ship-boy stood,  
Or silver trumpets charm'd the brackish flood,  
Some wearied crew is set, and daily seen  
Their sides instead of pitch caulk'd o'er with green. (2.4.81-86)<sup>5</sup>

Within a generation, the golden age of Elizabethan sound government had faded, leaving abandoned ships moored mournfully at Devon's ports, sad specters of a former glory. For Browne, maritime deterioration served as a powerful surrogate for political decay.

Legal contours in the early modern period underwent paradigm-shifting changes as well. The scholarly question of English law and the Renaissance was first addressed seriously by legal historian Frederic Maitland in his famous Rede Lecture of 1901. Indeed, so influential were his opinions that all legal historians writing in their wake have had to contend with them. Maitland's main question involved the endurance of the English common law during the early modern period. How was the national law of England able to resist the reception of Roman law?<sup>6</sup> Why did the English councilor courts

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<sup>5</sup> *The Poems of William Browne*, vol. 1, ed. Gordon Goodwin (London, 1894).

<sup>6</sup> The Reception refers to the process by which Roman law was introduced to Europe during the medieval and early modern periods. See C.C. Turpin, "The Reception of Roman Law," *Irish Juris*, 3.1 (1968), 162-74; O.F. Robinson, et al., *An Introduction to European Legal History* (Abingdon: Professional Books Ltd, 1985), 318-21.

fail to Romanize as the *Reichskammergericht* had done in Germany?<sup>7</sup> As legal historian John Baker notes, Maitland framed the situation thus: “On the Continent the old Canon-law books were being burned, and Roman law was driving German law out of Germany. Intellectuals such as Erasmus and Starkey were attacking the language and content of English law as barbarous, and raising the Civil law as refined and humane.”<sup>8</sup> The answer, concluded Maitland, to the riddle of English juristic resistance, lay in the Inns of Court, England’s law schools, and their manner of teaching municipal law. Centers of European legal learning could claim no equivalent, and so were susceptible to humanistic ideas sweeping through the universities.

Maitland later admitted that his conclusions were purposely broad because his knowledge and access to original materials precluded more precise assessments. He was also embarrassed by his paucity of knowledge regarding Scots law. In addition, he compared England mainly to Germany, which itself represented the true European outlier. But Maitland’s conclusions were also hindered by his general premise that during the first half of the sixteenth century Roman law threatened English law in any genuine way. Baker and others have shown this simply was not the case, that those English intellectuals who had studied on the Continent and returned to England inflamed by the new learning were few, insufficiently influential, and too deficient in requisite legal

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<sup>7</sup> Founded in 1495 during a period of imperial reform, the *Reichskammergericht* was the supreme court of the Holy Roman Empire. See Ralf-Peter Fuchs, “The Supreme Court of the Holy Roman Empire,” *Sixteenth Century Journal* 34.1 (2003): 9-27; Eva Ortlieb and Siegrid Westphal, “Die Höchstgerichtsbarkeit im Alten Reich: Bedeutung, Forschungsentwicklung und neue Perspektiven,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 123.1 (2006), 291-304.

<sup>8</sup> Baker, *The Reports of Sir John Spelman, Vol. II* (London: Selden Society, 1978), 24.

knowledge to instigate real change.<sup>9</sup> Locating the changes that did occur in law during the sixteenth and seventeenth centuries remains difficult for another reason, Baker notes “since there is a deep conservative element in the common law which often conspires to deny or conceal any sense of movement.”<sup>10</sup> Early modern lawyers embraced a nascent historicism about their laws and strove to prove their changeless qualities. Around 1470, John Fortescue had argued that English law was the oldest, and the best, in the world.<sup>11</sup> By the early sixteenth century, credulity of this degree began to dissipate. Vergil Polydore, for example, provided a more probable account of early English law in his *History of England* (c.1511).<sup>12</sup> In the early seventeenth century, lawyer Edward Coke—an indefatigable champion of the common law—felt pressure to demonstrate the constancy of English law for another reason: the ascension of James I.<sup>13</sup> By proving that

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<sup>9</sup> See Baker, *The Oxford History of the Laws of England Volume VI: 1483-1558* (Oxford: Oxford University Press, 2003), 3-18.

<sup>10</sup> Baker, *The Oxford History of the Law of England*, 17.

<sup>11</sup> “And touchynge the antyquitie of the same neither are the Romaine Ciuile lawes by so longe contynuaunce of aucient times confirmed nor yet the lawes of the venetians, whiche aboue al other are reported to be of most antiquity: forsomuch as their Ilande in the beginnynge of the Britones was not then inhabited, as Roome then also vnbuilded: neyther the lawes of any patnime nation of the world are of so olde and auntyent yeares. Wherefore the contrarye is not to be sayde nor thoughte, but that the Englyshe customes are verye good, yea of all other the verye best” (fol. 39r): Fortescue, *A learned commendation of the politique lawes of Englande* (1567).

<sup>12</sup> Polydore Vergil’s *English History: From an Early Translation*, ed. Henry Ellis (London, 1846), 292.

<sup>13</sup> “For Englishmen who wished to defend their law, it was not sufficient to assert that the king was bound by it, as Coke did to James’ face in 1608. ... It had also to be shown that James’ succession had not in any sense been a conquest, which would have vested him with a conqueror’s power to impose new laws on the conquered. ... Further, the existing law to which alone James owed the English throne could not be the creation of any king. Not only had his succession been no conquest, the continuous existence of English law had never been interrupted by any conquest. No king of England had ever exercised the powers of a conqueror. English law was not made by kings, English kings were made by the law”: George Garnett, “‘The ould fields’: Law and History in the Prefaces to Sir Edward Coke’s Reports,” *The Journal of Legal History* 34.3 (2013), 245-83 (249).

the national law of England had existed since before the Norman conquest, indeed, since time immemorial, then by extension, James remained bound to it. Later in the century, antiquary William Dugdale's *Origines juridiciales, or, Historical memorials of the English laws* (1666) demonstrated the continued interest in locating the origins of the common law. In Chapter 3, "The Antiquity of Our Laws in England," Dugdale wrote, "That which we call the Common Law is, out of question, no less antient than the beginning of differences betwixt man and man, after the first peopling of this land."<sup>14</sup> The authority of English law, for the early modern lawyer, swept in as a wind from the past.

Despite this seemingly ineradicable conservatism, law in England *did* change during the early modern period. The technology of the printing press did for English law what the technology of the Portuguese caravel had done for European sea travel: it ushered in changes that transformed the landscape. Most scholars agree that during the period the printing press pushed English law from an oral to a textual endeavor. In the Middle Ages, the common law depended on oral tradition, rather than textual references, as its main source of authority; the lawyers frequently invoked "our law" in their arguments, a phenomenon that persisted until the reign of Henry VIII.<sup>15</sup> In the early modern period, this dynamic shifted, and common lawyers began to rely increasingly on printed texts rather than memory: the technology that allowed the production and circulation of law books gradually changed the way the law itself was practiced. English

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<sup>14</sup> Dugdale, *Origines juridiciales, or, Historical memorials of the English laws* (1666), 3.

<sup>15</sup> Ian Williams, "'He Creditted More the Printed Booke': Common Lawyers' Receptivity to Print, c.1550-1640," *Law and History Review* 28.1 (2010), 39-70 (42).



law moved from an oral to a textual enterprise. A clear preference for print was discernable by the 1590s as evidenced in lawyers' citations.<sup>16</sup>

English Renaissance literature demonstrates paradigmatic shifts as well, and if one juxtaposes a poem of Thomas Wyatt with a poem by John Donne, it stretches credulity that their authors belong to the same broad literary epoch. The early modern period witnessed a proliferation of poetry and drama, and English literature came into its own as it looked to earlier models: Wyatt and Sidney to Petrarch, Spenser to Ariosto and Tasso, and Drayton to Spenser. As the world both within and beyond English shores transformed, the literature reflected these social, political, philosophical, and religious developments, sometimes deliberately—as in Redcrosse Knight's rejection of thinly-viewed Catholicism in Book I of Edmund Spenser's *The Faerie Queene*—and sometimes more circuitously—as in Shakespeare's characters, whose mutability beautifully reflects Pico della Mirandola's observations on human capacity for change in his *Oration on the Dignity of Man*.<sup>17</sup> Although the period failed to produce an English maritime epic equivalent to Portugal's *Os Lusíadas*, the sea informs *The Faerie Queene* more than has been recognized by previous scholars. Beyond Spenser's framing of his poem as an allegorical ship, the ocean plays a major role in several of the work's key plot developments and, as I demonstrate in Chapter 3, develops along a discernable trajectory. Similarly, Michael Drayton's *Poly-Olbion*, published in 1612 and 1622 with the mission to provide a "A Chorographicall Description of Tracts, Rivers, Mountaines, Forests, and

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<sup>16</sup> Williams, 48.

<sup>17</sup> "O supreme and stupendous felicity of man, to whom it has been granted to have whatever he wants and to be whatever he wishes! Who will not wonder at this chameleon that is man? What else is there anywhere more worthy of wonder?" Margaret King, ed. and trans., *Renaissance Humanism: An Anthology of Sources* (Indianapolis: Hackett, 2014), 57.

other Parts of this Renowned Isle of Great Britaine,” abounds with references to the sea, and Neptune permeates Drayton’s verse. The poetic indebtedness to the sea that defines both works reflects, in part, England’s increasing presence on the world’s oceans.

The period’s literature glances backward, however, even as it gazes into the future, and the antiquarianism of the English Renaissance has been well-documented.<sup>18</sup> Turning again to Drayton and Spenser, this extension becomes clear. While in the House of Alma, for example, Guyon “chaunst eke on another booke, / That hight, *Antiquitee* of *Faery* lond. / In which whenas he greedily did looke, / The’ofspring of Elves and Faryes there he fond” (II.ix.60). The proceeding canto provides a chronicle of British kings. This episode, along with the visit to Merlin in III.iii, in which he prophesizes the progeny of Britomart and Artegall, demonstrates Spenser’s preoccupation with Faery Land’s past, and how that past has shaped its present, and how, in turn, its present will shape its future. As Judith H. Anderson observes, “While a number of times in *The Faerie Queene* the words *antique* and *antiquity* are neutral in meaning, designating ‘ancient’ or ‘olden time,’ and at least once are touched distinctively by ambiguity, in this poem they generally carry a more positive weight.”<sup>19</sup> Even the poem’s “old” spelling impels the reader to look back, always, to envisage an earlier time; indeed, through his antiquated orthography, Spenser makes other directions of temporal textual engagement

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<sup>18</sup> See T.D. Kendrick, *British Antiquity* (1950; rpt. New York: Barnes and Noble, 1970); Paul Meissner, “Das goldene Zeitalter in der Englischen Renaissance,” *Anglia* 59 (1935), 351-67.

<sup>19</sup> “The Antiquities of Fairyland and Ireland,” *The Journal of English and Germanic Philology* 86.2 (1987), 199-214 (201). See also Chloe Wheatley, “Abridging the Antiquitee of Faery lond: New Paths Through Old Matter in *The Faerie Queene*,” *Renaissance Quarterly* 58.3 (2005), 857-80.

impossible.<sup>20</sup> In an analogous homage to the past, Drayton's *Poly-Olbion* pulsates with a nostalgia for Elizabeth's reign. Drayton urges the reader to engage with the history and legend embedded in his verse: those who ignore it do so at their own peril. In a stern rebuke of those who may set his poem aside, he chides, "Then, whosoever thou be, possest with such stupidity and dulnesse, that, rather then thou wilt take paines to search into ancient and noble things, choosest to remaine in the thicke fogges and mists of ignorance ... the fault proceeds from thy idlenesse, not from any want in my industrie" (v). It is not without significance that John Selden, the greatest English antiquarian of the seventeenth century, provided the first part of *Poly-Olbion* with its prose illustrations. In his study of Michael Drayton, Oliver Elton commented on the tension that preoccupied, indeed obsessed, the poet: on the one hand, he was taken by the Renaissance idea of Time's decay of beauty; on the other, he, like many of his generation, was compelled to attempt a recapture of the antiquity that had fallen away.<sup>21</sup>

## II. ADMIRALTY JURISDICTION AND FREE SEAS

Maritime law in early modern England found itself involved in two disputes, one domestic, the other international, that inform a large part of this dissertation. A brief overview of their major contours follows. Like the maritime, the legal, and the literary, these debates found their participants both pulled into the past and thrust into the future. The increase in sea traffic across the globe increased business at the High Court of

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<sup>20</sup> For an alternate interpretation of Spenser's spelling, see Catherine Nicholson, "Old Spelling and the Forging of Spenser's Readers," *Modern Language Quarterly* 78.2 (2017), 173-204.

<sup>21</sup> Elton, *Michael Drayton: A Critical Study* (New York: Russell & Russell, 1966), 110. See also John E. Curren, "The History Never Written: Bards, Druids, and the Problem of Antiquarianism in *Poly Olbion*," *Renaissance Quarterly* 51.2 (1998), 498-525.

Admiralty and brought renewed urgency to the question of the freedom of the seas. But each of these debates had earlier origins.

The question of English admiralty jurisdiction spans several centuries.<sup>22</sup> The earliest applications of maritime law occurred, most likely, at port courts (such as the Cinque Ports), which proceeded according to the customary law of the sea, or else at common law. Dating the establishment of the English admiralty court proves difficult, largely because the contemporary evidence does not survive, but the court was apparently operational by the mid-fourteenth century. Edward III's reign witnessed diplomatically ruinous piracy within the Channel; foreign merchants became dissatisfied with the procedurally slow-moving common law courts, and the High Court of Admiralty, which proceeded according to the civil law, was formed. Before the end of the century, the tension between common lawyers and this new admiralty court arose, and the Crown believed the Admiral was overflowing his jurisdictional boundaries by meddling in matters that belonged, rightly, to the common law. An oft-cited statute of 1389, 15 Richard 2 c. 3 (Jurisdiction of the Admiral), for example, sought to pinch the admiral's purview. It stipulated, in part, that "of the death of a man, and of mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers, the Admiral

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<sup>22</sup> The best treatment of the subject remains M. J. Pritchard and D.E.C. Yale, *Hale and Fleetwood on Admiralty Jurisdiction* (London: Selden Society, 1993). See also Joanne Mathiasen, "Some Problems of Admiralty Jurisdiction in the 17th Century," *The American Journal of Legal History* 2 (1958), 215-36; D.E.C. Yale, "A View of the Admiral Jurisdiction: Sir Matthew Hale and the Civilians," *Legal History Studies* 1972, ed. Dafydd Jenkins (Cardiff: University of Wales Press, 1975), 87-109.

shall have cognizance.”<sup>23</sup> The admiral did not take apparent heed, and similar statutes were issued before the close of the century.

While the tensions between common law and admiralty appear to have quieted during the otherwise tumultuous fifteenth century, the ascent of the Tudors witnessed an increase in naval activity and a subsequent increase in admiralty business. Henry VIII issued a statute, 32 Hen. 8 c. 14 (1540, *On the Maintenance of the Navy*), which granted greater power to the Lord Admiral in civil matters. Common lawyers were not pleased. During the second half of the sixteenth century, they developed sophisticated ways to wrest maritime cases away from the High Court of Admiralty and adjudicate them instead in the common law courts, while pointing to 15 Richard 2 c. 3 to justify these actions. The conflict peaked in 1575, when the judges of admiralty and the common law judges signed an agreement that sharply delimited their respective jurisdictions. But this armistice did little to end the war, and the common law courts continued to pilfer admiralty cases in the following decades. Indeed, the battle escalated throughout the early seventeenth century, spurred in part by the indefatigable remonstrations of common lawyer Edward Coke.

To the common lawyers, one main problem with the High Court of Admiralty was that it proceeded according to the civil law of the Continent. This meant that the further into English legal business the Lord Admiral extended his jurisdictional arm, the greater the threat of the unwelcome influence of imported law. But for a court awash in foreign suitors, the application of civil law made sense: during the early modern period, this law acted as a universalizing force across Europe. By the sixteenth century, civil law in

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<sup>23</sup> *Statutes of the Realm*, vol. 3 (1817; rpt. London: Dawsons, 1963), 79.

England was already viewed as suspect: its procedural usage in Chancery allowed for an “inquisitorial trial procedure which by-passed the sheriff and the jury.”<sup>24</sup> In the seventeenth century, when Coke took up his pen to explicate English jurisdictions in *The Fourth Part of the Institutes of the Laws of England* (1644), he wrote scathingly of foreign law. History, however, would prove the common lawyers’ anxiety unwarranted, as the common law courts eventually won the war over admiralty jurisdiction.<sup>25</sup>

The period’s second major debate touched international law and concerned the question of freedom of the seas. Like the admiralty jurisdiction debate, this issue did not originate during the early modern period, but increased sea traffic added urgency to the question. The concept of *mare liberum* has its roots in antiquity. Under Roman law, at least in theory, the sea remained open to all: it was considered *res communis omnium*, a thing belonging to no one.<sup>26</sup> And yet, for the Romans, the international law of the sea remained limited mostly to the Mediterranean. It would be over a millennium before Magellan and Drake launched their global circumnavigations, and the seventeenth-century debates reflected the law catching up with the political, navigational, and geographic realities of the early modern period. In the Middle Ages, the general attitude of jurists had tended toward *mare liberum*, in both theory and practice. During the sixteenth century, a number of jurists, most notably Alphonso de Castro and Fernando Vasquez of Spain, returned to the question in light of expanding navigational and

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<sup>24</sup> John Baker, *An Introduction to English Legal History*, 2<sup>nd</sup> ed. (London: Butterworths, 1979), 36-37.

<sup>25</sup> See Yale, “View of the Admiral Jurisdiction.”

<sup>26</sup> For a discussion of the concept of *mare liberum* in Roman law and its impact on the early modern debate, see W. Paul Gormley, “The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas,” *University of Detroit Law Journal* 40.5 (1963), 561-96.

technological advances, but although they argued for free seas, they did so via an appeal to earlier Roman sources: their writings did not advance the nature of the debate.

This turn occurred when Grotius published his *Mare liberum* anonymously in 1609.<sup>27</sup> The work was most likely written between 1604 and 1605, a period during which Grotius had been retained as legal counsel for the Dutch East India Company. Grotius' treatise was short and originally intended as a chapter in a longer work that was not published during Grotius' lifetime. Much of *Mare liberum* remained political and explicitly addressed the conflict with the Portuguese, who were attempting to monopolize trade routes to the East Indies, rather than arguing for *mare liberum* in a more general sense. Although he does not offer credit, Grotius borrowed a considerable portion of *Mare liberum* from Italian-born lawyer Alberico Gentili.<sup>28</sup> Gentili, who argued for open seas in his *De iure belli libri tres* (1598), resolved a common problem with the concept.<sup>29</sup> The high seas, even if free, required a certain degree of policing: the crime of piracy represented a major diplomatic threat during the sixteenth century, and it behooved governments to deal with the infraction as expeditiously as possible. Gentili's solution was to separate the concept of *possession* of the high seas from its *jurisdiction*, so that states could still punish pirates without claiming ownership of the sea. In 1625, Grotius

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<sup>27</sup> Richard Hakluyt translated *Mare liberum* into English around 1615, but his translation was not published until 2004.

<sup>28</sup> For more on Gentili's influence on Grotius and their shared importance to modern international law, see K. R. Simmonds, "Hugo Grotius and Alberico Gentili," *German Yearbook of International Law* 8.1 (1959), 85-100.

<sup>29</sup> Gentili's main work on maritime law, *Hispanicae advocacionis libri duo* (Hanau, 1613), written when he served as counsel to the Spanish crown at the English High Court of Admiralty, only reiterates his arguments about *mare liberum* set forth in *De iure belli libri tres*.

published a more mature work, *De jure belli ac pacis*, which fully developed his theory of *mare liberum*.

In 1613, lawyer William Welwood provided an unofficial English response to Grotius, which appeared as a chapter in his longer work *An Abridgement of All Sea-Lawes*, entitled “Of the Community and Propriety of the Seas.” Welwood’s rebuttal adopted a theological tenor: he averred that God had granted man dominion over the world, and that thus the sea was indeed capable of possession. Welwood also observed the precariousness of fishing reserves, noting that during the preceding twenty years the herring population off the eastern coast of Scotland had diminished dramatically. In 1615, Welwood translated and expanded this chapter in his *De dominio maris* in order to reach a wider Continental audience that included Grotius, who could not read English.

Grotius’ treatise, although expressly directed toward the Portuguese, alarmed James I, who issued “A Proclamation touching Fishing” in 1609 in response.<sup>30</sup> By 1619, James had grown increasingly vexed by international maritime affairs and sought legal guidance from lawyer John Selden, who offered the king a draft of *Mare clausum* by summer of that year. However, this draft remained unpublished, most likely because James did not wish to spur a dispute with Denmark, whose claims to the North Sea conflicted with Selden’s drawing of English territorial waters. When Charles I assumed the throne in 1625, he was initially consumed by war with Spain and France, but the next decade aroused his maritime concerns and in 1635 he asked Selden to rewrite *Mare*

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<sup>30</sup> In 1911, Thomas Wemyss Fulton argued that a single phrase in the proclamation, “questioning of our Right,” alluded to *Mare liberum*: in other words, James believed that Grotius had questioned the English right to police its territorial waters: Fulton, *The Sovereignty of the Seas* (1911; Millwood: Kraus Reprint, 1976), 148.



*clausum* to assert English sovereignty over the North Sea, a space on which the Dutch, according to the English, were encroaching.<sup>31</sup> The book, divided into two parts—the first directly rebutted Grotius’ arguments for *mare liberum*, while the second demarcated England’s territorial waters—reached the printing press later that year; readers would have to wait until 1652 to read the work in an English translation.<sup>32</sup> Selden’s *Mare clausum* remained unparalleled in seventeenth-century English legal literature in its engagement with earlier writers on the question of free seas, both classical and medieval, and he frequently used Grotius’ sources to make the opposite argument. He also displayed extensive knowledge of early English legal history and the history of the English admiralty. Ultimately—and improbably—Selden argued that English national waters stretched southward from the western coast of Ireland to the northern coast of Spain, eastward to the German sea, and northward to the limits of habitable space.<sup>33</sup> Of

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<sup>31</sup> See Mark Somos, “Selden’s *Mare Clausum*: the Secularisation of International Law and the Rise of Soft Imperialism,” *Journal of the History of International Law* 14 (2012), 287–330. Given its international interest, Selden’s *Mare liberum* was reprinted surreptitiously at least three times on the Continent in 1636, twice in Leiden and once in Amsterdam. See Peter J. Lucas, “Printing Anglo-Saxon in Holland and John Selden’s *Mare Clausum seu de Dominio Maris*,” *Quaerendo* 31.2 (2001), 120–38. Charles I issued two proclamations prohibiting the import and sale of these pirated copies in England.

<sup>32</sup> Marchamont Nedham, *Of the Dominion, or, Ownership of the Sea* (1652). For more on Nedham’s translation, see David J. Padwa, “On the English Translation of John Selden’s *Mare Clausum*,” *American Journal of International Law* 54.1 (1960), 156–59. In his introduction, Nedham writes, “But considering what a pitie it was, that so rare a Jewel as this, which hath drawn the envie of som few, and the Approbation of All, should lie so long lockt up in a Language unknown to the greatest part of that Nation whom it most concern’s; and how necessarie it is, in this perfect Juncture, to let the People have a clear understanding of their nearest interest, and how that Right hath been received in all Ages ... it was judged quite requisite to unlock the Cabinet, and expose the Jewel to the view of the whole Nation, that they may prize it” (A2v).

<sup>33</sup> John Borroughs, *The Sovereignty of the British Seas, proved by Records, History, and the Municipall Lawes of this Kingdome, Written in the Yeare 1633* (1652), which also addresses the limits of English territorial waters, has unfortunately been neglected by modern scholars.

the three treatises considered, only Selden's included maps, which demonstrate, visually, the possibility of containing the sea.

### III. CHAPTERS

My first chapter, "Like a Ship Without Ballast": Maritime Law in Early Modern England, begins by asking the fundamental questions, "What is maritime law?" and "What comprised its central texts in early modern England?" Unlike the English common law, the maritime law practiced in the realm had been imported from other places in Europe and thus requires a different framing of its central texts. Here I focus on those elements that might interest the literary scholar and cultural historian rather than the legal historian. The chapter, in considering these texts, provides an attendant overview of maritime law in England, one that does not concern itself with unraveling legal minutiae or explicating esoteric jargon, but rather focuses on placing early modern English maritime law within its cultural, national, and international contexts. I consider the European law of the sea in England through a schema that assigns its texts one of four labels: code, government document, report, or treatise. This categorization reveals, in part, that despite a universalizing impulse that stretches to the ancient world, the application of maritime law across Europe remained disparate well into the early modern period.

This first chapter makes two primary interventions in the current scholarly landscape. First, it expands the definition of "maritime law" within an English context to include printed royal proclamations on subjects such as mariner's wages, the suppression of piracy, and the jurisdiction of the Lord High Admiral. This argument about

proclamations, explored more robustly in my second chapter, provides a crucial link connecting the legal with the literary. Previous scholarship has assumed—correctly—that early modern public interest in maritime law remained small, as this interest involved mainly mariners, merchants, and admiralty lawyers. The law of the sea remained a specialized topic that lacked wider appeal. However, I argue that proclamations reached a far greater number of readers than other forms of maritime law and have been unfairly excluded from scholarly conversations.

My second intervention considers these texts *as* texts. Certain works, such as the *Book of the Consulate of the Sea*, hold perhaps little more than an antiquarian appeal for the literary scholar.<sup>34</sup> Consider this amusing passage on a sailor who violates dress regulations:

A sailor shall not undress for the night unless the vessel is moored in the port for a winter layover. Should he violate this rule, he should be punished for each transgression by being tied and dunked in the ocean three times while held by a rope. If he should violate this rule three times, he shall lose his wages and all the possessions he has aboard the vessel.<sup>35</sup>

Another targets sailors who throw food overboard: “A sailor who maliciously throws food or wine overboard shall be deprived of his wages and his right to free freight of any merchandise he may have aboard the vessel, and will be left at the mercy of the patron.”<sup>36</sup>

In England, however, the works of lawyers John Godolphin, Richard Zouch, and John Exton, who each wrote treatises on admiralty jurisdiction during the Restoration, have

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<sup>34</sup> *The Book of the Consulate of the Sea (Libre del Consolat de Mar)*, probably originating in Barcelona and written in Catalan, sought to coalesce local statutes and customs of the commercial judges who heard cases in coastal towns of the Mediterranean.

<sup>35</sup> Stanley Jados, ed. and trans., *Consulate of the Sea and Related Documents* (Tuscaloosa: University of Alabama Press, 1975), 87.

<sup>36</sup> Jados, 86.

never been read or studied for their literary, rather than legal, merits. Exton's treatise in particular exudes the craftsmanship and ear for language of a great prose stylist, and I close the chapter with a close reading of passages from his *The maritime dicæologie, or, Sea-jurisdiction of England* (1664). Ultimately, this contextual chapter works to define and categorize the "maritime law" of my project's title in a way that holds interest for the literary scholar.

My second chapter, "Robbers of the Sea: Piracy in Proclamations, Pamphlets, and Plays, 1558-1675," takes up the question of piracy, the maritime crime perhaps most intriguing to the reading public. It asks, specifically, "How did the early modern public come to know about the crime?" and answers, "In large part, through proclamations." Thus, it takes up the argument left off in Chapter 1 that printed royal proclamations represent the widest-spread form of printed maritime law circulating in early modern England. However, unlike the first chapter, this one moves away from the legal texts and maritime codes that would have occupied a civil lawyer's shelf and rather approaches the crime of piracy through the eyes of a disinterested party, that is, a non-merchant, non-mariner, and non-lawyer. It argues that, in addition to proclamations on piracy, this reading public could have acquired piratical information from pamphlets and broadsides, works such as *A true and certaine report of the beginning, proceedings, overthrowes, and now present estate of Captaine Ward and Danseker* (1609), *A true relation of the life and death of Sir Andrew Barton, a pirate and rover on the seas* (1630), and *A true relation, of the lives and deaths of two most famous English pyrats, Purser, and Clinton* (1639) that were written for a non-specialist audience. Ultimately, this section considers how, as a genre, a proclamation differs from a "popular account" in the way it conveys information

about piracy and possible implications of this difference. It considers these popular accounts as the offspring of the royal proclamation, one that both supplanted and transformed the government document, and traces this genealogy by analyzing distribution (from publicly displayed to privately purchased), form (from official government document to commercial text) and content (from unembellished facts to sensational narrative). It also ponders how the illustrations in certain popular accounts act as an additional means of theorizing early modern piracy.

This chapter closes with a reading of two early Stuart pirate plays, Robert Daborne's *A Christian Turned Turk* (1612, performed c.1612) and Thomas Heywood and William Rowley's *Fortune by Land and Sea* (1655, performed c.1609). This section serves to bridge the legal and literary aspects of this project—drama, as an ostensibly fictive literary genre, does not bear the burden of purported accuracy implied in the proclamations and pamphlets. At the same time, these two plays depict real historical pirates—Ward, Clinton, and Purser—who also appeared in corresponding pamphlets. These portrayals allow the critic to draw a theoretical line from proclamation to pamphlet to play. Much recent work has contributed to our understanding of piracy in early modern English literature and culture, and this recent scholarship offers several useful portals through which to engage with the pirate plays. To these I offer three more. First, I argue that drama afforded its playwrights the freedom to depict the human—in addition to the economic and political—toll of piracy, and that it achieves this end through testimony. Second, I consider the temporal contexts of *A Christian Turned Turk* and *Fortune by Land and Sea* and demonstrate how these contexts had significant consequences for the plays' portrayals of their respective pirates. Finally, I posit that the plays construct

piratical identity through carefully crafted language and that a closer analysis of these constructions reveals an increasingly nuanced portrait of the early modern literary pirate.

“Wrecked Upon the Sands: Maritime Law and Edmund Spenser’s *The Faerie Queene*,” my third chapter, stages a sustained dialogue between the legal and the literary by reading Edmund Spenser’s *The Faerie Queene* against the backdrop of the early modern English admiralty debates. It begins by considering one of the most puzzling episodes in the poem, the dispute in Book V, Canto 4 between brothers Amidas and Bracidas, and asks why the meaning of this brief passage has long eluded critics. I conclude that while the brothers’ fracas is usually interpreted within the context of Artegell’s mission for justice in Book V, its most plausible meaning emerges only when placed against the backdrop of the entire poem, and in particular, the poem’s engagement with maritime jurisdiction. Previous scholarship has overlooked this interpretative angle, and although *The Faerie Queene* is not a strictly maritime poem, its preoccupation with the law of the sea develops along discernable lines. The first half of this chapter, therefore, traces this development across Books II, III, and IV within the seas of Acrasia, Marinell, and Neptune. Each of these oceanic domains witnesses maritime infractions or jurisdictional disputes, and they provide a crucial alembic for distilling the Amidas/Bracidas episode in Book V.

The chapter’s second half then analyzes this episode within two contexts: the rest of *The Faerie Queene*, as well as the early modern question of admiralty jurisdiction. It concludes that Spenser inserted the brothers’ seaside conflict as a direct response to this question, and that it showcases the poet’s advocacy of the common law, a surprising

conclusion, given his other writings.<sup>37</sup> My reading of Artegall's intervention on the strand rests on three interpretative points. The first posits that Artegall is the allegorical depiction of the common law of England. The second considers the specific legal issues that Spenser included—alluvion and accretion, wreck, and marine salvage—and the relationship between these issues and English common law. Finally, my analysis considers the episode against the backdrop of the poem's larger treatment of maritime jurisdiction. Using these three points in tandem, my reading demonstrates that the Amidas/Bracidas episode reveals an alternative understanding of Spenser's attitude toward the common law, insofar as it relates to admiralty jurisdiction.

In my fourth chapter, ““Round About The Globe’: Spenser, Drayton, and the Freedom of the Seas,” considers the international law of the sea as a useful framework for engaging with early modern poetic texts. I begin the chapter with a brief exposition of the legal and historical context of the question of freedom of the seas and the debate between Hugo Grotius (who argued for *mare liberum*) and William Welwood and John Selden (who argued for *mare clausum*). This section does not focus on the strict legal principles of open seas and closed seas; rather, I show how these writers, through their conceptions of the ocean, defended these principles. The second part of the chapter uses these oceanic conceptions as a tool of literary interpretation. I analyze two moments in each poem: in *The Faerie Queene*, I consider Guyon's voyage to the Bower of Bliss (Book II) and the evolution of the character of Neptune (Books II, III, and IV). In *Poly-Olbion*, I ponder the catalog of English voyagers (Song 19) and the nymphs' song in honor of Neptune (Song 20). Through a close reading of these moments, I extract general principles that reflect

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<sup>37</sup> Spenser is particularly critical of the common law in *A view of the present state of Ireland*.

the authors' cultural understandings of the ocean. Ultimately, this chapter argues that the oceans of *The Faerie Queene* align with the features of the Seldenian sea, while the oceans of *Poly-Olbion* replicate the Grotian sea, and I conclude with a brief discussion of how such an approach can further develop the current literary and cultural understanding of early modern maritime space.

I do not suggest a one-to-one correspondence between legal arguments about the freedom of the seas and *The Faerie Queene* or *Poly-Olbion*, or that the poets composed their poems with any deliberate allusions to the legal debate itself. In the first place, Spenser died ten years before the debate's inception, and the first part of *Poly-Olbion* was published just three years after the appearance of Grotius' pamphlet; the publication of the poem's second part in 1622 preceded Selden's *Mare clausum* by thirteen years. Additionally, even if Drayton were aware of the debate—which is very likely, given both his acquaintance with John Selden and the political gravity of the matter—he left no explicit reference to it in his poem.<sup>38</sup> Rather, this chapter links the legal with the literary in a more abstract, and theoretical, fashion, and foregrounds certain cultural assumptions about the sea in the early modern period.

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<sup>38</sup> John Selden, who provided prose commentaries for Part I of *Poly-Olbion*, does not reference the debate either, although he was almost certainly acquainted with Grotius' *Mare liberum*. The songs of the poem I consider, 19 and 20, were published in Part II, to which Selden did not contribute.



## CHAPTER 1

### LIKE A SHIP WITHOUT BALLAST: MARITIME LAW IN EARLY MODERN ENGLAND

#### I. INTRODUCTION

In his *Direction of preparative to the study of the law* (1600), legal scholar William Fulbecke divided English law books into four categories: *historical*, *explanatory*, *miscellaneous*, and *monological*.<sup>1</sup> Fulbecke's method of categorization works well for the corpora of English common law and the Continental civil law, both of which he was conversant with.<sup>2</sup> Unsurprisingly, however, Fulbecke's bibliographic schema did not extend to the texts of maritime law that had governed the European law of the sea for centuries, and which continued to hold authority in the early modern period. The texts of maritime law were too specialized, or too small in number, to warrant his attention. This gap in English legal bibliography has persisted until the present: no comprehensive categorization of texts related to both the international law of the sea and the English admiralty has been attempted. This scholarly omission has adversely affected our understanding of maritime law in sixteenth- and seventeenth-century England. Most

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<sup>1</sup> "All books written of the Law may be reduced to these fower heads: either they are Historical, as the year Books of the common law; and Zasius his counsailes in the civill law ... or explanatory, as *Mast. Stamford* his Treatise of the Prerogative, and the Discourses of divers Glossographers, & commentators in the Civil Law... or els they be miscellaneous, and insuch they needeth no Methode ... or els they can be monological, being of one certain subject": Fulbecke, *Direction or preparative to the study of the law* (London, 1600), 24-25. See also John H. Baker, "English law books and legal publishing," *The Cambridge History of the Book in Britain*, vol. 3, ed. Lotte Hellinga and J.B. Trapp (Cambridge: Cambridge University Press, 1998), 474. Baker only considers Fulbecke's categorization in its common law context.

<sup>2</sup> Fulbecke had studied the civil law under the illustrious Alberico Gentili, considered below in the discussion of reports. He was also a member of Gray's Inn. See Daniel R. Coquillette, *The Civilian Writers of Doctors' Commons* (Berlin: Duncker & Humblot, 1988), 71-79.

previous studies of early modern writing on maritime law within an English context have either focused on the contents of selected works or have neglected entire categories of printed material. My intervention argues that by considering this branch of law through its corresponding texts, certain theoretical signposts emerge which inform the rest of this dissertation.

In this chapter, I begin to remedy this legal bibliographic gap. I consider the range of printed (and in some cases, manuscript) materials related to maritime law that existed on the Continent and in England in the early modern period. My schema categorizes maritime law into four distinct categories: codes, government documents, reports, and treatises. Each category adds a layer of nuance to our understanding of the position of maritime law in early modern England. I dedicate the greatest attention to legal treatises, and in particular treatises addressing English admiralty jurisdiction in England, since these texts shed the strongest light on the role of maritime law during the period. In some ways, they do the heavy lifting of synthesizing the three other categories (codes, government documents, and reports) and in turn offer us the most nuanced portrait of the subject. I conclude this section with a close reading of John Exton's *The maritime dicæologie, or, Sea-jurisdiction of England* (1664) and argue that it represents an apogee of early modern English writing on maritime law. Exton not only incorporates the other categories of maritime law, but in a gesture of literary reflexivity, he also infuses his treatise with language that calls attention to the sea itself.

In addressing the period's various texts on maritime law, this chapter also provides an overview of maritime law in England from the latter Middle Ages until about 1700. As a concept, "maritime law" can be difficult to pinpoint, and its definition

becomes even more unstable when considered in the context of early modern England: its presence on English shores presented problems of legal authority since its practice depended on the civil law of the Continent.<sup>3</sup> And unlike most other forms of law, which sat nestled firmly under the purview of the English common law, maritime law was paradoxically both *English* and *not English*, English because it was practiced in England within the English High Court of Admiralty, not English because its codes were transported from other areas of Europe. In addition, the High Court of Admiralty proceeded according to the civil law, which, for the English common lawyer, rendered it tainted by foreign roots. These larger themes of authority, jurisdiction, and the role of maritime law itself construct theoretical frames through which I analyze selections of the period's literature throughout this dissertation. Thus, using the complementary tools of legal history and bibliography, the theoretical goal of this chapter is to provide historically grounded instruments for a legal engagement with the early modern literary and cultural sea.

## II. THE CIVIL LAW AND COMMON LAW IN EARLY MODERN ENGLAND

In order to understand early modern maritime law in England, as well as its corresponding texts, a brief overview of the civil law in England is required. This is because the High Court of Admiralty was administered by the civil lawyers, a distinct professional body separated from the common lawyers by education and training, expertise, and even working language. They are also separated by fate: the civil lawyers

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<sup>3</sup> For a technical discussion of the distinction between “maritime law” and “admiralty,” see Thomas S. Rue, “The Uniqueness of Admiralty and Maritime Law,” *Tulane Law Review* 79.5-6 (2005), 1127-48.

did not survive the nineteenth century.<sup>4</sup> This trajectory has led to a certain degree of neglect among later legal historians. “Legal history is winner’s history,” notes Richard Helmholz, a leading authority on the canon law in England, “[and] Doctors’ Commons is gone.”<sup>5</sup> Indeed, the field of English legal history has tended to focus myopically on the common law, and as a result the contributions of the civil lawyers (referred to interchangeably as civilians) have often been overlooked. The sometimes amicable, sometimes tense relationship between the common lawyers and the civilians helped produce the great English treatises on maritime law.

The civil layers constituted a relatively small professional body: Brian Levack estimates that during the period from 1603 to 1641, the common lawyers outnumbered the civilians at a ratio of about ten-to-one.<sup>6</sup> While the common lawyers dealt with a wide range of civil and criminal matters, the civilians enjoined a more niche-based practice and focused mainly on ecclesiastical law and admiralty.<sup>7</sup> Despite their divergent numbers and forms of law, the two groups of lawyers paralleled each other in other notable respects. The common lawyers belonged to the Inns of Court, their professional organization.<sup>8</sup> Doctors’ Commons was the corresponding organization of the civil lawyers.<sup>9</sup> The

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<sup>4</sup> See G.D. Squibb, *Doctors’ Commons: A History of the College of Advocates and Doctors of Law* (Oxford: Clarendon, 1977), 102-9, for an account of the final years of Doctors’ Commons.

<sup>5</sup> Richard Helmholz, *Canon Law and English Common Law* (London: Selden Society, 1983), 3-4.

<sup>6</sup> Brian Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* (Oxford: Oxford University Press, 1986), 3.

<sup>7</sup> In 1535 Henry VIII had suppressed the teaching of canon law at Oxford and Cambridge. Issues formerly governed by canon law were subsequently handled by the civilians in the ecclesiastical courts.

<sup>8</sup> See Wilfred Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590-1640* (Totowa, NJ: Rowman & Littlefield, 1972).

<sup>9</sup> See Squibb, 1-22.

common lawyers obtained their legal education at the Inns and gained practical knowledge by observing cases at Westminster. The civilians learned about the civil law at Oxford or Cambridge (sometimes furthering their education at Continental universities) and picked up practical skills in the admiralty and ecclesiastical courts in London. Each type of law practiced also had a separate professional language: the common law was conducted in Law French, the civil law, in Latin. And finally, the common lawyers and civilians each engaged with a distinct professional literature.<sup>10</sup>

Levack's research reveals that the common lawyers enjoyed greater social prestige than the civilians: he notes that "the common lawyers of early seventeenth-century England belonged to a genteel profession," and most young men who entered the Inns of Court during this period came from families who belonged to the gentry class or higher.<sup>11</sup> Conversely, the men who studied civil law at the universities were more evenly distributed across social classes. Levack attributes this difference to the admission policies at Oxford and Cambridge, and the Inns: the law taught at the Inns was primarily land law, and even if students did not pursue careers as common lawyers, they would benefit from this information as members of the landed classes. At the same time, Oxford and Cambridge offered attractive fellowships to students who sought to study the civil

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<sup>10</sup> By the middle of the sixteenth century, the common law had produced the Year Books, the Registers of Writs, and *Brevia placitata* (c. 1260), *Casus placitorium* (c. 1260), and *Novae narrationes* (c. 1300), in addition to more theoretical works like *Bracton* (c. 1220), John Fortescue's *De laudibus legum Angliæ* (1471) and Christopher Saint German's *Doctor and Student* (1518). Although the texts of the civil law were not printed in England, the civilians had by way of European printers the Codex of Justinian, as well as the rich body of civil and canon law that originated on the Continent: *The Decretals*, the writings of the Glossators and the post-Glossators, and legal luminaries such as Ayala, Baldus, Bartolus, and Vitoria.

<sup>11</sup> Brian Levack, *The Civil Lawyers*, 9. The proclamation against Cowell's *The Interpreter* describes him as "only a civilian," perhaps a subtle jab aimed at the lower status of civilians during the early seventeenth century: *Stuart Royal Proclamations*, ed. James F. Larkin & Paul L. Hughes, 3 vols. (Oxford: Clarendon, 1973), 1.243-44.

law, which most likely appealed to students from lower classes who desired a career in law but who could not afford to attend one of the Inns.<sup>12</sup>

The common law had never been taught at Oxford or Cambridge: in fact, civil law and, prior to 1535, canon law were the only types of legal education offered at the English universities.<sup>13</sup> Here, students would gain a theoretical understanding of the *Corpus Juris Civilis*, as well as the medieval glossators and commentators. But it was at Doctors' Commons in London where they would gain the necessary practical experience to be advocates of the civil law. This system of practical learning shared its model with the common law: although common lawyers lacked a theoretical grounding—the common law had no *Corpus Juris Civilis* of its own—their experience mirrored the civilians in that they learned to practice law by observing the legal proceedings in the courts of Westminster.<sup>14</sup> Daniel Coquillette argues rather convincingly that the civilians enjoyed a more cosmopolitan education than the common lawyers: after obtaining their DCL (Doctor of Civil Law) degree from Oxford or Cambridge, many civilians continued their legal education in Europe, already conversant with the law practiced in those countries. However, as Alain Wijffels observes, “Despite the success of legal studies at Oxford and Cambridge [and] the formation of a professional *esprit de corps* among academically trained legal professionals, [...] the British Isles did not, at the time, count any civil lawyers who contributed significantly to the corpus of (legist) *ius commune*

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<sup>12</sup> Levack, *The Civil Lawyers*, 9-12.

<sup>13</sup> John Baker, *The Third University of England: The Inns of Court and the Common-Law Tradition* (London: Selden Society, 1990).

<sup>14</sup> The early modern students at the Inns also participated in moots and readings. The readings, delivered by a lawyer who had been called to the bar, focused on a particular statute. See Prest, 119-30.

literature.”<sup>15</sup> When the English civilians did begin to write on the philosophy of the civil law, the focus of their work was not maritime law: they tended, rather, to publish on ecclesiastical or comparative law. Early examples include Thomas Smith’s *De republica Anglorum* (1583), a work that juxtaposed the French and English legal systems, William Fulbecke’s *Parallele or Conference of the Civill Law, the Canon Law, and the Common Law of England* (1601), a work that attempted to synthesize the three types of law practiced in England, Alberico Gentili’s *De iure belli* (1588-89), a pioneering work on international law, and John Cowell’s *The Interpreter* (1607), a dictionary of legal and political terms that provided controversial definitions to words such as “Subsidy,” “Prerogative,” and “Parliament” and which was suppressed by royal proclamation in 1610.<sup>16</sup>

The professional line that divided the common lawyers from the civilians also impacted the reception of maritime law. While both groups wrote on the law of the sea in England, they approached the topic with different professional interests. The common lawyers wrote either for personal reference (Fleetwood and Hale), or in support of a particular position (Selden and Coke). The civilians, naturally, had a much more personal stake in maritime law and the workings of the High Court of Admiralty. Not only were they invested in the financial windfall of prize cases, but they also spent much of the early modern period fighting to protect their monopoly on admiralty jurisdiction. These

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<sup>15</sup> Alain Wijffels, “The Civil Law,” *The Cambridge History of the Book in Britain*, vol. 3, ed. Lotte Hellinga and J.B. Trapp (Cambridge: Cambridge University Press, 1998), 401.

<sup>16</sup> “A proclamation touching D. Cowels booke called the Interpreter” (1610). Cowell’s *Interpreter* does provide several definitions related to maritime law in England. These include Admiral, [General] Average, Charter Party, Cinque Ports, Creek, Flotsam, Prohibition, Shipper, and Wreck. However, the dictionary’s focus is not the English admiralty, and Cowell’s nautical definitions were not heterodox enough to warrant mention in the proclamation.

professional divisions affect the role played by maritime law and its related texts: the civil lawyer would have enjoyed a fundamental advantage in his engagement with these works, while the common lawyer stood a few steps removed. In a limited sense, maritime law acted as an equalizer and placed the common lawyers and civilians on the same plane, the former enjoying the role of England's more powerful legal professional, the latter a much greater comfort with the law itself. In England, as on the seas, maritime law rendered the established social order a little askew.

### III. LEGAL BIBLIOGRAPHY AND MARITIME LAW

The field of legal bibliography, notes David Ibbetson, remains "all too commonly left to historians of printing or seen as the preserve of law librarians rather than 'proper' scholars."<sup>17</sup> Despite this historical bias, much recent work on legal bibliography has emerged. This scholarship is perhaps best represented in the research of Ian Williams and Richard Ross, and their work represents two distinct approaches to the consequences of the burgeoning of legal printing in England during the early modern period. Most scholars agree that during the period the printing press pushed English law from an oral to a textual endeavor. In the Middle Ages, the common law depended on oral tradition, rather than textual references, as its main source of authority; the lawyers frequently invoked "our law" in their arguments, a phenomenon that persisted until the reign of Henry VIII.<sup>18</sup> In the early modern period, this dynamic shifted, and common lawyers began to rely increasingly on printed texts: the technology that allowed the production

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<sup>17</sup> David Ibbetson, "Legal Printing and Legal Doctrine," *Irish Jurist* 35 (2000), 345-54.

<sup>18</sup> Ian Williams, "'He Creditted More the Printed Booke': Common Lawyers' Receptivity to Print, c.1550-1640," *Law and History Review* 28.1 (2010), 39-70 (42).



and circulation of law books gradually changed the way the law itself was practiced. English law moved from an oral to a textual enterprise. A clear preference for print was discernable by the 1590s as evidenced in lawyers' citations.<sup>19</sup> I classify Williams's scholarship and methods as *internal*; that is, they focus on how the advent of print influenced English lawyers and the legal profession itself. The work of Richard Ross, conversely, looks outward, and applies an external approach. It considers what effects printed law had on society at large, because, as Ross notes, the "dissemination of law is at once unavoidable, politically dangerous, and potentially unpalatable to legal specialists."<sup>20</sup> Print rendered the legal texts of the common law available in a way unfathomable in the Middle Ages and its effects extended far beyond the legal profession itself.

No legal historian or bibliographer has considered the introduction of printed maritime law through either the internal or external approaches. Publishing the texts of such a narrow branch of law would have had far less societal repercussions than publishing the texts of the common law. Additionally, given that maritime law in England remains an understudied subject relative to the common law, it is unsurprising that the advent of printed maritime law has attracted little scholarly attention. Despite this neglect, maritime law offers a site at which to combine the internal approaches, and the treatises addressing admiralty jurisdiction prove particularly useful for understanding the texts of printed maritime law in England. The common lawyers and civil lawyers did not

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<sup>19</sup> Williams, 48.

<sup>20</sup> Richard J. Ross, "The Commoning of the Common Law: The Renaissance Debate Over Printed English Law, 1520-1640," *University of Pennsylvania Law Review* 146.2 (1998), 323-461 (327n5).

share a professional language (both literally and figuratively) and so they had to write across a linguistic chasm in order to make their own law accessible to a non-specialist on the other side. They had to address legal professionals who practiced not only a different *type* of law, but a different *system* of law. The debates also contain aspects of the internal approach: both the common lawyers and the civil lawyers were practicing legal professionals, and the circulation of their printed texts had obvious professional consequences for the English legal landscape. Consequently, while maritime law presents unique challenges for the legal bibliographer who seeks to collate its texts, it also provides a rich catalyst for understanding both the labyrinthine legal landscape of early modern England and the movement of texts dealing with the law of the sea.

Almost a hundred years ago, legal historian William Senior wrote on early English writers of maritime law.<sup>21</sup> He aimed to further probe why Welwood's *Sea-Law of Scotland* (Edinburgh, 1590) and *An Abridgement of all Sea-Lawes* (London, 1613) were the treatises printed in Britain on maritime law, even as several Continental jurists had published works on the subject during the sixteenth century. Although admiralty law had been practiced in England for centuries, and although jurisdictional disputes between the High Court of Admiralty and the common law courts had been waged since at least the fourteenth century, these debates were not set down in print until the seventeenth century. Senior notes that even as activity burgeoned in the High Court of Admiralty throughout the sixteenth century, the English presses produced no printed treatises or manuals of maritime law, and offers two reasons: first, this niche had already been filled by

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<sup>21</sup> William Senior, "Early Writers on Maritime Law," *The Law Review Quarterly* 147 (1921), 313-36.

Continental works on maritime and civil law printed in Latin, and second, whatever procedural materials the civilians needed to try maritime cases were readily available in manuscript form. Senior's work remains important. But the scholarship in Senior's wake has overlooked certain categories of printed law that also addressed maritime law in England.

As Senior accurately observed, the civilians appear the most likely candidates to have produced printed material on maritime law during the period, but despite the increase in business at the admiralty court, they were slow to produce a professional body of literature that explicated that court's function, let alone a philosophical or jurisprudential defense of their claim to admiralty jurisdiction. The functioning of the late sixteenth-century High Court of Admiralty involved the importation of legal writing from the Continent, but this method proved inadequate, especially with regards to the international law of the sea. As one legal historian notes: "A major impediment [...] was the absence of a specialized legal literature on international maritime law. Privateering and prize-law, probably the most important issues the Admiralty Court had to deal with, were a subject which no legal work treated systematically."<sup>22</sup> The only printed work in the first half of the seventeenth century to come out of direct practice in the High Court of Admiralty, Alberico Gentili's *Hispanicae advocationis libri duo* (1613), was theoretical, not procedural or pragmatic, in nature. It was not until the Restoration that civilian Francis Clerke wrote his treatise on the practice of the High Court of Admiralty, *Praxis curiae admiralitatis angliae* (1667). Clerke's work, however, was meant for the

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<sup>22</sup> Alain Wijffels, "Ius Gentium in the Practice of the Court of Admiralty around 1600," *The Roman Law Tradition*, ed. A.D.E. Lewis and D.J. Ibbetson (Cambridge: Cambridge University Press, 1994), 121.

advocates practicing the civil law in the High Court of Admiralty, not for common lawyers, politicians, merchants, or mariners.<sup>23</sup> Similarly, while the Restoration treatises of Godolphin, Zouch, and Exton appear addressed to the common lawyer, they—unlike the navigational manuals that contained ancillary sea law and customs—would have been of negligible value to the working seaman. Printed maritime law itself found itself suspended uneasily between the theoretical and the pragmatic.

#### IV. EARLY MODERN TEXTS ON MARITIME LAW

The nature of maritime law, like the nature of the sea itself, remains capricious, and its practice in England represents continual shifts, like the ebb and flow of the sea. The texts considered here reveal the law's protean instability. They also reveal something of the legal landscape of England itself. Legal authority is an unstable concept, but the maritime law in England challenged it at nearly every turn. That the debates on admiralty jurisdiction produced a rich corpus of literature attests to this tension. This chapter, thus, not only asks how maritime law can be categorized, and what previous attempts have overlooked, and what theoretical payoffs emerge from such a categorization, but it also considers what the relationship between the laws of England and the laws of the sea reveals about maritime law's position in England.

In this section, I attempt to categorize the different genres of printed maritime law that circulated during the period. This includes the treatises, but also statutes, royal

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<sup>23</sup> The relationship between Latin, English, and Law French during the period proves highly fraught. See J. W. Binns, *Intellectual Culture in Elizabethan and Jacobean England: The Latin Writings of the Age* (Leeds: Francis Cairns, 1990) and John Baker, *Manual of Law French* (Amersham: Avebury, 1979).

proclamations, codes, and reports. Each category constructs a distinct theoretical framework for understanding the period's maritime law in both a legal and cultural context. Each also represents varying degrees of public engagement. The codes of maritime law were generally only consulted by specialists: mariners who needed a working understanding of the law of the sea; civil lawyers who practiced in the High Court of Admiralty; scholars like John Selden who required a nuanced understanding of the sources of maritime law in order to defend *mare clausum*, the legal principle of closed seas; and common lawyers such as Matthew Hale, who wanted to situate the Admiral's jurisdiction within its common law strictures. The treatises on admiralty jurisdiction, although composed by civil lawyers, were intended mainly for common lawyers. The government documents offer various degrees of engagement: the royal proclamations enjoyed a wider circulation and readership than the acts of parliament and statutes of the realm. In fact, the royal proclamations represent the most widespread (but, paradoxically, the least studied) form of printed maritime law in the period.

Although I attempt a neat classification system, certain texts defy strict categorization. For example, William Welwood's *An Abridgement of all Sea-Lawes* (1613) could be considered a legal treatise or a conglomeration of codes, and Alberico Gentili's *Hispanicae advocationis libri duo* may be a report or a treatise. Any categorization, especially one that attempts to collate texts as divergent and unstable as maritime law, opens itself to quibbles and fissures. Perhaps this is fitting: given that maritime law attempts the ordering and jurisdictional dividing of a space as tempestuous as the sea, it only follows that its corresponding texts defy containment, cordoning off, and subjugation to static, impenetrable boundaries.

## 1. Codes

In law, the term “code” is used generally to signify a body or collection of laws. Ancient codes are numerous, Hammurabi’s Code and the Biblical codes of ancient Hebrew law being among the most familiar. Roman law, John Baker observes, “began, and ended, with a code.”<sup>24</sup> David Walker notes from “the fifteenth century onwards the term can be applied to a more or less comprehensive systematic statement in written form of major bodies of law, such as the civil law or the criminal law of a particular country.”<sup>25</sup> Although the codification of law remained largely the purview of the civil law, various English humanist scholars set out to codify the common law, a venture that began in the late fifteenth century. This impulse increased during the reign of Henry VIII, fueled in part by the broader legal reforms resulting from the English Reformation. Baker argues, though, that a serious refashioning of English law in the image of Roman principles of codification did not present a serious threat, and Francis Bacon’s later attempts at legal reform that proposed organizing the common law into a more codified

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<sup>24</sup> John Baker, *An Introduction to English Legal History* (London: Butterworths, 1979), 188. These codes Baker invokes were the Twelve Tables and the Code of Justinian.

<sup>25</sup> David M. Walker, *The Oxford Companion to Law* (Oxford: Clarendon Press, 1980), 234.

system never materialized (perhaps, in part, because Bacon's inclinations were toward legal philosophy rather than legal practice).<sup>26</sup>

Like the other legal codes, the great codes of maritime law deferred to in the early modern period—the Rhodian Sea Law, the Tables of Amalfi, the Rolls of Oléron, the Laws of Wisby, the Black Book of the Admiralty—deal mainly with substantive and, to a lesser extent, procedural, law. That is, they outline the custom of the sea and maritime commerce and prescribe appropriate methods for dealing with problems that arise during human-ocean interactions. The scope of these problems, relative to legal problems arising on land, proves small. They include piracy, wreck, salvage, marine contracts, mariners' wages, shipbuilding, and the duties of a captain, among others. The law outlined in the codes has a strong customary element, as it was born of necessity as legal problems arose and gathered into uniform systems later.

The most important post-Roman code of maritime law was the Rhodian Sea Law.<sup>27</sup> The collection dealt with a variety of maritime issues including theft of anchors, capacity and valuation of ships, and punishments for wayward mariners. Perhaps the most important law contained in the collection, the *lex Rhodia de iactu*, laid the

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<sup>26</sup> See John Baker, *The Legal Profession and the Common Law* (London: The Hambledon Press, 1986), 461-76. For Bacon's program of legal reformation, see Barbara Shapiro, "Sir Francis Bacon and the Mid-Seventeenth Century Movement for Law Reform," *American Journal of Legal History* 24.4 (1980), 331-62. In his discussion of the Statutes of the Realm, Bacon recommended "to discharge the books of those statutes whereas the case by alteration of time is vanished," "to repeal all statutes which are sleeping and not of use," to assure "that the grievousness of the penalty in many statutes be mitigated, though the ordinance stand," and to reduce "concurrent statutes heaped one upon another, to one clear and uniform law": Francis Bacon, "Proposition Touching Amendment of Laws," in *The Works of Francis Bacon*, vol. 13, ed. J. Spedding et al. (London: Longman, 1872), 71..

<sup>27</sup> A modern edition of the Rhodian Sea Law appeared in 1909: Walter Ashburner, ed. & trans, *Νόμος Ροδίων Ναυτικός: The Rhodian Sea-Law* (Oxford: Clarendon, 1909). This edition includes the original Greek text, translation, and extensive notes.

foundation of the modern law of general average.<sup>28</sup> Probably compiled on the island of Rhodes between 600 CE and 800 CE, the laws' origins were originally believed to be much older: until the early twentieth century, scholars believed that the laws dated to almost 1000 BCE and were inserted into the Twelve Tables, the earliest codification of Roman law, but this opinion has been shown to be erroneous: now most scholars presume the laws were developed around the second century BCE and recodified during the seventh or eighth century CE.<sup>29</sup> The Rhodian Sea Law's distant origins imbued them with an authority not uncommon to the authority similarly ascribed to the common law: they came from time immemorial, as Coke had claimed of the latter, and their status as "always existing" granted them a degree of clout in the minds of early modern lawyers. The English lawyers paid great homage to the Rhodian Sea Law. In his 1663 treatise, Zouch writes, "All businesse concerning Navigation, and all causes concerning things done at Sea, are decided by the Rhodian Lawes, for the Lawes of the Rhodians are of all Sea-Lawes the most antient."<sup>30</sup> John Godolphin's treatise of 1661 states, "There were also very Ancient Laws made and published by those of *Rhodes*, who were most expert at Sea, as well touching Navigation, as Merchant-affairs, where the use thereof was of no less Consequence unto, then of Antiquity in that *Mediterranean* Isle."<sup>31</sup> In chapter 25 of

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<sup>28</sup> Walker, 1069. General average stipulates "where a loss arises to one or more of the three interests involved in a maritime adventure, the ship, the cargo, and the freight, in consequence of extraordinary sacrifices or expenses incurred for the preservation of the several interests involved, it must be borne in due proportion by all." Walker, 515.

<sup>29</sup> C. John Colombos, *The International Law of the Sea*, 6<sup>th</sup> rev. ed. (London: Longmans, 1967), 31. Colombos writes, "[Its] principles were accepted by both Greeks and Romans and its memory lasted for a thousand years" (31).

<sup>30</sup> Richard Zouch, *The Jurisdiction of the Admiralty of England Asserted* (London, 1663), 2.

<sup>31</sup> John Godolphin, *Συνήγορος Θαλασσιος: A View of the Admiral Jurisdiction* (London, 1661), 19.



his *Mare clausum*, John Selden devotes several pages to the Rhodian sea law and its attitude toward the dominion of the seas.<sup>32</sup> The English writers on both admiralty jurisdiction and the international law of the sea exhibited a keen interest in the historiography of maritime law, and in their writings—as in the writings of Continental authors—all waterways flowed backward to the Rhodian Sea Law.<sup>33</sup>

On the Continent, the first post-Rhodian code of law germinated in the coastal town of Amalfi on the Mediterranean. The so-called Tables of Amalfi were collected sometime in the eleventh century, although the oldest extant manuscript dates from 1274.<sup>34</sup> The analogous Ordinamenta of Trani, dating to the early fourteenth century, contained the maritime customs of the towns on the Adriatic coast. The great importance of Amalfi and Trani to European maritime law and commerce notwithstanding, these codes did not have much influence in England: Edda Frankot points out that during the Middle Ages, maritime law was divided roughly along a north-south axis, noting “northwestern maritime law is generally considered to constitute a largely separate tradition from the law of the sea in the Mediterranean area and both have their own historiography.”<sup>35</sup> This geographic divide is well-known in legal history, but Frankot

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<sup>32</sup> John Selden, *Of the Dominion, or, Ownership of the Sea*, trans. Marchamont Nedham (London, 1652), 157-68.

<sup>33</sup> Hugo Grotius, for example, in his “Defense of Chapter V of the *Mare Liberum*” (his response to William Welwood’s *Abridgement of all Sea-Lawes*), writes, “Therefore it has happened that many peoples have of their own accord accepted the Justinian laws, as the Romans of old the Rhodian laws”: *The Free Sea*, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), 120.

<sup>34</sup> *Tabula de Amalphi: la revisione critica, l’annotazione e le appendici*, ed. Vincenzo Giuffrè ([Naples]: Di Mauro, 1965). See also Frederic Rockwell Sanborn, *Origins of the Early English Maritime and Commercial Law* (New York: The Century Company, 1930), 50.

<sup>35</sup> Edda Frankot, “Medieval Maritime Law from Oléron to Wisby: Jurisdiction in the Law of the Sea,” *Communities in European History: Representations, Jurisdictions, Conflicts*, ed. Juan Pan-Montojo and Frederick Pedersen (Pisa: Pisa University Press, 2007), 168n3.

draws an additional conclusion that gives pause: he argues that even within Northern Europe “a common medieval law of the sea was an impossibility due to the absence of a supra-territorial jurisdiction which could implement such a law” and that “the law of the sea was not shared between territories at all, but was divided across many small jurisdictions.”<sup>36</sup> These observations on the north-south divide, as well as north-north divisions themselves, challenge the idea of maritime law as a universalizing force during the period. While the impulse to standardize the law of the sea had existed since the classical world, its realization remained far out of reach during the Middle Ages and early modern period.<sup>37</sup>

The most important code of maritime law in Northern Europe were the Rolls of Oléron, which consisted of forty-seven articles. The Rolls took their name from the island of Oléron, which was situated off the coast of Aquitaine, but more exact information about their origins evades historians.<sup>38</sup> English tradition held that Richard I had returned to England from the Crusades with the Rolls in hand, a legend already debunked by lawyer Matthew Hale in the 1670s: “But the supposition that [Richard] made these Constitutions called the Laws of Oleron in his return from the Holy Land or in any short time after seems utterly improbable and indeed almost impossible.”<sup>39</sup> Still, despite the tale’s tenuous relationship to historical reality, it illustrates the anxiety inherent in

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<sup>36</sup> Frankot, 152.

<sup>37</sup> D. P. O’Connell, *The International Law of the Sea*, 2 vols. (Oxford: Oxford University Press, 1988).

<sup>38</sup> See Karl-Friedrich Krieger, *Ursprung und Wurzeln der Rôles d'Oléron* (Köln: Böhlau, 1970), 31-71.

<sup>39</sup> Matthew Hale, *A Disquisition touching the Jurisdiction of the Common Law and Courts of Admiralty in Relation to Things Done Upon or Beyond the Sea, and Touching Maritime and Merchants Contracts* (London: Selden Society, 1993), 62.

absorbing the foreign Rolls into England's domestic legal fabric. The laws had been adopted as the code which governed admiralty courts in England during the reign of Edward III in the fourteenth century. The first partial English translation appeared in *The Rutter of the Sea*, a 1520 French sailing manual, which had been translated by English poet Robert Copland in 1528 and reprinted a total of five times before the end of the sixteenth century.<sup>40</sup> In addition to practical navigational instructions for the coasts of Spain, France, and England, the 1536 edition of the *Rutter* contained an abridged copy of the Rolls of Oléron, the first translation of the laws into English.<sup>41</sup> It should not surprise us that the first printed copy of the Rolls appeared not as a legal text, but rather in a sailing manual, which highlights the utilitarian nature of the laws: they were as likely to be found in a captain's cabin as in a lawyer's study. But they also served as an authoritative touchstone for the seventeenth-century writers on admiralty jurisdiction and were reprinted in the treatise of Zouch, who included only twenty-seven of the original forty-seven articles. The Rolls represent the increasing impulse to standardize the law of the sea in the Northern Atlantic.

The Rolls of Oléron also appeared, untranslated, in the Black Book of the Admiralty, the most important work on the English Admiralty during the late Middle Ages. Like most records related to the court, it was not published until the second half of

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<sup>40</sup> How Copland came to translate the *Rutter* is unclear. See William Senior, "Early Writers on Maritime Law," *The Law Quarterly Review* 37 (1921), 326. Hale mentions the 1541 edition of *Rutter* on page 59 of his treatise, in relation to its printing of the Rolls of Oléron.

<sup>41</sup> Edda Frankot, *'Of Laws of Ships and Shipmen': Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh: Edinburgh University Press, 2012), 88. The full title of the 1536 edition is *The rutter of the see with the havens, rodes, soundynges, kennynges, wyndes, floodes and ebbes daungers and costes of dyuers regions with the lawes of the yle of Auleron, & the iudgements of ye see.*

the nineteenth century.<sup>42</sup> Its origins remain murky, but scholars generally agree it served as a manual for the Lord High Admiral. Compiled during the fourteenth century, its contents included rules for the Admiral, instructions for the Admiral during times of war, articles for a maritime inquest, miscellaneous laws and ordinances, and the Rolls of Oléron. Various manuscripts of the Black Book circulated; one copy (British Library Cotton MS Vespasian B. 22) is handsomely illuminated and was probably prepared for the Lord High Admiral himself.<sup>43</sup> John Selden, who owned a manuscript copy of the Black Book, wrote, “The book itself is rather a monument to antiquity, yet not above about Henry VI, than of authority, and rather as a purpose of what was in some failing project, than ever in use and judgement held authentical. Most of it is against both the now received and former practice.”<sup>44</sup> While the Black Book held considerable importance for the first two hundred years of the English admiralty, it was already perceived as outdated in the seventeenth century.

Another important and influential text for the history of European maritime law was birthed in the Mediterranean. *The Book of the Consulate of the Sea (Libre del*

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<sup>42</sup> This edition, edited by Travers Twiss, remains the only printed edition of the Black Book of the Admiralty. Twiss’s four-volume contribution was significant: in addition to the Black Book, he included other documents related to medieval maritime law and custom. Most scholarly work on the Black Book dates from the first half of the twentieth century, including Douglas Owen, “The Black Book of the Admiralty,” *The Mariner’s Mirror* 1.10 (1911), 267-71. Other scholars have engaged with the Black Book more tangentially; these contributions include A. B. Wood, “The Laws of Oleron,” *The Mariner’s Mirror* 4.6 (1914), 195-99; Sanborn, *Origins of the Early English Maritime and Commercial Law*; Lionel H. Laing, “Historic Origins of Admiralty Jurisdiction in England,” *Michigan Law Review* 45.2 (1946), 163-82; Timothy J Runyan, “The Rolls of Oleron and the Admiralty Court in Fourteenth Century England,” *American Journal of Legal History* 19 (1975), 95-111.

<sup>43</sup> M.J. Prichard and D.E.C. Yale, *Hale and Fleetwood on Admiralty Jurisdiction* (London: Selden Society, 1993), xxxvi-xxxvii.

<sup>44</sup> John Selden, “Notes upon Fortescue,” in *The Works of John Selden*, vol. 3 (London, 1726), 1898.

*Consolat de Mar*), probably originating in Barcelona and written in Catalan, sought to coalesce local statutes and customs of the commercial judges who heard cases in coastal towns.<sup>45</sup> The book contained both substantive and procedural law and in this sense can be viewed as a southern counterpart to the Black Book of the Admiralty, although the former enjoyed much wider influence and circulation. As Stanley Jados writes in the introduction to his translation, “Each commercial city had its own laws and customs, its own system of justice. Any merchant who was not a resident of the city in which he carried on his trade was regarded as a foreigner. For protection the merchants needed a reliable code of general laws and impartial courts.”<sup>46</sup> The *Consulate* contains an exhaustive compendium of sea law, and nearly every possible circumstance that might arise on the sea or in ports is addressed: examples include “123 - Obligations of a Passenger,” “249 - Waterlogged Cargo Carried in an Open Boat,” “271 - Inability of a Patron to Undertake a Voyage Due to His Indebtedness,” as well as ordinances related to a number of persons aboard ship, including barbers, the ship’s caulker, and the lookout.<sup>47</sup> At times, it is amusing in its specificity:

If any merchandise or cargo is damaged by rats while aboard a vessel, and the patron has failed to provide a cat to protect it from rats, he shall pay the damage; however, it was not explained what will happen if there were cats aboard the vessel while it was being loaded, but during the journey these cats died and the rats damaged the cargo before the vessel reached a port where the patron could purchase additional cats.<sup>48</sup>

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<sup>45</sup> Colombos, 35.

<sup>46</sup> Stanley S. Jados, ed. and trans., *Consulate of the Sea and Related Documents* (Tuscaloosa: University of Alabama Press, 1975), 38.

<sup>47</sup> See Jados, xix-xxxiii, for the complete contents of the *Consulate*.

<sup>48</sup> Jados, 38.

Due to its wide-reaching utility, the Consulate was printed twenty-fives times between 1490 and 1700, in both its original Catalan as well as Italian, Spanish, and French, and remained the authoritative body of maritime law in the region until the appearance of the *Ordenanzas de Bilbao* in 1737.<sup>49</sup> The Book of the Consulate of the Sea can most usefully be viewed as the Mediterranean equivalent of the Rolls of Oléron.

These maritime codes contain three elements to note. In the first place, they exude textual instability. The Rolls of Oléron, for example, shift content from one copy to the next. These discrepancies reveal that the Rolls exist on a plain of multifarity and that identifying an authoritative copy proves an elusive goal. The Rhodian Sea Law also, and unsurprisingly, was subject to much deviation across copies.<sup>50</sup> The law of the sea, in its transmission across times and places, adapted to both the needs of seafarers and the national law of the countries in which it was practiced. As a result, textual instability can be read more generously as textual flexibility, and this flexibility imbued it with a nascent universalizing impulse, as stubborn rigidity would have rendered the codes less effective. Related to this textual instability is geographic instability. That is, the sea law developed varying customs in the Mediterranean and in the North Atlantic, and the codes offer evidence of these differences. In England, William Welwood's *An Abridgement of all Sea-Lawes* attempted to truncate these divergent paths: as the medieval seas gave way to the early modern oceans, the need for a law that could be applied to ships and mariners

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<sup>49</sup> Robert S. Smith, "Criticism of the Consulate of the Sea," *The Hispanic American Historical Review* 14.3 (1934), 359-63 (359). See also Robert S. Smith, "The Libre del Consolat de Mar: A Bibliography," *Law Library Journal* 33.6 (1940), 387-95; J. M. Edelstein, "Early Editions of 'The Consulate of the Sea'," *The Papers of the Bibliographical Society of America* 51.2 (1957), 119-25.

<sup>50</sup> See Ashburner, xvi-xlvi.

across the globe grew more urgent. The codes represented specific geographic locations, emphasized in their very names—Rhodes, Amalfi, Oléron—but despite their initial provincialism, they stretched out from the north and the south until they met, and in their conjugal union they conceived what would become modern maritime law. Finally, the codes share a common interest in the practical. Unlike other forms of English law, they do not tend toward the esoteric. This reflects the nature of those using the law: mariners, merchants, men who did not have the time or inclination to pore over labyrinthine legal texts. The brevity of the codes parallels the reason why early modern merchants, both English and foreign, generally preferred the High Court of Admiralty to the common law courts. The nature of their business—swift, transitory, and often involving actors from different states—made the court an attractive alternative to the procedurally slower-moving common law courts. In fact, this feature comprises a reason for the existence of maritime law itself.<sup>51</sup> Appropriately enough, the codes reflect the nature of the law to which they are bound.

## 2. Government Documents

Maritime law must coexist with national law. It must flex and conform to the legal contours of the countries in which it is practiced. In England, of course, this law is

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<sup>51</sup> In “Admiralty’s Adjudicatory Jurisdiction over Alien Defendants: A Functional Analysis,” *The Journal of Maritime Law and Commerce* 11.4 (1980), 395-452, Richard T. Robol offers a heuristic model of admiralty jurisdiction to help conceptualize the law of the sea. His model argues that maritime law 1) supposes the actors in maritime transactions are engaged, to a greater or lesser extent, in interstate and international commerce, and as a result, they come into contact with a multiplicity of other nations; 2) sees the policing of the sea in matters such as piracy and the protection of seamen as a goal that serves an international, as opposed to mere national, purpose; 3) views national courts sitting in admiralty as sensitive to the needs of the international community, and not driven by national interests alone; and 4) considers admiralty law as essentially uniform throughout the world.

the common law. Government documents related to maritime law and admiralty jurisdiction remain an overlooked category of printed maritime law in early modern England. Materials that fall under this categorical umbrella include royal proclamations, statutes, and acts of parliament. These documents, of course, encompass the entire scope of royal authority in the period and are not exclusive to matters affecting the English admiralty. However, they demonstrate the range of maritime issues that the early modern English government sought to regulate. They complement and at times supplant the codes, and unlike the codes, they originated on English soil, safely within the confines of English legal authority. Edward Coke, who in his *Fourth Institute of the Laws of England* (considered below as a treatise) sought to define the jurisdictional parameters of the High Court of Admiralty, was not inclined to conjure the Continental codes of maritime law. As English judge Sir Francis Buller noted in a report from the eighteenth century, “In truth my Lord Coke could not bear anything connected with the Civil Law.”<sup>52</sup> Maritime law, procedurally connected to the Continental civil law, offended Coke as well. In the *Fourth Institute*, he relies on three authorities in his mission to restrict the admiralty’s court’s jurisdiction, Acts of Parliament, judgments and judicial proceedings, and book cases, all material rooted firmly in English soil.<sup>53</sup>

Coke, as well as the other writers on admiralty jurisdiction in England (Fleetwood, Godolphin, Zouch, Exton, Hale), sought to delimit the English admiralty in

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<sup>52</sup> Cited in William Senior, *Doctors’ Commons and the Old Court of Admiralty: A Short History of the Civilians in England* (London: Longmans, Green and Co., 1922), 89.

<sup>53</sup> Edward Coke, *The Fourth Part of the Institutes of the Laws of England: Concerning the Jurisdiction of Courts* (London, 1644), 134.



part through the invocation of certain statutes.<sup>54</sup> Perhaps the three most referenced statutes were 15 Ric. 2 c. 3 (1391, on the jurisdiction of the admiral), 28 Hen. 8 c. 15 (1536, on offenses at sea), and 5 Eliz. c. 5 (1562, on the maintenance of the navy).<sup>55</sup> The Statutes of the Realm cannot be considered maritime law in the same manner, or to the same degree, as the codes. But this does not mean that their interpretation did not have real consequences for the merchants and mariners who had their cases heard before the judges in the High Court of Admiralty, or who found themselves in the throes of the Lord High Admiral's jurisdiction within British waters. They did not seek to define aspects of maritime law substantively, as did the codes; rather, they mainly impacted the procedural elements of the English admiralty. In a sense they complement the codes by setting out the machinery with which to enforce the codes' directives in an English jurisdiction, and perhaps their procedural nature is what excluded them from Senior's discussions of maritime law.

The second main government document, the printed royal proclamation, offers an even more overlooked category of printed maritime law. Chapter 2 engages more robustly with these ubiquitous broadsides of the period, displayed across the realm as an ever-present visual reminder of royal authority, but a general consideration of their role in

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<sup>54</sup> The Statutes were first printed by Machlinia in 1482 or 1483: this first edition contained the statutes from 1 Edward III to 22 Edward IV. Pynson produced an edition in 1497, which contained all statutes from 1 Edward III until the present. Pynson printed another edition in 1508, which included some pre-Edward III statutes. Ferrers translated the Magna Carta along with several other statutes in 1534. Berthelet printed the first complete edition of the statutes in 1543. Powell printed all statutes to date in 1575. See Katherine F Pantzer, "Printing the English Statutes, 1484-1640: Some Historical Implications," in *Books and Society in History*, ed. Kenneth E. Carpenter (New York: R.R. Bowker, 1983), 69-114.

<sup>55</sup> For a discussion of the relationship between statute law and case law, see Giacomo A. M. Ponzetto and Patricio A. Fernandez, "Case Law versus Statute Law: An Evolutionary Comparison," *The Journal of Legal Studies* 37.2 (2008), 379-430.

early modern England will be considered here. Like the statutes, royal proclamations addressed many issues of maritime law: piracy, of course, but also shipwreck, mariners' wages, impressment of mariners, sea traffic, ships, the High Court of Admiralty, and even anchors. I know of no scholar who has investigated the proclamations' engagement with maritime law: this omission is unfortunate, as the proclamations represent the most widespread printed material addressing the law of the sea in early modern England. In certain ways, the proclamations' relationship to maritime law mirrors the statutes, but they also stand apart. For example, the legal authority of royal proclamations in the period remains contested by modern historians.<sup>56</sup> However, on a pragmatic plane, a person in early modern London who would most likely never have business in the High Court of Admiralty could read of maritime law and regulations across the city.<sup>57</sup>

The government documents on maritime law illustrate the precarious positioning of this law in England in a more straightforward, and clinical, fashion than the treatises. Their mere existence serves as a reminder of the High Court of Admiralty's subservience to English national law. In addition, they challenge two assumptions about early modern maritime law in England. First, that it was strictly international: while the codes did develop in other places in Europe, their implementation required administrative and procedural rules in England, and I would argue that these rules themselves constitute a form of maritime law. Due to a narrow definition of maritime law, some scholars have

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<sup>56</sup> In the Case of Proclamations (1611), Edward Coke famously ruled, "The King by his proclamation or other ways cannot change any part of the common law, or statute law, or customs of the realm." 77 Eng. Rep. 1352 (1611).

<sup>57</sup> Frederic A. Youngs notes that "several locations were used [for proclaiming] in London: the great cross 'at Cheepe', now Cheapside at Wood Street, St Magnus in Fish Street, Leadenhall, the conduit in Fleet Street, and Lombard Street." *The Proclamations of the Tudor Queens* (Cambridge: Cambridge University Press, 1976), 25.

focused on the substantive at the expense of the procedural in their discussions of the law of the sea. Second, this omission has unnecessarily shaped the scholarly trajectory of printed maritime law in early modern England. Beginning with Senior, the topic of English maritime law has been limited to codes and treatises. Leaving out these government documents has distorted the scholarly conversation and produced a myopic vision. In particular, the exclusion of printed royal proclamations, the most frequently printed and widely distributed form of English maritime law, has unhelpfully skewed ideas about the early modern English public's engagement with the English admiralty and the law of the sea.

### 3. Reports

In his "Proposition Touching Amendment of Laws," Francis Bacon set aside his lifelong animosity toward Edward Coke long enough to shower praise on the latter's *Reports*. He wrote that "had it not been for Sir Edward Coke's Reports (which though they may have errors, and some preemptory and extrajudicial resolutions more than are warranted, yet they contain infinite good decisions and rulings over cases), the law by this time had been almost like a ship without ballast."<sup>58</sup> The reports of Coke, as well as Spelman, Dyer, and Plowden, supplanted the long tradition of the year-books in English legal history.<sup>59</sup> The early reports, dating from the fifteenth century, were not much different from the year-books, but over time, the new medium added depth and

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<sup>58</sup> Bacon, 65.

<sup>59</sup> See Baker, *An Introduction to English Legal History*, 151-58, for details about the transition from the year-books to named reports. See also E.W. Ives, "The Purpose and Making of the Later Year Books," *The Law Review Quarterly* 89 (1973), 64-86.

sophistication to the art of English law reporting. This development reached an apogee in Coke's *Reports*, published in ten volumes between 1600 and 1615. One legal historian argues that Coke, as legal thinker, embraced a paradoxical farrago of conservatism, progressivism, and even superstition, but that this very combination granted his *Reports* their strength: "The great value of the *Reports*, in fact, lies in this, that although they summarise mediaeval authority upon a point, yet in many cases they also lay the foundations of a modern doctrine."<sup>60</sup> Reports of cases at common law—first in the year-books, later in the named reports—provided a crucial resource for the period's lawyers and legal thinkers.

Due in part to the limited nature of the High Court of Admiralty's jurisdiction and business, the practitioners produced no published texts analogous to the printed reports of the common lawyers. However, the civilians did keep records and notes of the cases that came before the court. One famous example is that of Sir Julius Caesar, who served as judge in the court between 1582 and 1606. Caesar's papers contain several volumes of notes related to this role; they include "miscellaneous papers which Caesar either received or transcribed in the course of the court of Admiralty business: correspondence with litigants or their representatives, lawyers, councillors, muniments, accounts, etc. ... in addition, five volumes contain Julius Caesar's personal notes (in his own handwriting) on the legal arguments presented by counsel."<sup>61</sup> The annotations mainly reference legal

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<sup>60</sup> Theodore F. T. Plucknett, *A Concise History of the Common Law* (Boston: Little, Brown and Company, 1956), 282. For more recent scholarship on Coke's *Reports*, see George Garnett, "'The ould fields': Law and History in the Prefaces to Sir Edward Coke's Reports," *The Journal of Legal History* 34:3 (2013), 245-84.

<sup>61</sup> Alain Wijffels, "Sir Julius Caesar's Notes on Admiralty Cases: An Alternative to Law Reporting?," in *Law Reporting in Britain*, ed. Chantal Stebbings (London: Hambledon, 1995), 89-112 (89).

authorities, and he generally omits factual details of individual cases. Alain Wijffels speculates that Caesar collected these notes for his own professional activities and adds as “a judge in the court of Admiralty, Caesar intended to clarify the workings of the court, whether or not with a view to publishing the results of his research and notes.”<sup>62</sup> Ultimately, Wijffels concludes, we cannot be sure of the purpose of Caesar’s notes, and they remain unpublished.

But Caesar was not the only civilian associated with the court to keep notes on his activity there. Italian-born civilian Alberico Gentili’s *Hispanicae advocacionis libri duo* (Hanau, 1613) represents the closest text to a report that exists of the early modern High Court of Admiralty.<sup>63</sup> Gentili himself is perhaps best remembered for several important contributions to early modern international law. According to Coquillette, Gentili’s main works “were remarkable for their narrow, objective approach. They focused on factual data about customary law, not on hypotheticals, ideals, or academic theories.”<sup>64</sup> In many ways, Gentili remained an outlier in early modern England’s legal landscape: he was not born in England, but rather Italy; he did not obtain his legal education at Oxford, Cambridge, or the Inns of Court, but rather at the University of Perugia.<sup>65</sup> He arrived in

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<sup>62</sup> Wijffels, 94.

<sup>63</sup> Later editions were printed in Amsterdam in 1641 and 1661.

<sup>64</sup> Coquillette, 65.

<sup>65</sup> By the sixteenth century the University of Perugia had firmly established itself as a leading European center of jurisprudence. Its professors had included Bartolus de Saxoferrato (1313-1357) and his pupil, Baldus de Ubaldis (1327-1400), who were both leading figures in the study of Roman law during the Middle Ages. Bartolus argued that the open sea was distinct from territorial waters. See Alberico Gentili, *De Iure Belli Libri Tres*, ed. James Brown Scott (Oxford: Clarendon, 1933), 12a; see also Pavel Kalenský, *Trends of Private International Law* (Leiden: Martinus Nijhoff, 1971).

England in 1579 as a Protestant refugee.<sup>66</sup> Gentili held a Regius professorship in Civil Law at the University of Oxford for twenty-one years, where he was, by all accounts, a popular and effective teacher. Despite his affiliation with the civil law, he never joined the Doctors' Commons. He did, however, hold an honorary membership at Gray's Inn.<sup>67</sup> In 1584, the Spanish ambassador to England, Don Bernardino de Mendoza, was accused of participation in a plot to liberate Mary, Queen of Scots. His alleged guilt had been revealed by the plot's chief conspirator, Francis Throckmorton, who confessed under torture on the rack. Unsure how to proceed, the Privy Council consulted both Gentili and French jurist François Hotman on the matter: both lawyers agreed that Mendoza could not be tried in England, as he enjoyed the criminal immunity of an ambassador.<sup>68</sup> Gentili's decision required a certain degree of moral courage, as it was an extraordinarily unpopular one; in *De iure belli*, he defended his decision to exile Mendoza rather than to have him stand trial.

The *Hispanicae advocationis* drew on Gentili's experience as the advocate for Spain at the High Court of Admiralty from 1605 until his death in 1608. As a result of his favorable opinion in the Mendoza affair, the Spanish Crown had entrusted Gentili with

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<sup>66</sup> Although it is commonplace to label Gentili an Italian Protestant, this requires some additional clarification. Gentili's father, Matteo, belonged to the Brotherhood of SS. Tommaso e Barnaba. Matteo's membership in the Brotherhood came to the attention of the Inquisition in 1579, prompting him and two of his sons to flee Italy. Gesina H. J. van der Molen argues that Matteo Gentili may have also encountered the Zwinglian community in Pisa, although this did not immediately precipitate his exile. See Molen, *Alberico Gentili*, 38-9. After his resettlement in England, Gentili married a French Huguenot.

<sup>67</sup> Molen, *Alberico Gentili*, 57.

<sup>68</sup> Molen, *Alberico Gentili*, 49. See also John J. Murray, "The Görtz-Gyllenborg Arrests: A Problem in Diplomatic Immunity," *The Journal of Modern History* 28.4 (1956), 325-37 (330).

representing Spain at the English admiralty court.<sup>69</sup> Lauren Brenton notes the precariousness of Gentili's position: he was expected to represent the Spanish Crown while remaining mindful of the interests of his adopted homeland.<sup>70</sup> During his three years as a Spanish advocate, Gentili took notes on the cases that he witnessed, which he probably intended to revise prior to publication. Unfortunately, however, Gentili died in 1608, before he had the opportunity to edit his manuscript. He directed his brother, Scipio, to destroy his other writings, but he wanted his notes on the international law of the sea to be published. Perhaps this illustrates Gentili's recognition of the gravity of the work. Frank Frost Abbot notes the "attitude which Gentili took toward the different branches of law and the method which he followed in establishing judicial principles are more clearly shown in the *Advocatio* than in any of his other writings, and perhaps in that fact the primary importance of this work lies."<sup>71</sup> The *Hispanicae advocacionis* is notable also because it is the only printed High Court of Admiralty corollary to the common law reports; and like the common law reports and Caesar's annotations, Gentili does not focus on the facts of cases but rather the broader jurisprudential issues piqued by the cases.

The best example of Gentili's method can be found in Chapter 11 of the *Hispanicae advocacionis*, "On Holding to the Civil Law in Appeals from a Judge of the

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<sup>69</sup> For more on Gentili's activities during this period, see K.R. Simmonds, "Alberico Gentili at the Admiralty Bar, 1605-1608," *Archiv Des Völkerrechts* 7.1-2 (1958), 3-23. Simmonds' article gives a particularly perspicacious account of the evolution of Gentili's thought, and the ways that arguing at the High Court of Admiralty shifted his views on a number of important issues related to maritime and international law.

<sup>70</sup> Lauren Brenton, "Legalities of the Sea in Gentili's *Hispanicae Advocatio*," *The Roman Foundations of the Law of Nations*, ed. Benedict Kingsbury and Benjamin Straumann (Oxford: Oxford University Press, 2010), 273. Brenton calls the early seventeenth-century admiralty courts "political minefields" (237).

<sup>71</sup> Frank Frost Abbot, "Alberico Gentili and his *Hispanicae advocacionis*," *The American Journal of International Law* 10.4 (1916), 737-48.

Admiralty.” This chapter also gives us a valuable window into the practical issues associated with the adjudication of maritime causes in common law England. This chapter comprises a small portion of the entire work—clearly, questions of admiralty jurisdiction were not the Italian jurist’s focus—but it does establish an early civilian position on the issue. Gentili, naturally, does not make value judgments on the merit of one law over the other. Instead he writes on the coexistence of the two systems in one national legal body. Gentili states the question as “whether those who profess the English common law ought to be among the appellate judges when an appeal is taken from a judge of the Admiralty, or whether those alone should be appointed who profess the English civil law.”<sup>72</sup> Compared to the later treatises on admiralty jurisdiction considered below, the scope of Gentili’s inquiry is remarkably narrow. He addresses one sliver of procedure, the appointment of appellate judges. Early in the chapter Gentili notes a distinction in terminology: instead of the adjectives “English” and “Roman,” he will use “common” and “civil” to distinguish the affiliations of appellate judges. This is to prevent confusion about the term “our law,” because the Admiralty Court had been instructed to give judgments in accordance with “our law.” He notes, “In a sovereign state there is no law but that of the state itself” (99). This observation reveals Gentili’s insight: the civil law, by virtue of its practice in England since the Middle Ages, could claim with certitude to be part of the English national law. Gentili’s second main point involves the suitability of the civil law for suits brought to the High Court of Admiralty. He argues that the English common law “lacks the intent, it lacks the power, it lacks the language to

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<sup>72</sup> Alberico Gentili, *Hispanicae advocacyonis libri duo*, trans. Frank Frost Abbot, vol. 2 (New York: Oxford University Press, 1921), 99.



deal with [foreigners]” (101). This position echoes the later civilian treatises on admiralty jurisdiction. The civil law, because it was practiced in all countries that surrounded England, remained far superior for dealing with the suitors who appeared before the High Court of Admiralty. Gentili, of course, was not antagonistic to the common law—he was, after all, an honorary member of Gray’s Inn—but, as shown in his recommendation in the Mendoza affair, he did not hesitate to promulgate an unpopular opinion.

Reports offer a direct link between the cases heard in the High Court of Admiralty and the reflections of legal practitioners who practiced therein. Although it is unfortunate that more advocates associated with the court did not publish their personal notes, Gentili’s *Hispanicae advocacionis* provides a glimpse into what the genre offers. Interestingly, based on the Restoration treatises, the work’s influence among the civilians in England appears to be negligible: none cite the *Hispanicae advocacionis*. Golphin, however, may have owned the 1613 edition.<sup>73</sup> Its influence in Europe lies outside the scope of this dissertation, but it should be noted that the later editions point to a sustained Continental relevance. And while Gentili’s main purpose in compiling his notes appears to lie in analyzing the relationship between maritime law and international law, the *Hispanicae advocacionis* offers what no other printed early modern text on the High Court of Admiralty does.

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<sup>73</sup> *Catalogus variorum & insignium librorum instructissimarum bibliothecarum doctiss. classimorumque, virorum D. Johannis Godolphin, J.U.D. et D. Oweni Phillips* (London, 1678), 4. Because Godolphin’s library was catalogued along with another, and no distinction was made regarding ownership, it is impossible to say with certainty the copy of *Hispanicae advocacionis* listed belonged to him. It, however, seems likely.

#### 4. Treatises

Treatises represent the largest, richest, and most nuanced category of printed English maritime law in the early modern period. In one sense, they sit positioned farthest from the law itself. As Edith Henderson notes, the fifteenth- and sixteenth-century common lawyer “needed access to three kinds of written material: statutes, form books, and collections of case law. Access to treatises or texts on particular aspects of the law would certainly have been helpful but probably, for the fully trained lawyer, not absolutely essential.”<sup>74</sup> While writing explicitly about the common law, the evidence (lack of treatises on maritime law produced in England until the seventeenth century) suggests this observation held true for the civilians as well.

The English treatises on maritime law fall into two broad categories: domestic and international. The former contains treatises that addressed English admiralty jurisdiction. As discussed above, this issue that had been present since the Middle Ages came to a head during the early modern period, and a series of both common lawyers and civilians addressed the struggle over jurisdiction not only in the courts, but also on the page. Some of these treatises were not published and remained personal references for their authors: common lawyers William Fleetwood and Matthew Hale each wrote treatises of this type that were not published until the twentieth century.<sup>75</sup> But others found their way to the printing press, the three most notable being the trio of Restoration treatises published in the early 1660s by civilians John Godolphin, Richard Zouch, and John Exton. The second

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<sup>74</sup> Edith G. Henderson, “Legal Literature and the Impact of Printing on the English Legal Profession,” *Law Library Journal* 68.3 (1975), 288-93 (288).

<sup>75</sup> *Hale and Fleetwood on Admiralty Jurisdiction*, ed. M.J. Prichard and D.E.C. Yale (London: Selden Society, 1993).

category of treatises addressed the international law of the sea, and specifically the question of free seas. John Selden's *Mare clausum* (1635; English translation 1652) fits into this category, as does William Welwood's *An Abridgement of all Sea-Lawes* (1613). Both types of treatises employ some of the same methods, although toward different ends: while the treatises on admiralty jurisdiction seek to define the Lord High Admiral's purview *inward*, to the point where it ended and the common law began, the international treatises looked *outward* and search for the defining line between England's territorial waters and the high seas. The significance in both groups of treatises lies in their integration of the codes, government documents, and reports. They allow scholars, in other words, to consider how the other three types of maritime law would have been viewed through the eyes of the early modern common lawyer or civilian. They offer the most direct engagement with the earlier texts.

In Chapter 4, I consider the early modern response to the question of free seas and discuss the treatises of Hugo Grotius and John Selden in depth. Here, I would like to focus on William Welwood's *An Abridgement of all Sea-Lawes* (1613), which both addresses the debate and also provides a more holistic treatment of the law of the sea. As the first true book on maritime law published in England, it falls somewhere between a code and a treatise. Given its engagement with Grotius' *Mare liberum*, most recent scholarship on *An Abridgement* has focused on its contribution to that debate.<sup>76</sup> However, Welwood's treatise sought to do much more than offer a rebuttal to the great Dutch jurist.

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<sup>76</sup> See, for example, J.D. Alsop, "William Welwood, Anne of Denmark and the Sovereignty of the Sea," *The Scottish Historical Review* 59.168 (1980), 171-74 and Martine Julia van Ittersum, "Mare Liberum Versus the Propriety of the Seas? The Debate between Hugo Grotius (1583–1645) and William Welwood (1552–1624) and its Impact on Anglo-Scotto-Dutch Fishery Disputes in the Second Decade of the Seventeenth Century," *Edinburgh Law Review* 10.2 (2006), 239-76.

*An Abridgement*, Welwood writes, sought to summarize “all Writings and Monuments which are to be found among any people or Nation, upon the coasts of the great Ocean and Mediterranean Sea.” Welwood’s treatise looks at a variety of legal problems, including salvage, piracy, and the duties and privileges of mariners; he cites Rhodian Sea Law, the Book of the Consulate of the Sea, the Rolls of Oléron, and the Laws of Wisby, among others. Although reprinted in 1636, the treatise’s impact on England’s civil lawyers appears negligible, as Exton and Zouch reference it only once in their works, and Godolphin does not mention it at all, although he may have owned the 1636 edition.<sup>77</sup> However, through its synthesis of earlier codes, *An Abridgement* illustrates the universalizing impulse among seventeenth-century jurists to produce a uniform, pan-European law of the sea.

The admiralty jurisdiction debates occasioned the majority of English treatises on maritime law, and a brief overview of their historical context necessitates an understanding of these texts. Maritime law was, of course, adjudicated in England in the High Court of Admiralty, which had its earlier roots in maritime tribunals held in towns on the coast. Historians have not always agreed on the history of the Tudor High Court of Admiralty, but one general trend is apparent: the sixteenth-century court enjoyed a far greater range of causes than the fifteenth-century court.<sup>78</sup> The expansion in maritime activity in the sixteenth century, which included gains in navigation, maritime commerce,

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<sup>77</sup> *Catalogus variorum*, 14.

<sup>78</sup> For more on the history of the medieval and early modern court, see Reginald G. Marsden, *Select Pleas in the Court of Admiralty, 1390-1545*, vol. 1 (London, 1894); Marsden, *Select Pleas in the Court of Admiralty, 1547-1603*, vol. 2 (London, 1897); Dorothy O. Shilton and Richard Holworthy, *High Court of Admiralty Examinations, 1637-1638* (Frome: Butler & Tanner, 1932); George F. Steckley, “Instance Cases at Admiralty in 1657: A Court ‘Packed Up with Sutors’,” *The Journal of Legal History* 7.1 (1986), 68-83.

and naval capabilities, subsequently increased the business of the High Court of Admiralty during the period. However, despite this burgeoning of legal activity, the court did not enjoy a truly independent jurisdiction and remained subject to the Crown through the figure of the Lord Admiral. R. G. Marsden notes that although during the latter part of the sixteenth century the court enjoyed a near-monopoly over prize cases, Sir Julius Caesar, judge of the High Court of Admiralty from 1584 until 1606, “had reason to remonstrate against the interference of the [Privy] council with his judicial functions.” This was because prize captured without letter of marque was considered illegal.<sup>79</sup> In the battle for admiralty jurisdiction, the most powerful weapon in the common law arsenal was the writ of prohibition. A prohibition could be issued at any time after a suit had been filed in the High Court of Admiralty; in fact, they could be targeted at any inferior court that the common law lawyers felt encroached on the jurisdiction of the common law. The common lawyers based these writs of prohibition on the earlier, pre-Henrician statutes, such as 15 Ric. 2 c. 3, which had more severely pinched the admiral’s jurisdiction.<sup>80</sup> Prohibitions often involved the use of a legal fiction, which had the power to move venues from one place to another.<sup>81</sup> In the case of legal fictions directed at cases

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<sup>79</sup> Letters of marque were the “authority formally given by a belligerent state to a private shipowner authorizing him to use his ship as a ship of war or privateer, and to wage sea-warfare on enemy shipping” (Walker 761).

<sup>80</sup> Holdsworth, *A History of English Law*, vol. 1 (Boston: Little Brown & Co, 1922), 553.

<sup>81</sup> Baker, *The Law’s Two Bodies: Some Evidential Problem in English Legal History* (Oxford: Oxford University Press, 2001), 33, 48. Generally, legal fictions refer to “any assumption which conceals or affects to conceal the fact that a rule of law has undergone alteration, its letter remaining unchanged” (Walker, 469). On these fictions, Jeremy Bentham wrote scathingly, “In English law, fiction is a syphilis, which runs in every vein, and carries into every part of the system the principle of rottenness”: *The Works of Jeremy Bentham*, vol. 5 (London, 1838), 92. In *Legal Fictions* (Stanford: Stanford University Press, 1967), Lon L. Fuller distinguishes a legal fiction from a lie, an erroneous conclusion, and the truth, and defines it as a linguistic phenomenon that is not intended to deceive (1-48).

filed in the Court of Admiralty, the fiction would state a contract had been signed in London, not *super altum mare*, and the common law courts thus enjoyed jurisdiction. Although originally a King's Bench writ, all three common law courts were issuing prohibitions by 1600. It proved a particularly potent weapon, as the "civilians never achieved any degree of success in questioning the authority of the two principal courts of common law."<sup>82</sup>

Both the civilians and the common lawyers produced treatises addressing the debate. The nature of the common lawyers' writing on admiralty jurisdiction defies expectation: because the common law courts ultimately won the debate, one would assume their treatises reflected an aggressive stance toward the limits of the admiral's purview. But, with the exception of Coke, their writings espouse a more subdued style, and they spend far more time describing the extent of the admiral's jurisdiction than calling for its limitations. And even Coke, the most strident of the opponents of the admiral's authority to intervene in matters that did not arise on the high seas, did not argue admiralty an unnecessary branch of English law. The civilians, conversely, approached the topic more gingerly: they were conscious of their precarious professional position as lawyers who practiced the civil law in England, and their writing revealed their caution. They were careful to never assert the superiority of the civil law over England's national law, and they based the largest part of their arguments on statutory interpretation. But compared with the common lawyers, the civilians' treatises paint a more expansive picture of maritime law and admiralty jurisdiction. Their historical references were deeper, more developed, and better integrated. They considered not only

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<sup>82</sup> Prichard and Yale, li.

*that* the admiral enjoyed a certain jurisdiction, but *why* maritime matters required the use of a separate court; and not only *that* the suits brought before the High Court of Admiralty proceeded by the civil law, but *why* the civil law possessed certain attributes that made it particularly well-suited for adjudicating maritime matters.

The treatises of William Fleetwood and Matthew Hale have been discussed extensively by legal historians Prichard and Yale. These texts stand apart from the other treatises in this chapter because they were not printed, but they offer what no other text of the period does: a monograph-length text, written by a common lawyer, dedicated to admiralty jurisdiction. Fleetwood likely began compiling his notes on admiralty jurisdiction while still a student at the Inns of Court; in his treatise, he sets out to explain the extent of the admiral's powers and jurisdiction.<sup>83</sup> Almost a hundred years later, Hale composed *A Disquisition touching the Jurisdiction of the Common Law and Courts of Admiralty in Relation to Things Done Upon or Beyond the Sea, and Touching Maritime and Merchants Contracts* (c. 1675); the text most likely was not intended for publication.<sup>84</sup> This sets it apart from the three civilian Restoration treatises, which not only were published, but were also written in English to reach a larger audience. Conversely, Hale's treatise offers something else: the private thoughts and musings of a

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<sup>83</sup> Prichard and Yale speculate the treatise was finished around 1568; they provide the following details concerning its composition: "A prefatory letter explains the occasion of his writing. It is addressed to Lord Cobham, Warden of the Cinque Ports and vice-admiral of Kent, and from it we learn that Fleetwood in executing a commission, dated 14 July 1566 from Cobham, had met with local resistance. Fleetwood therefore set pen to paper in a mood of indignant self-justification in the Ports and the County. The result was a "First copy" and his letter announces his intention to complete the work if Cobham approved of the first draft. Nevertheless the work does reach the end of the alphabet [Hale ordered each section alphabetically] and in that sense may be regarded as complete" (xxv).

<sup>84</sup> "[The treatise] shares the character of his other legal writings which were seemingly composed as a matter of private study and without intention to publish" (Prichard and Yale, xvii).

common law judge on the admiral's jurisdiction. Not even Fleetwood's treatise falls into this category: while not published, it was addressed to a particular person, and Fleetwood was acutely aware that its contents would be read, considered, and evaluated.

Edward Coke's writing on England's admiralty jurisdiction, which formed part of a much larger work, constituted the most important published common law contribution to the debate regarding the purview of the Lord High Admiral. Coke's *The Fourth Part of the Institutes*, dedicated to The Jurisdiction of the Courts, attempts to reconcile the existence of non-common law courts that functioned within the realm.<sup>85</sup> It begins with the "high and most honourable Court of Parliament" and then proceeds to the Council Board, the Protector, and the Court of the High Steward. Coke's section on admiralty jurisdiction, "Of the Court of the Admiralty proceeding according to the Civil Law," takes up only a small part of the *Institutes*. The domain of the Lord High Admiral was one of seventy-six separate jurisdictions and courts described by Coke.<sup>86</sup> In addition to the chapter on admiralty jurisdiction, Coke also writes on the courts of the Cinque Ports: as explained in the introduction to this dissertation, the Cinque Ports played an important role in the early practice of maritime law in England. However, the focus in the *Institutes* is not on the Ports' practice of English admiralty law, but rather the Ports' status as an

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<sup>85</sup> In the "Proemium" of the *Fourth Institute*, Coke writes, "Of Jurisdictions some be Ecclesiastical, and some Civil, or temporal: of both these some be primitive, or ordinary without commission; some derivative, or delegate by Commission. Of all these, some be of record, and some not of record; some to enquire, hear, and determine, some to enquire only; some guided by one law, some by another; the bounds of all and every several court Courts being most necessary to be known. [So] the body of the Common wealth is best governed, when every several Court of Justice executeth his proper jurisdiction" (B1<sup>v</sup>).

<sup>86</sup> This number is deceptive, however: Coke further divides the courts that operated within London (eighteen total) as well as the ecclesiastical courts (thirteen total).



independent jurisdiction.<sup>87</sup> Coke's chapter on admiralty jurisdiction responds directly to the complaints of Dr. Daniel Dun, a civilian who served as a judge in the High Court of Admiralty in the early seventeenth century.<sup>88</sup> Dun's complaint emerged from his experiences in the court: like many civilians in his position, he became frustrated with the use of prohibitions by the common law, which slowed down the business of the High Court of Admiralty considerably. Dun also complained that the common law judges were not honoring the agreement of 1575, which had been signed by the judges of admiralty and the common law judges and which sharply delimited their respective jurisdictions. Coke reprinted Dun's grievances in his chapter and responded to each in kind.

One of Coke's points warrants discussion as it obfuscates the relationship between legal printing and legal authority. The first involves his uncharitable reading of the statute 15 Richard II c. 3, "Jurisdiction of the Admiral." The line in question reads, "Nevertheless, of the death of a man, and of mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers, the Admiral shall have cognizance."<sup>89</sup> As noted above, the Statutes of the Realm had been printed in several editions since Gutenberg's press arrived on English shores: the first of these, Machlinia's edition of the early 1480s, the *Old Abridgement of Statutes*, misprinted the above excerpt from 15 Richard II c. 3 to read "only beneath the *points* of the same rivers nigh to the

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<sup>87</sup> For more on the jurisdiction of the Cinque Ports, see K.M.E. Murray, *The Constitutional History of the Cinque Ports* (Manchester: Manchester University Press, 1935).

<sup>88</sup> Richard Helmholz notes that "Dun and Coke knew each other: they had sat together as judges by commission": Helmholz, "Notable Ecclesiastical Lawyers V: Sir Daniel Dun (c. 1547-1617)," *Ecclesiastical Law Journal* 16.2 (2014), 205.

<sup>89</sup> *Statutes of the Realm*, vol. 3 (1810-1828; rpt. London: Dawsons, 1963), 79.

sea.”<sup>90</sup> This resulted from the confusion of two similar French terms, *portes* and *pountz*, and Machlinia’s befuddlement found its way into Pynson’s statute editions of 1497 and 1508. The misprint was corrected in Rastell’s English abridgement of the statutes, *The Grete Abregement of the Statutys of England untyll the XXII yere of Kyng Henry the VIII*, in 1533. In 1609, the judges of the Common Pleas noted the mistake: “[The] 15 of Richard the 2 is mis-printed, viz. that the admiral shall have jurisdiction to the points; for the translator mistook bridges for points, that is to say the lands-end.”<sup>91</sup> However, despite this acknowledgment, Coke seized on the misprint and incorporated it into his argument for limiting the admiral’s jurisdiction and Coke reprints the incorrect translation of the statute in the *Fourth Institute*. Prichard and Yale maintain that Coke was the first lawyer to argue for the limitation of the admiral’s jurisdiction based on the misprint but add that the power of his belief endured: it appeared in a judicial argument as late as 1713.<sup>92</sup> All three of the Restoration civilian writers summarily dismiss Coke’s attempt to base his argument on a misprint.

The Restoration treatises that responded specifically to Coke, and generally to the ever-present threat of the common law’s encroachment on the admiralty’s jurisdiction, appeared in the early 1660s. John Godolphin’s *Συνηγορος Θαλασσιος: A View of the Admiral Jurisdiction* (1661) was published first. His treatise, like a vessel with a preoccupied pilot, veers left and right, sometimes surging ahead with reckless speed, other times becoming mired in some immobilizing mud, always beholden to the currents

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<sup>90</sup> My emphasis.

<sup>91</sup> Prichard and Yale, clxxiii.

<sup>92</sup> Prichard and Yale, clxxv.

of its author's desultory mind. Coquillette calls Godolphin's effort "hardly jurisprudence, much more a charming hodgepodge of authority, uncritically selected and casually organized," and Joanne Mathiasen adds that Godolphin in his treatise "seems unaware of the grand struggle between civil and common law ... he writes essentially like a little man, jealously, though not unpleasantly, concerned about the jurisdiction of his particular court."<sup>93</sup> Apparently, however, Godolphin's contemporaries did not share the modern derision: *A View of the Admiral Jurisdiction* is the only Restoration treatise to be printed more than once (a second edition appeared in 1685) in the seventeenth century.

Godolphin proves a peculiar writer with a prose style that can only be described as purple, and his clumsy attempts to infuse his treatise with a literary flavor mostly fall flat.

Richard Zouch's *The Jurisdiction of the Admiralty of England Asserted* (1663) was the second treatise to be published. Although written almost contemporaneously with Godolphin's treatise, the two works sit at opposite ends of the rhetorical and stylistic spectrum: whereas Godolphin offers a farrago of maritime law, Zouch remains focused, methodical, and restrained. His treatise is a straightforward response to Coke's "Of the Court of the Admiralty." The effort generates fully competent, and often dry, discourse: Zouch sets out to dissect, discredit, and dismiss Coke's arguments against the admiral's jurisdiction one by one and he never meanders from this mission. And yet it is in its pedantry that Zouch's treatise succeeds. Using Coke's own cited authorities against him, Zouch shows how those sources ultimately argue for the enlargement of the admiral's purview over maritime affairs.

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<sup>93</sup> Coquillette, *The Civilian Writers*, 186-87; Mathiasen, "Some Problems of Admiralty Jurisdiction in the 17th Century," *The American Journal of Legal History* 2 (1958), 231. Jeffrey Collins adds, "Godolphin was by no means a sparkling stylist" (ODNB).

Evocative, effecting, and exuding both legal authority and literary prowess, Exton's *The maritime dicæologie, or, Sea-jurisdiction of England* (1664) represents a kind of apogee of the Restoration treatises.<sup>94</sup> The treatise shares much of its content with his colleagues Godolphin and Zouch, and yet despite these similarities, Exton manages to inject fresh air into the debates. While retaining Zouch's systematic program, he peppers his treatise with the lissome lexical and semantic associations of a seasoned poet. Not only does Exton display a formidable grasp of the jurisprudential elements of the debate, he does so as a great stylist of the English language. Exton divides *The maritime dicæologie* into three books. The first, which exposts the admiralty in England, assumes a historical tenor. The second, which sets out to establish the geographic purview of the English admiralty, provides the strongest example of the synthesis of codes, government documents, and reports, and demonstrates how Exton uses these authorities in tandem to establish the admiral's jurisdiction over liminal waters. In the third part, the author asserts that all marine contracts fall under the jurisdiction of the High Court of Admiralty.

The second part of Exton's treatise is also the longest. Stretching over twenty chapters, he seeks to clarify the jurisdictional status of bodies of water separated from the main sea: ports, havens, and creeks. He summons many types of authorities to his service: English statutes, readings on those statutes delivered at the Inns of Court, maritime codes, statutes of admiralty, reports of common law cases, writs and prohibitions, and commentators on the civil law. A cursory glance at this list might evoke an anxiety that Exton swerves too closely to Godolphian chaos. However, it is to Exton's

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<sup>94</sup> Exton had possibly served as an admiralty judge in 1647, and certainly by 1651. He was ejected from this position in 1653 but was reappointed by James II (then Lord High Admiral) in 1661. He dedicated *The maritime dicæologie* to James.

credit that he takes the utmost care in organizing and absorbing these sources into his treatise. His ordering demonstrates his prudence: he begins with a discussion of the medieval and early modern English statutes that delimited the Admiral's jurisdiction, Next, he turns his focus to reports of cases (found mainly in Coke's *Reports*) in which the common law courts handled cases that, Exton argues, should have been adjudicated in the High Court of Admiralty: he focuses on Lacey's Case, as well as Constable's Case and the Case of the Swans.<sup>95</sup> Then he moves to the maritime codes, dedicating a chapter each to the Rhodian Sea Law and the Rolls of Oléron. It is only in the final third of the second book that he introduces a detailed outline of the civil law and its attitude toward liminal waters. He closes with a discussion of the records of the admiralty, and the jurisdictional disputes between the High Court of Admiralty and courts of Common Pleas, King's Bench, and Chancery.

Exton's organization of this second book reveals the deliberateness with which he communicated to his audience. Indeed, potential readers of his treatise can be broken into three categories, common lawyers, civil lawyers, and merchants and mariners. In the treatise's introduction, he reaches out to the last group explicitly: "[How] necessary will it be to keep and preserve the Laws of Nations Civil and Maritime ... which is a point I must leave to be considered by my loving friends the Merchants of *England*, Owners of Ships and Vessels, and Sea-trading men that will spare but so much time as to read over this small Treatise!" (B4<sup>V</sup>). The list of authorities that would speak to each category of

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<sup>95</sup> In the Case of the Swans (77 Eng. Rep. 435, KB. 1592), King's Bench ruled that swans were royal fowl, as whales and sturgeon were royal fish, and thus belonged to the monarch through the royal prerogative. In Henry Constable's Case (77 Eng. Rep. 218, 22, KB. 1601), King's Bench held that the royal prerogative extended to include flotsam, jetsam, and ligan resulting from wreck of the sea. Lacey's Case dealt with the extent of admiralty jurisdiction as it related to criminal law. See Prichard and Yale, clxi-xlxv and 384.

potential reader differed, and it almost appears as if Exton executed a very deliberate schema in his ordering of materials. Chapters 1-8 deal mainly with English statutes and common law cases, the purview of the common lawyer and intended to appeal to his sense of English legal tradition. Chapters 10-13 appear directed at the English merchant and mariner mentioned in the introduction, and they include both the maritime codes as well as documents related to the historical admiralty, such as the Inquisition at Queensborough.<sup>96</sup> In Chapters 14-16, Exton attends to the civil law and its commentators, a section addressed not only to his civilian colleagues but also to his common law compatriots, although the minutiae would have been more meaningful to those lawyers well-versed in the civil law. Finally, Chapters 17-20 synthesize the preceding chapters: they combine records from both the admiralty and common law courts, as well as Parliament, to prove conclusively that ports, havens, and creeks lay within the admiral's jurisdiction.

In the writing of his treatise, Exton really only had to persuade one group of readers to adopt his reasoning: the common lawyers. Ostensibly, the merchants, mariners, and civilians already ascribed to his main arguments about admiralty jurisdiction.<sup>97</sup> For

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<sup>96</sup> The Inquisition at Queensborough (1375) is discussed at length in the *Black Book of the Admiralty* (132-73). Marsden notes that it “appears to have been taken in order to ascertain and settle the maritime law to be administered in the Admiral’s Court”: *Select Pleas in the Court of Admiralty, 1390-1545* (London: Selden Society, 1894), xlvi.

<sup>97</sup> See Steckley, “Instance Cases at Admiralty” for more on the merchants’ relationship to the High Court of Admiralty during the period.

this reason, he foregrounds the authorities of the common law.<sup>98</sup> But he also writes as an unapologetic proselytizer of the civil law, attempting to convince the reader of its value, and uses the printed word to bolster his cause. He does not attempt to mask his utmost faith in the civil law's merit as a universalizing legal system, claiming boldly, "[Any]one that hath but once seen the inside of a Civilian's study, either at home or abroad; for both are the same, and furnished with books of the same nature and kind; and all Lawyers or practitioners in the Laws, in all parts of Christendom are Civilians, and do study and take their degrees in the Civil Law" (131). Instead of merely mentioning that the civil law prevails in countries surrounding England—Exton boldly titles his chapter, "That the Civil Law is used and practised in all or most Nations in Christendome"—and pointing to its universalism in that way, Exton asks his reader to consider the personal libraries of English and foreign civilians: the similarities render them virtually identical. To a common lawyer reading Exton's treatise, perhaps in his own study, and surrounded by his own books on the common law, this would have been an enlightening mental exercise, and he would have to admit the common law, when juxtaposed with its erudite civilian cousin, seemed limited and provincial. Books of the civil law occupy a great deal of Exton's energy in this section. Although printing English law has most often been discussed in terms of the common law, Exton uses it to extol the civil law, and attempts

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<sup>98</sup> Exton is, however, no great admirer of Edward Coke's legal thinking and does not sugarcoat his disdain. Before picking apart Coke's interpretation of statute law, he writes, "For here I am to encounter a great Antagonist, the forementioned Sir *Edward Coke*, sometime Lord chief Justice of the Kings Bench" (59). Yet he also incorporates his characteristic wit in his dismissal of Coke: "Now we may see plainly by what Sir *Edward Coke* saith in the first place, where he voucheth this Record, that the Record (as I said before) is very far stretcht, and part which is from thence deduced and drawn very far fetcht" (85-6).

to affirm its authority by pointing out the sheer volume of civil (explicitly Roman) law that had been printed:

What shall we say of the printing and so often reprinting of this large body of the Law, since printing was first invented, which was but 190 years ago? Next what shall we say of the so late reprinting this large body with the gloss and case, and other notes upon the same, with the large index thereunto, in all consisting of six large volumes in folios, some printed in one country, and some in another; some printed within these thirty years, some within a shorter time? (131)<sup>99</sup>

Again, Exton appeals to the universalizing power of the civil law by bending his reader's mind to the substantial physical book and its power to unite practitioners from across Europe. A system of law that remains so uniform over such geographic variation seems best suited for dealing with maritime affairs.

For the literary scholar, it is Exton's language that provides the greatest pleasure. While his legal arguments may appear arcane and his sources inaccessible, his prose style teems with stylistic riches that serve his jurisprudential ends. Justice, he writes, resembles a bird: "[She] soars aloft and spreadeth herself over both sea and land, [and] she hath two Jurisdictions, the one fitted with Laws most apt and proper for distributing of right in all land businesses, the other furnished with Laws most meet and convenient for the dispensing of equity in all maritime and sea affairs" (135-36). The metaphor of the bird permeates his treatise, and he uses the image to illustrate additional points about jurisdiction. For example, he counters the common law argument that shifting maritime cases from the High Court of Admiralty to the common law courts increased efficiency by noting if one of the bird's wings is removed, "justice must needs fall flat to the

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<sup>99</sup> There were several editions of the *Corpus juris civilis* printed during the period, including two six-volume sets (Geneva, 1625 and Lyon, 1627). However, Exton's description (some volumes printed in one country, some in another) indicates that he is referring to a mixed or composite set with individual volumes impossible to identify.



ground, and can by no other so expand herself, as to extend either her directions unto one, or reach forth such her efforts to the other” (136). He continues, pointing out that removing the feathers from one wing and placing them in the other does not make the bird’s flight any faster; and in the same way, shifting cases moving maritime cases to the common law courts would not lead to a more effective procedure or just outcome. His metaphors do not end with the bird, however. When writing on foreign maritime jurisdictions, he states, “I must confess I am no traveller, and that in that regard have not been amongst these Mercatorian and nautical judges; but yet have I in my study travelled through the decisions and determinations of many foreign judicatures, and by that means (I believe) do know their laws” (144). The exquisite crafting of Exton’s treatise renders its sometimes-dry subject matter palatable. Its lofty language elevates the maritime law in England to a higher plane, and from below the civilian, merchant, and mariner can gaze upon it with pride, and the common lawyer, with awe and new-found reverence.<sup>100</sup>

The genre of the treatise provided their authors a level of freedom unavailable to the compilers of the codes and government documents. Unconfined by the pressure to conform to royal authority or indissoluble legal custom, the treatise writers composed texts that incorporated earlier sources in a holistic manner. In addition, they tackled the two major issues of maritime law of their day: freedom of the seas and the admiralty jurisdiction in England. These issues probe the nature of the sea itself, the role of maritime law in England, and the very purpose of maritime law. They offer certain legal

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<sup>100</sup> Eloquence alone could not stem the political tide against the admiral’s jurisdiction, of course, but as Stuart Handley notes, “Although it had little practical effect, [Exton’s treatise] was later reprinted three times in the mid-eighteenth century because it offered a good history of the court” (ODNB).

and cultural assumptions of their era, through which the modern critic can more accurately conceptualize the early modern sea.

## V. CONCLUSION

Maritime law affords the twenty-first century scholar rich resources for literary and cultural understandings of the early modern sea. This is in part because the most common legal issues adjudicated by the law of the sea make for good stories: tempest and shipwreck, sunken treasure and salvage, piracy and plunder all enthrall. They occur on a vast watery plain inaccessible to many readers, one that, even in periods of calm and tranquility, harbors the faint threat of danger. Early modern writers took advantage of maritime adventure and incorporated these topics into their works. But a cursory understanding of these issues fails to engage with them in a meaningful way. Here one can conjure the codes of maritime law: they provide the literary critic with a contextual apparatus for understanding what, exactly, motivated Artegall's judgment in Book 5, Canto 4 of *The Faerie Queene*, and what laws, exactly, condemned John Ward to death in *A Christian Turned Turk* (1612). The codes of maritime law governed the early modern sea, and in its poetic or dramatic simulacrum, this sea was governed by a set of corresponding laws that prove slightly askew, as did all human enterprise in the early modern ocean.

The texts on maritime law of the period introduce another tool for the literary scholar. They evince how the sea was conceived of as a legal, jurisdictional, space. In particular, the treatises on freedom of the seas ponder the nature of the ocean itself: where it ended and began, the extent to which it could be partitioned off, in what manner it

could be possessed, and how human-ocean interaction bore on these questions. These sentiments are particularly useful as they construct theoretical frames for understanding maritime space as a cultural and literary phenomenon. The legal view of the natural world differs significantly from the scientific or religious, and maritime law remained ever present—perhaps in a weathered copy of *The Rutter of the Sea*—aboard the English ships traversing the global ocean. As I show in Chapter 4, these legal ideas about the ocean rest on a spectrum, with Grotius on one end, and Selden on the other, and their writings help to theorize maritime space in works such as *The Faerie Queene* and *Poly-Olbion*. The seventeenth-century legal writers provide the twenty-first literary critic with an early modern theory of the sea.

Legal writing on the law of the sea can also aid in our understanding of *how* language works to construct the ocean. The later treatises on admiralty jurisdiction exploit the literary potential of the language of the sea. Emanating eloquent elucidation, Exton's treatise offers the paragon of early modern English writing on maritime law. Just as piracy and shipwreck appealed to the early modern reader, so did the billowing waves and watery expanses of the high seas appeal to the early modern poet. The ocean has produced a myriad of maritime metaphors in the English language not without cause, and while poets have long recognized its lyric potential, it was not lost on the legal writers of the period either. The domestic treatises create a linguistic link between the legal and the literary, one both historically grounded and critically robust.

Finally, the writings on maritime law disrupt our understanding of early modern legal authority. During the period, the law of the sea shared an uncomfortable relationship with the common law of England, in large part because of the disputes

regarding admiralty jurisdiction. The treatises that emerged from this debate call legal authority into question at times explicitly: the most fraught example is Coke's willful misinterpretation of a statute. But they also challenge the established order in a more abstract way. Maritime law itself required a specialized knowledge, the nuances of which were only available to the practitioners in the High Court of Admiralty. To the common lawyers—with the exception of stalwart scholars such as John Selden—this expertise lay beyond their grasp.

## CHAPTER 2

### ROBBERS OF THE SEA

#### PIRACY IN PROCLAMATIONS, PAMPHLETS, AND PLAYS, 1558-1675

##### I. INTRODUCTION

“When wee see a Ship alter her course,” colonial governor John Smith advised young mariners in 1627, “and useth all the meanes she can to fetch you up, you are the *chase*, and hee the *chaser*. In giving chase or chasing, or to escape being chased, there is required an infinite judgement and experience, for there is no rule for it; but the shortest way to fetch up your chase is the best.”<sup>1</sup> Smith’s instructions reflect a reality of life at sea for an early Stuart sailor: their vessels remained vulnerable not only to tempest and shipwreck but also to attacks from pirates and privateers, attacks that often led to international rancor and financial disaster. And yet in sixteenth- and seventeenth-century England, far more people encountered piracy on the printed page or the London stage than on the high seas.

Piracy sells. The maritime crime apparently fascinated the early modern English public. Shakespeare’s *Pericles, Prince of Tyre* (1609, performed c. 1606), which contains a nautical ensemble of mariners, fishermen, and pirates, proved one of the most popular plays performed during his lifetime. Other plays of the period, such as Heywood and Rowley’s *Fortune by Land and Sea* (1655, performed c. 1609) and Robert Daborne’s *A Christian Turned Turk, or The Tragical Lives and Deaths of the Two Famous Pirates*,

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<sup>1</sup> John Smith, *A Sea Grammar: with the Plaine Exposition of Smiths Accidence for Young Seamen, Enlarged*. Kermit Goell, ed. (London: Michael Joseph, 1970), 72-3.

*Ward and Dansiker* (1612, performed c. 1612), capitalized on the allure of the robbers of the sea: these works dramatized the lives and deaths of real English pirates.<sup>2</sup> The exploits of sea marauders were also captured in popular media such as pamphlets and ballads. The court proceedings of at least one pirate and his accomplices were even printed for wider distribution in *An Exact Narrative of the Tryals of the Pirates* (1674). While the fictional pirates of the London stage were not constrained by historical truth, these popular accounts purported to convey accurate narratives of piratical exploits. These various accounts position sea robbers, alternately, as fearless rebels, abhorrent traitors, insatiable thieves, and repentant sinners. But another printed medium concerning piracy permeated early modern England: the royal proclamation. Between 1519 and 1610, the government issued twenty-seven royal proclamations concerning piracy. These royal communiqués represent a major conduit of information about piracy, one that should not be divorced from discussions of the popular accounts. In addition, they provide a useful site of juxtaposition with the period's piracy plays.

This chapter considers these two main types of messaging which informed the public of piracy. Previous scholarship on royal proclamations addressing piracy focuses mainly on their content; it does not engage proclamation as a specific genre, nor the implications of a reading public that obtained knowledge about the maritime offense through an official royal medium.<sup>3</sup> As a result, the physical manifestation of the

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<sup>2</sup> These portrayals were not entirely accurate, however, as the case of John Ward, considered below, illustrates.

<sup>3</sup> For example, Claire Jowitt, in her otherwise excellent study *The Culture of Piracy, 1580-1630: English Literature and Seaborne Crime* (Farnham: Ashgate, 2010), references several proclamations touching piracy, but does not consider the effect of their physical presentation on the viewer.

proclamation constitutes a major component of this analysis, and at the center of my argument lies a fundamental premise: *how* early modern readers acquired information about piracy shaped conceptions of the crime to a comparable degree as did *what* information they encountered. Additionally, I look at how seventeenth-century accounts of sea marauding that targeted a popular audience were informed by printed royal proclamations. This chapter contends that these proclamations represent both the earliest and the most ubiquitous printed accounts of piracy in early modern England, and thus provide a useful tool with which to theorize about the popular accounts.

I begin with a brief exposition of Tudor and early Stuart piracy, using reformed-pirate Henry Mainwaring as my anchor: Mainwaring's biography and writings construct a valuable alembic in which to distill the early modern crime. I then turn to the genres of the printed royal proclamation and the popular account and consider, broadly, how these variant instruments conveyed information about piracy to the early modern reading public. In the next section, I conduct two case studies that examine the intersection of the royal proclamation and the popular account. In the first, I inspect the case of English pirate John Ward, whom James targeted by name in a royal proclamation in early 1609, and who became the subject of three printed pamphlets later that year. In the second, I explore the 1639 account of Elizabethan pirates Clinton and Atkinson, *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats*. The royal proclamation, depicted in both print and image, plays a key role in the pamphlet. These case studies demonstrate the fecundity of staging a dialogue between the popular account and the royal proclamation. The chapter concludes with a consideration of two of the period's pirate plays, *A Christian Turned Turk* and *Fortune by Land and Sea*. Ultimately, this

chapter draws a clean line from the legal to the literary and considers how depictions of piracy evolved from proclamation to pamphlet to play.

## II. HENRY MAINWAIRING AND THE CRIME OF PIRACY

Pirate-turned-pirate-policer Henry Mainwaring opens a useful aperture onto early modern piracy.<sup>4</sup> His biography challenges some assumptions about the crime in the early Stuart period, and he stands as proof that a pirate occupied a transitory identity, one that could easily pass from lawfulness to criminality and back again. Mainwaring, born in 1587 and educated at Brasenose College, Oxford and the Middle Temple (although apparently never called to the bar), was appointed by Lord High Admiral Charles Howard in 1610 to police piracy in the Bristol Channel. For reasons that still evade historians, Mainwaring had taken up piracy by 1613: operating under the guise of a privateer, a murky, politically unstable category, he began to attack Spanish ships on the Barbary Coast.<sup>5</sup> The year 1614 found Mainwaring in Newfoundland, a fertile piratical breeding ground, where he secured new recruits; and, freshly outfitted and manned, he returned to Barbary. In the meantime, his extra-judicial exploits had provoked the ire of French and Spanish authorities—Mainwaring was, by most accounts, an effective pirate—and they lodged complaints against him in London. This diplomatic nuisance prompted James to dispatch an English fleet to North Africa to urge Mainwaring to surrender. The vexatious

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<sup>4</sup> Biographical information about Mainwaring taken from G.E. Manwaring and W.G. Perrin, eds., *The Life and Works of Henry Mainwaring*, vol. I (London: Naval Records Society, 1920), 1-33.

<sup>5</sup> Sir Francis Drake and Sir John Hawkins are perhaps the most well-known of the early modern privateers. For a discussion of Elizabethan privateering, see N.A.M. Rodger, *The Safeguard of the Sea: A Naval History of Britain, 660-1649* (New York: W.W. Norton, 1998), 190-203; 272-96. For a discussion of Stuart privateering, see M.G. Hanna, *Pirate Nests and the Rise of the British Empire, 1570-1740* (Chapel Hill: University of North Carolina Press, 2015), 102-43.



mariner returned to England in late 1615, where he entered into negotiations with the king and agreed to stop attacking foreign ships; he would, instead, become a hunter of pirates. The signed agreement is dated June 9, 1616.<sup>6</sup>

Mainwaring's evasion of serious consequences, while due in part to his willingness to surrender, also reveals the ambiguous attitude that English law adopted toward the crime of piracy. During the Middle Ages, robbery at sea had been a civil, but not criminal, offense. That is, those merchants and mariners who were attacked by pirates and who sought justice requested only monetary restitution, not the punishment of the offending pirates. Legal historian R.G. Marsden observed that during the period piracy was "triable in the king's courts, but it seems never to have been a felony at common law."<sup>7</sup>475. In 1294 Sir William Leyburn was appointed the first Lord Admiral of England's admiralty, and piracy came to be tried in the admiralty court, which proceeded according to the civil law of the Continent rather than the common law of England. This shift proved unsatisfactory. A statute issued during the reign of Henry VIII addressed the court's insouciant attitude toward piracy: 28 Henry 8, c. 15 (1536), "An Act for Punishment of Pirates and Robbers of the Sea," states, "Where Traitours Pirotres Theves Robbers Murtherers and Confederatours uppon the See, many tymes escape unpunysshed because the triall of their offences hath heretofore ben ordered judged and determynd before the Adymirall or his Lyeutenante or Comissary, after the course of the civile Lawes"<sup>8</sup> Because he deemed the Admiral's policing of pirates to be insufficient, Henry

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<sup>6</sup> While some English pirates like Mainwaring returned to England from the Barbary Coast, others, such as John Ward, did not. Pirates who converted to Islam were said to have "turned Turk", and the Crown regarded them as traitors. Their conversion precluded the possibility of a royal pardon.

<sup>7</sup> R.G. Marsden, "The Vice-Admirals of the Coast," *The English Historical Review* 22.87, 475.

<sup>8</sup> *Statutes of the Realm*, vol. 3 (1817: rpt. London: Dawsons, 1963), 671.

used the 1536 statute to create a common law tribunal in which the crime of piracy could also be tried.<sup>9</sup> This marked a turning point in England's treatment of pirates: the number of pirates executed rose sharply during the second half of the century.

While Mainwaring's privileged background makes him an outlier among many other pirates of the early Stuart period, it also illustrates that men who resorted to maritime crime did not fit into a neat socioeconomic box. The pool of potential pirates included any individual with a working knowledge of life at sea. Historian John Appleby notes that for "many recruits, turning to piracy appears to have been an improvised, urgent response to economic and social conditions, fueled by grievances over employment, pay and working conditions."<sup>10</sup> Men such as the infamous John Ward, who originally worked as a fisherman, were certainly drawn from this demographic. More broadly, it would be impossible to ascertain the motivations of the several thousand English pirates at work during the early Stuart period—Appleby speculates that given the high-risk nature of their line of work, men aboard pirate ships witnessed a high turnover rate, which in turn has led to an underestimation of their numbers—but it seems reasonable to assume most acted out of discontent as well as cupidity. In the case of Mainwaring, the pirate's motivation seems less clear and is not explicitly addressed in his treatise. But within the popular accounts, as we shall see, the interest in the pirate transcends his skirmishes on the high seas: it also attempts to understand the pirate

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<sup>9</sup> See A.P. Rubin, *The Law of Piracy*, 2<sup>nd</sup> ed (Irvington-on-Hudson, Transnational Publishers, 1998), 43-70 for more on the treatment of piracy at common law and its evolution across the sixteenth and seventeenth centuries.

<sup>10</sup> John C. Appleby, "Jacobean Piracy: English Maritime Depredation in Transition, 1603-1635." In Cheryl A. Fury, *The Social History of English Seamen, 1485-1649* (Woodbridge: The Boydell Press), 279.

himself, what made him take up marauding, what kept him menacing the high seas, what prevented him from embarking on Mainwaring's reconciliatory route and returning, repentant, to England.

Because he remained loyal to the Crown, and because he surrendered without incident, Mainwaring avoided charges in the High Court of Admiralty. Many other pirates, both English and foreign, did not. If successfully captured, returned to England, and convicted, these men were transported via cart to Wapping Dock where they faced a punishment decidedly apt in its framing of maritime justice. In his *Chronicles* (1586), Raphael Holinshed includes a contemporary description of the grim fate awaiting guilty parties:

Pirats and robbers by sea are condemned in the court of the admeraltie, and hanged on the shore at lowe water marke, where they are left till three tides haue ouerwashed them. Finallie, such as having wals and banks néere unto the sea, and doo suffer the same to decaie (after conuenient adnomition) whereby the water entereth and drowneth vp the countrie, are by a certeine ancient custome apprehended, condemned, and staked in the breache, where they remaine for euer a parcel of the foundation of the new wall that is to be made vpon them.<sup>11</sup> (313).

In popular accounts of piracy, the moments before execution provided the pirate a chance to repent; and if these accounts are to be believed, some did. But certain pirates such as George Cusack proved so diabolical, their cruelty lying so far outside the boundaries of accepted human conduct—even on the lawless high seas—that scaffold repentance did not figure into their narratives.

Mainwaring's good fortune of avoiding a one-way trip to Wapping Dock did not escape him, and in a gesture meant to express appreciation for his pardon he presented a

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<sup>11</sup> Raphael Holinshed, *Holinshed's Chronicles*, vol. I (New York: AMS Press, 1965), 313.

manuscript to King James, *Discourse on Pirates*, in 1618. This treatise offers a particularly useful window into the world of early Stuart piracy, one not tainted by the heavy-handed moralizing or sensationalizing of the popular accounts nor the clinical detachment of the royal proclamation. When Mainwaring addresses his own foray into piracy, he adopts a prudently supplicative tone: “I am so far from justifying my own errors, that I can scarce afford them those reasonable excuses, which might be perhaps allowable in any other man” (9). He then notes that he fell into piracy “not purposely but by mischance” (9) and gives a short overview of his activities between 1613 and 1615. But he does not dwell unnecessarily on this period, and quickly shifts his attention to the suppression of piratical activity. Mainwaring claims that obtaining new recruits off the coasts of England and Ireland proved nearly effortless because the “common sort of seamen are so generally necessitous and discontented” (14). Mainwaring’s main intention here is not to humanize the pirate, but to view men connected with the crime as rational agents; suggesting that piracy, as a result, required a rational approach to its suppression. The remainder of the treatise focuses on the tactics, proclivities, and motivations of the early Stuart pirate. Mainwaring asserts that the prevention of piracy remains more important than its suppression, and that those who neglect this aspect do so at their own peril.

Although it enjoyed a healthy circulation in manuscript, Mainwaring did not compose *Discourse on Pirates* for a wider audience.<sup>12</sup> Accordingly, its narrow ambit assures that it remains a pragmatic text: while adopting the prescriptive tenor of a royal

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<sup>12</sup> In the early twentieth century, G.E. Manwaring and W.G. Perrin identified nine extant manuscript copies of the treatise.

proclamation, it was not a government document that carried legal authority; and while recounting the misadventures of a notorious pirate—Mainwaring himself—it does not succumb to the sensation or scandal of the popular accounts. In addition, it did not circulate in print. But Mainwaring’s treatise and biography challenge the two-dimensional image of the pirate as villain or antihero. They inject nascent sociological awareness by highlighting how the crime had larger economic and societal causes: infrequently did piracy result from the questionable proclivities of a few venal seamen.

This is the political world in which the royal proclamations and popular accounts of piracy appeared, and Mainwaring’s professional trajectory helps us conjure up this world. His treatise stages robbery at sea as most often a crime of opportunity committed by discontented, ill-treated, and desperate men. While Mainwaring was in no position to underscore the excitement of maritime depredation, a main feature of the popular account, his *Discourse on Pirates* remains a useful resource for understanding the early modern crime.

### III. PROCLAMATIONS AND POPULAR ACCOUNTS

The printing, circulation, and networks of early modern English news have attracted a considerable amount of scholarly attention.<sup>13</sup> Unfortunately, the material history of the printed royal proclamation has not: these official government documents, ubiquitous in the landscape of Tudor and Stuart England, have long been neglected by

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<sup>13</sup> See, for example, Joad Raymond, *The Invention of the Newspaper: English Newsbooks, 1641-1649* (Oxford: Clarendon Press, 2006); Joy Wiltenburg “True Crime: The Origins of Modern Sensationalism”, *The American Historical Review* 109.5 (2004), 1377-404; Andrew Pettegree, *The Invention of News: How the World Came to Know About Itself* (New Haven: Yale University Press, 2004).

historians, including historians of the book. Christopher Kyle, who has done much recent work to remedy this scholarly oversight, notes that proclamations “must be one of the most overlooked categories of printed material in the field of early modern history.”<sup>14</sup> This is unfortunate because proclamations cannot be truly understood if divorced from their physical form. The royal proclamation stretches back far before the arrival of Gutenberg’s press on English shores: they appeared in incipient form during the Anglo-Saxon period.<sup>15</sup> In the thirteenth century, sheriffs had been charged with proclaiming, and this happened in two ways: “[The sheriff] caused them to be read in the county court, or he caused them to be proclaimed generally in public places.”<sup>16</sup> (Morris 1968, 218). During the fifteenth century proclamations began to be displayed publicly, and in 1539 this protocol became permanent through the Statute of Proclamations (31 Hen. c. 8): “Furthermore be it enacted by the authoritie of this present parliament, that ... every Shereif [must] cause said proclamacions to be fixed and sett upp openly upon places convenient in every suche towne place or village, upon payne and penaltie of suche some and somes of money or imprisonment of bodye as shalbe conteyned in the saide

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<sup>14</sup> Christopher R. Kyle, “Monarch and Marketplace: Proclamations as News in Early Modern England,” *Huntington Library Quarterly* 78.4 (2015) 771. My own thinking about royal proclamations in early modern England has been largely shaped by Kyle’s scholarship, and in particular his papers “Engaging the Public: The Performative Visibility of Proclamations in Early Modern England” (31 March 2017, Chicago, Illinois) and “Contested Politics on Papered Walls: The Visual Landscape of Early Modern England” (13 October 2018, Amherst, Massachusetts).

<sup>15</sup> See, for example, A.J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (New York: AMS Press, 1974), which includes translations of two proclamations issued during the reign of Cnut (1016-1035), 140-153.

<sup>16</sup> Morris, *The Medieval English Sheriff to 1300* (New York: Barnes & Noble, 1968), 218.

proclamacion or proclamacions.”<sup>17</sup> Proclamations continued to be issued across the sixteenth century: although estimates vary, largely because historians have not always agreed on what, exactly, constitutes a royal proclamation, Frederic Youngs estimates that a total of 446 were dispersed during the reigns of Mary and Elizabeth. The Stuart proclamations have attracted less attention from historians, but their regular issue continued throughout the seventeenth century, including during the Interregnum.

How did Tudor and Stuart royal proclamations appear to early modern viewers? Indeed, their appearance constitutes one of the main channels through which we can understand them: unlike books of the period, proclamations did not lend themselves to marginalia or other extant evidence of readership. In addition, they were not typically collected by private individuals or added to personal libraries.<sup>18</sup> But despite these evidentiary constraints, we do have access to the proclamations themselves; and from their physical form we can, gingerly, extrapolate the experience of reading the early modern royal document, as well as speculate about possible effects of this experience on the viewer.

The early modern period witnessed an increasing uniformity in the physical appearance of the royal proclamation. In the early Tudor period proclamations were

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<sup>17</sup> *Statutes of the Realm*, 726. For an overview of the political function of Yorkist and early Tudor proclamations in fifteenth-century England, see J. A. Doig, “Political Propaganda and Royal Proclamations in Late Medieval England,” *Historical Research* 71.176 (1998), 253-80. For a study of Henrician proclamations, see R.W. Heinze, “The Pricing of Meat: A Study in the Use of Royal Proclamations in the Reign of Henry VIII,” *The Historical Journal* 12.2 (1969), 583-95.

<sup>18</sup> In 1550, the King’s printer published an anthology of Edward VI’s proclamations issued between 1547 and 1550 (*All suche proclamacions, as haue been sette furthe by the Kynges Maiestie*). In 1618, London notary Humphrey Dyson produced several collections of Elizabethan proclamations. See William A. Jackson, “Humphrey Dyson and his Collections of Elizabethan Proclamations,” *Harvard Library Bulletin* 1 (1947) 76-89.

produced on parchment and handwritten. By the reign of Elizabeth, proclamations appeared as one, two, or three folio sheets printed on a single side.<sup>19</sup> The top contained the words “By the King (or Queen)” centered and in a noticeably larger font than the rest of the document. They sometimes contained a title, but other times did not. The proclamation ends with “God Save the King (or Queen)” also centered, and beneath this, we find information about the proclamation’s printing. Their fonts alternate between Gothic and Roman; Gothic persisted in the printing of proclamations until the end of the Stuart period. In light of the political upheaval of Mary’s reign, it should not surprise us that about half of her proclamations appeared only in manuscript: matters of great exigency precluded the use of print. By the reign of Elizabeth, however, almost all royal proclamations were printed: Youngs notes that this had become so regular “that one local official expressed uncertainty about receiving one which was not in print.”<sup>20</sup> The general presentation of the proclamation changed little across the reigns of Elizabeth (fig. 2.1), James (fig. 2.2), and Charles I and II (fig. 2.3). The promulgation of proclamations also followed a set formula of “printing, sealing, distribution, and proclamation,”<sup>21</sup> but to the average person, only the act of proclaiming (and the proclamation’s subsequent public display) had direct bearing on their experience of it.<sup>22</sup>

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<sup>19</sup> For a technical investigation of how proclamations were produced by the King’s Printers in early Stuart England, see Graham Rees and Maria Wakely, *Publishing, Politics, and Culture: The King’s Printers in the Reign of James I and James VI* (Oxford: Oxford University Press, 2009) 121-24 and 140-43.

<sup>20</sup> Youngs, *The Proclamations of the Tudor Queens* (Cambridge: Cambridge University Press, 1976), 9

<sup>21</sup> Youngs, 18.

<sup>22</sup> Kyle (2015) provides an excellent overview of the pomp that surrounded the actual proclaiming; see 774-76.



Tudor and Stuart proclamations addressed a wide host of social, military, legal, economic, and religious topics. In the first ten years of James I's reign, for example, he issued a proclamation specifying what flags British ships should fly at sea (64), another ordering Jesuits and seminarians to quit the realm (66), another forbidding the production of starch (86), and another prohibiting unauthorized persons from transporting mail (99).<sup>23</sup> Several Elizabethan proclamations occupy themselves with dress; a lengthy proclamation dated 15 June 1574 sought to enforce statutes of apparel. It states, in part, "None shall wear spurs, swords, rapiers, daggers, skeans, woodknives, or hangers, buckles of girdles, gilt, silvered, and demasked: except knights and barons' sons, and others of higher degree or place, and gentleman in ordinary office attendant upon the Queen's majesty's person."<sup>24</sup> Various maritime issues are addressed in both Tudor and Stuart proclamations, including the wages of shipwrights, fraud by ship owners, shipwreck, anchorage, and fishing, among many others. Given piracy's impact on domestic and international affairs, it is not surprising to find it a frequent topic of the period's proclamations.

The royal proclamation functioned as more than a receptacle of information, however. It also represented a tangible manifestation of royal authority sent out across the realm and displayed publicly a direct line of communication between the monarch and his or her subjects. As a conduit of exchange, the proclamation required clear language, uniform appearance, and timely dissemination. These features have led Kyle to conclude

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<sup>23</sup> Numbers of proclamations taken from Larkin and Hughes, *Stuart Royal Proclamations* (Oxford: Clarendon Press, 1973).

<sup>24</sup> Hughes and Larkin, eds., *Tudor Royal Proclamations: The Later Tudors (1588-1603)* (New Haven: Yale University Press, 1969), 384.

that “[viewing] proclamations ... entails the recognition that effective communication and effective government were one and the same.”<sup>25</sup> The formulaic gestalt of the proclamations established a sense of expectation on the part of the viewer, and Youngs argues that this formula helped to solidify the document’s authority. One did not have to read the document to acknowledge it as a signifier of royal authority, although reading certainly represented the final link in its chain of authority; a Jacobean proclamation condemning piracy declares, “[We] strictly command all and every our Officers and loving Subjects, that immediately after the sight of this present Proclamation, they and every of them do make diligent search and inquirie in all places ... for the said persons [pirates].”<sup>26</sup> Additionally, because the proclamations’ content was, necessarily, mediated by its form, the information within enjoyed both an inherent authenticity and gravity. Even matters that readers may have deemed personally irrelevant were elevated to a position of royal import; and all proclaimed material could ostensibly be trusted—depending in part, of course, on one’s opinion of the issuing monarch.

Sir Julius Caesar, who served as judge of the High Court of Admiralty between 1584 and 1605, understood the communicatory potential of proclamations. He planned an admiralty circuit in 1591 designed to mimic the assizes of the common law courts. The circuit was prompted by Caesar’s frustration at the eschewing of royal authority on the coasts, particularly in the southern and western counties: the indifferent attitude of local authorities allowed piracy to thrive, and he figured the presence of a royal official would help curb the problem. In practice, however, the circuit proved a failure and a

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<sup>25</sup> Kyle, 774.

<sup>26</sup> Larkin and Hughes, 98-99.

disappointment to Caesar. Historian L.M. Hill points to several culprits, including local residents' reluctance to testify against men who provided them financial windfall; the unwillingness of local officials to submit to Caesar's demands; and the Lord Admiral's own if distant involvement in acts of privateering and piracy. After Caesar returned to London, he began to plan another circuit. As part of his preparations, he drafted a proclamation. According to historian L.M. Hill:

The first suggestion that Caesar made in terms of future circuits was that a proclamation should be made in the port towns a month before the court was scheduled to sit. The proclamation would warn all parties who were to be summoned that if they did not appear they would be sought out and forced to go before the circuit judge. The sheriff was to read the proclamation in order to avoid the weak link in the chain of Admiralty authority: the local officials from water bailiffs to vice-admirals.<sup>27</sup>

In effect, Caesar recognized that the royal proclamation provided an effective weapon against the crime of piracy. It carried royal authority to the outskirts of the realm—those places where piracy flourished—and reasserted the force of the High Court of Admiralty.

According to Robert Steele, the first record of proclamations concerning piracy date from the reign of Henry VI in the fifteenth century. Proclamations on the subject remained sporadic until the reign of Elizabeth I, when the diplomatic ill-effects of English piracy increased. These proclamations on piracy tend to emphasize certain aspects of the crime. In the first place, they frequently point to its exacerbation of diplomatic precarity. Elizabeth issued a proclamation in 1602 that avers “all such piracies and depredations [are] crimes most hateful to her mind and scandalous to her peaceable government”; she adds that she has issued the proclamation “for the better continuance of

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<sup>27</sup> L.M. Hill, “The Admiralty Circuit of 1591: Some Comments on the Relations between Central Government and Local Interests,” *The Historical Journal* 14.1 (1971), 13. 3-14.

amity with all other princes and states not enemies to her majesty.”<sup>28</sup> The proclamations also point to the communal aspect of piracy; an Elizabethan proclamation of 1591, for example, commands parties who may have purchased pirated goods to, within ten days, report to the proper authorities “with the several prices what they paid and the names of whom the same was bought, or tokens, deciphering the person and persons as near as they can remember, and the day, time, and place where and when the same was bought, exchanged, or received.”<sup>29</sup> Reflecting the dominant legal attitude toward piracy, the proclamations mostly ignore interpersonal violence inflicted by pirates. Legal historian D.P. O’Connell notes, “Because freebooters have traditionally committed depredation for acquisitive purposes, and violence against persons has been ancillary to that goal, the law has been preoccupied with the aspect of theft in piracy.”<sup>30</sup> Falling in line with this ethos, the proclamations emphasize economic and political, but not bodily, injury. Taken as the sum of their parts, the proclamations reveal a necessarily clinical rendering of sea marauding. But with the intent of informing rather than entertaining, they nonetheless might have piqued a reader’s interest and instilled a desire for more substantive or detailed information about the crime.

For the early modern reader, printed news pamphlets offered a possible occupant of this niche. These popular accounts fall under the broader genre of early modern news. Henry Ettinghausen labels this genre the “single event newsletter”, a pan-European phenomenon that brought news of domestic and international events to the reading

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<sup>28</sup> Hughes and Larkin, 238.

<sup>29</sup> Hughes and Larkin, 100.

<sup>30</sup> D.P. O’Connell, *The International Law of the Sea*, vol. II (Oxford: Clarendon Press, 1984), 967.

public.<sup>31</sup> These single event newsletters tended to the lurid and fantastical: in his groundbreaking study of the genre, M.A. Shaaber described the range of their content as “the doings of the court; murders and other crimes; miracles, prodigies, and wonders; monstrous births and strange beasts; witchcraft; the plague; acts of God, such as flood and fire, and the weather; and sporting events.”<sup>32</sup> Clearly public palates craved the macabre. According to Tessa Watt, “Stories of crime were a source of gruesome entertainment and collective disapprobation” and “Ballads and pamphlets describing executions were numerous and immensely popular.”<sup>33</sup> Accounts of infamous pirates fit neatly into this genre: they involve far-off, often exotic locales; tempestuous renderings of life on the high seas; detailed accounts of the robbing of ships; and the capture and execution of loathsome criminals. Given the content of these single event newsletters, as well as their low price, scholars once assumed that they were enjoyed only among the lower classes. Watt, however, challenges this claim and argues that instead they would be more accurately conceived of as the forerunner of the modern newspaper. An early Stuart barrister could have conceivably, for instance, represented his clients at Common Pleas by day and read of the shocking crimes of pirates Danseker and Ward by night.

Legal scholar Jonathan Gutoff has researched fictional representations of piracy from the 1680s to the twentieth century, where he focuses on film and television. He

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<sup>31</sup> Strictly speaking, *A True Relation, of the Lives and Deaths of the two most Famous English Pyrates* (1639) would not fall under the heading of single event newsletters, as Purser and Clinton had been dead fifty-six years by the time of its publication. And yet it adopts the conventions of the accounts of John Ward (1609) and George Cusack (1674 and 1675), which were published while their subjects were either still alive or recently executed.

<sup>32</sup> Matthias A. Shaaber, *Some Forerunners of the Newspaper in England, 1476-1622* (New York: Octagon Books, 1966), 138.

<sup>33</sup> Tessa Watt, *Cheap Print and Popular Piety* (Cambridge: Cambridge University Press, 1991), 108-109.

argues that earlier depictions manifest an understanding of the relationship between piracy and maritime law, and that this understanding decreased with time; in other words, depictions of piracy moved from the legal-dramatic to the strictly dramatic.<sup>34</sup> Gutoff's study begins in 1684 with Alexander Exquemelin's *The Buccaneers of America* (which itself was a translation from the Dutch: *De Americaensche Zee-Roovers* had first appeared in Amsterdam in 1678). While Gutoff attends mostly to fictional depictions, his larger point about the legal aspects of piracy can be applied to the popular accounts. Indeed, the concern with maritime justice builds a bridge between proclamation and pamphlet, and nowhere is this bridge more navigable than in the popular accounts of Irish pirate George Cusack. About ten years before *The Buccaneers of America*, the crimes, capture, and conviction of Cusack had occasioned three pamphlets infused with legal sophistication: *An Exact Narrative of the Tryals of the Pirates* (1674); *News from Sea, Or, The Taking of the Cruel Pirate* (1674); and *The Grand Pyrate: Or, the Life and Death of Capt. George Cusack* (1675). These three accounts contain elements of the earlier pamphlets considered in the next section and function as an instructive microcosm of the popular account. These accounts imbue their retelling of Cusack's case with authority: the confection of religious, dramatic, and legal rhetoric offers the reader a multidimensional portrait of the pirate. A full sixty-six years had passed between the retellings of Ward and Danseker's exploits and the capture and death of George Cusack,

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<sup>34</sup> Gutoff concludes that this lack of legal nuance does not hinder the entertainment value of pirate narratives and adds amusingly: "After all, few people—even among this journal's readership [*Journal of Maritime Law and Commerce*—want to go to the movies, rent a video, or turn on their television and be instructed in maritime law" (648).

but certain elements in the pamphlets on piracy remained constant throughout most of the seventeenth century.

*The Grand Pyrate* opens with a cursory nod to Cusack's early life: he was born in East-Meath, Ireland, to a Roman Catholic family. His parents wanted him to undertake the life of a friar, but he found "the wildness of his youth not agreeing with a Religious Life" (A2v). A brief stint as a private soldier in Flanders awakened in Cusack a distaste for authority and he discovered "the severity of that Discipline not agreeing with his looser temper" (A2v). At this point he placed himself in the service of several privateers. This movement from legitimate occupation to a life of crime occurs across the popular accounts, although it deviates from Mainwaring's assessment. While the latter points to ill treatment, low wages, and general discontentment as the forces that drive men to piracy, the former centers the pirate's temperament, deviant and truculent, as his impetus for thieving. The pirate himself, and not his circumstances, occasions his subsequent marauding. As a result, the popular accounts construct a cult of personality early. The reality of life at sea, with all its unpleasantness and exploitations, recedes into the background to deliver the pirate a starring role.

On a series of ensuing adventures, Cusack attacks ships and acquires prizes, and rises through the ranks of piratical hierarchy. These parts of the popular accounts teem with particulars: details of the pirates' crimes tantalize the reader while propelling the narrative forward. The growing audacity of their attacks satiates the craving for baseness. Cusack's story contains a particularly poignant example: the pirate and his co-conspirators mutiny the *Hopewell*, a ship bound for Virginia. After taking command of the vessel, Cusack's men ransack the crew's possessions and divide the valuables

equally. As he attempts to destroy evidence of the mutiny in the ship's cabin, Cusack "could not be perswaded to save a great large Bible that constantly lay upon the great Cabbin Table from the mercy of the Waves" (A4r). When his accomplices attempt to salvage the book, Cusack exclaims, "You Cowards, what do you think to go to Heaven, and do such actions as these? No, I will make you officers in Hell under me" (A4r). With these imprecations, Cusack lifts the Bible from the table and hurls it into the sea: "*Go thou thy way Divinity, what have we do to with thee*" (A4v). This transgression positions him as a maniacal agent of hell; and his symbolic gesture, a later iteration of the pirates who "turned Turk" and renounced Christianity, magnifies Cusack's villainy to near-caricature. Richard Frohock posits that "when Cusack casts the Bible into the sea, he doubly repudiates God's divine laws because he returns the creative, divine Word back to the original oceanic deep out of which God decreed the creation of the heavens and the earth."<sup>35</sup> Frohock concludes this act parallels Satan's rebellion in *Paradise Lost*.

But his shocking antics form only half of Cusack's tale. Like the other accounts of piracy, *The Grand Pyrate* tempers its sensationalism with evidentiary supplements. At the end of the first part, it prints a series of affidavits presented at Cusack's trial. These inclusions act as evidence of Cusack's misdeeds: testimony from those directly affected bolsters the credibility of the narrative. The author also includes alleged excerpts from the pirate's own journal and a letter from one Richard Wharton to George Nevil concerning Cusack's activity in the Plymouth colony. Epistolary supplements can also be found in the pamphlet on John Ward. *The Grand Pyrate* counters its lack of royal authority with

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<sup>35</sup> Richard Frohock, "Bible Overboard: The Word and the Grand Pirate, Captain George Cusack," *Early American Literature* 42.2 (2007), 267.



these additions to the narrative: the pamphlets not only strive to tell a story, but to give readers the real truth, as it happened, not muddled by maritime metaphors or contrived cliffhangers. In addition, *The Grand Pyrate* closes with a reprint of the earlier *An Exact Narrative of the Tryals of the Pirates* (1674). This judicial appendage, presented with the somber gravity of legal proceedings, carries a weight akin to the printed proclamation. Both documents bear an inherent authority, one that reinforces the power of the king to maintain his peace in the face of sea marauding and depredation.

When accounting for the differences between the proclamations and pamphlets, we find the proclamations on piracy concerned with the act itself, as well as its economic and diplomatic consequences. Conversely, the popular accounts revolve around the figure of the pirate, his character, his motivations, his ultimate end. But in spite of their incongruencies, the proclamations and popular accounts on piracy converge at several critical points: they were both printed, but they were not created as lasting objects; they both purported to convey information in an objective, unbiased fashion; and they helped inform the early modern reading public about the crime of piracy. But beyond their obvious divergence—proclamations expressed a royal directive; pamphlets told a story—certain aspects of the two mediums share a theoretical underpinning, such as their commitment to conveying the truth.

Broadly speaking, proclamations may be considered prescriptive and descriptive popular accounts: that is, the popular accounts depict crimes already committed, while the proclamations provide admonishments against crimes emergent on the horizon. While this framework proves useful in a cursory sense, closer inspection betrays the nuance inherent in the conveyance of piracy. The proclamations cautioning potential sea robbers

almost always begin with a contextual paragraph that explains the motives for the decree. For example, a proclamation of 21 July 1561 opens, “The Queen’s Majesty, hearing by report of some of the subjects of her good brother the King of Spain that, notwithstanding both the severity of justice divers times extended by her majesty against sundry pirates with pains of death, and also her often arming of certain vessels to the seas for the apprehension of such offenders [haunt] the seas for to take and seize the subjects and ships of the King of Portugal ...”<sup>36</sup> Brief expository declarations such as this, which open many proclamations, create a descriptive narrative framework. They tell a story that necessitates the remainder of the proclamation. But at the conclusion of the tale, the shift from descriptive to prescriptive occurs: after outlining the ills of robbery at sea, the king or queen prescribes a series of remedies to address the problem. The description services the prescription by adding context to justify royal intervention.

In contrast, the prescriptive nature of the popular accounts assumes a less overt manifestation. The claim that royal proclamations prescribe some course of action to combat piracy requires no additional justification, but the instructive elements of the popular account prove more elusive. In the first place, the readers of the popular accounts were most likely not cavorting aboard pirate ships on the high seas, but rather seeking information about current events or respite from a mundane existence. Thus these readers sought descriptions of piracy and its subsequent punishment, not legal arguments against embarking on a life of sea marauding. The popular accounts concern with justice signals to the reader a moral exhortation. J.A. Sharpe has analyzed the popularity of both public executions and stories of gallows repentance during the early modern period, noting that

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<sup>36</sup> Hughes and Larkin, 171.

“gallows literature illustrates the way in which the civil and religious authorities designed the execution spectacle to articulate a particular set of values, inculcate a certain behavioural model and bolster a social order perceived as threatened.”<sup>37</sup> Of the popular accounts I consider, the scene of the pirate’s execution is sometimes factitious (as in the case of Ward) and sometimes deferred to a time outside the narrative scope (as in the case of Cusack). Nevertheless, these accounts remain interested in conveying the consequences of the crime to their readers. The positioning of the pirate outside accepted social mores serves as a warning to the pamphlets’ audience to remain within a strict moral code. It prescribes, covertly, an appropriate way of behaving couched in intrigue and adventure. And sometimes the prescription is not so covert, as in the account of pirates Clinton and Purser.

The proclamations and popular accounts complement each other even as they involve an inherent tension. To the early modern reading public seeking information about the crime of piracy, the cases of John Ward, Zymen Danseker, Clinton Atkinson, and Thomas Walton aptly demonstrate these complementary tensions.

#### IV. TWO PIRATICAL CASE STUDIES

On January 8, 1609, James issued a lengthy proclamation against pirates. On its face it was rather formulaic: the king informed his subjects that he had been notified of “manifolde complaints” regarding the “many depredations and Piracies committed by lewd and ill disposed persons, accustomed and habituated to spoile and rapine.”<sup>38</sup> The

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<sup>37</sup> J.A. Sharpe, “‘Last Dying Speeches’: Religion, Ideology and Public Execution in Seventeenth Century England,” *Past & Present* 107 (1985), 148.

<sup>38</sup> Larkin and Hughes, 203.

proclamation continues in the anticipated fashion, explicating the diplomatic injury caused by piracy, reminding subjects of the punishment that awaits offending parties, and summarizing the preventive steps undertaken to thwart future transgressions. But this proclamation distances itself from the conventional formula in its two final paragraphs. It specifically mentions Captain John Ward and his accomplices, notorious pirates who were harassing ships in the Straits of Gibraltar, and provides a recounting of their nautical sins which begins: “And whereas divers great and enormous spoyles and Piracies have bene heretofore committed within the Straits of Gibraltar and other places by Captaine John Ward and his adherents, and other English pirates.”<sup>39</sup> The inclusion of Ward’s name and deeds speaks to the notoriety he enjoyed during his lifetime—Mainwaring also mentions Ward in his treatise—and this detail makes the proclamation a particularly interesting one for discussions of early Stuart piracy.

But the story of Ward does not end here. The year 1609 witnessed three separate popular accounts of Ward’s crimes: Andrew Barker’s *A true and certaine report of the beginning, proceedings, ouerthrowes, and now present estate of Captaine Ward and Danseker, Ward and Danseker, Two notorious Pyrates*, and *Newes from Sea, Of two notorious Pyrats*.<sup>40</sup> The first of these, a purported accurate account, takes cathartic license: Barker incorporates details of the pirates’ execution. His reporting amounts to fake news, however, as Hughes and Larkin note that Ward “was arrested and, with others, indicted for piracy against Venetian ships in 1607 and 1608” and “although 19 persons were executed for piracy at Wapping on 22 Dec 1609 [Stow 893] Ward was not one of

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<sup>39</sup> Larkin and Hughes, 205.

<sup>40</sup> A high-quality facsimile of *Newes from Sea* appears in Joel H. Baer, *British Piracy in the Golden Age: History and Interpretation, 1660-1730* vol. I (London: Pickering & Chatto, 2007).

them.”<sup>41</sup> The fiction of Ward’s death persisted in Robert Daborne’s 1612 play *A Christian Turned Turk, or The Tragical Lives and Deaths of the Two Famous Pirates, Ward and Dansiker*, considered below. (In point of fact, Ward was living an opulent life in Tunis in 1612.) These popular accounts act as a supplement to the proclamation of 8 January. They endow readers with the lurid details absent in the proclamation. For at least a percentage of readers, those who had read (or heard) the 8 January proclamation, the engagement with the pamphlets would have been mediated by this experience. This case study speculates on some possible effects of this mediation.

The first account about Ward, *Newes from Sea, Of two notorious Pyrats*, was probably written by Anthony Nixon (although published anonymously) and sold by Nathaniel Butter. Its popularity occasioned a second edition later that year. Historian Greg Bak observes the second edition lent “even greater prominence to Ward’s name in the title: *Ward and Danseker, Two notorious Pyrates*.”<sup>42</sup> This edition shares most of its content with *Newes from Sea*, excepting some prefatory material; additionally, the second edition contains slight variations in the placement of certain woodcuts. Andrew Barker also cashed in on Ward’s burgeoning infamy: his *A true and certaine report* offers the most exhaustive contemporary account of the two pirates. For this case study, I have chosen to concentrate on Nixon’s *Ward and Danseker, Two notorious Pyrates*.

*Two notorious Pyrates* presents its story in two parts. In the first, a brief biographical sketch informs the reader of Ward’s voyage to piracy. “This Ward”, the author tells us, “as base in Birth as bad condition, in the last yeare of her late Majesties

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<sup>41</sup> Larkin and Hughes, 205n2.

<sup>42</sup> Greg Bak, *Barbary Pirate: The Life and Crimes of John Ward* (Stroud: The History Press, 2010), 172.

raigne gave the first onset to his intendments: his parentage was but meane, his estate lowe, and his hope lesse” (A2r). While a fisherman working in Kent, Ward’s “pride at last would be confinde to no limits, nor anything would serve him but the wide Ocean to walke in” (A2r). Like Cusack, Ward’s turn to maritime crime stems from his moral shortcomings. On the wide ocean, Ward engages in various pillages and plunders, enriching himself, and acclimating himself to the life of the pirate; he eventually makes acquaintance with Dutch privateer Zymen Danseker. Ward’s interiority is conveyed in rich, evocative language: “his heart was on fire” (A2v), “the edge of his courage was clean taken away” (A3r), “his march was still under the maske of vanity, and folly attended uppon all his actions” (A3r). When his ship encounters a tempest in the Gulf of Venice, “his Argosey was filled with waves, her tacklings, sails, and Anchors lost and the violent storme so dashed her bulkes and bruised her bottom, as she was made altogether unfit, and unable for resistance, and so was sunke, and cast away” (A4v). Danseker and Ward part ways, and Ward’s existence becomes increasingly stately. The final chapter of the pamphlet’s first part hints at Ward’s opulent life in Tunis: twelve of his retinue guard him, “alwayes standing at his cabin doore” (B3v). By this final chapter, Ward’s depravity has come to destroy him much like the barnacles encrusting the hulls of his misappropriated galleons.

The pamphlet’s second part diverges sharply from the adventure, lavishness, and escapism of the first. It prints a letter sent from the masters of the *Charity* and the *Pearl*, two ships taken by Ward on 6 April 1609. The letter narrates the loss to the ships’ merchant owners in London; it is not unlike the letter printed in *The Grand Pyrate*. While both parts of Danseker and Ward’s story presuppose accuracy in their retelling, the

inclusion of this letter adds another layer of authenticity: it supplies a first-hand account. Even though “English authorities maintained decidedly tight regulatory control whenever possible of the domestic news market.”<sup>43</sup> (Barker 2014, 167), news pamphlets did not enjoy the authority of the royal proclamation, and their content had to authenticate itself more robustly. What better route to legitimacy than a firsthand account? The letter’s inclusion completes the multidimensional depiction of its subject: *Two notorious Pyrates* pulls the reader in, first with the title—tales of notorious pirates seem worthy of perusal—and then with woodcuts and an exhilarating narrative. After the reader has passed through these bibliographic layers, they reach the letter of the masters: on one hand more subdued, perhaps less engaging than the others; on the other pragmatic, like James’s proclamation, detailing the real economic fallout of piracy.

*Two notorious Pyrates* includes woodcuts that further substantiate its claims. This employment of illustration finds no parallel in the printed royal proclamations and thus offers a fruitful site of analysis for popular depictions of piracy.<sup>44</sup> The title page of *Two notorious Pyrates* depicts two galleons facing each other: the one on the left flies the flag of England; the one on the right, a flag of an upward-facing crescent, a clear symbol of Barbary pirates (fig. 2.4). The ship on the right, in addition, shows two bodies hanging from the foreyard. On deck two men—presumably Ward and Danseker—are depicted in

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<sup>43</sup> Sara K. Barker, “Strange News: Translations of European Sensational News Pamphlets and their Place in Early Modern English News Culture,” in John Hinks and Victoria Gardner, eds. *The Book Trade in Early Modern England: Practices, Perceptions, Connections* (New Castle: Oak Knoll, 2016), 167.

<sup>44</sup> One early Stuart proclamation issued in 1605, “A note of the Head-lands of England”, contained an illustration, a map of England that delimited these headlands. But the categorization of this proclamation as a royal proclamation remains dubious: while it is included in Steele’s bibliography, it is not included in Larkin and Hughes’s anthology of early Stuart proclamations.

garb that includes the crescent on the ship's flag, a possible visual cue that the two men have "turned Turk", and that Ward has committed treason. In the earlier *Newes from Sea* (which includes the same woodcut on its title page), the author explains the image to the reader: "To content thee, I have here in (white & black inckle) hung him out to thee at Sea, who could better have wished to have seene him hang'd to death (in hemp) a shore" (A4r). Because *Two notorious Pyrates* lacks this prefatory material, the woodcut produces narrative destabilization: a viewer would probably notice the two hanging men before the men on deck and may have initially identified them as Ward and Danseker. This would create an early sense of catharsis, since the "Two notorious Pyrates" of the title have met justice. But closer inspection would reveal Ward and Danseker below, very much alive, and responsible for both the capture of the English vessel and the execution of two of its crew. Given its ambiguity, the woodcut portends the pamphlet's sophistication. Unlike the straightforward information about Ward contained in James's proclamation, *Two notorious Pyrates* will stage narrative tension and in turn will offer the reader entertainment and diversion. Additionally, the depiction of the hanging men emphasizes Ward and Danseker's infliction of bodily harm, an aspect of piracy not emphasized in the proclamations. *Two notorious Pyrates* opens with a visual reminder of the pirates' interpersonal violence, adding human interest to its framing of the crime.

The pamphlet's additional woodcuts add to the authority of its account by providing visual evidence to supplement the pirates' tale. On A1v, we find two more woodcuts (fig. 2.5): the top shows "Wards Skiffe when he was a Fisherman"; immediately below is shown "The charity of London, of M. Megs twice taken". The juxtaposition of the two vessels is striking: Ward's fishing boat, barely large enough to



contain him and his partner, floats above an impressive galleon. Before the reader can engage the text itself, they are confronted with Ward's narrative via woodcut. Like the supplemental material found after Ward's narrative, these prefatory woodcuts further cement the pamphlet's credibility. They show the reader real things—Ward's skiff, Megs's galleon—to enhance not only its mission to amuse, but also to establish the account's reliability. *Two notorious Pyrates* closes with a list of ships taken by Danseker and Ward or their confederates; on the final page, without text, we see an image of a lone sailing vessel bearing the English flag (fig. 2.6). Ostensibly, this galleon was among those listed on the preceding page. However, beyond this speculation, the stately ship gliding undeterred through placid waters reinforces the burgeoning state of English naval dominance. In their final prescriptive act, the proclamations assert royal authority: no matter what maritime iniquity has occurred, the state holds the power to set things right. *Two notorious Pyrates*'s concluding English galleon produces a similar effect: despite the transgressions of these two notorious pirates, English shipping and commerce will endure.

The crimes of Clinton Atkinson and Thomas Walton (known more commonly as Clinton and Purser) occurred about thirty years before those of Danseker and Ward, but a corresponding popular account did not appear until 1639.<sup>45</sup> In the interim, Thomas Heywood's play *Fortune by Land and Sea* (1607-1609, performed c.1609) dramatized the story of the pirates, and Heywood likely wrote the 1639 pamphlet *A True Relation, of*

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<sup>45</sup> In the weeks following their 1583 execution, three pamphlets circulated that purported to tell of Clinton and Purser's gallows repentance, only one of which survives (*Clinton, Purser & Arnold, to their countreyemen wheresoeue*, London, 1583). I have chosen not to include them in the present analysis, however: the later account of 1639 focuses on the pirates' crimes, not their conversion.

*the Lives and Deaths of the two most Famous English Pyrats* (fig. 2.7). Unlike *Two notorious Pyrates*, *A True Relation* opens with an overtly moralizing tone. The first chapter foregrounds the power of justice: “Justice is a vertue that giveth no man any or the least priviledge to defraude another, of that which he may call his own” (A3r) and “Judiciall is that which properly belongeth to the Bench, & is grounded upon Statutes & Lawes; instituted and made for the benefit and profit of the Common-weale, to the depression of vice, and the incouragement of vertue” (A3v). The second chapter does not abandon this didactic rhetoric and explicates why laws are made: they, the author assures us, impel one “to live honestly, to hurt no man willingly; to render every man his owne carefully, and to extort no man forcibly” (A3v-A4r). In the third chapter, the focus shifts to the opprobrium that results from moral depravity, an opprobrium that follows one’s death. This observation serves as an appropriate prelude to Chapter 4, which offers a brief history of piracy from antiquity until the seventeenth century: marauders considered include Andrew Barton, a Scottish pirate of the early Tudor period (and the subject of a 1630 ballad, *A true relation of the life and death of Sir Andrew Barton*). Purser and Clinton finally tumble into this moral, legal, and historical farrago in Chapter 5.

The story of these Elizabethan pirates is a familiar one. After a brief nod to Danseker and Ward, we learn of Clinton and Purser’s growing acquaintance, facilitated in part because they are both “of haughty and ambitious spirits” (A8v). The narrative settles into the standard fare here; telling of the duo’s nautical pillage and plunder, expanding audacity, and tempestuous tribulations. The second part of *A True Relation* opens with the legal fallout of Purser and Clinton’s misdeeds. Elizabeth, upon hearing complaints that the pair have caused the loss of many ships, dispatches a Vice Admiral to locate the

pirates and offer them the Queen's pardon. Upon learning of the potential pardon, Purser and Clinton, along with their most trusted men, retire to their private cabin to deliberate. They ultimately reject the pardon, not because they do not appreciate Elizabeth's extension of grace, but rather because they fear the High Court of Admiralty: "[But] there was another feare and doubt to bee made, namely of the strict Court of the Admiralty, which seldome or never had any mercy of any who had transgressed in that nature" (B7v-B8r). Driven by this fear, the two men reject the pardon; in return, the Queen's council "have present order that Proclamation should bee made through the kingdome [that] they should thenceforth bee held no better than enemies unto the State, and meere rebells and Traytors to their Queene and Country" (B8v). The scenario leads to a comic interlude in an otherwise solemn pamphlet, a "pleasant accident", the author informs us, that "I am loath to overpass, in the executing of these publications" (B8v). By way of this pleasant accident, the reader encounters a royal proclamation on piracy.

After Elizabeth's condemnation, a pursuivant is dispatched into the realm to proclaim Clinton and Purser traitors. Inclement weather causes him to catch a cold and succumb to laryngitis such "that hee could bee scarcely heard to speake twice his lengthes distant from him" (B8r), and he finds himself unable to convey the royal missive. He enlists a country fellow to aid him, and the two set out on market day in a coastal town to fulfill the Queen's directive. All appears well until the moment of proclaiming, when the Pursuivant reads the proclamation to the Country Fellow, who repeats it inaccurately. "Purser and Clinton", the Pursuivant whispers; "Who hath lost their Purses at the Clinke" (C1v) the Country Fellow repeats. The Pursuivant, understandably, grows vexed, but forges ahead: "Who have lately robb'd divers of our

ships” becomes “Who have lately rob’d diverse shivers of our Chippes” (C1v) and “flung the chiefest Merchants over board” becomes “And flung the Merchants Cheeses over board” (C2r). After several similar errors, the Pursuivant exclaims, “O intollerable”, to which the Country Fellow dutifully replies: “O intollerable” (C2v). In its furnishing of respite from the more serious details of Purser and Clinton, the episode takes advantage of readers’ acquaintance with the papered posts of every English town.

Both text and image add authenticity to the scene’s portrayal of the royal proclamation. The dialogue of the Pursuivant and the Country Fellow alternates between Gothic and Roman typefaces (fig. 2.8). On the surface, this allows the reader to easily distinguish between the two men’s lines, an especially useful typographical aid given the episode’s general befuddlement. But on a more abstract level, the oscillation mimics the appearance of the Stuart proclamation. As noted above, proclamations in the first decades of the seventeenth century alternated between Roman and Gothic typefaces. But of the extant proclamations from the 1630s, every one was printed in Gothic. It follows that readers of *A True Relation* would have associated Gothic font with the printed text on royal proclamations. In this scene, the lines of the Pursuivant appear in Gothic font; the Country Fellow’s corresponding malaprops are printed in Roman. Consequently, the text preserves Gothic as the font of royal authority. Had the entire episode been printed in Gothic—like the rest of the pamphlet—then it would not have had this effect on the reader. It is the alternation of font type that reinforces the royal gravity of the proclamation condemning Clinton and Purser: Roman signifies a dilution of the authority residing in the Gothic. The pamphlet thus demonstrates a clear acknowledgment of its readers’ habitual encounters with royal proclamations.

A corresponding woodcut supplements the scene (fig. 2.9). In it, the two men are shown standing atop a horse-drawn cart. The Pursuivant is positioned behind the Country Fellow, who holds the proclamation; the Country Fellow, hat held reverently over his chest, solemnly repeats the royal decree. At the bottom and barely present in the frame stand eight subjects viewing the spectacle. The proclamation itself bears the primitive approximation of the royal seal. This small detail conveys to the viewer that the document in the Pursuivant's hand is, indeed, a royal proclamation, one imprinted with the stamp of legitimacy. This clever interplay between text and image is reinforced by the reduplication of the woodcut: it occurs in succession (C1r and C2r) so that the reader cannot encounter the text of the Queen's proclamation without viewing, if only in the periphery, this corresponding image (fig. 2.10). Consequently, the subtle presence of royal authority in an otherwise humorous interlude adds a layer of gravity to Clinton and Purser's story. And although Charles issued no known proclamations addressing piracy, proclamations themselves were still publicly displayed memorials of the King's sovereignty. The episode of the Pursuivant and the Country Fellow positions the proclamation as an unbroken line of royal authority stretching back to Elizabeth; and like the accounts of Danseker and Ward thirty years prior, it demonstrates that piracy represented a tangible thread that linked the crown's proclamatory authority with more popular forms of entertainment.

Like *Two notorious Pyrates*, *A True Relation* contains additional woodcuts. One of them (fig. 2.11) appears on the title page and then repeats four other times throughout the pamphlet. The image, similar to the woodcut depicting Ward and Danseker's piratical acts, shows two galleons facing each other engaged in battle, as evidenced by the

discharge of broadsides from both ships. But unlike the corresponding image in *Two notorious Pyrates*, each vessel flies the English flag, the merchant ship to broadcast goodwill, the pirate ship to deceive.<sup>46</sup> This woodcut's recurrence in *A True Relation* reminds the reader of the exact nature of the pirates' crime. It heightens the intrigue and suspense by documenting both the violence and scale of piracy, and through its repetition reinforce the scope of Clinton and Purser's misdeeds. In this way, they function as an additional layer of testimony by providing the depiction of a crime in progress.<sup>47</sup> Because the pamphlet postdates *Fortune by Land and Sea*—the former published in 1639, the latter performed around 1609—a visual depiction of the pirates had already been established on stage. What *A True Relation* could provide that the play could not, however, was a pictorial depiction of the two ships involved in a pirate attack.

The most visually sophisticated woodcut in *A True Relation* depicts the execution of the pirates (fig. 2.12). In my later discussion of the early modern Neptune, I address the period's visual depictions of the ocean. One important point is the power of the sea to distort. Even as cartographic and landscape portrayals of land assumed an increasingly scientific scale, ocean waters rested outside of these constraints, and ships, sea creatures, and even people assumed wildly inaccurate proportions in relation to their surroundings.

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<sup>46</sup> This detail mirrors Clinton and Purser's depiction in *Fortune by Land and Sea*, considered in the next section. In her analysis of the play, considered below, Barbara Fuchs considers this piratical duplicity and argues that "if state symbols can themselves be plundered on the open main, there are no guarantees that one is ever in fact attacking subjects of one state rather than another" (54). Fuchs, "Faithless Empires: Pirates, Renegadoes, and The English Nation." *ELH* 67.1 (2000), 45-69.

<sup>47</sup> The most dramatic depictions of early modern piracy come, I would argue, from the Dutch marine painters, for example, Willem van de Velde, *An English Ship in Action with Barbary Vessels* (fig. 2.13). See Jeroen Giltaij and Jan Kelch, *Praise of Ships and the Sea: The Dutch Marine Painters of the 17th Century* (Rotterdam: Museum Boijmans Van Beuningen, 1996).

In the execution scene, the bodies of Clinton and Purser hang at gallows positioned in the sea. As in the woodcut illustrating the royal proclamation's dissemination, a crowd of onlookers fills the bottom of the frame. Two of these spectators are granted individuality: their heads and faces rise above the crowd. We also see two pointing fingers: one is directed toward the executed pirate on the left, the other points upward, perhaps as a visual cue that the pirates, in their dying speeches, have appealed to divine mercy. A wall—ostensibly the one referred to in Holinshed's *Chronicles* in the description of Wapping Dock—separates the ocean water from the crowd. This framing is conventional enough and corresponds to both the execution as it appears in the text as well as the contemporaneous accounts of the pirates' deaths. It is in the scene's distorted proportions, not in its general subject matter, however, that the real interpretive interest lays.

Clinton and Purser constitute the largest figures in the image. Suspended from their nautical gallows, we can only see their torsos above the water. Heads askew, and eyes closed, their lives have been consummated, and their presentation offers a dramatic reminder of the legal consequences of piracy. However, despite their enormity, they appear paradoxically in the middle ground. In the foreground, between the pirates and resting at the exact center of the frame, two men row by in a pinnace: although positioned closer to the viewer, their boat is smaller than the executed pirates. They represent, perhaps, the minister who heard the pirates' last confessions and the executioner who carried out their sentence. In the background, on the horizon, a sailing galleon provides the image's vanishing point. The positioning and size of the woodcut's two vessels creates a realistic perspective; it is Clinton and Purser's giant scale that disrupts a smooth viewing experience. The distorted perspective takes the viewer on a disjointed journey.

Never finding a comfortable point of contemplation, continually shifting from pirate to pinnacle to galleon and back again, the eyes cannot find repose. Taken as a whole, the four main figures create a kind of tetrad of maritime justice. The enlarged pirates represent the gravity of the crime of piracy, and their derailing of the scene's perspective signifies how piracy itself disrupts the equilibrium necessary for peaceful trade and commerce by sea. The smooth-sailing galleon in the distance demonstrates the necessity of this equilibrium, while the foregrounded pinnacle provides the means of this peace. The woodcuts remind the viewer that restoration of a calm sea requires an appropriate social hierarchy, even as it relates to perspective.

The woodcuts in the two pamphlets link the popular accounts with the royal proclamations by establishing the visual element of piracy's depiction. The proclamations, by nature, were textual documents, and yet they exuded their authority through their physical manifestation. In a similar way, the woodcuts visually reinforced the pamphlets' content. Just as a viewer of a proclamation could interpret it as a surrogate for the monarch's royal authority, a monarch who themselves remained physically absent, the woodcuts provided the reader of the pamphlet with visual proof of robbery at sea. They created a piratical simulacrum; they produced their own experience of seeing piracy with one's own eyes.

Proclamations and pamphlets each transported the ocean to the cities, churches, bookstalls, town crosses, and marketplaces of early modern England. They told of crimes that occurred beyond British territorial waters and often in watery expanses far afield: the Cantabrian Sea; the Mediterranean; the Straits of Gibraltar. The ocean represented a dangerous space, one teeming with tempests, sea monsters, the threat of shipwreck, and,



of course, sea robbers poised for the attack. The vastness and inexhaustibility of the ocean, which featured prominently in Dutch jurist Hugo Grotius' defense of open seas, rendered it frightening, unknowable, "incomprehensible, no less than the air."<sup>48</sup> Even maps of the early modern period depict the mythological Neptune, poised as ruler of the seas, surrounded by fearsome creatures of the deep.

It was on this perilous plain that the early modern pirate committed his transgressions, and accounts of his crime remind us that even he remained at the mercy of a mercurial sea. The proclamations and popular accounts thus abound with an inherent drama, one that impels the viewer or reader to forge ahead until the end of the document, where justice returns, and order prevails. But as John Smith had reminded young mariners, a *chaser* never sailed too far behind, and the next pamphlet or royal proclamation on piracy lay just beyond the horizon. Throughout the early modern period, these mediums remained complementary pinnacles for the conveyance of information about maritime crime.

## V. THE LITERARY DEPICTION OF THE EARLY MODERN PIRATE

The exploits of Clinton and Purser, and Ward and Danseker, offer a bridge linking the legal with the literary. As noted above, in addition to appearing in pamphlets, their stories were dramatized for the London stage in *Fortune by Land and Sea* (1655, performed c. 1609) and *A Christian Turned Turk* (1612, performed c. 1612). The early seventeenth century abounded with dramatic depictions of pirates: other so-called pirate

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<sup>48</sup> Hugo Grotius, *The Free Sea*. Richard Hakluyt, trans. (Indianapolis: The Liberty Fund, 2004), 34.

plays of the period include Philip Massinger's *The Renegado* (1630, performed 1624), Thomas Heywood's *The Fair Maid of the West* (1631, performed early 1600s) and John Fletcher's *The Island Princess* (1647, performed c. 1619–21). In other plays, such as *Pericles, Prince of Tyre* (1609, performed c. 1606), and *Hamlet* (1603, performed c. 1600), pirates play an auxiliary, yet often important, role in relation to the central narrative. These fictional accounts of robbery at sea, even those that allege to portray real pirates, rest several degrees removed from the proclamations and popular accounts. Consequently, they warrant a separate analysis, one that takes into account their specific genre: unlike the proclamations, they are not vehicles of royal authority; unlike the popular accounts, they purport to provide audiences with only an approximation of the historical personages they depict. Because theoretical approaches to the early modern literary pirate could occupy this entire dissertation, I offer here only some nascent analysis on the subject. Using *A Christian Turned Turk* and *Fortune by Land and Sea* as my texts, I point to areas where the current scholarship could use greater attention.

*A Christian Turned Turk* capitalized on the burgeoning John Ward industry. The play was written between 1609, when the three pamphlets on Danseker and Ward appeared—these pamphlets provided Daborne with the main source material for his play—and 1612, when the play was published.<sup>49</sup> It is, more or less, a fictionalized account of John Ward's descent into piratical derangement, his conversion to Islam, and his eventual demise (by way of suicide). The last plot element takes creative license, as in 1612 Ward was living comfortably in Tunis. The play also includes a dramatized depiction of Zymen Danseker, who functions as Ward's foil. Although both men are dead

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<sup>49</sup> The 1612 printing produced the only edition of the early modern period.

by the story's end, only Danseker has redeemed himself. The two historical pirates are accompanied by a host of characters at sea and on land, in Tunis: the occupants of a French merchant ship, who are impressed onto Ward's vessel; Benwash, a Jewish merchant in Tunis, and his servant, Rabshake; and Agar and Voadia, the Turkish wives of Benwash and Ward. The play foregrounds the ocean as setting: the first five scenes alternate between Ward's ship and the French galleon. From the very first scene, when Ward hoodwinks Ferdinand to serve on the pirate ship, Daborne positions the English bandit as depraved and lacking capacity for redemption. As Laurie Ellinghausen notes, *A Christian Turned Turk* "differs significantly" from other pirate plays because "it places an unredeemed criminal at the centre of the tale, rather than at its margins, making his tragic comeuppance—culminating in Ward's shameful death, alone on foreign shores, betrayed by his own allies—the main focus."<sup>50</sup> Despite his treacherous relinquishing of both Christianity and Englishness, however, Ward does not meet his end overwashed by the tides at Wapping Dock. Daborne allows him to preserve his agency, and his death at his own hand solidifies his status as archetypal piratical antihero.

Heywood and Rowley's *Fortune by Land and Sea*, written between 1607-1609 and performed c.1609, was published until 1655.<sup>51</sup> Structurally, the play inverts *A Christian Turned Turk*, that is, it begins on land and moves to the sea only in the play's fourth act. Indeed, no mention of pirates occurs at all until Act 3, Scene 4. Although marketed as a tragicomedy, the play unfolds more like a romantic comedy, and all but its

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<sup>50</sup> Laurie Ellinghausen, *Pirates, Traitors, and Apostates: Renegade Identities in Early Modern English Writing*. (Toronto: University of Toronto Press, 2018), 50

<sup>51</sup> See Herman Doh, *A Critical Edition of Fortune by Land and Sea by Thomas Heywood and William Rowley* (New York: Garland Publishing, 1980) 1-37, for more on the play's dating and authorship.

basest characters avoid a tragic outcome. Indeed, the play's "fortune" merely rewards virtue and punishes avarice. It focuses on two families, the Forrests and the Hardings, whose fortunes have each turned: while the Forrests have steadily lost their family's wealth, the Hardings have grown richer. The play's action centers mainly on Young Harding, who, to his father's dismay, marries the impoverished Susan Forrest. Young Forrest, Susan's brother, provides the play's secondary plot, although his narrative can be thought of more usefully as a plot of juxtaposition: while Young Harding seeks his fortune by land, Young Forrest sets sail and finds prosperity at sea, and the two concurrent narratives work in tandem to position the ocean as a space of distorted morality. The moral program of the land is straightforward: the virtuous are summarily rewarded with favorable outcomes. On the sea, conversely, Forrest succumbs to the allure of piracy but still finds himself in fortune's favor at the play's end. The power of the sea to distort, referenced above in the discussion of Clinton and Purser's execution woodcut, extends to the ocean's ethical orientation. Ellinghausen refers to this phenomenon as the "alterity of the sea."<sup>52</sup>

Jowitt and others have noted *Fortune by Land and Sea* offers a more nuanced attitude toward piracy than *A Christian Turned Turk*, and Doh calls it the best of the period's pirate plays.<sup>53</sup> While the latter positions the crimes of Ward as inherently base, and their perpetrator beyond redemption, the former frames piracy as a morally ambiguous infraction, one whose legal status is determined by who is committing it (an attitude reflected in the historical pirates and privateers of Elizabethan England). Barbara

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<sup>52</sup> Ellinghausen, 56.

<sup>53</sup> Doh, 53.

Fuchs argues that *Fortune by Land and Sea* aims to legitimize piracy as a respectable activity, noting, however, that “the distinction between categories of licit and illicit commerce appears less clear.”<sup>54</sup> One way that Heywood achieves this end is by placing piracy not completely outside the established order: the play’s pirates, whether Clinton, Purser, or Young Forrest, operate according to maritime conventions which mimic corresponding customs on land. As Jowitt notes, “The pirates describe the government on their ship in similar terms to that of England. When Purser and Clinton reminiscence about their seaborne exploits they do so in language that mirrors descriptions of ceremonies and state activities in London.”<sup>55</sup> The differences between the two plays’ attitude toward piracy can be explained, in part, by their temporal context, which I discuss below. Not only were the central figures of *A Christian Turned Turk* very real, they were also still very much alive during the play’s composition and first performances.

Most current scholarship on the pirate plays focuses on one of two broad categories: identity and economics. Recent work on *A Christian Turned Turk* has foregrounded Ward’s conversion to Islam. For example, the play appears in Daniel J. Viktus’s anthology *Three Turk Plays from Early Modern England*, which centers on anti-Islamic and anti-Semitic representations on the English stage as well as the period’s conflation of Saracens, Turks, and Moors. Viktus notes that Ward (like Benwash) converts to Islam for the sake of a woman: “Daborne’s play is the tragedy of a man who puts love before religion and then despairs of God’s mercy.”<sup>56</sup> Thus, Ward’s conversion

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<sup>54</sup> Fuchs, 52.

<sup>55</sup> Claire Jowitt, “Piracy and Politics in Heywood and Rowley’s *Fortune by Land and Sea* (1607-9)” *Renaissance Studies* 16.2 (2002), 217-33. 222.

<sup>56</sup> Viktus, 39.

adopts intrigue for a more attractive presentation on stage. Other recent work, most notably by Laurie Ellinghausen and Benjamin D. VanWagoner, has focused on the economics of piracy in an increasingly sophisticated manner. This scholarship posits that *A Christian Turned Turk* represents a kind of nascent capitalism. As VanWagoner observes, the play articulates “a shift in early modern English economic thought as it moved toward a form of free-market capitalism exemplified onstage by Daborne’s pirates.”<sup>57</sup> Applying a slightly different economic reading, Ellinghausen argues that Ward’s tale epitomizes the upwardly mobile member of early modern English society whose rags-to-riches narrative occupies significant space within the play. The scholarship on *Fortune by Land and Sea*, which tends toward historicizing the play within the context of Jacobean piracy, is best represented in the work of Fuchs as well as Claire Jowitt. This recent scholarship offers several useful portals through which to engage with the pirate plays. To these I offer three more. First, I argue that drama afforded its playwrights the freedom to depict the human—in addition to the economic and political—toll of piracy, and that it achieves this end through testimony. Second, I consider the temporal contexts of *A Christian Turned Turk* and *Fortune by Land and Sea* and demonstrate how these contexts had significant consequences for the plays’ portrayals of their respective pirates. Finally, I posit that the plays construct piratical identity through carefully crafted language and that a closer analysis of these constructions reveals an increasingly nuanced portrait of the early modern literary pirate.

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<sup>57</sup> Benjamin D. VanWagoner, “Pirate Economics in Robert Daborne’s *A Christian Turned Turk*,” *SEL* 59.2 (2019), 305-24. 306.

The staging of the interpersonal toll of piracy offers perhaps the most neglected—and most important—contribution of the plays. The legal and quasi-legal representations of the crime found in proclamations and pamphlets focus on piracy's economic fallout. Injury to individuals assumes a secondary role, and its devastating effects, if mentioned at all, are presented in a detached, perfunctory fashion. This attitude, as legal historian D.P. O'Connell observes, reflects the prevailing legal orientation toward piracy.<sup>58</sup> Additionally, the pamphlets adopt an ostensibly objective presentation of their subject, and their appended testimonials from disgruntled merchants highlight the loss of ships and goods. Emotional or sensational accounts of the cruelty perpetuated by the pirate, accounts fitting in other crime literature of the period, would seem out of place in pamphlets committed to the tenor of legal disinterest.<sup>59</sup> Drama, however, enjoyed much greater liberty to recount the true extent of piracy's damage, not only for the merchant's accounts, but also for the captain's crew, those close to him to whom he harbored a professional duty, perhaps even an affinity, and who suffered impressment, servitude, slavery, or death as the result of a pirate attack. The genre of drama opens a window not only onto the interiority of the pirate, but also the inner world of the pirate's victims. Naturally, the plays do not offer this view at the expense of piracy's economic toll, and the critical focus on the economics of *Fortune by Land and Sea* and *A Christian Turned Turk* reflects the prevailing interests of Heywood and Daborne. However, the plays'

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<sup>58</sup> O'Connell, 967.

<sup>59</sup> Even the titles of these true crime accounts broadcast their salaciousness: *A briefe discourse of two most cruell and bloudie murthers* (London, 1583); *A most straunge, rare, and horrible murther committed by a Frenchman* (London, 1586); *A most horrible & detestable murther committed by a bloudie minded man vpon his owne vvife: and most strangely reuealed by his childe that was vnder fiue yeares of age* (London, 1595); *The horrible murther of a young boy of three yeres of age, whose sister had her tongue cut out* (London, 1610).

additional portrayals of piracy's human cost offer the literary critic a site to consider how literature adapts maritime crime and tempers it for non-legal audiences.

*A Christian Turned Turk* expresses piracy's interpersonal toll through a form of testimony. This technique finds a parallel in the account of the masters of the *Charity* and the *Pearl* in *Two notorious Pyrates*, but while the latter provides a straightforward (and dry) account, the former deploys the full arsenal of poetic language to convey piracy's ruthlessness. The play's most affecting scene occurs after the capture of the French ship, when Raymond learns Ward intends to sell his sons as slaves to Benwash. In an extended speech, Raymond pleads with the pirate for the release of his children. He implores:

Hard-hearted! 'Man' I cannot term thee. It's  
A name that bears too much pity in't,  
Compared with so inhumane. Creature, wert thou a father,  
These tears would move thee, that bemoan a son's,  
Nay all my children's, worse than funeral,  
Their ever thralldom. But Nature well denied  
Issue to thee, lest in thy barbarous guilt  
She had been a party when thy affectioned soul  
Had felt how much the name of child moves, with what care,  
How many jealous fears, we view their infancy;  
Lest having felt all this, thy accursed hand  
Should yet have dared to make men childless. (6.232-43).

At first, Raymond expresses a tinge of resignation mixed with his pleas: he recognizes that Ward's inhumanity has lodged itself so deeply within his being that words, no matter how well-crafted or eloquently delivered, will not move him. However, Raymond proceeds, as if love for his sons has overpowered this resignation, and the caesura at line 233 ("Compared with one so inhumane. Creature, wert thou a father") represents this shift. The movement to the subjunctive mood signals that Raymond's speech exists in a parallel realm, one that lies outside the play, one in which Ward is capable of a change of heart. Thus, the merchant no longer addresses Ward with the intent of altering his



resolve, but rather, he addresses the audience in a more general sense, and his lines assume the function of testimony. Raymond's grief, poignant and effusive, conveys the real damage of Ward's crimes.

One of Raymond's sons also begs Ward for his freedom. He tells him "for in us bleed / An aged father, a mother, to whose grief / No other misery can be added" (6.248-50). When Raymond realizes their supplications have moved neither Ward nor Benwash, he launches into an even longer speech: in these lines he petitions Ward more urgently. Instead of pleading for his sons' release, he begs that he, too, might be sold alongside them: "I see you are kind, would not now part us / That twenty and odd years have grown together" (6.264-65). Raymond assures the pirate and his associates that he, too, can undertake hard physical labor like his sons: "See, I am not old. / No wrinkle is on my brow; these are but frowns" (6.268-69). So come, he tells them,

Manacle these arms. You shall see us three  
Tug the day's eye out. There's not a father  
And his two boys shall dare to undertake us.  
The sun outvied, we'll set us down together  
and with our sadder cheer outmourn the night,  
And speak the happiness we might have lived, too. (6.273-79).

Both of Raymond's speeches are characterized by caesura and enjambment, as if his increasing panic over the loss of his sons seeps out into disjointed and overflowing verse. But even these impassioned lines fail to move their target. In a play that emphasizes Ward's great cruelty at every turn, the pirate's response to the pleas of a distraught father comes across as exceptionally sadistic: "Ha, ha, ha" (6.290). No, the pirate is not moved, and Raymond watches in horror as his sons are led away.

The role of testimony in cases of piracy was paramount, as authorities on land relied on witnesses for actions that took place at sea.<sup>60</sup> In *A Christian Turned Turk*, Raymond's testimony serves assorted functions. It allows Daborne to foreground Ward's inhumanity; it injects pathos and alters the pacing of the play's action. It also allows the audience to observe the effects of piracy as they unfold, a vantage point all but inaccessible outside of a play. The immediacy of Raymond's pleas offers a view of the pirate's infractions from within: unlike the royal proclamations, which look primarily into the future at piratical acts yet to be committed, or the pamphlets, which look into the past at crimes already commissioned, Raymond's speech portrays piracy as happening *now*. Even within the play, the economic harm inflicted by the pirate is not immediate, and the full extent of its insidious effects requires time to develop. Conversely, Ward's wresting of father from sons produces instantaneous, devastating consequences, and within this moment piracy's economic toll appears as only an incidental afterthought.

The use of testimony in pirate plays thus represents an unexplored avenue of further research. Its representation onstage is, paradoxically, both legal and non-legal, legal because it expounds the harm inflicted by piracy by those who find themselves in its path, non-legal because it enjoys the freedom to accentuate non-economic injury. When

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<sup>60</sup> Prior to 1536, when cases of piracy were handled in the admiralty courts, the issue of testimony became a problem. The civil law stipulated that pirates could only be convicted if they confessed or if two witnesses testified against them. However, these witnesses could not also be accomplices. When the common law courts began to prosecute piracy as the result of 28 Hen. 8, c. 15, witnesses could be accomplices as well. See Lucas Bento, "Toward an International Law of Piracy *Sui Generis*: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish," *Berkeley Journal of International Law* 29.2 (2011), 399-455, 403; Andrew Kent, "Piracy and Due Process," *Michigan Journal of International Law* 39.3 (2018): 385-452, 400. For more on the effects of 28 Hen. 8, c. 15 on English admiralty jurisdiction, see M.H. Prichard and D.E.C. Yale, *Hale and Fleetwood on Admiralty Jurisdiction* (London: Selden Society, 1993), cxxxvii-ccl.

thinking about the framing of maritime crime in early modern drama, a deeper consideration of this tension proves productive. In addition, this work could be informed by recent scholarship on the role of testimony in the period's literature.<sup>61</sup> Positioning the crime as interpersonal in nature fundamentally reorients it, a move that can occur seamlessly in drama through the use of testimony.

Temporal context also plays an important role in the interpretation of both *A Christian Turned Turk* and *Fortune by Land and Sea*. This context has not been wholly ignored by recent criticism: on the contrary, both plays have been the site of rich historicizing. *Fortune by Land and Sea*, in particular, has attracted this methodological approach. A Jacobean work that features Elizabethan pirates teems with interpretive potential, and the popularity of the early Stuart pirate plays undeniably reflected James's increasingly hardline stance toward robbery at sea.<sup>62</sup> Heywood and Rowley's play exudes nostalgia for Elizabeth and the erratic stance toward the freewheeling English privateers that characterized her reign. The play, Jowitt argues, "uses values and activities associated with Elizabeth in James's reign as a contrast to those promulgated by the new monarch."<sup>63</sup> I propose a different contextual approach, one that considers the relationship between the literary pirates and real-life counterparts. These relationships unfold quite differently across *A Christian Turned Turk* and *Fortune by Land and Sea*. Not only do

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<sup>61</sup> See, for example, Barbara J. Shapiro, "Law and the Evidentiary Environment," in *The Oxford Handbook of English Law and Literature, 1500-1700*, ed. Lorna Hutson (Oxford: Oxford University Press, 2017), 257-75; Lorna Hutson, "'Lively Evidence': Legal Inquiry and the Evidentia of Shakespearean Drama," in *Shakespeare and the Law: A Conversation Among Disciplines and Professions*, ed. Bradin Cormack, et al (Chicago: University of Chicago Press, 2013), 72-97.

<sup>62</sup> See Rodger, *The Safeguard of the Sea*, 347-52.

<sup>63</sup> Jowitt, 218.

these divergent developments impact how the characters of Ward, Purser, and Clinton evolve across their plays, but also how the plays themselves structure their interests: the latter is a play about piracy, the former is a play about a pirate.

Ward's evolving identity occupies a central position in part because he was still alive during the play's initial performances. Ward-as-character appeared onstage as an imposter, because the real Ward existed out in the world, his life still amenable to additional metamorphoses. It is also conceivable that some viewers of *A Christian Turned Turk* had read one (or more) of the earlier pamphlets as well as viewed James's proclamation of January 8, 1609. The play then exists at the logical end of a progression from proclamation to pamphlet to stage, with each point providing a deeper glimpse into the pirate's psyche, his proclivities, his temperament and motivations. Not only did the real Ward evolve during his lifetime, but his representation in print and on stage evolved as well, with each move bringing him into sharper focus. On stage, he is capable of evolution—the titular turning—even if this evolution moves in an increasingly precarious direction eventually leading to his death. His suicide itself marks an important divergence from the real Ward. In Jacobean England, the ideal legal punishment for Ward's crimes would have been extradition to his country of origin, a trial at the High Court of Admiralty, and a swift execution at Wapping Dock; for viewers of Heywood's play, this offstage possibility still existed. So while the pirate's onstage death provided catharsis within the play itself, it did nothing to convict the real Ward, and in fact reminded the audience that he had not yet been apprehended. His fictive self-murder, even the throwing of his corpse into the entrails of the sea, constituted a mockery of legal justice.

Juxtaposed with Ward's dynamic development, Clinton and Purser appear almost as stock characters. Unlike Ward, the pair had been dead for over twenty years when their fictional doppelgängers materialized onstage, and their well-publicized execution at Wapping Dock precluded any other outcome of their lives. Even their last dying speeches, considered below, seem formulaic on a first encounter. According to Doh, it is likely that *Fortune by Land and Sea* originally contained nameless pirates and that the identities of Purser and Clinton were inserted later.<sup>64</sup> The two scenes that add historical credence to their identities, the promulgation of the royal proclamation (3.4) and the pirates' farewell speeches (5.1), do not advance the main plot of the play. Rather, they feel like interpolations intended to confirm that the pirates onstage do, indeed, correspond to the historical Clinton Atkinson and Thomas Walton. In Clinton and Purser's other scenes, the two retain their anonymity and project a certain interchangeability: unlike Ward and Danseker, they do not assume distinct characteristics or outcomes. I believe this directly reflects Clinton and Purser's achieved position of archetypal Elizabethan pirates: the passage of time since their execution had imbued them with a mythical status. The Clinton and Purser of Heywood's play only roughly approximate their historical counterparts because they have no need to: they are more closely aligned to the figures in

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<sup>64</sup> The later pamphlet further complicates the timeline. By the time Heywood's *A True Relation* appeared in 1639, thirty years had passed since the composition of the play; a full fifty-six years since the pirates' watery end at Wapping. Doh speculates that Heywood wrote the pamphlet from memory and that he did not have a copy of the earlier play before him. The strongest evidence to support this claim is a close comparison of the royal proclamation scenes. The printed play did not appear until 1655. It is a slipshod effort: the text is printed entirely in prose and contains numerous typographical errors. The scene between the Clown and Pursuivant runs all the lines together in a muddled mess (fig. 2.14), providing only the faintest echo of the scene's neat and typographically sophisticated presentation in Heywood's *A True Relation*.

a Spenserian allegory than real pirates, and in this capacity they appropriately represent a nostalgia for Elizabeth's reign.

Language offers the third site of potential analysis. Royal proclamations assume the official language of royal authority, and both proclamations and pamphlets must employ concise prose to convey a sometimes-complicated narrative within a confined space. The language of drama, however, is not as bound by form or function, and a greater attendance to its nuance can yield a more robust modern understanding of the plays' portrayals of pirates and piracy. Able to engage fully with the literary and the expansive possibility of language, *A Christian Turned Turk* remains recurrently conscious of the pirate's debt to the ocean. Daborne establishes this linguistic precedent early. In the first scene, when a lookout spots Monsieur Davy's French ship on the horizon, Ward's men respond with confused shouting. "Why stand you so amazed?" asks Ward. "Conceive you not the language of the sea?" (1.15). This language of the sea permeates the play. The first four scenes occur aboard ships, and Daborne peppers his dialogue with allusion to the ocean in order to reinforce the nautical setting. When Ferdinand rebukes Ward for his cruel nature, he compares the pirate to an unmanned vessel at the mercy of a mercurial sea: "Bloodthirsty monster ... who like a ship unmanned, / That's borne by motion of the violent waves / And giddy winds, doth seem to make a course / Direct and punctive, till we see it dash / Against some prouder Scylla" (2.96, 98-102). When Daborne's play disembarks from its galleons and lands its audience on the shores of Tunis, these maritime metaphors follow. Ferdinand appeals to Ward, "Hear us but now, / We'll forgive all our wrongs, with patience row / At the unwieldy oar" (7.259-261) and Rabshake tells his master Benwash, "If I should try him, it is

beyond my compass if he outsail me” (16.147). Thus, Daborne allows maritime language to flow throughout the play.

A close reading of the final speeches of Clinton and Purser uncovers some specifics about how the play frames the literary pirate. This moment reveals the pirate at his most vulnerable, moments from death, and disinclined to dissemble. We witness the pirate laid bare. The speeches occupy an entire scene not concerned with much else. The only other characters present onstage, the Sheriff, Hangman, and Silver Oar (the admiralty officer), deliver some passing lines, but not much else happens: it is a moment constructed solely through the pirate’s language. The extended dialogue that oscillates between Clinton and Purser assumes a solipsistic quality. Although they address figures non-present on stage, such as navigators and fellow pirates, they really seem to be speaking only to each other, and sometimes only to themselves. Purser dominates the scene. At times, Clinton appears deferential, almost sycophantic, to his companion; at others, the two appear as equals. The scene’s tableau-like quality reflects, in part, its structural relationship to the ballads circulated when the real pirates were executed, and, in part, its obvious shoehorning into the play; yet the scene can also be read as *Fortune by Land and Sea*’s definitive manifesto on the nature of the pirate. Unfortunately, because the 1655 printing of the play is set entirely in prose, it is difficult to execute a sound formal analysis of the scene’s verse.<sup>65</sup> However, the language itself provides ample material for consideration.

Heywood infuses the last dying speeches of Clinton and Purser with understated metamorphosis. As noted above, the ability to transform, to move between identities,

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<sup>65</sup> Doh’s 1980 edition resets the printed prose as verse.

defined the early modern pirate. In *A Christian Turned Turk*, Daborne foregrounds Ward's transformation in a very tangible way: the title itself broadcasts that the play features a protean identity. *Fortune by Land and Sea* also highlights piratical metamorphosis, and Forrest moves lissomely between the oppositional categories of pirate and non-pirate. For Clinton and Purser, however, this capacity to change assumes greater nuance: because the Elizabethan marauders live as pirates and die as pirates, their role in the play exudes a mechanical prosaicism seemingly impervious to change. But a closer attendance to the language of their dying speeches reveals they do change, relative to the sea, and the relationship between pirate and ocean, between "Kings," Purser proclaims, "and our realm" (2158), informs this metamorphosis. The most important linguistic moment of the scene, one that centers the capacity for piratical change, occurs at line 2223. Purser breaks to address his fellow mariners:

Oh you brave Navigators that have seen,  
Or ever had your selves command abroad,  
That knew our empire there, and our fall now,  
Pitty at least us that are made the scorn  
Of a base common Hangman. (2221-25)

The central line here is the clause "That knew our empire there, and our fall now" (2223). The shift from an adverb of place to an adverb of time produces a resonating dissonance: rather than a harmonizing there/here or then/now pairing, Purser moves from place to time within a single phrase. The change of adverbial direction arrests the audience, whose smooth listening is jarred by linguistic disharmony. It signals that the pirates' identities, like their attendant verse, can change. There, not here. Now, not then.

The predominant example of piratical metamorphosis is revealed by juxtaposing lines 2170-78 (delivered by Clinton) and lines 2257-66 (delivered by Purser), which



bookend the scene. Clinton begins his speech by addressing Purser, “Whom storms could never move, tempests daunt, / Rocks terrifie, nor swallowing gulphs affright, / To whom the base abysses in roughest rage / Shew’d like a pleasant Garden in a calm” (2171-74). Heywood employs the conventional language of stormy seas to great effect, and his intensifying adjectives bring this ocean into even sharper focus: “swallowing gulphs,” “base abysses,” “roughest rage.” The playwright uses the negation of verbs to quell these horrors: Purser is *never* moved, *never* daunted, *never* terrified, *never* frightened. The ocean, ever subject to tempests and currents, constantly fluctuates; the pirate, firm, constant, remains steadfast. The juxtaposition between sea robber and sea does not end here: at line 2174, Clinton tells us that Purser is not only unmoved by the sea, but he also possesses the capacity to transform it. His presence on the “light billows” (Purser’s own description of the sea at line 2159) converts the ocean’s rage into a “pleasant Garden in a calm / And the Sea-monsters but like beasts at land / Of profit or pleasure” (2275-76). Superficially, Clinton’s lines convey the fearlessness of his associate in the face of the hangman’s noose: could a man unmoved by the sea be “Affrighted with a halter?” (2177). When considered within the context of the rest of the scene, however, they assume deeper meaning.

Purser’s last lines of the play confirm that the metamorphosis is complete. He begins by signaling that the end is nigh, that “our sun is all setting, night comes on” (2257). The scene’s focus on the movement of time, beginning at line 2165—“We have a flash left of some half hour long”—and punctuated by the Sheriff at line 2195—“Gentleman, your hour draws near”—concludes not with the consummation of thirty minutes, but with the setting of the sun. Purser resists the strictures of the land even in his

last moments. The pirate's inherent defiance turns to the sea. "The watery wilderness ore which we reign'd," he observes, "Proves in our ruins peaceful" (2258-59). A placidity envelops both the pirates and the sea. In Clinton's earlier speech, Heywood frames the ocean as inimical, an entity that must be tamed by the pirates. In Purser's juxtaposing lines, the dynamic has shifted, and the pirates find themselves comforted by the tranquility of the sea. Perhaps all that has changed is the two men's frame of mind and no real metamorphosis in relation to the sea has occurred, but Purser disabuses us of this notion a few lines later. He addresses the Thames, "whose double tides / Must o'rflow our bodies, and being dead / May thy clear waves our scandals wash away, / But keep our valours living" (2263-66). In a clear allusion to baptism—itself a kind of metamorphosis—Purser allows for the sea's transformative power over the pirates' transgressions. The dynamic has inextricably shifted, and the ocean, once positioned as subservient to the pirates, now acts upon them. Both pirate and ocean have transformed in tandem and power has changed hands, and the sea, paradoxically, exudes a benevolent domination. The pirates' understated metamorphosis is a metamorphosis nonetheless, one informed by the delicacy of shifting language and consummated by the flowing and reflowing of the sea.

## VI. CONCLUSION

Piracy represents the most productive maritime issue to link the legal with the literary. The other issue that frequently touches both the law of the sea and early modern literature, shipwreck, proves less useful for this connection. Within early modern English poetry, romance, and drama, shipwrecks most often serve to propel a plot forward: for

example, the wreck that opens William Shakespeare's *The Tempest* or the wreck of Pyrocles and Musidorus in Philip Sidney's *The Old Arcadia*. Piracy, conversely, presents a dynamic issue, one that continually develops from scene to scene, page to page, and proclamation to proclamation. And although the period did produce English shipwreck narratives which I consider in my conclusion, wreck itself occasioned only a very small number of royal proclamations. As a result, a focus on legal and literary depictions of shipwreck would preclude the neat line this chapter draws from proclamation to pamphlet to play—a smooth transition from an advocate's bookshelf stuffed with technical maritime legal texts to the London stage with its romanticized pirates. My next chapter, however, turns to shipwreck in a much different context: it considers how *The Faerie Queene* used this maritime issue not for its dramatic or allegorical effects, but rather, to explicate Edmund Spenser's attitude about the admiralty jurisdiction debates in England.

## CHAPTER 3

### WRECKED UPON THE SANDS:

#### MARITIME LAW AND EDMUND SPENSER'S *THE FAERIE QUEENE*

##### I. INTRODUCTION

Around 1630, a poor man walking near the sea came across a piece of ambergris. Ambergris, a wax-like substance that originated in the intestines of the sperm whale, was highly valued for its role in perfume production; according to contemporaries, the piece of ambergris in question weighed close to two hundred pounds. The poor man discovered it “halfe an howre before high water wrapt up in nothings but les it groweth of it selfe.”<sup>1</sup> Civil lawyer William Colman recorded the subsequent legal case in his notebook. The central legal question, according to Colman, was “whether [the ambergris] doth not properly belonge to the poore man the finder thereof or hath the lord admirall for the time beinge any just claime or property therein.”<sup>2</sup> In other words, could the poor man keep the piece of ambergris, or did it belong to the Crown represented in the figure of the Lord Admiral?

The question did not lend itself to an easy answer; and Colman includes admiralty judge Arthur Duck's opinion on the case in his notebook. According to Duck, the ambergris rightfully belonged to the finder. He based this opinion on the tenets of natural law: unlike the case of treasure washed ashore following a shipwreck, the piece of ambergris belonged to nature. Its presence on the beach represented a natural

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<sup>1</sup> William Colman, *The Notebook of William Colman*, ed. Richard Helmholz, *Three Civilian Notebooks, 1580-1640* (London: Selden Society 2011), 126v.

<sup>2</sup> Colman, 126v.

phenomenon and unlike goods transported by sea on a ship, it had never had an original owner. Duck argues that the ambergris *could* have had such an owner, but that the difficulty in finding proof of this owner would be prohibitively difficult. Thus, the ambergris belonged to the poor man, as it had passed directly from nature to the finder. In the same way, “it is the case of any that finds jewells or precious stones on the sea shore the finder hath a good title to them.”<sup>3</sup> The courts, however, did not wholly agree with Duck’s assessment of the case, although according to legal historian Richard Helmholz, it may have influenced the ultimate ruling. The parties reached a compromise: instead of allowing the finder to keep the ambergris outright, the Lord Admiral took possession of it and then paid the finder an annual pension.

In Book V of Edmund Spenser’s *The Faerie Queene*, Artegall, the knight of justice, finds himself confronted with a similar legal quandary. After attending the nuptials of Florimell and Marinell in canto 3, Artegall, the Knight of Justice, encounters brothers Amidas and Bracidas on the seashore. When he approaches, Artegall notices a sea-battered coffer before them. The older brother, Bracidas, explains the nature of their dispute: they had each been bequeathed an island, but over time, the “devouring ocean” had removed soil from Bracidas’ island and deposited it on Amidas’s, increasing its size. This development has, understandably, left Bracidas disgruntled. But the fraternal discord does not end here. Bracidas further explains that he had been betrothed to Philtera, but that the lady had discarded him in favor of his brother, Amidas, who possessed the larger island. Lucy, who was herself betrothed to Amidas, despairs when she realizes she has been abandoned and attempts to commit suicide by throwing herself into the sea. As she

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<sup>3</sup> Colman, 127v.

is tossed about by the ocean currents, she regrets her impulsivity, grabs onto a fortuitously placed coffer to stay afloat, and eventually washes up onto Bracidas' island, where he claims it as marine salvage. Philtera objects, as the coffer contains her dowry and was lost at sea. Amidas, the younger brother, then interrupts and argues that while Bracidas has been truthful about the islands, the treasure chest rightfully belongs to him, as it contains Philtera's dowry.

After listening to the brothers' testimony, Artegall renders judgment. He concludes that Amidas has the right to Bracidas' accreted land that has increased the size of his island, and that Bracidas has the right to the treasure chest that has washed up upon his shore. Artegall's decision includes a statement on the whimsical nature of the sea:

For equall right in equall things doth stand,  
For what the mighty Sea hath once possest,  
And plucked quite from all possessors hand,  
Whether by rage of waues, that neuer rest  
Or else by wracke, that wretches hath distrest  
He may dispose by his imperiall might  
As thing at randon left, to whom he list  
So *Amidas*, the land was yours first hight,  
And so the threasure yours is *Bracidas* by right. (V.iv.19)

The judgment leaves Amidas and Philtera displeased but satisfies Bracidas and Lucy. Artegall, having addressed the brothers' dispute, resumes "his old quest" (V.iv.20) from which the matter on the seashore has distracted him.

This episode appears to fall outside of the narrative structure of Book V: on its surface, it does not advance the book's plot nor link to other moments in the poem. Consequently, the Amidas/Bracidas incident has long puzzled critics. Extant scholarship on Artegall's judgment has typically fallen prey to one of the following pitfalls: it has focused on the episode's legal issues but ignored its role in the larger context of the

poem; has used the legal issues to support a larger, but not expressly legal-historical, argument; has ignored the specific legal issues to support a divergent, non-legal interpretation; or has attended to the legal issues while failing to fully appreciate their significance.

In this chapter, I offer a new interpretation of the Amidas/Bracidas seaside dispute. My reading of the episode rests on the central premise that maritime law pervades *The Faerie Queene*: from Guyon's voyage to the Bower of Bliss, to Marinell's claim to prize on his jewel-encrusted shore, to Florimell's kidnapping and imprisonment by Proteus, Spenser's allegory teems with maritime infraction and its corresponding legal problems. As a result, Artegall's judgment rests not in a narrative vacuum, but rather engages productively with these earlier moments. Additionally, I argue that Spenser's treatment of certain legal issues within the episode reflects his conscious engagement with the admiralty jurisdiction debates, the most important issue concerning maritime law in England during the late sixteenth century.

I begin with an overview of recent criticism on Spenser and the law. Next, I consider the different oceans of *The Faerie Queene* and demonstrate their broader narrative and allegorical functions within the poem. Next, I analyze the problem of jurisdiction within these oceans and argue that the law of the sea undergoes a distinguishable evolution across Books II, III, IV, and V. Finally, I offer my interpretation of the Amidas/Bracidas episode, which considers the legal components of Artegall's judgment and places it within the larger trajectory of maritime law within *The Faerie Queene*.

## II. SPENSER AND THE LAW

Although he was not trained as a lawyer, Edmund Spenser has long attracted scholars interested in the legal aspects of his works. This is due in part to the poet's knowledge of the law: in his administrative roles in Ireland, he both required an understanding of legal matters and also demonstrated a personal interest in legal reform. Additionally, *The Faerie Queene* abounds with legal and jurisprudential issues that reflect the historical reality, and at moments Spenser uses the poem as a mouthpiece for his own positions on the political issues of his day. These biographical and literary intersections have provided the modern scholar a puzzle: what did Spenser think about the legal questions of his day, how were these opinions reflected in his imaginative literature, and what methodological tools can be used to link the legal with the literary, and the civil servant with the poet?

Criticism on Spenser and the law can be divided broadly into two groups: scholarship that predates and postdates the law and literature turn in early modern literary studies that occurred in the early 2000s.<sup>4</sup> The work before this turn already recognized the rich payoff of putting Spenser's work in conversation with the law. Older monographs such as Jane Aptekar's *Icons of Justice: Iconography and Thematic Imagery in Book V of The Faerie Queene* (1969) and T. K. Dunseath's *Spenser's Allegory of Justice in Book Five of The Faerie Queene* (1968) deal tangentially with the jurisprudential aspects of the poem, but they do not engage with substantive law or the role of the common law in English legal history. Both works develop modes of

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<sup>4</sup> See the Introduction.



interpreting Book V which focus on textual allusion and the theme of justice.<sup>5</sup> Angus Fletcher's *The Prophetic Moment* (1971) remains one of the most valuable assets for developing an understanding of the law in Spenser. Most of these earlier studies of Spenser and the law focus, appropriately enough, on Book V, such as W. Nicholas Knight's "The Narrative Unity of Book V of *The Faerie Queene*: 'That Part of Justice which is Equity'" (1970). Most of this scholarship relies on textual interpretation, and when more contextual lenses are applied, they are rarely legal-historical. Diane Parkin-Speer's "Allegorical Legal Trials in Spenser's *The Faerie Queene*" (1992) diverges from this tradition and can be read as a forerunner to later work on the law in Spenser. Parkin-Speer argues that two trials within *The Faerie Queene*, those of Duessa and Mutabilitie, demonstrate Spenser's antipathy toward the English common law. While published before the turn to law and literature, Parkin-Speer's scholarship uncovers methods to understand Spenser's legal thinking and attitude toward the jurisprudential issues of his day.

This framework allowed Spenserians to apply greater legal nuance to their scholarship; in particular, scholars have attended to the question laid out by Parkin-Speer and tried to ascertain Spenser's attitude toward the common law from both his poetry and prose. One early example, Robin E. Bates's "'The Queene is Defrauded of the Intent of the Law:' Spenser's Advocacy of Civil Law in *A View of the State of Ireland*" (2005), traces Spenser's aversion to the common law in *A View* and asks whether the work

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<sup>5</sup> Aptekar focuses on the iconography present in Book V and groups the thematic imagery into five main headings: Orthodoxy, Power, Dubiety, Guile, and Hercules. Dunseath considers the interpretive cruxes of Book V, which he identifies as Character and Theme, Humility and Wisdom, Desire and Love, and Justice and Peace.

reveals a preference for the civil law of the Continent. James Schiavoni's "Royal Prerogative versus the Common Law in *A View of the Present State of Ireland and The Faerie Queene*, Book V" (2010) investigates how the struggle between common law courts and prerogative was reflected in Spenser's writing. To date, Andrew Zurcher's seminal *Spenser's Legal Language* (2007) represents the most engaged scholarship that links Spenser with early modern English law. Zurcher positions the jurisprudential aspects of Spenser's works (*The Faerie Queene*, *Two Cantos of Mutabilitie*, and the lyric poetry) in a framework that accounts for Spenser's acute attention to the effects of language and the use of legal diction present in all his works.<sup>6</sup> Zurcher's work considers legal issues such as contract, property, defamation, and equity. His reading of Marinell and Florimell, considered below, provides his most sophisticated contribution to Spenser and the law: it accounts equally for legal and historical context, linguistic gravity, and allegorical convention. *Spenser's Legal Language* sits squarely at the center of my theoretical reading of maritime law in *The Faerie Queene*.

Despite this impressive body of work on the law and Spenser, the role of maritime law in his imaginative writings has never been addressed by critics. On one level, this is understandable: as this dissertation more broadly argues, the question of maritime law and English Renaissance literature remains unprobed in the current scholarship. But despite this explanation, the neglect of the law of the sea in *The Faerie Queene* appears a particularly egregious omission. In the first place, as noted in the Introduction, maritime law represents a distinct form of law from both common law and civil law. Critics who

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<sup>6</sup> Andrew Zurcher, *Spenser's Legal Language: Law and Poetry in Early Modern England* (Woodbridge, Suffolk: D. S. Brewer, 2007), 9.

attempt to analyze moments of maritime adjudication in the poem while failing to account for this distinction cannot achieve the level of sophistication required for a robust, legally nuanced reading. Second, the role of maritime law in England, and in particular the admiralty jurisdiction debates, constituted a major legal question of Spenser's time. While the question directly affected the immediate concerns of lawyers and mariners, it also raised more abstract issues regarding royal authority and the role of the civil law in common law England, and Spenser surely had an opinion on it. And third, *The Faerie Queene* itself contains several distinct oceans, and these oceans witness several incidences of maritime transgression. To overlook the role of maritime law in Spenser's allegory hinders the poem's interpretive potential and cuts off a major avenue for understanding the poet's attitude toward the legal machinery of his day.

Ultimately, my approach to interpreting maritime law in *The Faerie Queene* combines aspects of both older and more recent work on law in Spenser. From Aptekar, Dunseath, and Fletcher I borrow a strong textual and thematic engagement with the poem; from Zurcher, Bates, and Knight I borrow a closer attention to real legal issues in late sixteenth-century England. My reading of Spenser attempts to synthesize these critical approaches to provide a holistic theory of the law of the sea in the allegory and, in turn, offer an explanation for the Amidas/Bracidas episode.

### III. THE OCEANS OF *THE FAERIE QUEENE*<sup>7</sup>

*The Faerie Queene* is, itself, a metaphoric ship. The reader engages with the poem as a passenger on a nautical voyage: the stanzas ebb and flow as the tide and the narrative envelops the poetic vessel like the ocean water, at times calm, serene, at others, threatening, violent, impenetrable. Spenser acts as our pilot, guiding us through his allegory, stopping from time to time so that we may appreciate his linguistic prowess, picking up and depositing characters and plotlines on the shore, and anchoring our interpretation in his moralistic vision. The ship conceit depends not only on critical speculation: Spenser himself informs the reader at the beginning and end of canto 12, Book I of our nautical enterprise:

Behold I see the hauen nigh at hand,  
To which I meane my wearie course to bend;  
Vere the maine shete, and beare vp with the land,  
The which afore is fayrly to be kend,  
And seemeth safe from storms, that may offend;  
There this fayre virgin wearie of her way  
Must landed bee, now at her journeyes end:  
There eke my feeble barke a while may stay,  
Till mery wynd and weather call her thence away. (I.xii.1)

And:

Now strike your sailes yee iolly Mariners,  
For we be come vnto a quiet rode,  
Where we must land some of our passengers,  
And light this weary vessell of her lode.  
Here she a while may make her safe abode,  
Till she repaired haue her tackles spent,

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<sup>7</sup> Georgia Ronan Crampton offers what is perhaps the most thoughtful commentary on the meaning of the sea in *The Faerie Queene*: “Most of all the sea is a recurrent, an enveloping, motif. Setting and symbol for Britomart, setting and home for Cymoent, connected with Arthur as apt sign for all his incertitudes, the ocean may be either peril or refuge, as it will be for the wounded Marinell, but it is always the medieval sea of fortune, the rich and ambiguous flux that wrecks some and bestows wealth on others, that speaks with many voices, that tosses up our losses” (218). Crampton, “Spenser’s Lyric Theodicy: The Complaints of the Faerie Queene III.iv,” *ELH* 44.2 (1977), 205-21.

And wants supplide. And then againe abroad  
On the long voiage whereto she is bent:  
Well may she speede and fairely finish her intent. (I.xii.42)<sup>8</sup>

Why a ship, and why an oceanic voyage? One critic who has considered this question at length, Jerome Dees, argues that the “ship conceit helps to establish a pattern of relationship between the narrator and the central characters of each book, between the concern for and struggle with his poem and the contingencies that they face in their various quests.”<sup>9</sup> The ship conceit does indeed offer a narrative coherence, but it also draws attention to *The Faerie Queene* as an essentially maritime poem. In Books II, III, IV, and V, major plot points coalesce in the sea. Like Britain, Faery Land feels fenced in by the ocean, and while the poem presents a kind of geographic instability, the perilous seas offer—paradoxically—a fixed entity. Adding to this nautical cohesion is the impulse across the poem to impose order on these maritime spaces, to tame them in the way that Faery Land itself has been subjugated. In her discussion of Spenser’s depiction of Proteus in Books III and IV, Isabel MacCaffrey contends that the sea is “a matrix of life and figure for ‘huge eternal chaos’ which supplies Nature with substance.”<sup>10</sup> Maritime law, within the context of *The Faerie Queene*, develops to temper this chaos, and its progression yields a steady mollification of the sea.

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<sup>8</sup> Grace Warren Landrum associates this passage with the sense of accomplishment at the close of Book 1: “There is zest [...] in the satisfaction of accomplishment, with its ring of tomorrow and fresh woods and pastures new” (202): “Imagery of Water in *The Faerie Queene*,” *ELH* 8 (1941), 198-213.

<sup>9</sup> Jerome S. Dees, “The Ship Conceit in ‘The Faerie Queene’: Conspicuous Allusion and Poetic Structure,” *Studies in Philology* 71.1 (1975), 208-25 (212).

<sup>10</sup> Isabel G. MacCaffrey, *Spenser’s Allegory: The Anatomy of Imagination* (Princeton: Princeton University Press, 1976), 331.

Every ocean in *The Faerie Queene* offers some kind of legal problem, and thus Spenser invites the reader to view the sea as an essentially *legal* space. This allegorical layer occurs not haphazardly, but on a set trajectory, and like the poem's movement through maritime space it follows a deliberate, traceable progression. After the pilot has struck his sails at the end of Book I, the reader meets Guyon in Book II, which marks the beginning of a larger structural descent into the ocean. This voyage begins in the first canto of Book II, with the introduction of Guyon's quest to destroy the Bower of Bliss. Two oceans feature in this book: The Idle Lake, which has been identified by critics as the Mediterranean, and Acrasia's Sea, traversed during Guyon's journey to the Bower of Bliss in canto 12. Spenser describes the Idle Lake as "this wide Inland sea, that hight I by name / The *Idle Lake*, my wandring ship I row" (II.vi.10). Guyon's voyage across Acrasia's Sea emphasizes that ocean's vastness: "Two dayes now in that sea he sayled has, / Ne euer land beheld, ne liuing wight" (II.xii.2). These oceanic bodies each serve the practical function of navigation, as well as the metaphorical role of presenting Guyon temptations and obstacles that could impede his mission.<sup>11</sup> Guyon's interaction with the sea, as well as the reader's, remains on the water's surface, with his ship gliding through the waters without penetrating the fathoms below.

Books III and IV continue and deepen—both literally and metaphorically—the ocean's function in *The Faerie Queene*. The shift occurs on a linguistic, as well as narrative, level: the ocean spaces in Book II are labeled "lake" or "sea"; in Books III and IV, a shift to "maine" and "deepe" signifies a geographical transfer to the high seas. Early

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<sup>11</sup> I consider the question of freedom of the seas in relation to Book II of *The Faerie Queene* in the following chapter.

in Book III, Britomart's complaint on Marinell's strand, which mimics the traditional Petrarchan blazon, addresses the sea directly: "Huge sea of sorrow, and tempestuous grief / Wherein my feeble barke is tossed long" (III.iv.8). Britomart's complaint, one scholar argues, also demonstrates her comfort with the sea. The sea that Britomart addresses sits adjacent to Marinell's jewel-encrusted shore. Another ocean emerges in canto 7, when Florimell flees from the Witch's Son and finds herself in a fisherman's boat. Proteus, the infamous shapeshifting sea god, rescues her from the rapacious mariner only to hold her hostage in an underwater prison for eight months. At the end of Book IV, Marinell's mother Cymoent enlists the help of Neptune to release his beloved from Proteus's captivity. In Book V, the ocean features in the episode with the Egalitarian Giant, in Artegall's adjudication of the brothers' conflict, and the defeat of the Souldan at the hands of Artegall and Arthur.<sup>12</sup> Finally, Book VI, like Book I, is largely bereft of oceans and instead adopts a pastoral setting.

This brief overview of the oceans of *The Faerie Queene* demonstrates a general pattern: the metanarrative begins removed from the ocean in Book I, enters it through the voyages of Guyon in Book II, descends outward and downward through Proteus's kidnapping of Florimell in Books III and IV, arrives back at the shore for the nuptials of Marinell and Florimell and Artegall's episode of adjudication on the strand in Book V, and returns completely to land in Book VI. Additionally, the progression establishes another pattern: it shows that every ocean in *The Faerie Queene* lies under the jurisdiction of a particular figure. Spenser offers not one unified ocean without

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<sup>12</sup> This last episode, in which Spenser depicts a metaphoric approximation of the defeat of the Spanish Armada and moves the battle from the sea to a lawn, lies outside my analysis in this chapter.

jurisdictional boundaries; rather, he gives us Acrasia's Sea, Marinell's Sea, Neptune's Sea, and Artegall's Sea. This cordoning off of ocean space creates the need for a unified law of the sea in Faery Land. It invites the reader to ask how legal issues are adjudicated in each sea, if general principles of maritime law are at play, and to what extent Acrasia, Marinell, Neptune, and Artegall exercise dominion over their respective oceans.

Both the poem's spatial movement through Faery Land's oceans and the introduction of legal issues in each sea underpin my analysis of the Amidas/Bracidas episode in Book V. Indeed, I argue that the episode represents a culmination of maritime law in *The Faerie Queene* in which the law of the sea has acquired the power to fully contain the tempestuous ocean. In this way, the poem mirrors the historical development of maritime law: the legal issues that arose at sea were not confined to any one geographic area, and the impulse to create a uniform body of law drove the earliest maritime codes. Although at times an inaccurate simulacrum of this legal-historical development, Spenser's poem exhibits a conscious engagement with the underlying principle: maritime chaos can be constrained by a measured, uniform system.

#### IV. JURISDICTION AND *THE FAERIE QUEENE*'S SEAS

*The Faerie Queene* engages with various issues touching maritime law, which include jurisdiction, piracy, wreck, and marine salvage.<sup>13</sup> These issues culminate in the conflict between Amidas and Bracidas in Book V, and their evolution throughout the poem provides a central prism through which to understand this episode's significance.

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<sup>13</sup> The poem also addresses the question of free seas, mainly in Book II. I consider this issue and its incorporation into *The Faerie Queene* in the next chapter.



The depictions of these issues in the poem do not necessarily correspond to their legal and historical reality: young civil lawyers who aimed to practice at the High Court of Admiralty were not reading Spenser's allegory for insight into adjudicating maritime cases. Therefore, it is not my argument that Spenser sought to present a realistic depiction of these legal problems. Instead, he weaves them in under the guise of allegory, and their careful inclusion in *The Faerie Queene* signals Spenser's own commentary on admiralty jurisdiction in England. Of the legal issues listed above, I focus mainly on the poem's incorporation of jurisdiction.

Jurisdiction over the sea establishes the source from which all other admiralty issues in the poem flow. In the first place, it creates maritime boundaries: my contention that ocean space in *The Faerie Queene* contains four well-defined seas rather than contiguous ocean space is established through jurisdiction. That is, four different figures—Acrasia, Marinell, Neptune, and Artegall—exercise adjudicatory power that cordons off distinct maritime space. The tenuous geography of Faery Land itself offers no clues that assume these divisions, and previous critics such as Isabel MacCaffrey and Kirsten Tranter have erroneously implied that all oceans in the poem belong to the same broad entity, a conclusion that betrays the sophistication with which Spenser fashioned his allegory's seas. In actual maritime law, the division of ocean space is unstable enough: an area as small as the English Channel has long attracted competing claims of dominion from both the French and the English, and the question of freedom of the seas rested, in part, on the possibility of delimiting ocean waters.<sup>14</sup> In a poem as spatially labyrinthine as *The Faerie Queene*, in which clear topography is at best an afterthought,

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<sup>14</sup> I address this issue in the next chapter.

these divisions appear to defy demarcation. However, the task lies within reach when the question of jurisdiction is applied.

In his depiction of the ocean in *The Faerie Queene*, Spenser faces a conundrum: does jurisdiction establish maritime boundaries, or do maritime boundaries establish jurisdiction? This question can be answered in two complementing ways. First, a consideration of moments in the poem where jurisdictions clash shows the unseen, yet ever-present, jurisdictional boundaries at work in these moments. These clashes of jurisdiction in the poem, however, resolve neatly, and their clean outcomes represent how sharply Spenser draws his maritime lines. The second way of deducing oceanic boundaries sans geographic clues lies in a close reading of the individual seas. The nature of each aquatic domain differs; the language Spenser employs to describe each ocean implies that they inhabit different physical spaces and are, by extension, exclusive. Thus, in addressing Spenser's jurisdictional conundrum, it appears maritime boundaries enjoy a reciprocal relationship with jurisdiction: in Faery Land, the two reinforce each other in a way that leaves no doubt that Spenser recognized the importance of clear jurisdictional limits in the application of maritime law.

### 1. Acrasia's Sea

*The Faerie Queene's* first sea belongs to Acrasia. The poem defines this sea with the language of chaos: Spenser assails Guyon's senses and ours with reminders that the waters surrounding the Bower of Bliss teem with tempests, sea monsters, and every snare that may engulf an allegorical—or early modern—mariner. The poem marks off the sea as a distinct geographic space early in canto 12: after sailing for two days in open waters,

apparently unimpeded by nautical obstacles (“Ne euer land beheld, ne liuing wight” (II.xii.2)), Guyon, on the third morning, finds himself in a vexatious sea: “Vpon the waues to spred her trembling light / An hideous roring far away they heard, / That all their sences filled with affright, / And streight they saw the raging surges reard / Vp to the skyes, that them of drowning made affeard” (II.xii.2). The implication that they have entered Acrasia’s domain becomes evident as the canto progresses, and this early stanza draws a clear demarcation between the open seas of Guyon’s two-day voyage and the chaotic waters that define the remainder of his journey. In the next stanza, we learn that the Gulfe of Greediness sits on this jurisdictional line, which acts as a symbolic division, an unyielding partition marking off the calm, steady waters of the jurisdictionally ambiguous high seas from the, paradoxically, tightly controlled and yet simultaneously anarchic ocean of Acrasia.

Guyon’s subsequent voyage through this sea represents *The Faerie Queene’s* most sustained engagement with the ocean. The reader, like Guyon, experiences Acrasia’s territorial waters with an intimacy unparalleled in the rest of the poem. This point is significant: the ensuing chaos becomes synonymous with ocean space in Faery Land. For forty-four stanzas, Guyon and his crew are bombarded with every maritime obstacle imaginable. After their jolting encounter with the Gulfe of Greediness, they notice an immense boulder and realize the Gulf and Rock act in cahoots, with the former tossing unsuspecting ships into the latter. Here Spenser employs the language that will frame Acrasia’s Sea as a whole: the Gulfe is “violent and greedy” (II.xii.5), it sucks “the seas into his enthralls deepe” which seem “more horrible then hell” (II.xii.6). Opposite the Gulf, Guyon beholds the ships that have met their ruin on “sharp cliftes” where “the

ribs of vessels broke” and had “beene wrecked late” (II.xii.7). The violent language continues as Guyon, the Palmer, and the Boatman forge ahead. Spenser depends especially on adjectives to construct a tempestuous sea in perpetual flux: dangerous, detestable, whirling, restless, surging, dreadful, resounding. In stanza 34, Spenser makes explicit the nature of this ocean: “And this great Vniuerse seemd one confused mas.” The vivid verse that enwraps the entire first half of the stanza lays the foundation for the luscious descriptions of the Bower of Bliss that follow, and the most straightforward reading of Acrasia’s Sea positions it as lacking restraint. The sea, thus, assumes two meanings: the one restricted to Book II, which serves to highlight the importance of temperance, and the larger function that extends to Book V, which illustrates the poem’s evolving understanding of maritime space.

Although Acrasia enjoys jurisdiction over her sea, her villainous nature exacerbates rather than tempers its inherent chaos. In stanza 26, we learn that some of the obstacles she has employed to shield her bower result from her own sorcery: after encountering a panoply of sea monsters, the Palmer informs his fellow passengers that “For these same Monsters are not these in deed, / But are into these fearefull shapes disquiz’d / By that same wicked witch, to work vs dred” (II.xii.26). Although the implication remains ambiguous (“disguised” here means transformed), these lines could be interpreted to show the chaos in Acrasia’s Sea is not inherent, and that its waters contain ordinary sea creatures that incite fear only through her manipulation. This interpretation highlights her absolute dominion since she not only controls her sea, but also controls the perceptions of those who traverse it. In the end, it is not Acrasia who calms the transgressors of her sea, but rather the Palmer: “But soone as they approcht

with deadly threat, / The Palmer ouer them his staffe vpheld, / His mighty staffe, that  
could all charms defeat: / Eftesoones their stubborne corages were queld, / And high  
aduanced crests downe meekely feld” (II.xii.40). The Acrasian Sea remains in chaos not  
because order eludes it, but because Acrasia directly benefits from the disorder and  
chooses not to intervene.

Acrasia’s Sea features a moment that implies a conflict of jurisdiction. Although  
the sorceress demonstrates no interest in procuring legal consequence for the offenses  
committed upon her waters—her cavalier deportment merely extends the lawlessness  
endemic to the Bower of Bliss—another potential arbitrator, Neptune, arrives on the  
scene: “The waues come rolling, and the billowes rore / Outragiously, as they enraged  
were, / Or wrathfull *Neptune* did them driue before / His whirling charet” (II.xii.22).  
Later, in Book IV, we learn that Neptune functions in the allegory as more than a mere  
mythical figure who commands the tempests: he exercises adjudicatory power over the  
ocean when he impels Proteus to release Florimell. And yet in Acrasia’s Sea, he enjoys no  
such clout. He appears, plays his tempestuous role, and then departs. His legal authority  
does not extend to the sea surrounding the Bower of Bliss. In this passage, Spenser shows  
that within Faery Land, as in early modern England, admiralty jurisdiction involves not  
only geographic boundaries, but jurisdictional limits as well. Neptune’s legal power is  
rendered moot when he ventures from his own sea and enters the domain of Acrasia.

Defined by its chaos, the disordered Acrasian Sea frames our readings of the  
poem’s subsequent oceans. The Palmer’s intervention, while almost an afterthought, sets  
an important precedent. Although the Palmer rectifies the transgressions of the  
tumultuous waters with metaphysical acumen rather than legal principles, he shows that

an ocean mired in maritime crime *can* be controlled. In Faery Land, the whims of nature and lawlessness that have saturated Acrasia's Sea do not sentence ocean space to indefinite chaos.

## 2. Marinell's Sea

The poem's next ocean emerges in Book III, canto 4. Unlike Acrasia's Sea, which Spenser presents in a continuous, unbroken narrative, Marinell's Sea is offered piecemeal, and whereas the former unfolds through rich description, the latter materializes through different characters' relationships to it. This fragmentation suits Marinell's Sea: unlike the straightforward jurisdictional schema of Acrasia's domain, Spenser subjects the ocean in Book III to administrative ambiguity, and a careful parsing of its moving parts is required to settle the question of proper jurisdiction. Consequently, when juxtaposed with Acrasia's Sea in the preceding book, Marinell's Sea extends the poem's increasingly sophisticated engagement with admiralty jurisdiction.

We first come to know this sea through Britomart, who approaches it from the land. After departing from Redcrosse Knight at the opening of canto 4, she begins her quest in search of Artegall: "So forth she rode without repose or rest, / Searching all lands and each remotest part, / Following the guydaunce of her blinded guest, / Till that to the seacoast at length she her addrest" (III.iv.6). The encounter with Marinell's Sea, thus, originates on the shore and moves outward. This contrasts with Guyon's journey across Acrasia's Sea: the latter involves movement *inward*, from the open, unbound ocean into the sorceress's territorial waters. These oppositional approaches clarify the types of jurisdiction each ocean concerns itself with. For Acrasia, the main concern involves how

far her domain stretches into the sea, and how much of this space she can control. For Marinell, conversely, the central question concerns his domain inward, from the edge of the water to the shore. Indeed, this preoccupation with the coast defines his sea in the same way Acrasia's ocean is defined by chaos. The stanza immediately preceding Britomart's arrival at the shore further establishes this point. Spenser does not describe the ocean as a detached entity *out there*, but rather unveils its gestalt through its interactions with the shore: "Tho hauing vewd a while the surges hore, / That gainst the craggy clifts did loudly rore, / And in their raging surquedry disdaynd, / That the fast earth affronted them so sore" (III.iv.7). This stanza reveals two important points about Spenser's treatment of Marinell's Sea: first, it has been defined in terms of its conflict with the land, and second, our view of it comes to us from Britomart's shoreside point of view.

The second point becomes clearer in the next three stanzas in which Britomart addresses the sea directly in a complaint. The view of the ocean before her comes mediated not only through Spenser's language, but also through Britomart's relationship to the ocean. Usually her complaint is interpreted inward, revealing more about her mental state than about the sea itself. Paradoxically, however, it is through this mediation that the poem's clearest, most accessible overview of maritime law emerges. Britomart begins her complaint by describing a metaphoric sea of grief marked by Acrasian chaos: "Huge sea of sorrow, and of tempestuous griefe, / Wherein my feeble barke is tossed long, / Far from the hoped hauen of reliefe, / Why doe thy cruel billowes beat so strong" (III.iv.8). Britomart's words call to mind Guyon's own journey in the preceding book, but

her internal struggle against a mercurial sea remains firmly situated in her mind.<sup>15</sup> The reference to her frail vessel reminds the reader that her interaction with the ocean must be mediated by a man-made object, just as our interaction with Marinell's Sea must be mediated by Britomart's perception of it. Similarly, as noted above, this sea can only be defined in relation to the shore. This point establishes the emergence of a nascent maritime law: the tempestuousness of the ocean becomes a burden only when a feeble bark attempts to traverse it, just as its ferocity emerges only when the waves come crashing upon the shore. Thus, any attempts to quell its volatility must originate on the land, as the land, and things associated with it, are the real source of the conflict.

The second stanza of Britomart's complaint expounds the danger of sailing in turbulent waters. But no longer do the waves toss her bark on the high seas: she has begun a drift closer to shore, which subjects her to greater danger: "For els my feeble vessell crazd, and crackt / Through thy strong buffets and outrageous blowes, / Cannot endure, but needes it must be wrackt / On the rough rocks, or on the sandy shallowes" (III.iv.9). Spenser's inclusion of spondees and trochees in the final line reflects the disharmony of this maritime chaos, as if his verse itself remains subject to a temperamental ocean and, like Britomart's bark, his familiar iambs become battered and mangled when tossed against the rocks. The coast contains its own inherent danger: even the pilot and boatswain prove impotent "gainst tyde and winde" (III.iv.9). The turbulence that Britomart's bark—and heart—encounters in these first two stanzas finds resolution

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<sup>15</sup> One could argue that Guyon's journey is an internal one as well, in which he battles against the vice of intemperance. While this remains an important part of his quest, his voyage to the Bower of Bliss also implies material, physical interaction with the sea; conversely, Britomart's struggle against grief remains exclusively psychic and internal.



in the third. Here, the object of her complaint shifts from the ocean itself to Neptune, “Thou God of windes, that raignest in the seas / That raignest also in the Continent” (III.iv.10). Neptune possesses the authority, Britomart declares, to “blow up some gentle gale of ease” which will transport her bark “[unto] the gladsome port of her intent” where she will find safety. Britomart closes her complaint with a pledge to consecrate a votive tablet to the sea god if he delivers her from the inimical ocean.

These three stanzas offer a microcosm of oceanic evolution across *The Faerie Queene*: their relatively early appearance—the narrative has not yet realized its most robust engagement with the sea—foreshadows the apogee of this progression reached in the Amidas/Bracidas episode in Book V. Britomart’s metaphorical journey (like Guyon’s) begins on the high seas, where her ship is tossed on tempestuous waves. In the second stanza, she moves closer to land, and closer to danger, as strong winds push her toward sand bars and perilous rocks. Finally, in the last stanza, she appeals to Neptune for safe delivery from her nautical torment. Textually, this progression across stanzas correlates with the oceans of Books II, III, and IV: Acrasia’s Sea is marked by chaos and anarchy and exists far from the coast; Marinell’s Sea demonstrates an intimate, reciprocal relationship with the shore signaled in the second stanza. Neptune’s Sea, which stretches across Books III and IV—a textual reflection of its breadth—appears in the last stanza in the figure of Neptune himself. And Britomart’s appeal for Neptune to release her both foreshadows Florimell’s eventual release from Proteus’s bower and reveals the sea god’s adjudicatory power to subdue maritime disorder. Britomart’s journey inward to safety not only reflects the serenity of port waters, but also links Neptune with that serenity. In his capacity to calm the waves, the sea god sets a precedent for the poem’s later, more legally

sophisticated remedies for rectifying oceanic infractions, and Britomart's desired port represents the regulating character of maritime law.

While making her complaint, which has transported the reader to the high seas and back again, Britomart remains firmly rooted to the coast. Spenser notes she sits “downe upon the rocky shore” (III.iv.7) before addressing the formidable waters. Her presence on this shore both foregrounds and foreshadows the ensuing jurisdictional clash. Up until this point, the coast has appeared uninhabited: with the exception of Glauce, Britomart sits alone. Although we learn later that the shore is awash with the prize from shipwrecks, in the canto's opening stanzas this coast appears to be *es communis omnium*, a thing belonging to no one. Britomart reacts with shock, then, when she sees a figure who “far away, one all in armour bright, / With hasty gallop toward her did ryde” (III.iv.12). Britomart, who has removed her own armor during this seaside sojourn, quickly redons it and prepares for battle, her “former sorrow” transmuted into “sudden wrath” (III.iv.12). The subsequent duel between Britomart and the as-yet unidentified Marinell abounds with interpretive potential, but given its proximity to the sea, one could read it as a battle for jurisdiction. Spenser's language describing their conflict emphasizes its ferocity: “Strongly the staunge knight ran, and sturdily / Strooke her full on the brest, that made her downe / Decline her head, and touch her crouper with her crown” (III.iv.15) and “by mischaunce / The wicked steele through his left side did glaunce; / Him so transfixed she before her bore / Beyond his croupe, the length of all her launce” (III.iv.16). Britomart's fierce attack sends Marinell tumbling down onto the “sandy shore.” In the next stanza, Spenser modifies his description slightly, describing the beach

as the “precious shore” (III.iv.17). The small adjectival shift from “sandy” to “precious” changes the tenor of the knights’ skirmish: suddenly, much more is at stake.

In conflicts over admiralty jurisdiction in English law, coasts have always presented jurists with problems. Whereas the line between territorial waters and the high seas fell under the purview of the international law of the sea, the issue of admiralty jurisdiction within England remained a domestic issue that centered on liminal spaces such as coasts, bays, havens, and rivers, those bodies of water that, geographically, fell within counties but remained subject to maritime law through the unbroken flowing of the sea.<sup>16</sup> Thus, the location of the Britomart-Marinell scuffle is more than incidental. It transcends an isolated conflict between two aggressive knights and offers a glimpse into the battle for admiralty jurisdiction fully realized in the Amidas/Bracidas episode. Critics have often read Marinell as the complement of Florimell.<sup>17</sup> This interpretation feels natural: not only do the two join together in marriage in Book V, but their names themselves illustrate harmonization: Florimell of the land, Marinell of the sea. However, Britomart and Marinell complement each other in a similar fashion: they are both knights, and we know enough of their respective backgrounds to link them decisively with land and sea. A significant portion of Merlin’s prophecy in canto 3 relates to Britomart’s lineage. Similarly, later in canto 4, we learn of Marinell’s family background: his mother,

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<sup>16</sup> See Westerman, *The Judicial Bay* (Oxford: Oxford University Press, 1987), 32-61. The portion of coast covered by water at high tide is referred to as the *foreshore* which is described as “neither dry land nor sea and ... constantly being covered and uncovered by water, driven by tidal processes.” Derek J. McGlashan et al., “The Foreshore: Geographical Implications of the Three Legal Systems in Great Britain,” *Area* 36.4 (2004), 338-47 (338).

<sup>17</sup> See, generally, Thomas P. Roche, *The Kindly Flame: A Study of the Third and Fourth Books of Spenser’s Faerie Queene* (Princeton: Princeton University Press, 1964), 150-94; William Blissett, “Florimell and Marinell” *Studies in English Literature, 1500-1900* 5.1 (1965), 87-104.

Cymoent, is herself the daughter of Nereus, the old man of the sea; his father is Dumarin, whose name implies *of the sea*. (Interestingly, Spenser provides no such lineage for Florimell.) Considering the ways Marinell and Britomart supplement each other within the narrative aids in the interpretation of their clash: Marinell, of the sea, represents maritime law; Britomart, of the land, represents the common law (or, less controversially, a general terrestrial law); and the precious shore that stages the battle represents the admiralty jurisdiction debates.

Britomart wins their chivalric tussle. Marinell is thrown to the sandy—or precious—shore suffering from an apparent mortal wound, while the “martiall Mayd stayd not him to lament” and forges ahead down the coast. Here the nature of Marinell’s shore is clarified: as she rides over the strand, “She saw bestrowed all with rich aray / Of pearles and pretious stones of great assay, / And all the gravell mixt with golden owre” (III.iv.18). His coast is coated with the prize from the shipwrecks that have occurred in his waters. Marinell’s “rich strand” has implications for deducing the jurisdiction of his sea. Britomart, despite her victory, does not stop and linger among the treasure: “Whereat she wondred much, but would not stay / For gold, or perles, or pretious stones an howre, / But them despised all; for all was in her powre” (III.iv.18). Her indifference to this trove of treasure invites a clear juxtaposition with Guyon, who grows in thrall of Mammon and his cave in Book II. The description “Great heapes of gold, that neuer could be spent: / Of which some were rude owre, not purifide” (II.vii.5) further links Marinell’s treasure with Mammon’s by signaling the practical worthlessness of the unpurified ore that comprises both of their caches. Britomart’s immunity to Marinell’s riches, despite her victory at battle, suggests more than a stronger resolve than Guyon. Instead, it implies that

jurisdictional lines have not been redrawn, and that despite his momentary incapacity, Marinell remains in legal control of his sea.

Spenser provides an explanation for Marinell's treasure, a detail left out of his account of Mammon's Cave. Marinell has acquired his prize legally: it is his *right*. Raised by a nymph in a rocky cave, Marinell grows into a "mighty man at armes, and mickle fame" who rises through the proverbial ranks of Faery Land. Meanwhile Cymoent, Marinell's mother, appeals to her father, Nereus, "To doen his Nephew [grandson] in all riches flow" and "Eftsoones his heaped waues he did commaund, / Out of their hollow bosome forth to throw / All the huge threasure, which the sea below / Had in his greedy gulfes deuoured deepe" (III.iv.22). In the eighteenth century, John Upton linked the figure of Marinell with the Lord Admiral.<sup>18</sup> These stanzas provide the strongest evidence of this correlation. In the first place, Marinell's military prowess is highlighted: he grows into a "mighty man at armes" and, in his martial ascent, is able to subdue a great number of other knights and turn them into his vassals. The position of Lord Admiral carried both military and legal significance, and Marinell occupies these complementary roles: militarily in his skirmish with Britomart; legally in his right to the treasure washed up upon his strand. Because the Lord Admiral enjoyed jurisdiction over both the territorial waters of England as well as those liminal spaces of coast, bay, river, and haven, Marinell's movement from sea to land begets no fracture of his jurisdiction: he, like the Lord Admiral, enjoys command over both water and coast. The implication is clear: Marinell's Sea, defined by its adjacency to his strand, represents a distinct

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<sup>18</sup> "I have all along thought, and am still of the opinion, that Lord Howard, the Lord High Admiral of England, is imaged under the character of Marinell." Cited in Henry John Todd, *The Works of Edmund Spenser* vol. 4 (London, 1805), 337.

jurisdictional space within the poem. The figure of Marinell himself carries with it the legal authority of the English Admiralty, and his purview is defined by the historical limits of his office.<sup>19</sup> Britomart, who in this canto represents English law—an interpretation fortified by her association with Artegall, the Knight of Justice—remains unmoved by Marinell’s treasure not only because she operates above greed, but also because she has no legal right to the riches of the sea. Marinell’s fall onto his jewel-encrusted strand serves as a vital reminder that although he has been injured, his wound has not diminished his right to prize: admiralty jurisdiction in Faery Land remains unaffected.

### 3. Neptune’s Sea

Here it might end. Here the poem may require no additional need to temper its tempestuous seas. Having established the danger of maritime disorder, Spenser has positioned Neptune—a convenient proxy for the international law of the sea—as the figure to calm this chaos; and having demonstrated the peril of malleable jurisdictional lines, he has offered Marinell—a formidable approximation of the English Lord Admiral—as the figure to maintain inflexible legal boundaries. And yet Marinell’s Sea represents only the second of the four oceans in the poem. The third is introduced later in Book III, but it does not fully materialize until the end of Book IV: Neptune’s watery

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<sup>19</sup> Various critics have noted Marinell’s indifference to his own treasure and offered differing explanations for it. In “Early Modern Masculinities and ‘The Faerie Queene’,” *English Literary Renaissance* 35.2 (2005), 210-47, for example, Lisa Celovsky argues Marinell’s jewel-encrusted strand represents his willful infertility. In my analysis, his indifference is clear: during the sixteenth century, the English Admiralty had become besmirched by the cupidity of certain admirals who cared more about lining their pockets than maintaining order in English waters. By showing that Marinell can accumulate the windfall of wreck while not falling under its spell—unlike Mammon—Spenser provides a model for the proper conduct of the English Lord Admiral.

realm casts a wide net over *The Faerie Queene*, and the broad extension of its jurisdictional tentacles represents the geographic scope of the international law of the sea.

As I argue elsewhere in this dissertation, Neptune's role in *The Faerie Queene* has been consistently overlooked in the scholarly literature.<sup>20</sup> This is partly because scholars have focused on his mythical manifestations in the poem. Such an approach renders the sea god rather forgettable: playing a purely pedestrian part, his greater allegorical significance proves unworthy of deeper investigation. In fact, Neptune's representation is two-pronged: not only does he occupy a mythical role, but he provides a legal function as well, and the latter is what makes his character fundamental to the poem's progression. If Acrasia's Sea can be defined by its chaos, and Marinell's by its shore, then Neptune's Sea can be defined by its *law*. And this law offers the reader a sophisticated legal process, one dependent on the written word, implying a codification of the law of the sea, and one intricate enough to require an entire canto. By transcending his mythical function, Neptune demonstrates that his earlier control of the weather only calms the ocean on a superficial plane. It is his adjudicatory power to remedy maritime tort that brings lasting tranquility to the sea.

Neptune's Sea begins, and ends, with Florimell. Marinell's betrothed spends much of the poem fleeing from other men: first the Forester, then the Witch's Son, then the Witch's Beast, and finally the Fisherman. She spends the greatest time, however, imprisoned in Proteus's Bower deep in the depths of the sea. Florimell's narrative serves two functions in relation to maritime law. First, it anticipates the analogous story of Lucy in the Amidas/Bracidas episode and in turn creates a link between Marinell and Artegall.

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<sup>20</sup> This argument begins in the next chapter and culminates in Chapter 5.

Second, it establishes both Neptune's jurisdiction in relation to Marinell and the nature of maritime judgment in the poem. Spenser opens by establishing the high stakes of the episode: he subjects Florimell to the only act of maritime interpersonal violence in the poem. Having rejected the advances of the Witch's Son, Florimell finds herself pursued by a beast conjured by the Witch herself; this beast chases her to the shore, where she jumps into an idling fishing boat. Florimell discovers the apparent safety of this boat is a mere mirage: when the fisherman awakens, he sees the "blazing beauties beame" of Florimell, whose "rare light of his bote did beautifye" (III.viii.22) and becomes overcome with desire. The fisherman's reaction at seeing Florimell's snowy skin contains rather graphic sexual innuendo: "The sight whereof in his congealed flesh / Infixt such secrete sting of greedy lust / That the drie withered stocke it gan refresh / And kindled heat, that soone in flame forth brust" (III.viii.25). Florimell's oceanic respite from the advances of the Witch's Son transforms into a nightmare, as the fisherman proceeds to attempt to rape her: he throws her down in his boat as she valiantly resists. The fisherman comes far closer to raping Florimell than do her earlier pursuers, the Witch's Son as well as the Forester, in Book III. Here Neptune's Sea succumbs to Acrasian chaos. Unlike the land, where Florimell has been able to flee from her assorted would-be attackers, the ocean offers her no reprieve. The fisherman's boat represents a lawless space, and the fisherman himself is bound to no apparent codes of decorum.

Spenser underscores the distance that lies between the fisherman's boat and the relative safety of the shore. This emphasis provides the clearest geographic evidence that Neptune's Sea lays beyond Marinell's domain, even before the introduction of legal nuance and clear jurisdictional boundaries between Marinell and Neptune in Book IV.



When Florimell leaps into the fisherman's boat in canto 7, the shore is described as "roaring" and its apparent violence dissuades the Witch's Beast from aquatic pursuit. When Florimell's narrative resumes in canto 8, we learn "her selfe was far away" (III.viii.20) and that "Long so she on the mighty maine did float, / And with the tide drove forward carelessly" (III.viii.21). We learn that the distance traversed has produced a calming of the seas: "For th'ayre was milde, and cleared was the skie, / And all his windes *Dan Aeolus* did keep / From stirring up their stormy enmity" (III.viii.21). When juxtaposed with both Guyon's journey to the Bower of Bliss and Britomart's complaint, Florimell's jaunt out to sea reaffirms that tempestuous weather afflicts Faery Land's coastal waters; the "mighty maine" enjoys relative freedom from the capriciousness of the shore. When the fisherman awakens, Florimell tells him they "sith far in sea" and "the great waters gin apace to swell, / That now no more we can the mayn-land see" (III.viii.24). The fishing boat now floats *super altum mare*, on the high seas, and although the waters begin to swell, it is not a storm that threatens Florimell, but the isolation of their location. Neptune's mythical prerogative to control the winds proves meaningless in the face of maritime tort: only a legal intervention can remedy a legal problem.

Proteus, whose intercession thwarts the fisherman's attack, functions in the poem as an early modern pirate. He materializes at the fisherman's boat and notices the ensuing struggle: "And comming to that Fishers wandring bote, / That went at will, withouten card or sayle, / He therein saw that yrkesome sight, which smote / Deepe indignation and compassion frayle / Into his hart attonce" (III.viii.31). Proteus delivers Florimell, it seems, from the fisherman's advances, and the sea god takes "that old leachour", ties him to his chariot, and casts him up upon the shore. Unfortunately, however, he does not offer

Florimell a similar conveyance to land, and instead shepherds her to his bower. This act positions Proteus as an allegorical pirate, and his abduction of Florimell as an act of piracy. As noted in the previous chapter, the early modern pirate—both historically and literarily—comprised a protean figure. He often moved lissomly across identities, between the contrasting identities of pirate and non-pirate, and demonstrated equal comfort in each. Proteus himself, of course, embodies oceanic shapeshifting. Florimell also undergoes a metamorphosis in the sea: she transforms from snowy maiden to maritime prize, a shift that foreshadows Lucy’s fate in Book V: upon jumping into the sea, she transforms from jilted lover to marine salvage.

Proteus’s intervention underscores another point: Neptune’s Sea represents the only ocean space into which the reader can descend.<sup>21</sup> Not only does Spenser pull us *outward*, far beyond the safety of the shore, but he also pulls us *downward*, into the bowers of both Cymoent and Proteus. The language of their description helps to establish their similarity: “Deepe in the bottome of the sea, her bowre / Is built of hollow billowes heaped hye / Like to thicke clouds, that threat a stormy showre” (III.iv.43) corresponds with “His bowre is at the bottome of the maine, / Vnder a mightie rocke, gainst which do raue / The roring billowes in their proud disdaine” (III.viii.37). In a later description of Proteus’s dungeon, Spenser employs enjambment to simulate the effect of a descent to the ocean floor:

Deepe in the bottome of an huge great rocke  
The dongeon was, in which her bound he left,  
That neither yron barres, nor brasen locke  
Did neede to gard from force, or secret theft

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<sup>21</sup> In Book V, Lucy plunges into the sea in a thwarted suicide attempt, which offers a glimpse of the ocean’s underside. But her subaquatic encounter lasts, apparently, only a few moments, and it cannot compare with the underwater narratives of Marinell and Florimell in Books III and IV.

Of all her louers, which would her haue reft.  
For wall'd it was with waues, which rag'd and ror'd  
As they the cliffe in peces would haue cleft;  
Besides ten thousand monsters foule abhor'd  
Did waite about it, gaping grisely all begor'd. (IV.xi.3)

This movement downward allows Spenser to create even more distance between the safety of Marinell's Strand and the threat of open waters. Although anachronistic in its application—Grotius published *Mare liberum* (1609) ten years after Spenser's death—the Dutch jurist used this fact in his support of free seas: the ocean presented a space unsuited to permanent human occupation, which precluded any possibility of its possession. Spenser raises the stakes by pulling Florimell and Marinell to the ocean's depths for a period of seven months. While land-dwellers can traverse the surface of the sea within the safety of a sailing vessel and thus temporarily inhabit maritime space, the ocean floor represents a truly inaccessible space that defies any occupation at all.<sup>22</sup>

Why does Spenser associate the ocean's depths with Neptune's domain? Because it allows the reader to fully disengage from physical presence on land. In turn, this offers additional evidence that Neptune's Sea falls out of the jurisdictional confines of Faery

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<sup>22</sup> The ocean floor was not an entirely *inaccessible* space during the early modern period, however. Marine salvage sometimes necessitated attempts to recover valuable items lost during shipwreck. This development dates to at least the Greeks, who employed diving methods to recover goods lost at sea. In England, the wreck of the *Mary Rose*, a carrack that sank in the Solent in 1545, offers the most well-known early modern example of attempted underwater salvage. Salvors (who included the Italian Piero Paola Corsi) tried to access the wreck for seven years before finally abandoning their mission in 1552. Twentieth-century technological advancements finally allowed for the excavation of the *Mary Rose* between 1979 and 1982, and the ship contained a treasure trove of items that shed light on life aboard a Tudor ship. See Frank J. Frost, "Scyllias: Diving in Antiquity," *Greece and Rome* 15.2 (1968), 180-85 and Lionel Casson, "Excavating Underwater," in *Seafarers and Sea Fighters of the Mediterranean in Ancient Times*, second edition (Princeton: Princeton University Press, 1991), 23-29 for more on the ancient practice of underwater excavation. See Margaret Rule, *The Mary Rose: The Excavation and Raising of Henry VIII's Flagship* second edition (London: Conway Maritime, 1990) for more on the sixteenth-century attempts to salvage the *Mary Rose*.

Land's national law. Through both geographical inaccessibility and separate judicial process, Neptune's waters resist attempts at control from the shore. As a result, this vast and unwieldy space requires not only law itself, but another *type* of law—an allegorical approximation of the international law of the sea—in order to govern itself. Neptune himself further exemplifies the full break from land. He is not beholden to Faery Land's conventions, traditions, or laws, nor does he pledge his fealty to any figure on land. This detachment endows him with an air of impartiality that mirrors the disinterest inherent in maritime law.<sup>23</sup>

After leaving her to languish in Proteus's dungeon for seven months, a passage denoted in the poem not only by narrative time but also by textual space—fourteen cantos have passed from her initial imprisonment in III.viii until her release in IV.xii—Spenser finally lays the groundwork for Florimell's liberation. In the last two stanzas of Book IV, Neptune's Sea finally shifts from the mythological to the legal, demonstrating a sophisticated engagement with maritime law. The marriage of the Medway and Thames, which occupies the better part of canto 11, is among the most discussed episodes in all Spenserian scholarship and does not warrant additional parsing here. Rather, what interests me in cantos 11 and 12 is the legal language employed by Spenser: these cantos witness an emerging jurisprudential sophistication that culminates in Book V. Canto 11 opens with a return to Florimell's narrative: Spenser reminds the reader of her captivity.

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<sup>23</sup> In Chapter 1, I noted Richard T. Robol's heuristic model of admiralty jurisdiction. This model assumes that maritime law considers the policing of the sea in matters such as piracy and the protection of seamen as a goal that serves an international, as opposed to mere national, purpose, and that national courts sitting in admiralty remain sensitive to the needs of the international community and are not driven by national interests alone. See Robol, "Admiralty's Adjudicatory Jurisdiction over Alien Defendants: A Functional Analysis," *The Journal of Maritime Law and Commerce* 11.4 (1980), 395-452.

Proteus's unsuccessful wooing has led him to throw her "into a dongeon deepe and blind,  
/ And there in chaynes her cruelly did bind, / In hope thereby her to his bent to draw"

(IV.xi.2). The dungeon represents another inaccessible ocean space, and for seven months Florimell "Ne euer euening saw, ne mornings ray, / Ne euer from the day the night descride, / But thought it all one night, that did no houres diuide" (IV.xi.4).

Meanwhile, Marinell has endured his own languishing incapacitation: still in Cymoent's bower, "he yet in languor lyes, / Ne can be cured of that cruell stroke / Which *Britomart* him gaue, when he did her prouoke" (IV.xi.5). Marinell finally finds his condition repaired when his mother enlists the aid of Tryphon, who applies a restorative salve.

The marriage of the Thames and Medway contains one moment of jurisdictional tension that illustrates Marinell's and Neptune's respective domains. As the sea gods gather in Proteus's Hall, Marinell stands on the outside, "for he was halfe mortall, being bred / Of mortall sire, though of immortall wombe, / He might not with immortall food be fed, / Ne with th'eternall Gods to bancket come" (IV.xii.4). While this detail reveals something about the metaphysical hierarchy of Faery Land, it also evinces the line that separates Marinell from Neptune. While they both command a portion of the sea, the nature of Neptune's dominion reflects his nature itself: as a god, he enjoys omnipresence over his waters, which stretch across unfathomable distances. Marinell, conversely, is a mortal, and his territorial waters are defined by their limits both inward and outward. As a result, Marinell cannot cross the tangible threshold that lies at the entrance to Proteus's Hall, just as he cannot cross the imperceptible line that separates his waters from Neptune's high seas. Thus, when he hears Florimell's "lamentable voice" while pacing

outside the hall, Marinell lacks the authority to rescue her, which sets in motion an intricate legal process to secure her release.

This process begins with Florimell's complaint in stanzas 6-11. This complaint loosely mirrors Britomart's in Book III: it begins with a general plea to the gods before addressing Marinell directly, as Britomart begins her own with a general plea to the sea and concludes with a direct appeal to Neptune. Florimell's entreaty to Marinell outlines her "wretched case" (IV.xii.8); both this language, as well as her shift from a supplication to the gods to the request for intervention from an authoritative figure, signal to the reader the movement from mythological to legal. She tells her betrothed "if that life ye vnto me decree, / Then let mee liue, as louers ought to do, / And of my lifes deare loue beloued be" (IV.xii.10). Stanzas 10 and 11 also reference judicial opinion as it relates to Florimell's release: "doom" and "judgement" further emphasize the legal nature of her request. She explains further the futility in petitioning Proteus herself: "The whiles I him condemne, and deeme his paine, / He where he list goes loose, and laughes at me" (IV.xii.11). In effect, Florimell seeks an intervention from Marinell, but unlike her metaphysical supplication to the gods, she couches her request to him in the language of the law, the language with which he is most conversant, and the law which has the power to release her.

Florimell's complaint moves Marinell, who has hitherto resisted their union, to seek her release in order to marry her. However, he finds himself at an impasse, and "for grieve of minde he oft did grone, / And inly wish, that in his powre it weare / Her to redresse: but since he meanes found none / He could no more but her great misery bemone" (IV.xii.12). Marinell's recognition that he lacks the jurisdictional authority to

rescue Florimell himself vexes him, and his mind begins to consider the different courses of action he can pursue to procure her release. Spenser's description of Marinell's deliberation conjures the image of an admiralty lawyer pacing his office in Doctors' Commons with a particularly recondite case before him, and the subsequent stanzas offer a glimpse into Marinell's method of decision-making. He first considers a measured approach: "Some while he thought, by faire and humble wise / To *Proteus* selfe to sue for her discharge" (IV.xii.14). Appealing to Proteus directly yet subserviently, in recognition of his jurisdictional disadvantage, appears attractive to Marinell on its face; yet turning it over in his mind, he changes course. Rescuing Florimell, however, remains his goal, and within the same stanza he considers "with sword and targe / Her forth to fetch, and *Proteus* to constraine: / But soone he gan such folly to forthinke againe" (IV.xii.14). While implying that Marinell battles in equal parts his devotion to his mother and his desire for Florimell, this stanza also reveals that Marinell is developing his legal reasoning skills. The release of Florimell requires a carefully considered course and Marinell's impetuosity will impair his intent.

Marinell becomes increasingly absorbed in thought. "In this sad plight," Spenser tells us, "he walked here and there, / And romed round about the rocke in vaine, / As he had lost him selfe, he wist not where" (IV.xii.17). When the feast of the sea gods ends, Marinell is impelled to depart with Cymoent, leaving Florimell behind in Proteus's dungeon. Upon returning to her bower he succumbs to lovesickness, and Cymoent, who thinks he is still suffering the effects of Britomart's attack, grows rankled. She confronts Tryphon, who claimed to have healed Marinell previously, and accuses him of fraud: "Therefore to *Tryphon* she againe doth hast, / And him doth chyde as false and

fraudulent, / That fayled the trust, which she in him had plast” (IV.xii.23). Tryphon denies her accusations, telling her that Marinell suffers from a more recently inflicted malady, and Cymoent learns on her journey home that love has caused her son’s latest incapacitation. Marinell confesses to her his love for Florimell, and Cymoent “gan a fresh to chafe, and grieve in euery uaine” (IV.xii.27). Critics have interpreted the Marinell-Cymoent dynamic as one of an overprotective mother and her discontented son, and the text in canto 12 supports this conventional reading. However, in my variant interpretation, the two assume the roles of lawyer and client. Because Marinell has been rendered incapacitated, Cymoent must visit Neptune in his stead and advocate on behalf of her son for the release of Florimell: she functions much in the same way as the advocates of Doctors’ Common who represented their clients in the High Court of Admiralty. In Marinell’s case, his incapacitation can be read as his jurisdictional limit: he lacks the legal authority to appear in Neptune’s court, a prohibition that sharply delimits his territorial waters from the rest of the ocean.

Spenser infuses the next five stanzas with the language of the law. Cymoent appears before Neptune and makes “humble suit vnto his Maiestie” for her son’s life (and, by extension, the release of Florimell) because a “cruell Tyrant [Proteus] had presumptuouslie / By wicked doome condemn’d [Marinell], a wretched death to die” (IV.xii.29). Neptune responds, “Daughter me seemes of double wrong ye plaine, / Gainst one that hath both wronged you, and vs: / For death t’adward I ween’d did appertaine / To none, but to the seas sole Soueraine” (IV.xii.30). In the next stanza, Cymoent pleads her case, lending to the facts of the case a legally informed interpretation:

To whom she answered, Then it is by name  
*Proteus*, that hath ordayn’d my sonne to die;



For that a waift, the which by fortune came  
Vpon your seas, he claym'd as propertie:  
And yet nor his, nor his in equitie,  
But yours the waift by high prerogatiue.  
Therefore I humbly craue your Maiestie,  
It to repleuie, and my sonne repriue:  
So shall you by one gift saue all vs three aliue. (IV.xii.31).

Cymoent's appeal showcases her ease with the legal aspects of the case. She appears not so much as a distressed mother, but rather as a lawyer pleading for her client's release and employing the requisite knowledge of the law to achieve that end. In effect, Cymoent's argument reduces Florimell to property that Proteus has unlawfully pilfered and that, due to his "high prerogative," belongs rightfully to Neptune.<sup>24</sup> While her speech to the god of the sea assumes the tenor of deference, her tone could also represent the performative language assumed in court, further signifying her allegorical transformation into a legal professional.

Neptune grants Cymoent's request without further deliberation. At this moment we witness a verdict handed down at sea, a crucial piece of evidence when adducing the poem's attitude to maritime law. Neptune delivers his judgment and "streight his warrant made, / Vnder the Sea-gods seale autenicall, / Commaunding *Proteus* straight t'enlarge the mayd" (IV.xii.32). Cymoent delivers the warrant to Proteus, who "reading it with inward loathfulnesse, / Was grieved to restore the pledge, he did possesse" (IV.xii.32). For the first time in *The Faerie Queene*, we observe a maritime case from the commission of a crime to its ensuant verdict and remedy. Acrasia's Sea has witnessed egregious infraction without legal intervention; Marinell's Sea has witnessed legal intervention without crime, at least within the frame of the poem. Only in Neptune's Sea

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<sup>24</sup> I address Florimell as property below, in the section on salvage.

does the entire legal process unfurl. Neptune's judgment, written and placed under his imperial seal, approximates the codification of maritime law. In effect, Spenser has established a lawless sea and then introduced the appropriate means by which to tame it: binding written law, an elaborate juridical procedure, recognized jurisdictional boundaries, and actors familiar with the innerworkings of this legal system.

## V. BRACIDAS AND AMIDAS

From the chaos of Acrasia's territorial waters, to Marinell's jewel-encrusted shore, to the deepest depths of the Neptunian ocean, Spenser takes the reader on a voyage through the diverse jurisdictions of Faery Land's seas. On this journey we witness tempestuous chaos and its disastrous consequences: an ocean with no discernable law to monitor maritime infraction. We see the sometimes-heated conflicts that result when two jurisdictions clash, and we observe the emergence of an efficient method for remedying offenses committed at sea. *The Faerie Queene*, of course, contains a fourth distinct ocean space that witnesses legal unrest. After attending the nuptials of Marinell and Florimell in the Castle on the Strand, Artegall sets off and comes upon Amidas and Bracidas, swords drawn, on the cusp of a trial by battle. I have already given an account of this episode above, but it is worth mentioning another detail about it in relation to the poem's other engagements with maritime law, one that adds an additional interpretive layer: the events that lead to the brothers' dispute occur *outside* of the narrative frame. This distinction proves noteworthy, because the reader is left to consider the conflict and its sequence of events based on testimony alone. The poem's earlier oceanic infractions—Acrasia's meddling with free passage across her waters, Britomart's unwitting attempt to encroach

on Marinell's jurisdiction, Proteus's emboldened act of piracy—occur *within* the narrative frame. Insofar as the reader trusts Spenser, the reader can also trust the veracity of these moments. Cymoent's appeal to Neptune begins to shift this narrative paradigm a bit, because Neptune (ostensibly—Spenser does not make this explicit) himself does not witness Florimell's abduction or imprisonment, and he must make his judicial ruling based on Cymoent's account of it. However, the reader knows this account to be true because they themselves have witnessed it. Conversely, the case of Amidas and Bracidas depends solely on their interpretation of earlier events. This reliance on witnesses introduces legal sophistication to Artegall's judgment by adding testimony as a method for addressing maritime conflict.

Artegall's judgment on the strand remains one of the most curious episodes in all of *The Faerie Queene*. The earliest synthesis of Amidas and Bracidas criticism occurred in the 1932 *Variorum Spenser* edition of Book V.<sup>25</sup> In the notes of this edition, the editors drew upon Gough, Upton, and others to provide a rather straightforward legal explanation of the episode, in which they focus on the issues of alluvion (citing the *Digest* as well as references to Hugo Grotius) and wreck (deciphering the Elizabethan law of wreck and determining that Artegall erred in his application of the law).<sup>26</sup> The underlying analysis is strong, but the commentary does not consider *why* Spenser chose alluvion, wreck, and marine salvage as the issues dealt with on the strand, a central question to understanding the episode. Edwin Greenlaw's monograph *Studies in Spenser's Historical Allegory* (1932) attempts to put the Amidas/Bracidas affair into a more nuanced historical context.

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<sup>25</sup> Edmund Spenser, *The Faerie Queene Book Five*, ed. Ray Heffner, in *The Works of Edmund Spenser: A Variorum Edition* vol. 5 (Baltimore: Johns Hopkins Press, 1932).

<sup>26</sup> Heffner, 194-95.

First admitting that the moment on the strand appears somewhat incidental, he argues that it is rooted in historical reality: “But the incident is apparently founded on fact, since it refers, I believe, to the story of Northumberland’s claim of treasure cast ashore in his jurisdiction in 1560, and possibly also to his claiming of Mary on the ground that she had landed in his territory.”<sup>27</sup> In 1940, Herbert Nelson squarely dismissed Greenlaw’s contention, showing among other things that Greenlaw had confused some basic facts of the Northumberland incident. In addition, Nelson argued, the origins of Amidas and Bracidas remain obscure: if the episode were based on an actual legal case, that case had not yet been discovered. Alternatively, Nelson posits, the episode may be rooted in an Irish folktale (now lost) or merely a hypothetical law case employed by Spenser to illustrate matters of equity. This last hypothesis belongs to Nelson, who argues that a strict application of the law in the case of the brothers would result in an injustice, and that only by ignoring the law and applying equity would a desirable outcome occur.<sup>28</sup>

Scholarship in the decades after Greenlaw and Nelson attempted to place the Bracidas-Amidas legal dispute in the larger context of Artegall’s quest for justice. According to Fletcher, the episode conveys the sacredness of Artegall’s judgments: although Philtera and Amidas harbor displeasure at Artegall’s ruling concerning the coffer, they acknowledge the authority with which he makes it. Fletcher argues, “The higher form of respect for such judgements seems to be adoration; right judgement is a

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<sup>27</sup> Edwin Greenlaw, *Studies in Spenser’s Historical Allegory* (Baltimore: Johns Hopkins Press, 1932), 141-42.

<sup>28</sup> Herbert B. Nelson, “Amidas v. Bracidas,” *Modern Language Quarterly* 1 (1940), 398-99. This interpretation, that Artegall’s handling of the Amidas/Bracidas dispute illustrates the workings of equity, seems to be the one most commonly favored by critics.

kind of miracle.”<sup>29</sup> Dunseath, like Nelson, interprets the episode as a moment of equity and argues that in the canto Artegall shifts from a judge of criminal cases, such as homicide and theft, to equity; in this shift “he assumes the role of a civilian.”<sup>30</sup> Dunseath also claims that the Amidas/Philtera, Bracidas/Lucy pairings, along with the comparable pairings of Artegall/Britomart, Florimell/Marinell, and Bourbon/Flourelis, further elaborate on Spenser’s investigation, woven throughout Books III and IV, of the dialectics of love.<sup>31</sup> Russell Meyer argues that the episode requires Artegall to possess knowledge of international law, namely, the law of the sea.<sup>32</sup> More recent scholarship on Amidas and Bracidas usually reflects the critical interests of the scholar in question and imposes an interpretive schema to match these interests. Mary Bowman, for example, reads the episode in light of her larger thesis about Book V, namely, that Artegall’s role can usefully be understood through the lens of gender. Consequently, she interprets the episode as illustrative of “an elision of women’s agency and a tendency to treat women as property.”<sup>33</sup> Sean Kane reads the episode as the “recognition of the rights and claims of others” and notes the “balance of the situation—even the symmetry of the Roman names

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<sup>29</sup> Fletcher, 168.

<sup>30</sup> Dunseath, 124. “Civilian” in this context does not denote a practitioner of civil law, but rather one who adjudicates civil (as opposed to criminal) actions. Curiously, Dunseath does not address M. Pauline Parker’s treatment of equity in *The Allegory of The Faerie Queene* (Oxford: Oxford University Press, 1960). Parker herself limits her discussion of equity to moments in Book V in which Spenser uses the word itself..

<sup>31</sup> Dunseath, 9.

<sup>32</sup> Russell J. Meyer, *The Faerie Queene: Educating the Reader* (Boston: Twayne Publishers, 1991), 100-01.

<sup>33</sup> Mary R. Bowman, “Distressing Irena: Gender, Conquest, and Justice in Book V of *The Faerie Queene*,” *Spenser Studies* XVII (2003), 156-60. Bowman’s article is useful for its brief overview of approaches to Amidas and Bracidas, although I disagree with her conclusion that the episode reveals more about gender in the poem than law.

and the fact that the two men, like all men, are brothers—is testimony to the power of rational justice that permits the self to identify with others beyond the sphere of physical appearances.”<sup>34</sup> Andrew Zurcher has adopted a more legally nuanced position, correctly identifying the two main legal issues present in the episode as alluvion and wreck: he states the former belongs to the civil law, the latter, the common law.<sup>35</sup>

My reading of Artegall’s intervention on the strand rests on three interpretative points. The first posits that Artegall is the allegorical depiction of the common law of England. The second considers the specific legal issues that Spenser included—alluvion and accretion, wreck, and marine salvage—and the relationship between these issues and English common law. Finally, my analysis considers the episode against the backdrop of the poem’s larger treatment of maritime jurisdiction. Using these three points in tandem, my reading demonstrates that the Amidas/Bracidas episode reveals an alternative understanding of Spenser’s attitude toward the common law, insofar as it relates to admiralty jurisdiction.

Parsing Artegall’s allegorical function in Book V lies at the center of the episode’s messaging. As scholars have noted, Book V resumes the familiar pattern established in Books I and II: a single knight, with a single mission, sets out on a clearly delineated quest. Along the way, he is met by various trials and travails that attempt to separate him from his resolve. Eventually, the knight prevails and successfully fulfills his quest, aided in part by houses of instruction: the House of Holiness, Alma’s Castle, and the Temple of Isis. Books III and IV deviate from this basic formula, although Book III

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<sup>34</sup> Sean Kane, *Spenser’s Moral Allegory* (Toronto: University of Toronto Press, 1989), 153.

<sup>35</sup> Zurcher, 144–45. I disagree slightly: although alluvion has its origins in Roman law, the common law had developed its own method for remedying the issue.

retains the device of the single knight.<sup>36</sup> Because Artegall correlates to Redcrosse, Guyon, and Britomart in this structural setup, the reader is invited to find an allegorical meaning in him which transcends his simple narrative function.<sup>37</sup> While it is easy to read Redcrosse, Guyon, Britomart, and Artegall as embodiments of the moral virtues of their respective books, with Artegall representing Holiness, Guyon representing Temperance, and so on, this interpretation adopts a simplicity that betrays Spenser's allegorical sophistication. Nevertheless, scholars have reached quasi-consensus on the meaning of the poem's more central characters and episodes. Nohnberg, unsurprisingly, associates Redcrosse with several figures, including Adam, Moses, the Church, Everyman, and Theseus.<sup>38</sup> On a more intertextual level, Redcrosse's mission to defeat the Dragon and free Una's parents invites us to view him as a representation of Saint George; his battles with Despair and the False Una construct him as an errant, and then reformed, Christian. Guyon, the knight of temperance, like Redcrosse, "is fragmented, and his qualities, impulses, and states of mind are personified to provide a moral analysis of the action as it proceeds."<sup>39</sup> Of the poem's heroes, argues Maurice Evans, Guyon has provided critics the greatest difficulty in interpretation.<sup>40</sup> His story has been alternatively read as a microcosmic retelling of the *Iliad* and *Odyssey* (Hamilton); the figure of the Christian

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<sup>36</sup> Books III and IV also demonstrate Spenser's increasing indebtedness to Ariosto.

<sup>37</sup> Indeed, nearly every character, event, and place in *The Faerie Queene* contains an allegorical element. However, the allegorism of Redcrosse, Guyon, Britomart, and Artegall form the lynchpin of the poem, both structurally and thematically.

<sup>38</sup> James Nohnberg, *The Analogy of The Faerie Queene* (Princeton: Princeton University Press, 1976). Redcrosse as the Church appears the most conventional of his interpretations.

<sup>39</sup> Maurice Evans, "Guyon," *The Spenser Encyclopedia*, gen. ed. A. C. Hamilton (Toronto: University of Toronto Press, 1990), 343.

<sup>40</sup> Evans, 343.

warrior (Heale); and temperance itself (Meyer).<sup>41</sup> For her part, Britomart has been read as the female counterpart of Arthur as well as Queen Elizabeth. The larger point is that Artegall, like the poem's other heroes, does not represent only one figure or ideal. As a result, I do not allege that my reading of him as the common law is authoritative, but rather one piece of the kaleidoscopic allegory.

Based on these various interpretations, I believe that Artegall is the allegorical representation of the English common law.<sup>42</sup> At the crux of this conclusion rests Britomart's dynastic betrothal to Artegall. If Britomart represents the destiny of Britain and Artegall represents an evolving legal sophistication, then their impending nuptials may herald the development of the common law in the incipient English nation.<sup>43</sup> When Britomart sees Artegall for the first time in Merlin's mirror, "By straunge occasion she did him behold, / And much more straungely gan to loue his sight" (III.ii.18). This love induces the female warrior to undertake a quest for the Knight of Justice that spans three books. The pair finally meet at the end of Book V, when Britomart beheads Radigund

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<sup>41</sup> Meyer further notes that Redcrosse must learn how to be holy; conversely, Guyon symbolizes temperance from the beginning of Book II. In this sense, Artegall more closely resembles Redcrosse than Guyon, as he goes through multiple moments of erudition, e.g., with Astraea and at the Temple of Isis.

<sup>42</sup> When ascribing a form of law to Book V, some critics, e.g. Dunseath, have identified natural law. This is not surprising, given the importance of natural law theory to the early modern intellectual mind. However, I argue that Spenser included enough details of specific legal issues to invite a more legal (rather than philosophical) interpretation. However, the relationship between natural law and common law in Book V remains a rich site of potential scholarship. For a discussion of the theoretical relationship between the common law and natural law, see Richard O'Sullivan, "Natural Law and Common Law," *Transactions of the Grotius Society* 31 (1945), 117-38.

<sup>43</sup> Robin E. Bates notes the appeal of the common law to the people of England: "Because it operated without the possibility of any intervention from the monarch, there was no opportunity for the monarch to interfere with the judgments made by the jury in Common Law trials. The absence of opportunity for Crown interference in legal judgments was a large part of what made the Common Law so satisfying to the English—they saw it as preventing the potential tyranny of a monarch too closely involved in creating the policy of custom and court judgements" (123-24).



and releases Artegall and the other captives. Andrew Fichter argues “Artegall is the perfect complement to Britomart, which means in part that he is as limited in his way as she is in hers at corresponding points in their respective evolutions.”<sup>44</sup> In other words, they require each other to fulfill their respective quests. Fichter adds, “Ultimately the reconciliation of Britomart and Artegall will require the establishment of a kind of feminine ascendancy that paradoxically does not emasculate.”<sup>45</sup> Within the poem, the complementary qualities of femininity and masculinity that characterize Britomart and Artegall—even when these qualities are transposed, as with Britomart’s victorious duel against Marinell—reflect the symbiotic relationship between English monarch and English law. Spenser makes Britomart’s allegorical function more explicit than Artegall’s: her name, as well as Merlin’s explanation of her lineage, quashes any doubt. Spenser leaves more ambiguity surrounding Artegall. By the sixteenth century, however, the common law had become synonymous with the English state, and humanist attempts to supplant it with a universalizing European civil law never gained purchase. If Britomart’s allegorical corollary provides Faery Land with legal order, then there can be little doubt this law is English, and common, in nature.

The deliberate inclusion of alluvion and accretion, marine salvage, and wreck provides the second point of interpretation. Alluvion and accretion offers perhaps the most intriguing of the three, because they are rooted in Roman law and concern the

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<sup>44</sup> Fichter, *Poets Historical: Dynastic Epic in the Renaissance* (New Haven: Yale University Press, 1982), 184.

<sup>45</sup> Fichter, 189.

movement of land via water.<sup>46</sup> In the case of Bracidas and Amidas, this movement has deprived Bracidas of a portion of his island. In effect, the sea has seized his land and granted it to his brother. Although alluvion and accretion find their roots in Roman law, their insertion in Book V signals the centrality of land law to the common law. One of the most important legal actions in the first centuries of the common law's development, the assize of novel disseisin, demonstrates the land's significance. In effect, this action provided a remedy for a landowner who had recently been seized of land. The action aimed to thwart a resort to self-help measures to reclaim the land in question, for example, the landowner's enlistment of friends and neighbors to forcibly eject the offending party. The action proved popular, and as a result, English landowners viewed ownership of land as the foundation from which all other legal rights flowed. Legal historian Donald W. Sutherland notes, "To generations of freeholding Englishmen [novel disseisin] was largely synonymous with security under law. The rights that protected property in lands and tenements were the most important in the world for medieval men."<sup>47</sup> Legally, alluvion and accretion bear only a tangential relationship to the assize of novel disseisin, but the general principle of the loss of land links the two concepts. It appears deliberate that Spenser inserted a legal problem originating in Roman law that

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<sup>46</sup> Accretion refers to the movement of the water; alluvion refers to the subsequent movement and redepositing of the land and is distinct from the similar concept of avulsion. Legal historian Joseph L. Sax writes, "The accretion/avulsion distinction embodies one of the baffling riddles of property law. Unfortunately, it cannot be dismissed as a mere artifact of antiquarian interest. The rule has serious contemporary relevance, for it determines ownership and use of our shorelines. The law provides that when the water's edge shifts 'gradually and imperceptibly' (accretion), the property boundary moves with it. But where the shift is 'sudden or violent' (avulsion), the boundary stays where it was" (306). Sax, "The Accretion/Avulsion Puzzle: Its Past Revealed, Its Future Proposed," *Tulane Environmental Law Journal* 23.2 (2010), 305-68. Alluvion and accretion typically affect riverbanks.

<sup>47</sup> Sutherland, *The Assize of Novel Disseisin* (Oxford: Clarendon, 1973), 2.

also touched a fundamental aspect of the common law. In addition, the movement of land inherent in alluvion and accretion also holds the power to shift jurisdictions: within Faery Land, alluvion and accretion transform the sea into land, and the land into the sea. Naturally, this in turn affects jurisdiction: a space that has been hitherto under the purview of maritime law now finds itself beholden to the national law of Faery Land, and vice versa. Because it affects both land ownership and admiralty jurisdiction, alluvion provides a productive framing of the entire Amidas/Bracidas episode: its concern with the ownership of land definitively links the brothers' dispute with English common law, while its interest in the shifting of jurisdictions alludes to the reciprocal relationship between admiralty and common law.

Wreck and marine salvage constitute the episode's other legal issues. The legal history of these matters lies far outside the scope of this chapter; indeed, the evolution of the English position on the matter has proven difficult for even legal historians to trace. John J. Kenny and Ronald R. Hrusoff note the different reasons for this obstacle as it relates to wreck:

First, there are relatively few cases on the subject, and one is consequently thrown back on such authorities as Bracton, Coke, and Blackstone—who are often in disagreement. Moreover, the cases and other authorities are concerned almost exclusively with property resulting from shipwreck—and particularly with wreck, which forms only a small part of such property. Finally, though the law of treasure trove developed separately from that governing property recovered from the sea and has its own distinct principles, there has been some interaction between these two areas, the exact nature of which is not easy to ascertain.<sup>48</sup>

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<sup>48</sup> Kenny and Hrusoff, "The Ownership of the Treasures of the Sea," *William and Mary Law Review* 9 (1967), 383-401 (384). Kenny and Hrusoff point to an additional problem: "Another difficulty stems from the fact that terms such as 'wreck' are often used imprecisely. Thus 'wreck' is sometimes used in its strict sense, to mean property lost at sea which has come to shore, and sometimes is loosely used to include flotsam, jetsam, and ligan" (384n.4).

Traditionally, note Kenny and Hrusoff, the national law of England maintained that unclaimed goods washed ashore belonged to the sovereign. In the early thirteenth century, the King's ownership of treasure that resulted from shipwreck had already been established, and Henry de Bracton argued that the law of nations had displaced natural law (which held abandoned goods belonged to the finder) in such cases:

Things which are considered derelict are also said to be the goods of no one. Things such as treasure are likewise said to belong to no one due to the passage of time. This is also the case when the owner of a thing does not appear, as with wreck of the sea ... and things which formerly belonged to the finder by natural law are now the property of the sovereign by the law of nations.<sup>49</sup>

The Black Book of the Admiralty also addressed the issue and held that those who had goods lost in a wreck had a year and a day to claim the spoils: "Item, lett inquiry be made about all those whoe suffer wrecke of any shipp or boate perished upon the sea whereabout man, cocke, dogg, or catt doth escape alive, and the owner thereof, or of all the goods which were therein, come within a yeare and a day to challenge the ship or goods."<sup>50</sup> Given the multifarious jurisprudential opinions on wreck and marine salvage in England across the centuries, I will not attempt to relitigate Artegall's judgment on the strand. The larger point is that legally, wreck and marine salvage represent complex issues with competing interests.

Neither alluvion and accretion nor salvage present strictly maritime issues. Most instances of accretion occur on rivers.<sup>51</sup> In the same way, salvage can involve both ocean

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<sup>49</sup> Henry de Bracton, *On the Laws and Customs of England* vol. III. trans Samuel E. Thorne. (Cambridge: Belknap Press, 1968), 339.

<sup>50</sup> *The Black Book of the Admiralty*, ed. Travers Twiss (London, 1876), 159.

<sup>51</sup> *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text*. trans. Fred H. Blume, ed. Bruce W. Frier. Cambridge: Cambridge University Press, 2016, 1912-15.

and land, and its developmental relationship to treasure trove, however poorly understood, precludes the legal problems it presents as arising only at sea. This is key: Spenser could have just as easily staged the conflict between Amidas and Bracidas on a river and lost nothing of its narrative force, nor would he have sacrificed the larger points it illustrates about equity. The two brothers could have lived on opposite banks; Philtera's dowry could have traveled with the river waters and become embedded on Bracidas' shore, constituting treasure trove. Thus, it is not only significant that Spenser chose alluvion and salvage as the legal issues to feature, but that he chose to adjudicate them on the seacoast. This setting invites the reader to view Artegall as sitting in admiralty, and we are invited to consider more than just his application of equity when interpreting the episode. This aspect of the brothers' narrative is also key: it is not only the case itself that is significant, but also who adjudicates it.

The development of maritime law across *The Faerie Queene* demonstrates that the law of the sea requires effective judges. Acrasia's Sea succumbs to chaos because no such judge is present, and Acrasia herself is unwilling to police her waters. But of course Spenser does not allow the poem's oceans to remain in disorder. In Book III, Marinell emerges as the arbitrator of his coast, and in Book IV Neptune remedies infractions committed on the high seas. By the time, then, that Artegall arrives on the scene and hears the brothers' dispute in Book V, the poem has offered two figures who are ostensibly better suited to decide an admiralty case. This is particularly true since Spenser has emphasized the maritime nature of the dispute at hand, and the judgment itself occurs on the coast. The reader must then ask: why Artegall? Marinell appears to have jurisdiction over the strand of Faery Land: his duel with Britomart in Book III establishes

this point. Similarly, Philtera's wreck and Lucy's seizing of the dowry chest occur in the sea itself, the undisputed domain of Neptune. Based on the precedent set earlier in the poem, either Marinell or Neptune appear to be the appropriate judicial figures to settle Book V's fraternal squabble. As with the legal issues presented, having either of them judge the case would not muddy the issue of equity: Spenser could just as easily illustrate his underlying point if Neptune or Marinell acted in Artegall's stead. Here the allegorical readings of all three figures become crucial to understanding the episode: Marinell as the Lord Admiral; Neptune as the international law of the sea; and Artegall as the common law. Three entities have the authority to hear the brothers' case, and Spenser chooses the one with the most tenuous relationship to admiralty jurisdiction.

Considering the legal historical context in which Spenser wrote brings the meaning of the episode on the strand into focus. The increasing tension between the common law and the High Court of Admiralty over the appropriate arbitrator of certain maritime causes and the proper extent of the Lord Admiral's jurisdiction informs Artegall's intervention and, more significantly, signals Spenser's attitude toward the issue. In matters in which both the admiralty and the common law of England can claim the authority to hear a case, *The Faerie Queene* suggests that the common law should prevail. This revelation uncovers more than just the poem's framing of maritime law. It also invites us to rethink Spenser's own attitudes toward the relationship between civil law and common law in sixteenth-century England. I am not prepared to argue that the poem advocates unequivocally for the common law: on the contrary, Marinell's association with the Lord Admiral and Neptune's disinterested judgment on the high seas show that many maritime causes could not be dealt with effectively by the national law of

Faery Land (or England). In addition, Spenser's poem does not exist in a textual vacuum, and his other writings reveal his apparent affinity for the civil law. But *The Faerie Queene* demonstrates that this preference was not absolute. The poem's ever-evolving attitude toward the law of the sea ends on the strand, and its final maritime judgment is not delivered by an admiralty judge, but rather a common law judge sitting in admiralty, stepping for a moment outside his usual purview. In the cosmos of Faery Land, this shift remains possible, and believable: the law of the land spilling out a little into the sea does not disrupt the legal order, nor does it impede Artegall on his quest for justice. In a similar fashion, Spenser seems to be hinting that the common law's adjudicatory power over certain marine causes will not disturb the delicate balance of English legal authority.

## VI. CONCLUSION

Although not classified as primarily a poem of the sea, *The Faerie Queene's* engagement with the ocean informs the narrative at almost every turn. Maritime space transports characters on critical quests; links narratives across books; sunders then reunites central figures. This exchange with the sea, however, transcends the poetic and the narrative. It also positions the sea as a legal space, one in which law and order prove necessary to quiet tempestuous ocean waves and transgressive protean impulses. The evolution of maritime law in the poem follows a neat, easily traceable path—sometimes eschewing historical reality, but providing the reader with a primer on the importance of order at sea. To argue that Spenser wrote the poem's oceans with an explicitly didactic mission may be overstating his intention—or not. The evidence is inconclusive. But he

does provide enough clues in relation to the Amidas/Bracidas episode to deduce its commentary on a contemporary legal debate.



## CHAPTER 4

### ROUND ABOUT THE GLOBE:

#### SPENSER, DRAYTON, AND THE FREEDOM OF THE SEAS

##### I. INTRODUCTION

In 1603, the Dutch East India Company captured a Portuguese cargo ship, *Santa Catarina*, in the Straits of Singapore and returned with it to the Netherlands. In response, Dutch jurist Hugo Grotius anonymously penned *Mare liberum* (1609), which argued for free seas. Two English lawyers offered responses to Grotius: William Welwood in *An Abridgement of all Sea-Lawes* (1613) and John Selden in *Mare clausum* (1635). Both men argued for closed seas and asserted England's dominion over its territorial waters. These works remain a linchpin in our current understanding of the early modern law of the sea and seventeenth-century conceptions of ocean space.

The central premise of this dissertation argues that all human-ocean interactions of the early modern period were mediated by some form of law, whether maritime law, customary law, international law, or an admixture of the three. Additionally, it contends that a nuanced understanding of these legal conceptions of the ocean is essential to developing a cultural understanding of the early modern sea. The preceding chapter considered Edmund Spenser's *The Faerie Queene* in relation to the early modern English admiralty jurisdiction debates and the evolution of maritime law in Europe. This chapter continues an analysis of Spenser's allegory but moves away from the domestic debates and toward debates involving the international law of the sea. It also includes Michael Drayton's long chorographical poem *Poly-Olbion* (1612, 1622) into its analysis, as

Drayton wrote in Spenser's wake, and while his poem remains indebted to its predecessor, it also fundamentally reorients readers' perception of the ocean.

I begin the chapter with a brief exposition of the legal and historical context of the question of freedom of the seas and the debate between Hugo Grotius (who argued for *mare liberum*) and William Welwood and John Selden (who argued for *mare clausum*). This section does not focus on the strict legal principles of open seas and closed seas; rather, I show how these writers, through their conceptions of the ocean, defended these principles. The second part of the chapter uses these oceanic conceptions as a tool of literary interpretation. I analyze two moments in each poem: in *The Faerie Queene*, I consider Guyon's voyage to the Bower of Bliss (Book II) and the evolution of the character of Neptune (Books II, III, and IV). In *Poly-Olbion*, I ponder the catalog of English voyagers (Song 19) and the nymphs' song in honor of Neptune (Song 20). Through a close reading of these moments, I extract general principles that reflect the authors' cultural understandings of the ocean. Ultimately, this chapter argues that the oceans of *The Faerie Queene* align with the features of the Seldenian sea, while the oceans of *Poly-Olbion* replicate the Grotian sea, and I conclude with a brief discussion of how such an approach can further develop the current literary and cultural understanding of early modern maritime space.

I do not suggest a one-to-one correspondence between legal arguments about the freedom of the seas and *The Faerie Queene* or *Poly-Olbion*, or that the poets composed

their poems with any deliberate allusions to the legal debate itself.<sup>1</sup> In the first place, Spenser died ten years before the debate's inception, and the first part of *Poly-Olbion* was published just three years after the appearance of Grotius' pamphlet; the publication of the poem's second part in 1622 preceded Selden's *Mare clausum* by thirteen years. Additionally, even if Drayton were aware of the debate—which is very likely, given both his acquaintance with John Selden and the political gravity of the matter—he left no explicit reference to it in his poem.<sup>2</sup> Rather, this chapter links the legal with the literary in a more abstract, and theoretical, fashion, and foregrounds certain cultural assumptions about the sea in the early modern period.

## II. LEGAL AND HISTORICAL BACKGROUND

The concept of *mare liberum* has its roots in antiquity.<sup>3</sup> Under Roman law, at least in theory, the sea remained open to all: it was considered *res communis omnium*, a thing

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<sup>1</sup> In this sense, I deviate from recent work on the subject. Sandra Logan, for example, argues that Drayton composed certain passages in Part I of *Poly-Olbion* as a deliberate engagement with *Mare liberum*. While I find Logan's argument convincing, I aim to undertake a markedly different type of analysis in this chapter. In addition, whereas Logan focuses on Part I of the poem, I limit my analysis to Part 2. See Logan, "Michael Drayton's *Poly-Olbion*: Maritime England and the Free Seas Debates," *The Seventeenth Century* 33.4 (2018), 411-26.

<sup>2</sup> John Selden, who provided prose commentaries for Part I of *Poly-Olbion*, does not reference the debate either, although he was almost certainly acquainted with Grotius' *Mare liberum*. The songs of the poem I consider, 19 and 20, were published in Part II, to which Selden did not contribute.

<sup>3</sup> Recent scholarship in legal and political history has addressed the issue of free seas during the early modern period in depth. See, eg, Monica Brito Viera, "*Mare Liberum* vs. *Mare Clausum*: Grotius, Freitas, and Selden's Debate on Dominion over the Seas," *Journal of the History of Ideas* 64.3 (2003), 361-77; Helen Thornton, "John Selden's Response to Hugo Grotius: The Argument for Closed Seas," *International Journal of Maritime History* 18.2 (2006), 105-27; Edward Gordon, "Grotius and the Freedom of the Seas in the Seventeenth Century," *Willamette Journal of International Law and Dispute Resolution* 16.2 (2008), 252-69; Gustaaf van Nifterik and Janne Nijam, "Introduction: *Mare Liberum* Revisited (1609-2009)," *Grotiana* 30 (2009), 3-19.

belonging to no one.<sup>4</sup> And yet, for the Romans, the international law of the sea remained limited mostly to the Mediterranean. It would be over a millennium before Magellan and Drake launched their global circumnavigations, and the seventeenth-century debates reflected the law catching up with the political, navigational, and geographic realities of the early modern period. In the Middle Ages, the general attitude of jurists had tended toward *mare liberum*, in both theory and practice. During the sixteenth century, a number of jurists, most notably Alphonso de Castro and Fernando Vasquez of Spain, returned to the question in light of expanding navigational and technological advances, but although they argued for free seas, they did so via an appeal to earlier Roman sources: their writings did not advance the nature of the debate.

This turn occurred when Grotius published his *Mare liberum* anonymously in 1609.<sup>5</sup> The work was most likely written between 1604 and 1605, a period during which Grotius had been retained as legal counsel for the Dutch East India Company. Grotius' treatise was short and originally intended as a chapter in a longer work that was not published during Grotius' lifetime. Much of *Mare liberum* remained political and explicitly addressed the conflict with the Portuguese, who were attempting to monopolize trade routes to the East Indies, rather than arguing for *mare liberum* in a more general sense. Although he does not offer credit, Grotius borrowed a considerable portion of

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<sup>4</sup> For a discussion of the concept of *mare liberum* in Roman law and its impact on the early modern debate, see W. Paul Gormley, "The Development and Subsequent Influence of the Roman Legal Norm of Freedom of the Seas," *University of Detroit Law Journal* 40.5 (1963), 561-96.

<sup>5</sup> Richard Hakluyt translated *Mare liberum* into English around 1615, but his translation was not published until 2004.

*Mare liberum* from Italian-born lawyer Alberico Gentili.<sup>6</sup> Gentili, who argued for open seas in his *De iure belli libri tres* (1598), resolved a common problem with the concept.<sup>7</sup> The high seas, even if free, required a certain degree of policing: the crime of piracy represented a major diplomatic threat during the sixteenth century, and it behooved governments to deal with the infraction as expeditiously as possible.<sup>8</sup> Gentili's solution was to separate the concept of *possession* of the high seas from its *jurisdiction*, so that states could still punish pirates without claiming ownership of the sea. In 1625, Grotius published a more mature work, *De jure belli ac pacis*, which fully developed his theory of *mare liberum*.

In 1613, lawyer William Welwood provided an unofficial English response to Grotius, which appeared as a chapter in his longer work *An Abridgement of All Sea-Lawes*, entitled "Of the Community and Propriety of the Seas."<sup>9</sup> Welwood's rebuttal adopted a theological tenor: he averred that God had granted man dominion over the world, and that thus the sea was indeed capable of possession. Welwood also observed the precariousness of fishing reserves, noting that during the preceding twenty years the herring population off the eastern coast of Scotland had diminished dramatically. In 1615,

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<sup>6</sup> For more on Gentili's influence on Grotius and their shared importance to modern international law, see K. R. Simmonds, "Hugo Grotius and Alberico Gentili," *German Yearbook of International Law* 8.1 (1959), 85-100.

<sup>7</sup> Gentili's main work on maritime law, *Hispanicae advocacionis libri duo* (Hanau, 1613), written when he served as counsel to the Spanish crown at the English High Court of Admiralty, only reiterates his arguments about *mare liberum* set forth in *De iure belli libri tres*.

<sup>8</sup> For more on the legal status of piracy in the early modern period, see Chapter 2.

<sup>9</sup> See Chapter 1 for more on Welwood's *Abridgement*. Two important non-English responses to *Mare liberum* also followed: Franciscus Seraphin de Freitas' *De iusto imperio Lusitanorum asiatico* (1625) and Joannis de Solorzano Pereira's *Disputationem de indiarum* (1629). See C. H. Alexandrowicz, "Freitas versus Grotius," *British Year Book of International Law* 35 (1959), 162-82.

Welwood translated and expanded this chapter in his *De dominio maris* in order to reach a wider Continental audience that included Grotius, who could not read English.<sup>10</sup>

Grotius' treatise, although expressly directed toward the Portuguese, alarmed James I, who issued "A Proclamation touching Fishing" in 1609 in response.<sup>11</sup> By 1619, James had grown increasingly vexed by international maritime affairs and sought legal guidance from lawyer John Selden, who offered the king a draft of *Mare clausum* by summer of that year. However, this draft remained unpublished, most likely because James did not wish to spur a dispute with Denmark, whose claims to the North Sea conflicted with Selden's drawing of English territorial waters. When Charles I assumed the throne in 1625, he was initially consumed by war with Spain and France, but the next decade aroused his maritime concerns and in 1635 he asked Selden to rewrite *Mare clausum* to assert English sovereignty over the North Sea, a space on which the Dutch, according to the English, were encroaching.<sup>12</sup> The book, divided into two parts—the first

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<sup>10</sup> See J.D. Alsop, "William Welwood, Anne of Denmark and the Sovereignty of the Sea," *The Scottish Historical Review* 59.168 (1980), 171-74. Grotius penned a response to Welwood, "Defense of Chapter V of the *Mare Liberum*," which was not published until the nineteenth century.

<sup>11</sup> In 1911, Thomas Wemyss Fulton argued that a single phrase in the proclamation, "questioning of our Right," alluded to *Mare liberum*: in other words, James believed that Grotius had questioned the English right to police its territorial waters. Fulton, *The Sovereignty of the Seas* (1911; Millwood: Kraus Reprint, 1976), 148.

<sup>12</sup> See Mark Somos, "Selden's *Mare Clausum*: the secularisation of international law and the rise of soft imperialism." *Journal of the History of International Law*. 14 (2012): 287–330. Given its international interest, Selden's *Mare liberum* was reprinted surreptitiously at least three times on the Continent in 1636, twice in Leiden and once in Amsterdam. See Peter J. Lucas, "Printing Anglo-Saxon in Holland and John Selden's *Mare Clausum seu de Dominio Maris*," *Quaerendo* 31.2 (2001): 120-38. Charles I issued two proclamations prohibiting the import and sale of these pirated copies in England. Appropriately enough, the first edition of *Mare liberum* was also pirated: Mark Somos and Dániel Margócsy, "Pirating *Mare liberum* (1609)," *Grotiana* 38.1 (2017), 176–210.

directly rebutted Grotius' arguments for *mare liberum*, while the second demarcated England's territorial waters—reached the printing press later that year; readers would have to wait until 1652 to read the work in an English translation.<sup>13</sup> Selden's *Mare clausum* remained unparalleled in seventeenth-century English legal literature in its engagement with earlier writers on the question of free seas, both classical and medieval, and he frequently used Grotius' sources to make the opposite argument. He also displayed extensive knowledge of early English legal history and the history of the English admiralty. Ultimately—and improbably—Selden argued that English national waters stretched southward from the western coast of Ireland to the northern coast of Spain, eastward to the German sea, and northward to the limits of habitable space.<sup>14</sup> Of the three treatises considered, only Selden's included maps (fig. 4.1), which demonstrate, visually, the possibility of containing the sea.

Grotius never responded to Selden's *Mare clausum*. By the 1630s he had renounced his Dutch citizenship and found refuge in Sweden, where his legal representation of Queen Christina effectively rendered his continued defense of the principle of *mare liberum* politically untenable: Swedish claims to the Baltic Sea

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<sup>13</sup> Marchamont Nedham, *Of the Dominion, or, Ownership of the Sea* (London, 1652). For more on Nedham's translation, see David J. Padwa, "On the English Translation of John Selden's *Mare Clausum*," *American Journal of International Law* 54.1 (1960), 156-59. In his introduction, Nedham writes, "But considering what a pitie it was, that so rare a Jewel as this, which hath drawn the envie of som few, and the Approbation of All, should lie so long lockt up in a Language unknown to the greatest part of that Nation whom it most concern's; and how necessarie it is, in this perfect Juncture, to let the People have a clear understanding of their nearest interest, and how that Right hath been received in all Ages ... it was judged quite requisite to unlock the Cabinet, and expose the Jewel to the view of the whole Nation, that they may prize it" (A2v).

<sup>14</sup> John Borroughs's *The Sovereignty of the British Seas, proved by Records, History, and the Municipall Lawes of this Kingdome, Written in the Yeare 1633* (London, 1652), which also addresses the limits of English territorial waters, has unfortunately been neglected by modern scholars.

conflicted with those of the Netherlands, and Grotius could not risk arousing his client's ire.

### III. LEGAL CONCEPTIONS OF THE SEA

Grotius' *Mare liberum* and Selden's *Mare clausum* approach their subject from different methodological and political directions: Pitman Potter notes that "the works of Grotius and Selden and their coadjutors were products of personal and national desires rather than works of pure and unbiased juristic science."<sup>15</sup> But if we step back and analyze their attitudes toward the ocean itself, we find that the Grotian and Seldenian conceptions of the sea contain certain features that can be uncoupled and distilled to form an interpretive literary lens. This lens, in turn, provides a more nuanced understanding of Spenser's and Drayton's depictions of oceans.

Both Grotius and Selden appealed to natural law in their treatises, and yet they employed different techniques in their arguments. For Grotius, natural law in relation to the sea could be extracted from an observation of the physical nature of the ocean itself: it contained certain qualities which precluded the possibility of its possession. For Selden, this natural law rested in the long history of human-ocean interaction, and he used four types of authority—classical, biblical, patristic, and rabbinic—to demonstrate this reciprocity. And, of course, he held that these interactions involved an element of human dominion.

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<sup>15</sup> Pitman B. Potter, *The Freedom of the Seas in History, Law, and Politics* (New York: Longmans, 1924), 61.



Grotius' main argument, that the high sea cannot be possessed, can be reduced to two key observations about the nature of maritime space: first, its vastness and unsuitability for permanent human occupation; and second, the inexhaustibility of its main resource, navigation. Grotius, as the Romans had done before him, equated the sea with the air, "seeing the sea is incomprehensible, no less than the air, it can be added to the goods of no nation."<sup>16</sup> In his *De jure ac pacis*, Grotius even goes so far as to defend taking water from the ocean.<sup>17</sup> On navigation, he countered the assertion that the first country to traverse a part of the ocean could consequently claim possession: "But if they call this possession, that they have sailed before others and after a sort opened the way, what could be more ridiculous? For seeing there is no part of the sea into the which someone hath not entered first, it will follow that all navigation was possessed of some" (34). This argument has particular resonance when directed at the Portuguese: Magellan had crossed the Pacific Ocean almost a hundred years earlier, and no one would argue in good faith that the Portuguese could claim dominion over such a vast space. Grotius declares that "neither people nor any private man can have any property in the sea [...]" seeing neither the consideration of public use nor nature permitted occupation" (32). In other words, while humans can enter the sea for purposes of fishing and navigation, they cannot *live* in the sea, at least in the same way they can live on land, and because

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<sup>16</sup> Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt (Indianapolis: Liberty Fund, 2004), 34.

<sup>17</sup> "The extent of the ocean is in fact so great that it suffices for any possible use on the part of all peoples, for drawing water, for fishing, for sailing. The same thing would need to be said, too, about the air, if it were capable of any use for which the use of the land also is not required, as it is for the catching of birds. Fowling, therefore, and similar pursuits, are subject to the law laid down by him who has control over the land" (190). Grotius, *De jure belli ac pacis libri tres*, trans. Francis W. Kelsey (Oxford: Clarendon, 1925).

ownership remains intrinsically tied to the concept of occupation, the ocean as uninhabitable space in turn precludes it from ownership.<sup>18</sup>

Selden's *Mare clausum* is a long work, around five-hundred printed pages, and it more closely resembles Grotius' *De jure belli ac pacis* than his *Mare liberum*. He only devotes three chapters to rebutting the arguments put forth in Chapter 5 of Grotius' 1609 treatise: in the first (Chapter 20), he counters Grotius' claim that possession of the sea necessarily precludes freedom of navigation; in the second (Chapter 21), he dismisses *Mare liberum*'s contention that the continual motion of ocean waters renders its ownership impossible; and in the third (Chapter 22), he refutes the assertion that the sea remains impervious to fixed boundaries, a prerequisite of ownership, as well as the notion that the sea's inexhaustibility shields it from possession. Selden asks, "What is this [freedom of passage] to the dominion of a thing, through which Merchants and Strangers are to pass? Such a freedom of Passage would no more derogate from it [...] then the allowing of an open waie for the driving of Cattel, or Cart, or passing through upon a journie."<sup>19</sup> According to Selden, navigation and commerce were free so long as they did not impinge on oceanic dominion. Regarding the alleged mutability of the sea, Selden asks "are not Rivers and Fountains much more in a perpetual Flux or motion? Rivers always run forward, wherewith the Sea being compared, it seem's to stand immovable" (127). And yet, Selden notes, these rivers can be subject to private ownership and

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<sup>18</sup> Percy Thomas Penn notes that this is a main reason why feudal law failed to cultivate a separate maritime law: feudal rights were predicated on ownership of land, and this ownership could not be extended to the sea, except perhaps the water immediately adjacent to land. See Penn, *The Origin of the Right of Fishery in Territorial Waters* (Cambridge: Harvard University Press, 1926), 69-80.

<sup>19</sup> John Selden, *Of the Dominion, or, Ownership of the Sea*, trans. Marchamont Nedham (London, 1652), 123.

dominion in spite of their inconstancy. In the next chapter, Selden attacks the argument that oceans cannot be realistically demarcated and points to advancements in cartography that rendered oceanic boundaries more tenable, as well as the ways different authorities had addressed this jurisdictional quandary.<sup>20</sup> Finally, he argues that a seemingly infinite supply of resources has no bearing on a thing's possessibility. Here he uses the example of a candle, which if used to light a plentitude of additional candles, does not cease to be the possession of its owner.

In summary, the oceans presented in these legal treatises can be reduced to the following qualities: the Grotian sea is infinite, boundless, continually in flux, unsuitable for permanent human occupation, and inexhaustible for purposes of navigation; the Seldenian sea is relatively stagnant, open for navigation only insofar as dominion is not affected, capable of definite boundaries that stretch far beyond the shore. In addition, the inexhaustibility of its resources does not impact its potential for possession.

#### IV. THE OCEANS OF *THE FAERIE QUEENE* AND *POLY-OLBION*

I will now shift my focus from the legal to the literary and discuss four moments in Edmund Spenser's *The Faerie Queene* and Michael Drayton's *Poly-Olbion*. Why put these poems in conversation with the question of open seas? I contend that, despite certain similarities on a superficial level, the poems' depictions of the ocean rest at two ends of a spectrum, and that the legal rhetoric employed by Grotius and Selden provides a

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<sup>20</sup> The great medieval jurist Bartolus de Saxoferrato (1313-1357), for example, promulgated the hundred-mile limit: in this model, the jurisdiction of a sovereign reached out into the sea a distance of one hundred miles from the shore, or less than a two-day journey. Baldus de Ubaldis (1327-1400), Bartolus' pupil, reduced this distance to sixty miles, or a one-day journey. Fulton, 539-40.

useful theoretical tool for conceptualizing this spectrum. And although both *The Faerie Queene* and *Poly-Olbion* contain poetic depictions of the sea, their constructions of these aquatic spaces diverge significantly: while Spenser uses narrative as his primary constructive tool, Drayton builds the seas of *Poly-Olbion* with language. To put it bluntly, not much *happens* in *Poly-Olbion*'s seas. Intriguingly, this loosely parallels the writings of Selden and Grotius: Selden develops a sustained historical narrative to build his defense, while Grotius uses the language of natural law to defend the freedom of the seas. Another important difference between the poems involves their unity: despite its abundance of seemingly disparate episodes, *The Faerie Queene* is most usefully considered as a complete entity. Conversely, *Poly-Olbion* consists of truly independent histories, myths, and legends, linked only by their geographic trajectory and poetic style. Ultimately, my attendant readings demonstrate that the opposing conceptions of maritime space central to the legal debates can be located in the period's poetry as well, and that Spenser and Drayton each assemble their oceans with a conscious investment in explicating the nature of the early modern sea.

In the preceding chapter, I provided an account of the progression of Spenser's depictions of the ocean in *The Faerie Queene*. This exercise demonstrates the poem's clearly defined maritime motion: Spenser's allegory begins removed from the sea in Book I, enters it during the voyage of Guyon in Book II, descends outward and downward through Proteus' kidnapping of Florimell in Books III and IV, arrives back at the shore for both the nuptials of Marinell and Florimell and Artegall's episode of adjudication of the brothers' dispute in Book V, and retreats completely to land in pastoralized Book VI. In addition, the entire poem can be viewed as a ship, with the

reader as passenger: the final stanza of Book I notes, “Now strike your sailes yee iolly Mariners, / For we be come vnto a quiet rode, / Where we must land some of our passengers, / And light this weary vessell of her lode” (I.xii.42). Having dropped off the characters of Book I—Una, Red Crosse, and Archimago—the ship leaves the port and we now journey to the quest of Guyon in Book II. Appropriately enough, the poem’s subsequent engagements with the ocean occur with the reader looking on from a freshly rigged sailing vessel.

Within this trajectory, Guyon’s journey to the Bower of Bliss represents *The Faerie Queene*’s most sustained engagement with the ocean and is thus a natural point to enter analysis of the poem in the context of free seas. In his quest to destroy Acrasia’s bower, Guyon must first undertake a perilous journey across the sea during which he is bombarded by various assailments. Critics have long noted that Spenser modeled this episode on Book I2 of Homer’s *Odyssey*, but, as A.C. Hamilton notes, “While Ulysses endures four dangers (the Sirens, the Wandering Rocks, the two rocks of Scylla and Charybdis, and the island of Thrinacie), Guyon endures twelve, and these are designed to exhaust all possible dangers and combination of dangers on sea, land, and in the air.”<sup>21</sup> Hamilton argues that the deliberate effusiveness with which the episode is composed lends to it an element of humor. Guyon’s dangers, Hamilton notes, never present him any real threat, unlike those of Ulysses: whereas Ulysses loses all his companions on the journey, the Palmer and Boatman emerge intact. Spenser also modeled this episode on the journey of Ubaldo to the Isle of Armida in Tasso’s *Gerusalemme liberata*. Because

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<sup>21</sup> A. C. Hamilton, *The Structure of Allegory in The Faerie Queene* (Oxford: Clarendon, 1961), 120-21.

the outcome of Guyon's voyage is predetermined, the attendant dangers in the episode lose some of their edge. The payoff, however, allows the reader to ponder more leisurely the character of Acrasia's Sea.

The voyage to the Bower of Bliss begins in a state of relative tranquility. Following his visit to the House of Alma in the preceding canto, at which Guyon recovers his strength after his faint in Mammon's Cave, he undertakes his journey: "Two dayes in that sea he sayled has, / ne euer land beheld, ne liuing wight" (II.xii.2). This respite—not only on his journey to Acrasia's dwelling, but also in the larger context of Book II—makes the distress of his impending nautical obstacles when he crosses the threshold of the high seas into Acrasia's territorial waters even more daunting. He encounters the Gulf of Greediness early, in stanza 3, which sucks into its "devouring jawes" (II.xii.4) ships that sail too close. Next, Guyon and his crew sail past the Rock of Vile Reproach, "a dangerous and detestable place" (II.xii.8), that repels most types of fish and birds; only cormorants and seagulls dare to approach it. The Palmer tells the other passengers the Rock's destructive powers flow from "lusfull luxurie and thriftlesse wast" (II.xii.9). The Wandering Islands come next, transitory plots of land that lull passersby into a sense of false security: once on land, they "wandreth ever more uncertain and unsure" (II.xii.12). After a seductive sighting of Phaedria, the enchantress first introduced in canto 6, Guyon's boat floats by the Quicksand of Unthriftyhed, which wrecks unsuspecting vessels in its entrails. Once mired in the sand, mariners find "neither toyle nor traveill" (II.xii.19) might recover their ships. The Whirlpool of Decay that sucks in ships follows, and then a tempest: "the waves come rolling, and the billowes rore" (II.xii.22) and "huge sea monsters abound" (II.xii.22). Other non-nautical snares emerge, but at last Guyon

prevails, and the indefatigable Boatman rows his passengers to the entrance of the Bower of Bliss. The episode raises inescapable questions about navigation in a sea over which a sovereign—in this case, Acrasia—has claimed both jurisdiction and dominion. As noted in the previous chapter, Acrasia’s Sea remains in chaos not because order eludes it—the pacifying interventions of the Palmer prove this—but because Acrasia directly benefits from the disorder and chooses not to intervene. In effect, Guyon’s voyage demonstrates not only the harm beget by closed seas, but also the potential profit to those invested in keeping them tightly controlled.

Unlike *The Faerie Queene*, Drayton’s *Poly-Olbion* seems at first glance an odd poem in which to ponder the question of *mare liberum*: its focus on the geography, history, and mythology of every county of England and Wales endows it with a domestic, terrestrial flavor. The poem appears bereft of any unifying narrative or central figure beyond the Muse, who, Jean Brink observes, acts primarily “as an agent for prosopopoeia.”<sup>22</sup> However, the ocean plays a central role in *Poly-Olbion*: Joan Grundy observes that Neptune is the only deity in the poem “whose presence is really felt.”<sup>23</sup> He touches nearly every song, even those of landlocked counties, because every county contains rivers, and in Drayton’s cosmos, rivers are accountable to the sea. In his discussion of Song 10, Richard Hardin notes that for Drayton the sea “is an eternally shifting place for man; the rocks of the past should provide him with both a reference point for navigating, and a model for stability. Yet because man’s position is eternally shifting [...] the rocks themselves seem temporary, as they remain only momentarily in

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<sup>22</sup> Brink, *Michael Drayton Revisited* (Twayne: Boston, 1990), 89.

<sup>23</sup> Grundy, *The Spenserian Poets: A study in Elizabethan and Jacobean poetry* (London: Edward Arnold, 1969), 137.

his sight.”<sup>24</sup> Hardin makes this observation to expound Drayton’s theory of history, but it has equal value in positioning Drayton’s sea as Grotian: mutable, unstable, always in flux. And this Draytonian ocean, most legible in Songs 19 and 20, provides a poetic glimpse into the *mare liberum/mare clausum* debate. Drayton dedicates part of Song 19 to a catalog of the English voyagers; borrowing heavily from Richard Hakluyt’s *The principall navigations, voiages, and discoveries of the English nations* (1589), Drayton uses Song 19 to stretch a broad canvas on which to paint his panorama of national maritime pride. He considers mariners from the quasi-apocryphal Robert Machin and Nicholas of Lynn to the very real Drake, Cavendish, and Raleigh. Describing navigational feats invites a contemplation of the nature of the sea itself: in Song 20, Neptune gathers the water nymphs and commands them to perform a nymphall in his honor. This performance, more so than any other place in *Poly-Olbion*, explicates the nature of Drayton’s sea. The nymphall positions the ocean as an unbounded space, stretching across the globe: no mention is made of its Englishness and no hint of the demarcation between territorial waters and high seas is given. Both Songs 19 and 20 escape the geographic domesticity which characterizes the rest of *Poly-Olbion* and hence provide the modern critic an alembic in which to distill the poem’s conception of the ocean.

Drayton’s catalog in Song 19 remains just that—a catalog, a list, and thus lacks the drama inherent in Guyon’s voyage. The poet moves from one account to the next with no interest in rising action; no apogee; no resolution. At a few moments, however, he

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<sup>24</sup> Richard Hardin, *Michael Drayton and the Passing of Elizabethan England* (Lawrence: U of Kansas Press, 1973), 62.



breaks the seeming monotony and inserts micronarratives: his account of the ill-fated Robert Machin provides a good example. Machin falls in love with a woman (unnamed in both Hakluyt's and Drayton's accounts); her parents do not consent to their marriage, and so the star-crossed lovers sail south. A tempest washes the pair ashore on the island of Madeira, where Machin's bride dies of seasickness. Meanwhile, some shifty mariners abscond with Machin's ship, leaving him stranded on the island. He builds a modest altar for his beloved, fashions a small boat from a tree, and is "Put foorth againe to Sea, where after many a flaw, / Such as before themselves, scarce Mortall ever saw; / Now miserable men could possibly sustaine, / Now swallowed with the waves, and then spu'd up againe" (19.269-272).<sup>25</sup> But Machin's maritime misfortunes are not a total waste, as they serve to "amuse our owne [world]" (19.274). Each of these small navigational narratives remains linked not through any culmination of plot, but through the growing tapestry of English navigational prowess. The catalog's approximate chronological progression creates a type of continuity, but, as noted below, Drayton underscores the continually expanding geographic scope of the voyages rather than their advancement through time. In a sharp structural departure, Spenser's account of Guyon delineates the clearly defined stages of beginning, middle, and end, and the whole episode provides closure to Book II. This structural opposition provides a link to early modern ocean spaces: Drayton's poem, like the Grotian sea, resists narrative containment. Conversely, Spenser's poem exists within the framework of clear, clean narrative boundaries.

The poetic differences between the two works also contribute to their depictional disjunction. Each Spenserian stanza employs iambic pentameter, familiar yet delectably

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<sup>25</sup> Drayton borrowed his account of Machin almost exclusively from Hakluyt.

versatile, to relay the dramas of Faery Land. This meter, well-suited to the progression of a plot, allows Spenser to craft intricate and interwoven storylines. At the end of each stanza, however, he incorporates an alexandrine, which serves as a trusty engine to propel the narrative forward.<sup>26</sup> Each stanza comprises a discrete unit, self-contained, much in the way the Seldenian sea remained cordoned off with tidiness and cartographic precision. Resisting English Renaissance poetic tradition, Drayton composed *Poly-Olbion* in alexandrines.<sup>27</sup> The extra two syllables per line are particularly well-suited for a poem that engages so intensely with geographic matters. Parker Duchemin observes that Drayton “found that the alexandrine offered certain immediate advantages for a long, slow, sprawling, usually undramatic poem like *Poly-Olbion*. Its compulsive forward motion faithfully reflects the poem’s itinerary from place to place.”<sup>28</sup> The alexandrines, though, have a sometimes stifling effect on the narrative structure, as if the extra two syllables stretch the poet too far, and superfluous words creep in and crowd out the poem’s dramatic potential. As a result, *Poly-Olbion* at times assumes the shape of a disjointed chronicle rather than providing a holistic portrait of England and Wales.<sup>29</sup> But it is precisely this lack of narrative tension that affords Drayton the leisure to craft his evocative illustrations of land and sea, one that stops and lingers on their beauty, one that

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<sup>26</sup> See Richard Danson Brown, “Unusual staff: the archeology of the Spenserian stanza,” for a recent discussion of Spenser’s poetic form: Brown, *The Art of The Faerie Queene* (Manchester: Manchester University Press, 2019), 139-91.

<sup>27</sup> He deviates from the alexandrine only in each song’s argument, eight lines composed in iambic tetrameter that preface each song.

<sup>28</sup> Parker Duchemin, “Drayton’s *Poly-Olbion* and the Alexandrine Couplet,” *Studies in Philology* 44.2 (1980), 145-60.

<sup>29</sup> Joseph Berthelot argues that in spite of its seeming disjointedness, *Poly-Olbion* remains unified by three central components: the presence of the Muse across the poem, the geographical continuity of the Muse’s journey, and the recurring theme of conflict that permeates each song. Berthelot, *Michael Drayton* (New York: Twayne, 1967), 99.

is Grotian in its vision and depth. Additionally, whereas Spenser has separated his verse into stanzas, Drayton's songs contain no line breaks. Each song runs for hundreds of continuous lines, and the reader is left to parse out any arbitrary divisions of its content for themselves. This structural framework also correlates with the boundlessness of Grotius' free seas which can be demarcated only by the adjacent shore.

Language itself provides an essential component in the analysis of these episodes' treatment of aquatic space, especially the poems' depiction of human-ocean interactions. Although Spenser uses other moments in the poem to describe the ocean itself, two instances in Guyon's journey stand out for their use of poetic language to construct the sea. While this linguistic construction is more of Drayton's domain, most notably in Neptune's nymphall but also in his catalog, Spenser's treatment of the subject foregrounds the characters' oceanic dominion. Spenser notes the Boatman rows so vigorously that "the hoare waters from his frigot ran / And the light bubbles daunced all along / Whiles the salt brine out of the billowes sprong" (II.xii.10). Later, as they approach the Bower of Bliss, Spenser conjures up an additional image of Acrasia's sea: "Ye might have seen the frothy billowes fry / Under the ship, as thorough them she went / That seemd the waves were into yvory / Or yvory into the waves were sent" (II.xii.45). This linguistic engagement with the sea provides the reader intimacy. It places us in the boat, looking just over the edge at the confection of salinity, water, bubbles, and billows. And a thing immediately perceivable appears much more capable of possession than one existing on an unfathomable scale. Grotius recognized this fact and employed sweeping, abstract language as a result. This focus on the relationship between perception and possession also finds a parallel in the physical manifestations of *Mare liberum* and *Mare clausum* as

books: Selden's treatise included maps (fig. 4.1), which clearly demarcated the boundaries of the English sea, while Grotius constructs the ocean through language alone.<sup>30</sup>

Drayton's catalog, conversely, seems to distance the voyagers from the actual sea. Their navigations occur on an almost abstract plane which at times seems not to penetrate the physical world at all, or at least does not emulate Spenser's aura of empiricism. For example, Drayton makes frequent reference to the sphericity of the globe; the vastness of ocean spaces; the expanse of travel at sea: "this earthly ball" (19.365), "mightie sea" (19.302), "this mightie Round" (19.332), "the surging Maine" (19.315), "flowing of the Seas" (19.213); for the reader, this has the effect of viewing the voyages on a map or a globe, rather than from the starboard of a ship. In addition, his emphasis through language such as "farre distant shores," (19.233), "the most unknowne" (19.240), and "that further world" (19.274) foregrounds the vast distances traversed by the English mariners. Because this global ocean exists on such an incomprehensible epistemological plane, its possession and dominion seem beyond reach. These competing oceanic portrayals vacillate between Grotius' and Selden's conceptions of the sea. In Spenser's case, Acrasia's ocean feels contained, directly accessible, and almost suffocatingly stagnant. Not only are Guyon's movements policed, but his—and our—views of the ocean remain limited to the immediate surroundings: beside the boat, underneath it, just off in the distance.

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<sup>30</sup> One could argue that *Poly-Olbion's* allegorical maps, considered in the next chapter, represent a similar concretization of possession. But these cartographic appendages depict only the sea in relation to the adjacent counties: no effort is made to portray the high seas traversed by Drayton's voyagers.

Guyon's voyage lends itself to a straightforward allegorical reading. Because he functions as the Knight of Temperance, the obstacles he encounters in Acrasia's sea act as moral temptations that stand between him and an ideal Christian ethic, and situating these temptations within an ocean journey had deep cultural precedent. The early modern motif of shipwreck has been addressed perhaps most eloquently in the work of art historian Lawrence Otto Goedde, who writes, "The tempestuous sea has always occupied a vital place in man's consciousness of the world and of himself. Apprehended as tragic circumstance and as deeply resonant symbol, it has been an unfailing source of metaphors for the vicissitudes of existence."<sup>31</sup> Many times, this consciousness assumed the role of cautionary tale, and the model of maritime disaster as metaphor for moral depravity is represented in both shipwreck narratives of the early modern period and in an earlier literary work, *Das Narrenschiff* (*The Ship of Fools*) immensely popular across Northern Europe at the turn of the sixteenth century.<sup>32</sup> *Das Narrenschiff* equates moral depredation with a ship of fools representing every human foible and shortcoming, sailing toward

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<sup>31</sup> Lawrence Otto Goedde, *Tempest and Shipwreck in Dutch and Flemish Art: Convention, Rhetoric, and Interpretation* (College Park: Penn State University Press, 1990), 1.

<sup>32</sup> *Das Narrenschiff* was translated into several European languages, including Latin, English, French, and Dutch. Brant appropriates the image of a ship of fools from Plato's *Republic* and recounts the ill-fated oceanic voyage of a group of fools; in the process he satirizes a large portion of late fifteenth-century German society. Two English translations emerged: Alexander Barclay's, in verse (1509), and Henry Watson's, in prose (1509). See Richard Levin, "An Unrecorded Version of *The Ship of Fools*," *The Review of English Studies* 54.216 (2003), 473–78.

inevitable destruction. Shipwreck narratives, popular especially in Portugal, adopted a theological tenor when accounting for tragedy at sea.<sup>33</sup>

Guyon's journey, while existing within these cultural frameworks, transcends conventional interpretations. Shipwreck and tempest contain a certain limitation when applied to the episode in Acrasia's sea. The shipwreck narratives make clear that their maritime mishaps have resulted from some type of sin or moral shortcoming and are therefore the punishment of an angry God. For the sake of interpreting *The Faerie Queene's* oceans, this omnipotent entity is represented by Neptune; my analysis of Florimell's imprisonment below expands on this observation. But during Guyon's journey, Neptune is mentioned only once. He does not control the sea but is, apparently, acted upon through the whims of Acrasia: in a tempest she conjures, the "waves come rolling, and the billows rore / Outragiously, as they enraged were, / Or wrathful Neptune did them drive before / His whirling charet, for exceeding fear" (II.xii.22). Indeed, within the context of canto 12, Spenser inserts no figure that assumes the role of moral arbitrator, and this deeply shapes the canto's interpretive framework.<sup>34</sup> I would go so far as to argue the episode resists a moralizing elucidation, and the obstacles Acrasia places

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<sup>33</sup> While these narratives were not translated into English until the twentieth century, I believe they provide an illustrative overview of the larger theme of early modern shipwreck. In his account of the wreck of the *São Thomé*, for example, Diogo do Couto writes, "All this night they passed in great trouble and distress, for everything they could see represented death. For beneath them they saw a ship full of water, and above them the Heavens conspired against all, for the sky was shrouded with the deepest gloom and darkness. The air moaned on every side of it as if it was calling out 'death, death.' [...] Within the ship nothing was heard but sighs, groans, shrieks, moans, and prayers to God for mercy, as it seemed that He was wroth with all of them for the sins of some who were in the ship" (57-58). C.R. Boxer, trans., *The Tragic History of the Sea* (Minneapolis: University of Minnesota Press, 2001).

<sup>34</sup> Interpreting Book II in a non-theological frame is not a novel approach: see, eg, Lewis H. Miller, Jr, "A Secular Reading of *The Faerie Queene*, Book II," *ELH* 33.2 (1966), 154-69.

in Guyon's path represent hindrances to his free movement, rather than mere moral allurements.

On an allegorical plane, this parallels the Portuguese attempt to thwart open Dutch commerce in the East Indies. Economic interests undergirded the question of free seas in the early modern period, and I posit that these interests, more so than legal or political considerations, drove the debate. At the heart of the Dutch East India Company's ire rested anxiety concerning Portuguese control of trade routes in the East Indies. Being cut off from open navigation had dire consequences for Dutch economic stability. In the same way, the responses of both James I and William Welwood to Grotius' *Mare liberum* had been prompted by trepidation concerning fishing rights in English waters.

Interestingly, these monetary interests were supported both by open seas and closed seas: open seas facilitated commerce, and closed seas helped preserve fish populations.

Moreover, curbing the crime of piracy had clear economic advantages. Spenser, as a result, composed the episode in Acrasia's sea with clear allusions to the economic precarity of maritime passage. On his journey, Guyon passes some wrecked ships laden with treasure. The first instance comes as they pass the Quicksand of Unthriftyhed: "They passing by, a goodly Ship did see, / Laden from far with precious merchandize, / And bravely furnished, as ship might bee, / Which through great disaventure, or mesprize, / Her selfe had ronned into that hazardize" (II.xii.19). As the crew passes the Rock of Vile Reproach, they behold the ruins of several ships: "On thother side, they saw that perilous Rocke, / Threatning it selfe on them to ruinate, / On whose sharp cliftes the ribs of vessels broke / And shivered ships, which had beene wrecked late" (II.xii.7). When they see the scene of marooned ships in the Quicksand, they even witness mariners and

merchants laboring to recover their “rich wares” (II.xii.19). Shipwreck entailed significant monetary loss, and Spenser capitalizes on this truth by highlighting the economic devastation of Acrasia’s snares.

This focus on the economics of commerce by sea foregrounds the larger interest of Book II with wealth; consider, for example, the episode in Mammon's cave in canto 7.<sup>35</sup> But even more compelling is Spenser's recognition of the sea as a site of economic expansion. The trajectory extends beyond Guyon's voyage: at the beginning of Book III, when the reader encounters Marinell's shore, we find it covered in “Exceeding riches and all pretious things” (III.iv.23), the “wealth of the East” (III.iv 23), and “Gold, amber, yvorie, perles, owches, rings / And all that els was pretious and deare” (III.iv 23). Marinell's windfall, notes Spenser, results from an exceptionally generous ocean. Additionally, the episode in Book V in which Artegall adjudicates the case of Amidas and Bracidas involves the central question of ownership of Philtera's shipwrecked treasure chest. Even Mammon's corrupting riches ostensibly came to him by means of the sea, as his cave lies beyond the Idle Lake. In Faery Land, the economic utility of the ocean remains inextricably joined to the ocean itself, and its wealth must be protected and guarded: hence, it is always possessed, either through proper means (Marinell's jewel-encrusted shore and Philtera's treasure chest) or improper (Mammon's Cave and the plunder of Pollente and Munera). Nothing of value in Faery Land, it seems, exists as a thing belonging to no one.

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<sup>35</sup> See David Landreth, “At Home with Mammon: Matter, Money, and Memory in Book II of *The Faerie Queene*,” *ELH* 73.1 (2006), 245-74.



*Poly-Olbion*, however, deviates significantly from this economic ethos. The poem applies a much more open attitude toward wealth and resources: most often, the poem conceives riches as the bounty of the natural world and constructs a sense of communal ownership, and the forests, birds, plants, and herbs of *Poly-Olbion* are each *res communis omnium*, things belonging to no one. For Drayton, the wealth of these resources does not result from their possession, but rather from an experience of their qualities. This feature is perhaps nowhere more apparent than in Song 13's description of the afternoon sun:

"Suppose twixt noone and night, the Sunne his halfe-way wrought / (The shadowes to be large, by his descending brought) / Who with a fervent eye lookes through the twyring glades, / And his dispersed rayes commixeth with the shades" (13.167-170). Like the air and the sea, the evasive nature of sunlight positions it as immune to human possession, and yet this evasiveness does not diminish its abundance. As a result, Drayton's natural resources escape *The Faerie Queene*'s anxiety of possession: in fact, their multitude renders possession redundant. These vastly divergent ideas regarding the role of possession map on neatly to the free seas debate. Grotius argued that infinite resources rendered the sea common to all men, to be used and enjoyed as a common good and went so far as to assert that ocean water itself could be removed from the sea. Selden asserted the converse, that a thing's plentitude has no bearing on its ability to be possessed.

Both Spenser and Drayton enlist the catalog in their construction of the sea, which extends our understanding of their economic programs, particularly in *Poly-Olbion*.

Drayton's employment of the device in Song 19 has already been discussed, but he uses it in other places in *Poly-Olbion* to describe the marvels of nature. Spenser, in canto 12, catalogs loathsome sea creatures (stanzas 23 to 25) and foreboding fowl (stanzas 35 and

36). Fittingly for this analysis, Drayton includes a catalog of fish in Song 25 as well as of birds in Song 8. A juxtaposition of these catalogs highlights a fundamental difference in each poets' conception of the natural world, one that further engages their poems with the debate of free seas. Spenser, in accordance with the general atmosphere of doom that characterizes Guyon's voyage, positions nature as an inimical force meant to restrict movement rather than provide resources. For example, in his catalog of marine life, he notes the "ugly shapes" and "horrible aspects" are all "dreadfull pourtraicts of deformattee" (II.xii.23); the "dreadfull fish" of Acrasia's sea "hath deserv'd the name / of Death" (II.xii.24). And the horrors seem almost without end: "All these, and thousand thousands many more / And more deformed Monsters thousand fold" (II.xii.25). This frightening farrago stands in direct opposition to *Poly-Olbion's* catalog of marine life. Drayton, who extols the plentitude of the Washes, documents not only the aquatic creatures' culinary appeal ("The Conger finely sous'd, hote Summers coolest food; / The Whiting knowne to all, a generall wholesome Dish; / The Gurnet, Rochet, Mayd, and Mullet, dainty Fish; / The Haddock, Turbet, Bert, Fish nourishing and strong" (25.162-165)) but also their utility in erotic enterprise: "The Sperme-increasing Crab, much cooking that doth aske, / The big-legg'd Lobster, fit for wanton Venus taske, / Voluptuaries oft take rather then for food" (25.180-182). Drayton's scrumptious seafood and salacious shellfish stress the salubrious generosity of the sea.<sup>36</sup> Fishing rights comprised a major point of contention in the seventeenth-century debates, but questions of the maritime jurisdiction of fisheries stretched back to antiquity. As the result of

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<sup>36</sup> Similarly, Spenser's and Drayton's catalogs of birds accentuates the poems' contrasting views of nature.

escalating political tensions, the nature of the debate shifted during the early modern period.<sup>37</sup> While his focus is on freedom of navigation, Grotius also foregrounds the bounty of oceanic resources: he argues that fishing “everywhere ought to be free to foreigners, that servitude cannot be imposed on the sea, which cannot serve” (32), although he does not go so far as to argue that fish are an inexhaustible resource. Drayton does not portray an endless supply of fish either, but his lines on the aquatic wealth of the Washes illuminate their plentitude. These sharply opposing depictions of the natural world provide further insight into the question of free seas. For Drayton, as for Grotius, the sea provided an infinite supply of certain resources, and these resources could not be exhausted. *Poly-Olbion*’s riches are natural and organic while *The Faerie Queene*’s economic bounty consists of man-made, material objects, such as coins and jewels.

Navigation, appropriately enough, occupies considerable space in both episodes, but its representation spans the depictional spectrum. Whereas Spenser’s account of Guyon’s voyage emphasizes his *method* of transportation, Drayton focuses on the vast *distances* over which his mariners travel. For instance, Spenser makes frequent reference to the Boatman’s rowing: “strongly he them rowes” (II.xii.5), “So forth they rowed” (II.xii.10), “But his oares did sweepe the watry wildernessse” (II.xii.29), and “he the boteman bad row easily” (II.xii.33). Spenser even draws attention to the Boatman’s stamina in the face of this corporeal exertion: he “ne sought to bayt / His tyred armes for toylesome weariness” (II.xii.29). These references remind the reader that Guyon’s vessel is propelled not by the winds and the currents but by the physical displacement of water

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<sup>37</sup> See Penn, *The Origin of the Right of Fishery in Territorial Waters*, for an excellent discussion of fishing rights throughout history. Pages 150-223 consider how the question evolved over the sixteenth and seventeenth centuries.

through the act of rowing. Interestingly, the wrecked vessels that Guyon encounters are all described as ships, not boats; during the period, “ship” clearly denoted a vessel capable of sail, although sometimes propelled by oar, such as a galley.<sup>38</sup> Although the juxtaposition of “boat” and “ship” can be interpreted at a strict allegorical level—a ship remains beholden to the winds and currents and signifies a certain abdication of the will while a boat with oars is acted upon by human agency—this comparison also invites a legal allegorical interpretation. In Roman law, ownership implies that the property is owned to an absolute degree; in “relation to the content, the word ‘absolute’ suggests that the Roman owner was free to do as he pleased.”<sup>39</sup> The Boatman, Guyon, and the Palmer engage in a manipulation of the sea as they navigate it. It submits increasingly to their will until at the end of the canto, they have, through the act of navigation, exercised total dominion over it. Like canto 12, Selden’s treatise emphasizes human involvement with the ocean on nearly every page; it is almost as if the Seldenian sea cannot exist independent of this interaction. Guyon’s voyage establishes the ocean as malleable. It is not the conqueror, but the conquered, and it remains subject to possession and dominion.

The navigational spaces envisaged through Drayton’s catalog of voyagers, conversely, continually expand and underscore breadth. This roughly follows the historical trajectory of English seaward expansion, beginning with Arthur’s invasion of Norway and ending at Drake’s circumnavigation. Drayton’s geographic enlargement is

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<sup>38</sup> See N.A.M. Rodger, *The Safeguard of the Seas: A Naval History of Britain, 660-1649* (New York: W.W. Norton, 1998), 62-64, 71-72.

<sup>39</sup> Peter Birks, “The Roman Law Concept of Dominium and the Idea of Absolute Ownership,” *Acta Juridica* 1985 (1985), 1.

nowhere more jarring than in the voyage of Martin Frobisher. In an account which leaves out the more unflattering historical reality of Frobisher's failures, Drayton writes:

Then *Forbosh*, whose fame flew all the Ocean o'r,  
Who to the Northwest sought, huge *China's* wealthy shore,  
When nearer to the North, that wandring Sea-man set,  
Where hee in our hotst Mon'ths of June and July met  
With Snow, Frost, Haile, & Sleet, and found sterne Winter strong,  
With mighty Iles of Ice, and Mountains huge and long.  
Where as it comes and goes, the great eternall Light,  
Makes halfe the yeare still day, and half continuall night.  
Then for those Bounds unknown, he bravely set againe,  
As he a Sea-god were, familiar with the Maine. (19.287-96)

Frobisher's unsuccessful quest for the Northwest Passage allows Drayton to illustrate the ocean's geographical breadth. These lines emphasize both the physical distance traversed in the voyages and the corporeal sensations associated with traveling to an arctic region. In a line that alludes to an earlier moment in the poem, Frobisher's fame "flew all the Ocean o'r" (19.287): this image echoes the opening of Song 10, in which the Muse transforms into a seabird. Like the Muse, but with much greater scope, Frobisher's fame flies across the entire ocean. To remind his reader of the Englishness of the voyage, Drayton first positions us in England, in the "hotst Mon'ths of June and July" (19.290). Then immediately he bombards the reader with "Snow, Frost, Haile, & Sleet" and "sterne Winter strong" (19.291). In the infinitesimal space between lines 290 and 291, we have been transported from the familiar harbor at Ipswich to the remote Labrador Sea. There, we find "mighty Iles of Ice" and "Mountains huge and long" (19.292). This geography contains the strange chiaroscuro of summer's "great eternal Light" and winter's "half continuall night" (19.293-94). Frobisher returns to England and then sets out again, as "he a Sea-god were, familiar with the Maine" (19.296). Frobisher's lines construct the ocean as a geographic entity so vast that it remains penetrable only by skilled mariners.

They also emphasize the remoteness of the Labrador Sea, a landscape alien to Drayton's English readership. And paradoxically, this image conjured by Drayton, that of a wooden sailing vessel pushing through an inhospitable arctic sea, also creates an inherent tension: even in the most favorable of circumstances, human dominion of the seas remains precarious, dependent on the whims of a protean landscape. The very essence of the Labrador Sea, in addition to its geographic remoteness, renders it impervious to English possession.

The poems' contrasting depictions of social hierarchy provide one final link to the free seas debate. Nellish, in an analysis of Guyon's voyage, observes that the Boatman's language is terse and formal; this pattern of speaking is particularly evident when contrasted with the dialogue between Guyon and the Palmer.<sup>40</sup> For example, the Boatman commands the Palmer to "stere aright" (II.xii.3), and when Guyon wants to visit the Wandering Islands the Boatman responds, "That may not be" (II.xii.11). Nellish interprets this rough speech as the Boatman's representation of will as opposed to the reason that propels the Palmer as pilot: "As the man at the tiller is associated with reflective virtues," he notes, "with reason, prudence, and temperance, so the boatman is the active principle, the very spirit of perseverance, will, spirit or courage."<sup>41</sup> Both sets of virtues aid Guyon in his journey, and Nellish's interpretation coincides with his allegorical reading of the episode. I would, however, posit an alternative explanation for this discrepancy in language that transcends a strictly allegorical interpretation.

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<sup>40</sup> Nellish, "The Allegory of Guyon's Voyage: An Interpretation," *ELH* 30.2 (June 1963), 96-97.

<sup>41</sup> Nellish, 97.

In his social history of Elizabethan seamen, naval historian Kenneth Andrews traced the relative social standing of the crews of late sixteenth-century English sailing vessels. Using extant records from the period, he observed that those who lacked sophisticated nautical skills provided the brute labor aboard ship and were frequently pressed men. In addition, the men who navigated the galleons and galleys of Elizabethan England were rarely expert pilots, but rather sailors who held the rank of master.<sup>42</sup> And Andrews notes that although the terminology of the period is sometimes confusing and contradictory, “the important gap [in social standing] was between the master and the rest [of the crew].”<sup>43</sup> Thus, I would argue that Guyon, Palmer, and the Boatman, in addition to representing an allegorical editorial on the virtue of temperance, represent the historical reality of sixteenth-century life at sea. In some ways, the legal sea involved a level of equality with little parallel on land; but this interpretation extends only so far, and this mitigated social structure still presumed a hierarchy of actors. Taken a step further, this indicates that the strict social hierarchy on land mirrored that on the sea, which reflected a more general worldview that the ocean skewed the established terrestrial social order. Spenser’s emphasis on clearly defined structures of power extends to the sea itself: belonging to a higher social echelon, Guyon and the Palmer enjoy dominion over the whole sea; the Boatman only controls the vessel’s movement and the waters in its immediate vicinity. Drayton’s catalog lacks an analogous social hierarchy. He makes no

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<sup>42</sup> William Bourne, the sixteenth-century mathematician who wrote an immensely popular treatise on navigation, harbored no great esteem for the navigational skill of these masters: “For this is generall amongst Sea-men and also Gunners how simple or without skill souer that they be, if that they haue once taken charge to be the Master of a shippe [he] will bragge of himselfe how long he hath bene a Master, and GOD knowethe vtterlye without skill.” Bourne, *A Regiment of the Sea*, 1580, ed. E.G.R. Taylor (London: The Hakluyt Society, 1962), 293-94.

<sup>43</sup> Andrews, *The Elizabethan Seaman* (Greenwich: National Maritime Museum, 1982), 256.

mention of his mariners' crews, or the more rudimentary minutiae of life on the high seas. By this omission, one could argue that the Draytonian sea adopts a near-complete tenor of equality. His ocean is indeed a thing existing for the common use of all men.

## V. NEPTUNE AND THE FREEDOM OF THE SEA

In this section, I consider the role of Neptune in the poems as it relates to the question of free seas. I focus on two moments of significance: Florimell's imprisonment by Proteus in Books III and IV of *The Faerie Queene* and the nymphall in praise of Neptune in Song 20 of *Poly-Olbion*. An analysis of Neptune's function within the poems further elucidates their attitudes toward the question of free seas. As noted above, *Poly-Olbion* and *The Faerie Queene* are only loosely related, and Neptune's corresponding presence demonstrates at best a cursory relationship. Still, the god of the sea occupied a unique niche in the Renaissance literary and cultural imagination, and within this context the early modern reader encountered him in poetry. Certain cultural assumptions about Neptune, like the corresponding assumptions about the early modern ocean, undergird my analysis of the poem.

As characters, Spenser's Neptune proves dynamic and mutable, while Drayton's remains static, unyielding. Neptune appears in all but two of *The Faerie Queene*'s books (if one includes the Mutabilitie Cantos in the tally): he is conspicuously absent from Books V and VI. His function in Books I and VII proves strictly perfunctory: for example, in canto 3 of the first book Archimago alludes to Neptune's ability to enthrall women, which parallels Una's own seduction at the sorcerer's hand (stanza 32). In the Mutabilitie Cantos, he is mentioned only in relation to his mythological purview: "*Ops of*



the earth; and *Iuno* of the Ayre; *Neptune*, of the Seas; and Nymphes, of Riuers all” (VII.vii.26). In the intervening cantos a dynamic portrait of Neptune emerges, and the clearly discernable trajectory of *The Faerie Queene*’s engagement with the sea, discussed earlier, finds a parallel in the development of the god of the sea himself. He enters as abstraction and gradually materializes across Books II, III, and VI, a progression that brings into focus the poem’s endorsement of *mare clausum*. Here again Drayton veers sharply from his predecessor: given *Poly-Olbion*’s desultory nature, it is unsurprising that no such Neptunian trajectory can be located in the poem, although the nymphall in Neptune’s honor in Song 20 offers a quasi-apogee of Britain’s nautical landscapes. Spenser’s investment in Neptune as character reveals his discomfort with Draytonian-levels of prosopopoeia; Drayton, on the other hand, gives the reader no demarcation between Neptune and the physical ocean. Ultimately, I argue that these divergent depictional approaches parallel the jurisprudential opening and closing of maritime space.

For early modern readers and viewers, Neptune represented an entity inextricably tied to both the sea and to a precise historical moment. “The literary portrait of Neptune,” art historian Luba Freedman reminds us, “is an invention of Renaissance mythographers.”<sup>44</sup> Freedman notes that this Renaissance Neptune, unlike other classical deities, did not correspond to his depictions from antiquity. Andrea Mantegna’s engraving *The Battle of the Sea Gods*, which dates to the 1470s, provided the first important fifteenth-century representation of Neptune and helped shape all subsequent portrayals from that century (fig. 4.2). Similarly, Leonardo’s drawing of Neptune for

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<sup>44</sup> Luba Freedman, “Cinquecento Mythographic Descriptions of Neptune.” *International Journal of the Classical Tradition* 2.1 (1995), 44.

Andrea Segni (c.1504), undertaken for a painting now lost, influenced the sea god's sixteenth-century depictions (fig. 4.4). Broadly, Freedman notes that unlike classical portrayals, these Renaissance interpretations move away from the depiction of Neptune as a classical deity and instead present the viewer with a humanized embodiment of the sea god.<sup>45</sup> Perhaps this shift is nowhere more apparent than in Baccio Bandinelli's drawing (after 1528) and Agnolo Bronzino's portrait (c.1530s) of Charles V's famed admiral Andrea Doria as Neptune (figs. 4.5 and 4.6).<sup>46</sup> During these decades Neptune also assumed his familiar visage: nude, flowing beard—one that calls to mind the billowy aspect of ocean waves, Freedman observes—and expressive countenance.<sup>47</sup> The engravings of Neptune in *Poly-Obion* (figs. 4.7-4.10) pay clear homage to these earlier artistic models. Additionally, Freedman notes that unlike most other classical deities, Neptune's purview was rather narrow, and his oceanic realm helped solidify the one-to-one cultural correspondence between Neptune and the sea.

Relative to its treatment in art history, the role of Neptune in early modern English culture has been understudied. One Spenserian example: despite his presence in five of *The Faerie Queene's* seven cantos, Neptune does not warrant his own entry in *The Spenser Encyclopedia*.<sup>48</sup> A recent monograph gives testament to Cupid's cultural capital

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<sup>45</sup> Boccaccio's *Genealogy of the Pagan Gods* (*Genealogia deorum gentilium*) had a profound impact on later Renaissance depictions of Neptune. This influence is discussed in Chapter 5.

<sup>46</sup> See Friedrich Polleroß, "Rector Marium or Pater Patriae? The Portraits of Andrea Doria as Neptune," in *Wege zum Mythos*, Luba Freedman, ed, Berlin: Gebr. Mann, 2001, 107-21.

<sup>47</sup> See Luba Freedman, "Neptune in Classical and Renaissance Visual Art." *International Journal of the Classical Tradition* 2.2 (1995), 219-37.

<sup>48</sup> Neptune finds himself relegated to an entry on "gods and goddesses"; even here, he is overlooked. John Manning, "gods and goddesses." in *The Spenser Encyclopedia*, ed. A.C. Hamilton (Toronto: University of Toronto Press, 1990), 335.

during the period, but no analogous monograph exists for Neptune.<sup>49</sup> I would argue, however, that his status as early modern cultural icon extends far beyond that of Cupid, and touches the legal, the literary, the scientific, the cartographic, the nationalistic, and the naval. In Chapter 5 of this dissertation, I begin to remedy Neptune's scholarly neglect. For my present purposes, it will be sufficient to note that in his treatise, Selden references Neptune's role in Roman culture, while Grotius does not.<sup>50</sup> This divergence may only reflect the men's differing scholarly approaches to the topic at hand, and the rather exhaustive nature of Selden's *Mare clausum*.<sup>51</sup> However, Selden's inclusion and Grotius' exclusion also serve the authors' respective arguments: by drawing attention to the ancient impulse to appoint a god of the sea, Selden signals to his readers that the ocean is a space capable of being ruled over. It is impossible to draw any larger inferences from the authors' engagement with Neptune without a more robust understanding of Neptune's cultural standing in the period, which I will not provide until the next chapter. Consequently, my analysis of Neptune and the question of free seas does not draw a straight line from the legal treatises to the literary texts. Instead, I ponder what Neptune's depiction in the poems reveals about the nature of the sea.

After his passing mention in *The Faerie's Queene's* Book I, Neptune reemerges in Book II to play a relatively negligible role. In fact, he is mentioned only twice: first, in a stanza describing Guyon's passage across the Idle Lake ("Both slow and swift a like do

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<sup>49</sup> Jane Kingsley-Smith, *Cupid in Early Modern Literature and Culture* (Cambridge: Cambridge University Press, 2010).

<sup>50</sup> In his 1652 translation of *Mare liberum*, Marchamont Needham included a six-stanza poem, "Neptune to the Common-wealth of England," and engraving (figure 4.3). I consider this poem and engraving in the following chapter.

<sup>51</sup> Grotius omits Neptune from his much-longer *De jure belli ac pacis libri tres* (1625) as well.

serue my tourne, / Ne swelling Neptune, ne lowd thundring Ioue / Can chaunge my  
cheare, or make me euer mourne; / My little boat can safely passe this perilous bourne”  
(II.vi.10) and his aforementioned presence when Acrasia conjures a tempest (“The waves  
come rolling, and the billows rore / Outragiously, as they enraged were, / Or wrathfull  
Neptune did them drive before / His whirling charet, for exceeding fear” (II.xii.22)). In  
this second book, Neptune’s function can be reduced to the primal: he is not so much a  
character in the manner of Acrasia, Guyon, or the Palmer, but rather a force of nature.  
The successive mention of Neptune and Jove at the Idle Lake signals to the reader that we  
occupy a world of classical mythology, and that Neptune has not yet forfeited his Roman  
roots in order to submit to his Renaissance humanizing. In part because of this classicized  
conception, and in part because he makes no plot interventions in the book, Neptune’s  
presence in Book II resists a more allegorical reading: this may possibly account for his  
larger neglect in Spenserian scholarship.

Books III and IV reposition Neptune’s role in the Faery Land cosmos. In Book  
III, when Britomart delivers her blazon on Marinell’s strand, she invokes the god of the  
sea:

Thou God of windes, that raignest in the seas,  
That raignest also in the Continent,  
At last blow vp some gentle gale of ease,  
The which may bring my ship, ere it be rent,  
Vnto the gladsome port of her intent:  
Then when I shall my selfe in safety see,  
A table for eternall monument  
Of thy great grace, and my great ieopardie  
Great *Neptune*, I avow to hallow vnto thee. (III.iv.10)

Britomart’s invocation further establishes Neptune’s deific position in Faery Land. As we  
learned in Book II, he controls the waves, the currents, the storm, and the calm. While

this is unsurprising given Neptune's function in the classical world, as well as the Renaissance attention to his ability to control the sea, the episode on Marinell's strand demonstrates the ambit of his powers. One stanza after Britomart ends her supplication, a metaphorical gale emerges on the horizon: Marinell (whose identity she learns later) gallops toward her, which results in a sudden shift of her mental state from sorrow to wrath. Neptune is not directly named as the cause of Marinell's sudden entrance, and we later learn that Proteus has foretold of this seemingly chance encounter on the strand. And yet Spenser constructs the episode in a way that invites an inference of causation: Britomart supplicates Neptune for a deliverance from her suffering, and then Marinell appears. This sequence expands Neptune's purview because not only does he rule the waves, but apparently he commands the shore as well, an expansion that carries implications for the poem's engagement with the international law of the sea.

Once Neptune's general powers have been delineated, the poem offers additional details about his nature. When Britomart inadvertently injures Marinell on his own strand, Marinell's mother, Cymoent, springs into action. Gathering her "watry sisters"—the Nereides—she climbs on a dolphin-pulled chariot and hastens to her son's jewel-encrusted shore. En route "Great Neptune stoode amazed at their sight, / Whiles on his broad rownd backe they softly slid / And eke him selfe mournd at their mournfull plight" (III.iv.32). He facilitates their journey as they draw attention from other aquatic creatures: "His mighty waters to them buxome bee: Eftsoones the roaring billowes still abid, / And all the griesly Monsters of the See / Stood gaping at their gate, and wondred them to see" (III.iv.32). In a passage that draws attention to Neptune's corporeality for the first time in the poem, the chariot of Cymoent and the Nereides slides down Neptune's back; his

waters they find buxom. These lines offer a clear conflation of character with landscape; that is, Neptune functions as both ruler of the seas and ocean water itself. Buxom is not typically an adjective used to describe the sea.<sup>52</sup> Later in the canto, in an episode modeled on a scene from Ovid's *Heroides*, the Nereides' chariots swim gently "Vpon great Neptunes necke" (III.iv.42), lines again implying a paradoxically disembodied corporality. Assuming a high degree of prosopopoeia, Spenser's description in canto 4 shares almost nothing with the sea god's humanistic depiction in Renaissance maps and portraits, which leaves Neptune's body to inhabit an indeterminate space of quasi-materiality. The Neptune of the Nereides' voyage defies Seldenian enclosure. But in *The Faerie Queene's* cosmos, the sea cannot withstand containment indefinitely, and Spenser reveals a true physical description of Neptune late in Book III, during Cupid's masque. This passage adopts the more conventional Renaissance portrait of the sea god:

Next vnto him was *Neptune* pictured,  
 In his diuine resemblance wondrous lyke:  
 His face was rugged, and his hoarie hed  
 Dropped with brackish deaw; his threeforkt Pyke  
 He stearnly shooke, and therewith fierce did stryke  
 The raging billowes, that on euery syde  
 They trembling stood, and made a long broad dyke. (III.xi.40)

What interests me in these lines is not the image conjured: it is conventional enough. Rather, this passage offers a crucial clue regarding the poem's attitude toward the freedom of the seas. A main point on which Grotius and Selden disagreed was the capacity of the sea to be contained within static borders. Indeed, if such borders were

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<sup>52</sup> Spenser uses "buxom" elsewhere in *The Faerie Queene* in the sense of *flexible, pliant; yielding to pressure* (OED). This definition best fits its usage to describe Neptune in Book III.

impossible, then the question of ownership would be rendered moot. Up until this stanza, *The Faerie Queene* has offered no clear embodiment of Neptune. He is introduced initially as indistinguishable from the sea: he possesses the ability to control the ocean currents not only because he reigns over the waters, but because he is the sea itself, and enjoys ostensible agency over the movements of his own watery assemblage, an extracorporeal framing that becomes reinforced in the episode with Cymoent's chariot. But here, at Cupid's masque, we encounter the Neptune of Bronzino's portrait: determined visage, hoary hair, identifying trident. Spenser himself draws attention to this act of embodiment: "was *Neptune* pictured" (III.xi.40). As a consequence of this image, Spenser has contained the unruly sea into the figure of the maritime god easily identifiable on the period's maps and sea atlases. In this presentment of Neptune as both the sea itself and the embodied ruler of the sea, *The Faerie Queene* advances a twofold argument for *mare clausum*: first, it shows how the ocean itself, represented in the figure of Neptune, can move from boundlessness to containment; and second, it demonstrates that this containment enjoys its own inherent authority.

While Neptune's most pivotal role in Spenser's poem occurs in Book IV, canto 12, discussed in the last chapter, he also appears in canto 11 during the marriage of the Medway and the Thames. This episode has drawn considerable attention from critics, and the fluvial union also heavily influenced *Poly-Olbion* and is even glossed in the poem.<sup>53</sup> Now a few comments as this episode relates to Neptune are in order. First, Spenser interjects the marriage of the Medway and Thames into the Florimell and

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<sup>53</sup> "And but that *Medway* then of *Tames* obtain'd such grace, / Except her country Nymphs, that none should be in place, / More Rivers from each part, had instantly been there, / Then at their marriage, first, by *Spenser* numbred were." *Poly-Olbion*, 18.105-8.

Marinell plot. Indeed, canto 11 opens with a description of Proteus' maritime dungeon, which has confined Florimell for seven months "in the bottom of the maine" (III.viii.37). Spenser emphasizes Florimell's dire imprisonment in a few descriptive lines: "Deepe at the bottome of an huge great rock / The dungeon was, in which her bound he left, / That neither yron barres, nor brazen locke / Did neede to gard from force, or secret theft" (IV.xi.3). Spenser reveals that Proteus' indifferent attitude toward domestic security results from the inundation of the ocean itself: "For wall'd it was with waues, which rag'd and ror'd / As they the cliffe in peeces would have cleft; / Besides ten thousand monsters foule abhor'd / Did waite about it, gaping griesly all begor'd" (IV.xi.3). Proteus' dungeon and Cymoent's bower represent the deepest engagements with the sea to be found in *The Faerie Queene*—all others occur on its surface, or at the shore. Here the true nature of the ocean becomes manifest to those brave enough to peer into the abyss; and here they find "horror" and "darknesse dredd, that neuer viewed the day, / Like to the balefull house of lowest hell" (IV.xi.4). These visions of the ocean mirror the period's larger epistemological conceptions of inaccessible maritime space, but they also unveil that the sea itself could be used for purposes of confinement. This revelation has a profound impact on the question of free seas: not only does Spenser's ocean allow for maritime boundaries, but the ocean water itself can be used as a material for these borders.

The second significant aspect of the placement of the rivers' marriage is that it definitively divorces the figure of Neptune from the physical ocean. The description of Proteus' lair and its surrounding sea sits in sharp opposition to Neptune's appearance at the wedding ceremony, described thus: "First came great *Neptune* with his threeforkt



mace, / That rules the Seas, and makes them rise or fall; / His dewy lockes did drop with brine apace, / Vnder his Diademe imperiall” (IV.xi.11). The proximity of these two passages highlights the ontological distance between Neptune and the sea—the latter unknowable and foreboding, the former solid and regal—and this juxtaposition allows Neptune, as a fully independent entity, to execute his most important task of liberating Florimell: because he is now disengaged from the sea, he can, like an impartial admiralty judge, rule over it. After hearing his lady’s laments inside Proteus’ den, Marinell finds himself moved to pity. Cymoent recognizes both the necessity of rescuing Florimell and the futility in appealing to Proteus for her son’s release, and thus turns to “great king *Neptune*” and “on her knee before him falling lowe, / Made humble suit vnto his Maiestie, / To graunt to her, her sonnes life, which his foe / A cruell Tyrant had presumptuouslie / By wicked doome condemn’d, a wretched death to die” (IV.xii.29). Neptune’s response employs both the royal we (“one that hath both wronged you, and vs” (IV.xii.30) and refers to Neptune as “the seas sole Soueraine” (IV.xii.30). When he delivers his judgment, Neptune adopts a markedly legal tenor, the significance of which has been overlooked by critics: “He graunted it: and streight his warrant made, / Under the Sea-gods seale autenticall / Commaunding *Proteus* straight t’enlarge the mayd, / Which wandring on his seas imperiall, / He lately tooke” (IV.xii.32). The language in canto 12 constructs Neptune as both royal and legal entity. His position is not only deific, but *political*; and this grants him a kind of royal prerogative to police his seas. Nowhere else in *The Faerie Queene* does Spenser offer such an unequivocal endorsement of *mare clausum*. Within Faery Land, Neptune has come to allegorize the arm of royal authority which stretched out into England’s waters. In his evolution through the poem, he has

moved from primordial matter, to godly statesman, to the symbolic representation of maritime dominion itself. Especially significant is the extent of Neptune's jurisdiction: it spreads not only from the shore to the coastal waters, but rather from land to those unbounded stretches of ocean which most vexed the legal philosophers. Spenser's emphasis on the remoteness of Proteus' lair serves not only to highlight Florimell's plight, but also to define the vast reaches of national maritime dominance.

The triangulation of Marinell, Neptune, and Proteus also contains an additional key to unlocking *The Faerie Queene's* attitude toward freedom of the seas. While I discuss the allegorical meaning of these figures in the last chapter, here I offer some observations on what this three-way relationship means for the principle of *mare clausum*.<sup>54</sup> If allegorical designations can be applied to these three characters, Proteus signifies the sea itself: shapeshifting, mutable, continually in flux. Conventional enough, this interpretation of the sea god as primal matter should not invite controversy and lays the foundation for my analysis. Marinell and Neptune, however, incite more interpretive woes. In the eighteenth century, John Upton argued that the character of Marinell represents the Lord High Admiral, and specifically, Charles Howard, Earl of Nottingham.<sup>55</sup> Ostensibly, Upton based this reading on the riches accumulated on Marinell's strand, which represent the Lord Admiral's right to prize. While I recognize

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<sup>54</sup> Admittedly, my interpretation shifts between these chapters. In the former, I read Proteus as pirate, Marinell as the Lord Admiral, and Neptune as the international law of the sea. In the current, I read Proteus as the ocean itself, Neptune as the Lord Admiral, and Marinell as interpretively ambiguous: perhaps a vice-admiral. These shifts, however, do not undermine my larger interpretive schema. The former chapter investigated the English admiralty; the current, conversely, considers the nature of ocean space in the poem as it relates to freedom of the seas.

<sup>55</sup> Edmund Spenser, *The Faerie Queene, Book Four*, ed. Ray Heffner (Baltimore: Johns Hopkins Press, 1935), 277n4.

this interpretation's historical rigor and concede it is not without merit, the figure of Neptune complicates matters. Spenser has demonstrated that the reach of Neptune's authority extends both outward, to the "main sea", and inward, to the coasts. The ambit of his jurisdiction more closely aligns him with the Lord High Admiral than with the international law of the sea. Even Grotius did not argue that nations did not enjoy dominion over their coasts, and so Neptune's apparent authority to patrol Marinell's strand associates him with the authority of Faery Land itself, and not with international maritime law.<sup>56</sup> Were Neptune to represent only the international law of the sea, then his jurisdiction would cease at the shore. But it does not, and as Andrew Zurcher has recently observed, Marinell's right to wreck comes from Neptune himself.<sup>57</sup> Neptune's dominance over Faery Land's shore (represented by his dominance over Marinell), in addition to its sea (represented by his dominance over Proteus), shifts his role in *The Faerie Queene* from the mythic to the legal-political. As disembodied policer of the ocean, he might serve Grotius' argument for open seas; but as allegorical representation of the Lord High Admiral, he becomes solidified, his jurisdiction extends to land, and he proves that nations contain the capacity to effectively police both their coasts as well as the high seas.

A parallel journey through *Poly-Olbion* expatiating on the nature of Drayton's Neptune would prove extraneous. As noted earlier, Neptune-as-character remains rather

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<sup>56</sup> Neptune may appear to serve a similar function as the international law of the sea; that is, he may attempt to bring a universal order to *The Faerie Queene*'s oceans. But the geography of the poem does not support this position. In my larger argument, Faery Land contains not a singular ocean, but rather a *series* of oceans; Neptune's presence at the Idle Lake substantiates this claim. That said, all of *The Faerie Queene*'s seas appear to lie adjacent to the continent of Faery Land. Consequently, Neptune symbolizes an arm of Faery Land's royal authority, rather than a universalizing international maritime law.

<sup>57</sup> See Andrew Zurcher, *Spenser's Legal Language: Law and Poetry in Early Modern England* (Cambridge: DS Brewer, 2007), 107.

static throughout the poem. Paradoxically, however, it is in this stasis that *Poly-Olbion* rounds out its implicit argument for *mare liberum*: the predictability of Neptune's pliancy provides proof that the sea cannot be possessed. Song 20 presents the clearest lyric portrait of the Draytonian sea. Although the geographic spaces of Song 19 have already described the sea's *gestalt*, Song 20 focuses solely on the ocean rather than human-ocean interaction, and this unadulterated maritime vision mimics the ocean envisaged by Grotius in *Mare liberum*. The nymphall is short, only about forty lines (Song 20 itself is 290 lines, one of the shortest of *Poly-Olbion*), and opens with a twelve-line pedigree of the sea god. An analysis of this section of the poem demands a near-unquestioning acquiescence to Drayton's prosopopoeia, as well as the resignation that the line separating Neptune from ocean, and ocean from Neptune, cannot exist: this strange materialism itself supports *mare liberum*, as it produces maritime space that is impossible to contain. For the purpose of understanding *Poly-Olbion*'s attitude toward the sea, Neptune *is* the ocean.

Song 20 opens with Neptune's dramatic ascent from the sea: he calls upon the sea nymphs and commands them to perform a nymphall in his honor. Although by Song 20 Drayton has thoroughly established Neptune's fearsome character, this passage reminds the reader of the sea god's oppressive presence. It associates Neptune primarily with sonorous sound, one so powerful that it reaches from Suffolk to Norfolk's shore. Responding to his summons, the seamaids, who command the whales and fish, gather. After the assembled parties adumbrate Neptune's pedigree, they shift their focus to the nature of Neptune himself. This opens with musings on the ocean's geographic scope:

A world of mightie Kings and Princes I could name,  
From our god *Neptune* sprung; let this suffice, his fame

Incompasseth the world; those starres which never rise,  
Above the lower South, are never from his eyes:  
As those againe to him doe every day appeare,  
Continually that keepe the Northerne Hemisphere;  
Who like a mightie King, doth cast his Watched robe,  
Farre wider then the land, quite round about the Globe. (20.177-85)

In his description of the ocean, Drayton faces a spatial conundrum: how can one represent the spherical dimensions of the globe? To wit, how can Neptune, who, in the poem, both *rules* the sea and *is* the sea, be present throughout the surface of the Earth? The question seems metaphysical, almost theological, in its scope. But Drayton does not shirk from a spatial challenge. In lines that echo Frobisher in the preceding song, Drayton offers a visual as well as linguistic solution: “let this suffice, his fame / Incompasseth the world” (178-79). The enjambment suggests that even the expansive alexandrines cannot contain Neptune’s fame. The passage continues: “those Starres which never rise, / Above the lower South, are never from his eyes.” Neptune remains ever present, and Drayton, as he did in Song 19, again emphasizes the spherical quality of the globe. He creates a spatially impossible scenario, one that even his English navigators cannot achieve: concurrent presence both above and below the equator. And Drayton’s solution to the spatial problem of representing Neptune’s omnipresence, while also expressing the sphericity of the globe, is to reference the hemisphere-specific constellations. The sheer immensity of the planet, which had been coming into clearer focus for early modern Europeans since the circumnavigation of Magellan in the early sixteenth century, was much more frequently encountered via book board than starboard, and Drayton offers an exquisite linguistic palette. His ability to produce an almost infinite global ocean rivals Grotius: Song 20 constructs aquatic space that remains impervious to national possession or dominion.

The relationship between Neptune and the freedom of the seas presents the literary critic a problem difficult to overcome. It rests on a conception of the sea god that was, like the domain he governed, protean and susceptible to unaccountable shifts. And yet the different approaches to his depiction—Spenser’s dynamic, Drayton’s static—reveal embedded attitudes toward the freedom of the seas. In Spenser’s case, Neptune begins nearly synonymous with the sea itself; his subsequent evolution across the poem may represent legal, technological, and navigational advancements in the human sphere, which rendered international maritime boundaries possible. In addition, the sea god’s transition from indeterminate matter to identifiable figurehead of royal and legal authority symbolizes England’s increasing consciousness of its sovereignty over British waters. During the early modern period, *mare clausum* required a national admiralty with the capacity to adequately patrol its waters and coasts, and *The Faerie Queene*’s Neptune proves an effective admiral. *Poly-Olbion*’s Neptune, conversely, assumes a Grotian vision of ocean space. He never escapes the fetters of Draytonian prosopopoeia; his fate renders him perpetually, relentlessly, indistinguishable from the sea. In its resistance to progression, Drayton’s conception of Neptune inadvertently supports Grotius’ argument for free seas. This analysis had begun to open some of the interpretive complexity inherent in the figure of the Renaissance Neptune.

## VI. CONCLUSION

Questions of *mare clausum* and *mare liberum*, as noted at the beginning of the chapter, have their roots in the classical world, but the contributions of Selden and, in particular, Grotius represent a turn in the nature of the debate. Their general methods for

conceptualizing the sea endured until the introduction of more sophisticated technology in the twentieth century. But the broader debate persists into the twenty-first century, in which the possession of and jurisdiction over maritime space still figures prominently in international law and politics. Consequently, literary and cultural historians working in the maritime humanities—in the early modern period but also in subsequent periods—can benefit from a more nuanced understanding of the international law of the sea. This chapter has forged one path forward in this potentially robust scholarly conversation, one that engages literary, legal, cultural, economic, and transnational contextualizations, and provides a methodological example of how to engage these issue

## CONCLUSION

This dissertation began with a survey of early modern English maritime legal texts because these writings and the subject they address are so unfamiliar, even to specialists in the field of Renaissance studies. But the subject was not unfamiliar to early moderns themselves, and the dissertation proceeded to demonstrate the productive link between maritime law and English Renaissance literature. Reading these literary and other texts in dialogue with the writings of maritime law opens a variety of new questions, methods, and approaches, and brings a variety of new texts into the emerging scholarly conversation on early modern maritime humanities. This conclusion offers some thoughts on extended projects that could develop out of each chapter. While they ask a broad range of questions and consider a host of texts, they, in most cases, find affinity through their linking of text and image, and content and form.

On October 8-9, 2020, the Université catholique de Louvain hosted a conference, “Engaging Margins: Framing Imagery as Embodiment of Cognitive Processes,” at which I presented. The conference aimed to “assess to what extent images placed in the margins of a main literary or visual work could reflect, encourage or interact with cognitive processes. To date, the influence of early modern developments of knowledge in marginal visual devices has been under-addressed in art historical studies.”<sup>1</sup> My paper focused on the physical manifestation of the 1633 edition of Hugo Grotius’s *Mare liberum*, and John Selden’s response, *Mare clausum* (1635; English translation 1652). I

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<sup>1</sup> Call for papers, Gwendoline de Mûelenaere and Sophie Suykens, “Engaging Margins: Framing Imagery as Embodiment of Cognitive Processes,” Université catholique de Louvain, October 8-9, 2020.



argued that the material presentation of these treatises had a significant effect on the way that readers conceived of the contested legal principle of freedom of the seas. Although the first edition of *Mare liberum* did not contain illustrations and relied solely on its text to construct a sound legal argument, the 1633 edition integrated a sailing ship on its title page, a visual cue to remind the reader of the benefit of open seas (fig. C.1). Selden's *Mare clausum* (1635) incorporated several illustrations, including two maps of the British Isles. In addition to these cartographic appendages, *Mare clausum*'s English translation (1652) employed an elaborate frontispiece and corresponding poem that further promulgated Selden's argument for English sovereignty over its territorial waters (fig. C.2). Ultimately, my paper argued that these paratextual frames augmented readers' conceptions of maritime space. They complemented the adjacent text by providing a visual reinforcement of the legal arguments contained within.

During the summer of 2020, along with historian Valérie Hayaert, I organized a panel for the Renaissance Society of America's annual meeting. The theme, broadly, was "Early Modern Law and Visual Culture." Our panel will interrogate the visual dimensions of early modern law and legal phenomena. During the period, images acted as surrogates for judges and, consequently, enjoyed an inherent relationship to legal authority. In addition, these artworks often hung above judge's benches, representing a visual reinforcement of their juridical role. Thinking through these larger themes, Carolin Behrmann's paper will consider the role of balance in shaping both aesthetic and judicial principles in early modern Europe; Vanessa Paumen will analyze two large panel paintings depicting the judgment of Cambyses which hung in the city hall chamber of Bruges; and my own paper will consider the figure of Neptune as the visual exemplar of

early modern maritime law. Our interdisciplinary panel centers Continental (rather than English) law and visual culture.

In conjunction, this conference and panel have pushed me to consider the visibility of printed English law. In my first chapter, I considered legal texts as texts. I did not, however, attend to their physical manifestation: the way the text appeared on the page; their historiated initials; their borders; their woodcuts and engravings. A project that considers the texts of early modern English law alongside their paratextual elements would provide a fruitful site of scholarly enquiry and investigation. Previously, this work has been undertaken by Continental, and in particular, German scholars.<sup>2</sup> German printed books of early modern law, such as Michael Beuther's German translation of Joost de Damhouder's *Praxis rerum criminalium* (Frankfurt, 1565), contain sophisticated woodcuts (figs. C.3 and C.4). Locating this visibility in English law books of the sixteenth and seventeenth centuries proves more difficult, and perhaps requires a reorientation of the concept of "image," but it does not preclude sustained research and analysis. My preliminary explorations have uncovered some printed books that would serve as the foundation of my inquiries. In addition to John Selden's *Mare clausum*, Edward Coke's *The first part of the Institutes of the lawes of England. Or, A commentarie upon Littleton* (1628) teems with visual elements that supplement the text. The title page, for example, offers the reader a rich viewing experience (fig. C.5) before

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<sup>2</sup> See, eg, Franziska Prinz, *Der Bildgebrauch in gedruckten Rechtsbüchern des 15. bis zum Ausgang des 18. Jahrhunderts* (Hamburg: LIT, 2006); Klaus F. Röhl, "Bilder in gedruckten Rechtsbüchern," in *Recht Vermitteln: Strukturen, Formen und Medien der Kommunikation im Recht*, ed. Kent Lerch (Berlin: De Gruyter, 2005), 267-348; Hanna Sofia Hayduk, *Rechtsidee und Bild: Zur Funktion und Ikonografie der Bilder in Rechtsbüchern vom 9. bis zum 16. Jahrhundert* (Wiesbaden: Reichert, 2013). See also Fabiana Tuccillo, "Typographic Art and Roman Law: A Renaissance Image of the Lex XII Tabularum," in *History of Law and Other Humanities*, ed. Virginia Amorosi and Valerio Massimo Minale (Madrid: Dykinson, 2019), 69-80.

the reader engages with the book's content. The 1629 edition also contains an engraving by Robert Vaughan of fifteenth-century judge and legal writer Thomas de Littleton (fig. C.6). What fascinates me the most about this edition, however, is the complicated layout of its text (figs. C.7-C.9). An admixture of roman, italic, and two types of gothic, it presents readers with a sophisticated visual interface that fluctuates between Littleton's original text, the English translation, and Coke's explication of the text. This interface and oscillation of font mediates their consumption of Coke's commentary on Littleton. Printers maintained this elaborate textual presentation when producing the second, third, and fourth parts of Coke's *Institutes* (although the layout of text reverts into a more conventional configuration: fig. C.10). In another seventeenth-century legal example, John Selden's *Mare clausum* (1635) incorporates the oscillation of font (fig. C.11), which included letters from Old English—a detail that presented problems for the Dutch printers who pirated the work the following year (fig. C.12).<sup>3</sup> Font represents a necessary paratext in printed books, one that acts as an intermediary between text and reader, and a closer inspection of the relationship between content and form may lead to discoveries about authority and printed English law. The 1671 edition of William Dugdale's *Origines juridiciales, or, Historical memorials of the English laws* also incorporates an illustration of judges and administrators who played an important role in English legal history (fig. C.13). The interplay of text, font, and image in these examples invites such questions as, to what extent did legal authority rest in a particular font for the early modern English

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<sup>3</sup> Peter J. Lucas, "Printing Anglo-Saxon in Holland and John Selden's *Mare Clausum seu de Dominio Maris*," *Quaerendo* 31.2 (2001), 120-38.

lawyer, and how did paratexts such as images and even layout of text serve to reinforce the attendant legal texts? I would like to pursue this line of questioning in the future.<sup>4</sup>

A possible avenue of inquiry embedded in my second chapter involves the early modern construction of piratical identity. I began to address this question within the chapter, especially in my discussion of the early Stuart pirate plays. A project of this nature would expand the texts with which it engages: in addition to further plays of the period, it would include legal texts that address piracy, including the maritime codes discussed in my first chapter, as well as more theoretical works, such as Grotius's *De jure belli ac pacis* (1625); commentary from the period's naval officers, such as William Monson's *Naval Tracts*; additional popular accounts (including ballads), such as *A true relation of the life and death of Sir Andrew Barton, a pirate and rover on the seas* (1630) and non-drama literary depictions of pirates, such as in Edmund Spenser's *The Faerie Queene* (1590, 1596) and William Warner's depiction of Aegaeon in *Albions England* (1612). Furthermore, it would attend much more closely to the text of the royal proclamations considered in my second chapter, in addition to their form. Texts from the pirate's own hand, such as Cusack's (alleged) journal in *The Grand Pyrate: Or, the Life and Death of Capt. George Cusack* (1675) and Henry Mainwaring's account of his own piratical exploits in *Discourse on Pirates* (c.1618) would also be considered. The protean sea robber, like the sea itself, remained always in flux, shifting and mutating as he moved

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<sup>4</sup> Work of this type has been tackled in, for example, Mark Bland, "The Appearance of the Text in Early Modern England," *Text* 11 (1998), 91-154 and Kasia Solon Cristobal, "From Law in Blackletter to 'Blackletter Law'," *Law Library Journal* 108.2 (2016), 181-216.

between texts. and my research would theorize how language, in turn, informed this refashioning in relation to different purposes, forms, and audiences.

My third chapter offers three possible sustained sites of study, one of which I will discuss here. It would consider the role of tempest and shipwreck in early modern English literature and culture.<sup>5</sup> *The Faerie Queene* involves several shipwrecks: in addition to the wreck sustained by Philtera's ship and the moored ships that dot Acrasia's islands, Talus's defeat of the Giant is described thus:

Like as a ship, whom cruell temptest driues  
Vpon a rocke with horrible dismay,  
Her shattered ribs in thousand peeces riuies,  
And spoyling all her geares and goodly ray,  
Does make her selfe misfortunes piteous pray.  
So downe the cliffe the wretched Gyant tumbled;  
His battered ballances in peeces lay;  
His timbered bones all broken rudely rumbled,  
So was the high aspyring with huge ruine humbled. (V.ii.50)

In *The Faerie Queene*, the ocean often represents a site of metamorphosis.<sup>6</sup> However, existing criticism does not adequately address why the Giant evolves into a metaphoric ship, nor why his ascent resembles a shipwreck. I did not address this episode in my chapter; however, the broader motif of shipwreck in early modern English literature and

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<sup>5</sup> The germ of this idea lies *The Tragic History of the Sea*, ed. and trans. C.R. Boxer (Minneapolis: University of Minnesota Press, 2001) and art historian Lawrence Otto Goedde, *Tempest and Shipwreck in Dutch and Flemish Art* (State College: Pennsylvania State University Press, 1989).

<sup>6</sup> For example, when Lucy leaps into the sea in V.iv in her thwarted suicide attempt, her intent reorients itself: "The wretched mayd that earst desir'd to die / When as the paine of death she tasted had/And but halfe seen his vgly visomie / Gan to repent, that she had been so mad" (V.iv.11). Perhaps the most evocative example, however, is that of Malbecco. Filled with disgust at the perfidy of Hellenore, he runs to a precipice over the sea and in a moment of suicidal despair throws himself off. However, because he has so long neglected himself "through long anguish, and selfe-murdering thought" (III.x.57), the leap is not enough to kill him. His waif-like frame receives "no hurt at all" and he crawls into a small cave. Eventually, after becoming injured to the existence he is "woxen so deform'd that he was quight / Forgot he was a man, and *Gelosy* is hight" (III.x.60).

culture offers such a rich site of analysis, especially in an analysis informed by legal conceptions of wreck. Legally, a ship represents much more than a vehicle by which to transport people and goods from one point to another: it is also an instrument fraught with multifarious legal significance. Legal historian D.P. O’Connell notes:

A ship is a unique subject-matter of law. It is for some purposes, such as being a negotiable asset of value, a chattel, but it is not only a chattel, because it has the capacity to carry with it the law and jurisdiction of sovereigns. In that sense a ship is said to have personality, but that is an unusual usage of the expression because, unlike persons in international law, a ship is not a legal actor independent of those who operate it, and if it is the bearer of legal rights and obligations this is only for procedural reasons. Unlike inanimate objects, a ship is the creature simultaneously of more than one system of law.<sup>7</sup>

This legal aspect of ships, and shipwrecks, would provide an additional linking of the maritime, the legal, and the cultural. The second point of my investigation would incorporate shipwreck narratives. Although England failed to generate a literature of this genre to rival the Portuguese, it did produce seventeenth-century pamphlets such as *Lamentable newes, shewing the wonderfull deliuerance of Maister Edmond Pet sayler, and maister of a ship* (1613), *The raging tempest stilled* (1623), and *Sad News from the Seas. Being a true relation of the losse of that good Ship called the Merchant Royal* (1641). These short accounts provide the reader with the inherent drama of wreck: “[the ship] began to sinke deeper and deeper into the Sea, whereupon every one began to shift for himselfe in laying hold some upon one thing, and some upon another ... then with great shrikes and loud cries they were al drowned: Nay more, not one living thing in the ship saved.”<sup>8</sup> Broadside ballads that depict wreck also circulated, such as Martin Parker’s

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<sup>7</sup> O’Connell. *The International Law of the Sea*, vol. 2 (Oxford: Clarendon Press, 1989), 747.

<sup>8</sup> *Lamentable newes, shewing the wonderfull deliverance of Maister Edmond Pet sayler and maister of a ship*, A2v.

*Neptune's raging fury, or, The gallant sea-mens sufferings* (c.1650) and *The Benjamin's lamentation for their sad loss at sea, by storms and tempests* (c.1674). These accounts are imbued with theological or moral meaning; as Lawrence Goedde observes, "The tempestuous sea has always occupied a vital place in man's consciousness of the world and of himself. Apprehended as tragic circumstance and as deeply resonant symbol, it has been an unfailing source of metaphors for the vicissitudes of existence."<sup>9</sup> What intrigues me the most about these accounts, however, is their marriage of text with image (figs. C.14-C.21). Not only do these images present a third point at which to theorize about early modern shipwreck, they also imply that English conceptions of shipwreck were as much *visual* as they were *textual*. Thus, this project would stage a dialogue between text and image in these narratives, in addition to depictions of tempest and shipwreck in the period's poetry, prose romance, and drama. These considerations would be informed, more generally, by the legal meanings inherent in shipwreck.

My final research project, rooted in my fourth chapter, considers the role of Neptune in early modern English culture. It argues that the sea god's portrayal in the frontispiece of Marchamont Nedham's 1652 translation of John Selden's *Mare clausum* (1635) represents a kind of apogee, one in which Neptune had come to symbolize a visual exemplar of early modern maritime law. The project traces Neptune's evolution across the sixteenth and seventeenth centuries and engages with the different meanings the English ascribed to him. Taking cues from the work of art historian Luba Freedman, who researches the artistic evolution of Neptune in Renaissance Italy, Richard Unger, who studies illustrations on sixteenth- and seventeenth-century maritime maps, and Reuben

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<sup>9</sup> Goedde, 1.

Brower, who considers how the mythic Neptune was translated from classical to early modern literary and visual depictions, my research links Neptune with the poetic, the cartographic, the visual, and the legal. In one interesting example, Neptune appears in two different pictographic roles (military and mythological) in John Speed's *Theatre of the Empire of Great Britaine* (figs. C.22-C.25). This project is essentially interdisciplinary in its approach and applies the tools of literary and visual analysis, cultural history, and history of the book. Such a project on a particular mythical figure finds precedent in Jane Kingsley-Smith's 2010 monograph *Cupid in Early Modern Literature and Culture*, which considers the cultural significance of Cupid in early modern England.<sup>10</sup>

Despite his proliferation in texts of the English Renaissance, Neptune has received no comparable treatment in English literary or cultural scholarship. My project would remedy this deficiency. It takes on a two-pronged approach: it considers the visual and the textual and examines how these media worked in tandem to produce the uniquely English Neptune. This section focuses mainly on *The Faerie Queene* and *Poly-Olbion*, although I will include other works that feature Neptune, such as John Lyly's *Gallathea* and Ben Jonson's *Neptune's Triumph for the Return of Albion*. *Poly-Olbion* presents a particularly useful site of investigation: Neptune appears not only in Drayton's verse, but

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<sup>10</sup> Most work on Renaissance Neptune has been undertaken by art historians working on Renaissance Italy. See, eg, Cecil Gould, "Leonardo's 'Neptune' Drawing," *The Burlington Magazine* 94.595 (1952), 289-95; Bianca Candida, "Un bronzo di Alessandro Vittoria," *Prospettiva* 28 (1982), 79-82; Anna Maria Massinelli, "Osservazioni sul rilievo del Carro di Nettuno al Museo del Bargello," *Mitteilungen des Kunsthistorischen Institutes in Florenz* 36.1/2 (1992), 227-35; Richard J. Tuttle, *The Neptune Fountain in Bologna: Bronze, Marble, and Water in the Making of a Papal City* (London: Harvey Miller, 2015).



also in the attendant cartographic engravings that accompany the poem (figs. 4.6-4.9). *Poly-Olbion*, thus, entails an interplay of text and image. The English nature of Neptune is solidified further in the poem's dedication, where Drayton writes on Prince Henry's maritime aspirations: "He like great Neptune on three Seas shall rove, / And rule three Realms, with triple power like Jove." *The Faerie Queene*, although it lacks contemporary illustrations, also constructs Neptune as the allegorical manifestation of English maritime law, as I argue in Chapter 3.

The second prong of my project engages the visual. Locating this visual English Neptune proves a bit more challenging than his Italian counterpart: England enjoyed no fountains of Neptune as in Florence (fig. C.26), Bologna (fig. C.27), or Messina (fig. C.28), civic monuments that afforded the public imposing views of the god of the sea. My research has revealed, however, that Neptune did occupy a public-facing role in England: he appeared in the historiated initials of several printed royal proclamations, particularly during the reigns of Mary and Elizabeth (fig. C.29).<sup>11</sup> This discovery reveals that Neptune already enjoyed a relationship to English maritime law long before Marchamont Nedham's translation of *Mare clausum*: the proclamations that his image accompanies include 563 (Elizabeth, 1569), which enforced penalties against piracy and 784 (Elizabeth, 1596), which ordered defenses maintained and commanded naval officers remain on the coast (numbers from Hughes and Larkin). To date, no scholar has considered the relationship between the historiated initials and the text of the proclamation itself. In Chapter 2, I did not consider how a piece of the proclamation—the

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<sup>11</sup> This particular image comes from a 1570 English edition of Sebastian Brant's *Stultifera nauis*; however, it is identical to the initial used in the proclamations.

historiated initial—sat in direct dialogue with its content. Indeed, the extensive circulation and public display of royal proclamations makes their images of Neptune the most widely viewed in early modern England, and consequently, developing a portrait of the English Neptune would be futile without considering his presence on this ubiquitous royal document. Additionally, my nascent investigations have revealed that European books also contain historiated initials featuring images of Neptune, mostly in Italy.<sup>12</sup> Books containing Neptune were printed in Bologna, Rome, and Venice, and I have identified six unique Neptune initials (figs. C.30—C.35). I have located one non-Italian Neptune in a book printed by Sebastian Gryphius in Lyon in 1552 (fig. C.36). These initials may represent an overlooked, but important, site of scholarship on images of the Renaissance Neptune.

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<sup>12</sup> I thank Rachel Young for drawing my attention to the existence of Italian Neptune initials.

## FIGURES

All images presumed to be in the public domain as per the representation of the holding institutions.

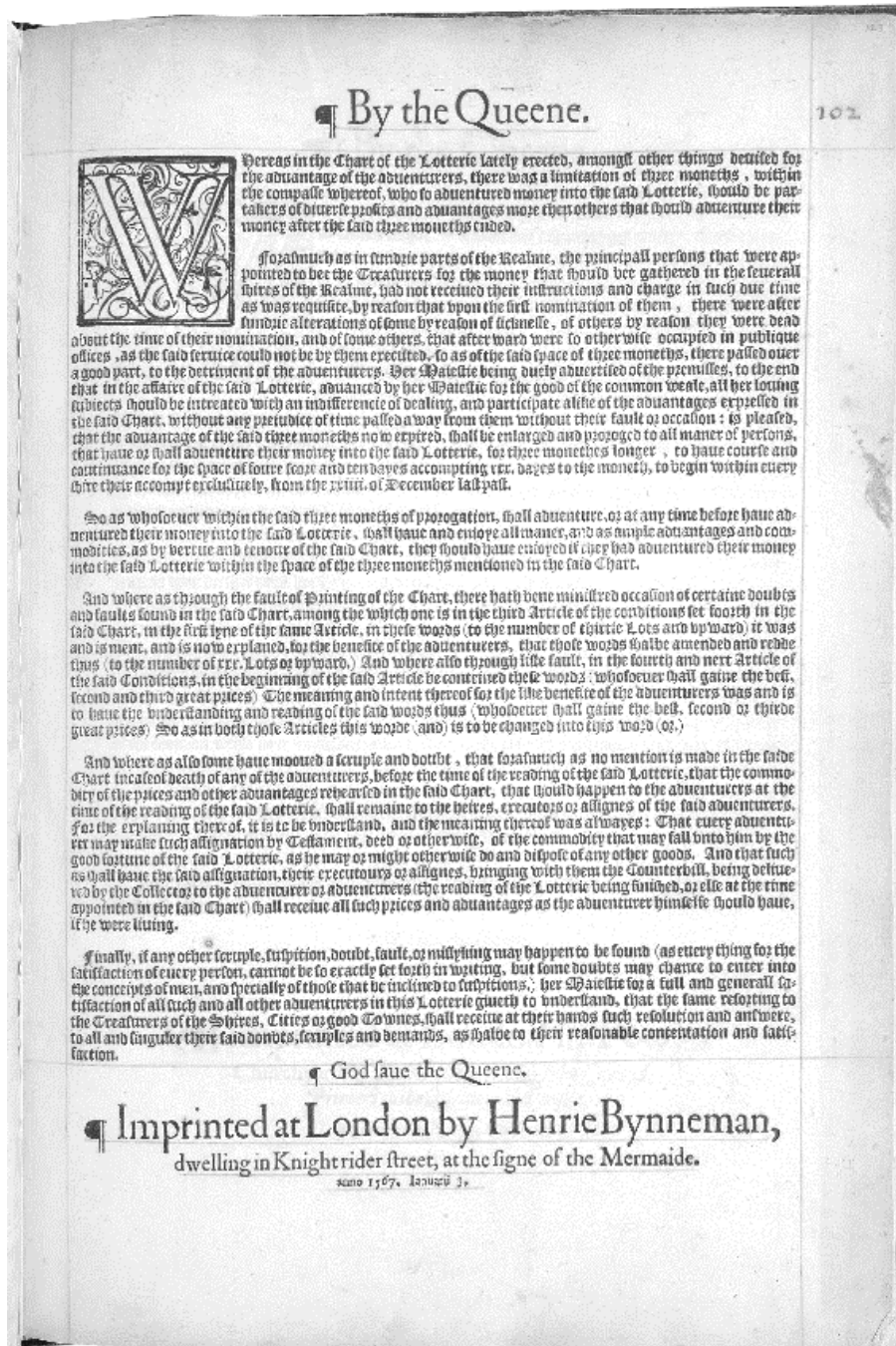


Fig. 2.1 Royal Proclamation, Elizabeth I, issued January 3, 1567  
Image and Source: Folger Shakespeare Library

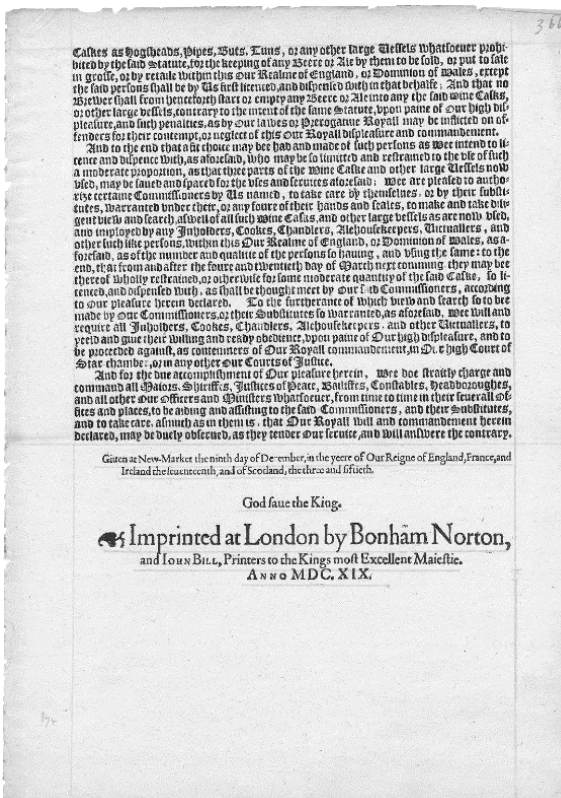
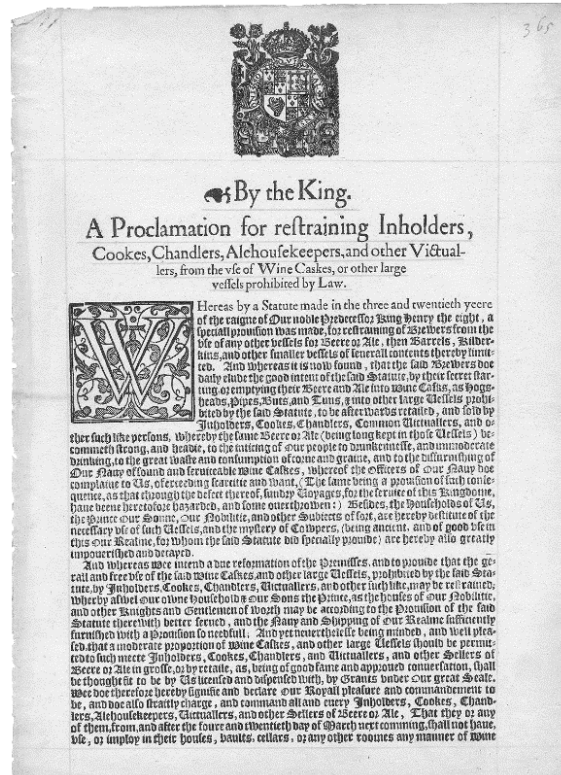


Fig 2.2 Royal Proclamation, James I, issued December 9, 1619  
Image and Source: Folger Shakespeare Library



By the King.  
**A PROCLAMATION**

For Suppressing the Printing and Publishing Unlicensed News-Books,  
and Pamphlets of News.

CHARLES R.



Whereas it is of great Importance to the State, That all News Printed and Published to the People, as well concerning Foreign, as Domestick Affairs, should be agreeable to Truth, or at least Warranted by good Intelligence, that the minds of his Majesties Subjects may not be disturbed, or amused by Lies or vain Reports, which are many times raised on purpose to scandalize the Government, or for other indirect Ends; And whereas of late many Evil-disposed Persons have made it a common Practice to Print and Publish Pamphlets of News, without License or Authority, and therein have vended to his Majesties People, all the idle and malicious Reports that they could Collect or Invent, contrary to Law: The continuance Whereof would in a short time endanger the Peace of the Kingdom, the same manifestly tending thereto, as has been declared by all his Majesties Judges unanimously: his Majesty therefore considering the great Mischief that may ensue upon such Licentious and Illegal Practices, if not timely prevented, hath thought fit by this his Royal Proclamation (with the Advice of his Privy Council) strictly to Prohibit and forbid all Persons whatsoever to Print or Publish any News-Books, or Pamphlets of News not Licensed by his Majesties Authority. And to the intent all Offenders may know their Danger, and desist from any further Proceedings of this kind, his Majesty is Graciously pleased hereby to Declare, That they shall be proceeded against according to the utmost Severity of the Law: And for that purpose, his Majesty doth hereby Will and Command all his Judges, Justices of Peace, and all other his Officers and Ministers of Justice whatsoever, That they take effectual Care, that all such as shall Offend in the Premises, be proceeded against, and punished according to their Demerits.

Given at Our Court at Whitehall this 1.<sup>th</sup> day of May, in the Two and thirtieth year of Our Reign.

**God save the King.**

*London, Printed by John Bill, Thomas Newcomb, and Henry Hills,  
Printers to the Kings most Excellent Majesty. 1680.*

Fig. 2.3 Royal Proclamation, Charles II, issued May 12, 1680  
Image and Source: Folger Shakespeare Library

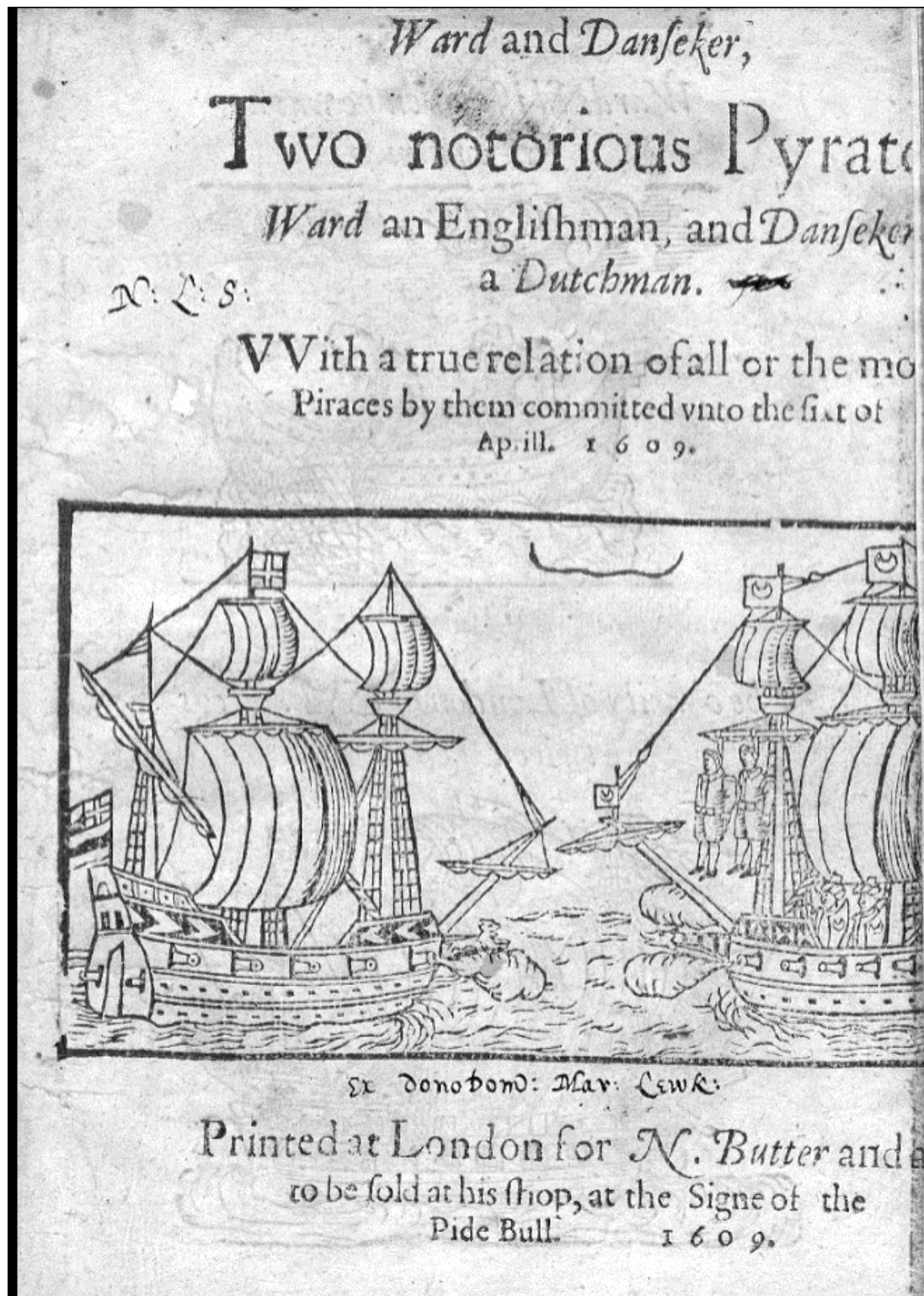


Fig. 2.4 *Ward and Danseker, Two notorious Pyrates* (London, 1609), title page, woodcut  
Image and Source: Folger Shakespeare Library



*Wards Skiffe when he was a  
Fisherman.*



*The charity of London of M. V. egs  
twice taken.*



Fig. 2.5 Ward and Danseker, *Two notorious Pyrates*, A1<sup>v</sup>, woodcut  
Image and Source: Folger Shakespeare Library

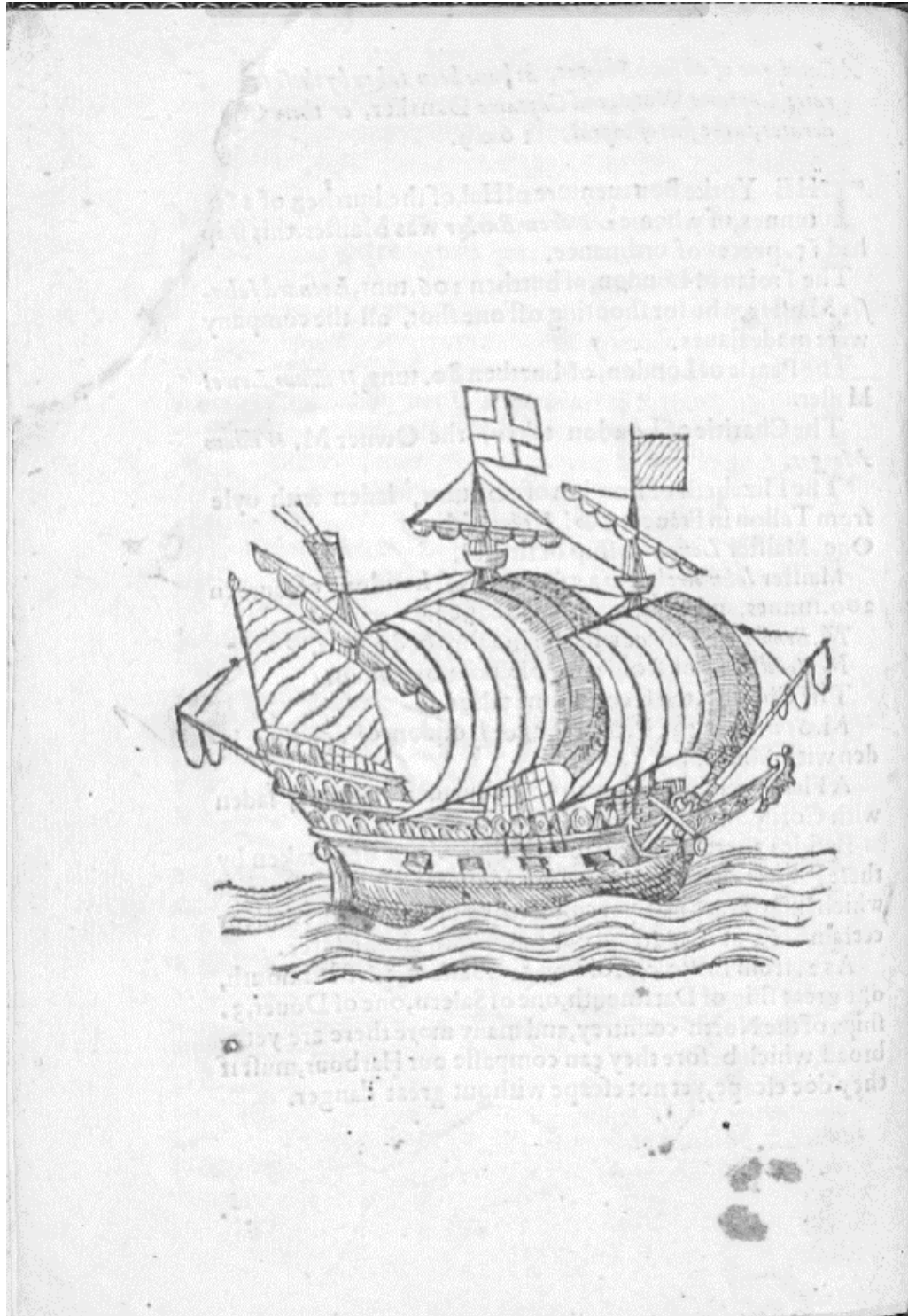


Fig. 2.6 *Ward and Danseker, Two notorious Pyrates*, D4<sup>v</sup>, woodcut  
Image and Source: Folger Shakespeare Library



A True Relation,<sup>v</sup> of  
the Lives and Deaths of the  
two most Famous *English* Py-  
rats, *Purser*, and *Clinton*, who lived  
in the Reigne of Queene  
ELIZABETH.

Together with the particular actions of their  
Takings, and undertakings

*With other pleasant Passages which hapned before  
their surprizall worth the observing.*



LONDON  
Printed by Io. Okes. 1639.

Fig. 2.7 A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton (London, 1639), title page, woodcut

Image: Bodleian Library

Source: Early English Books Online

*The Lives and Deaths of*

Answer, Notwithstanding her Majesties Declaration:

Still keepe out : sayth the pursebant.

Answer. And they will not come in.

The Pursebant hearing him speake so out of order began to grow angry, and said, I had thee say, and still keepe out :  
who replide againe,

And they will not come in.

And why ( said the Pursebant ) not as well keepe out ? Is it not all one ( answered the fellow )

For all the while they keepe out, you see they doe not offer to run in.

The Pursebant said, How am I troubled with his Cocks-combe :

Hee etchoed to him againe,

How am I troubled with this Cocks-combe :

But I see there is no remedy.

But I see there is no remedy.

The Pursebant proceeded againe, and said,  
Who have lately robb'd divers of our ships :

Who have lately rob'd divers shivers of our Chippes.

Answer. Well, I see I must endure it:

Well

Fig. 2.8 *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton, C1<sup>v</sup>*

Image: Bodleian Library

Source: Early English Books Online



Fig. 2.9 *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton*, C2<sup>r</sup>, woodcut

Image: Bodleian Library

Source: Early English Books Online

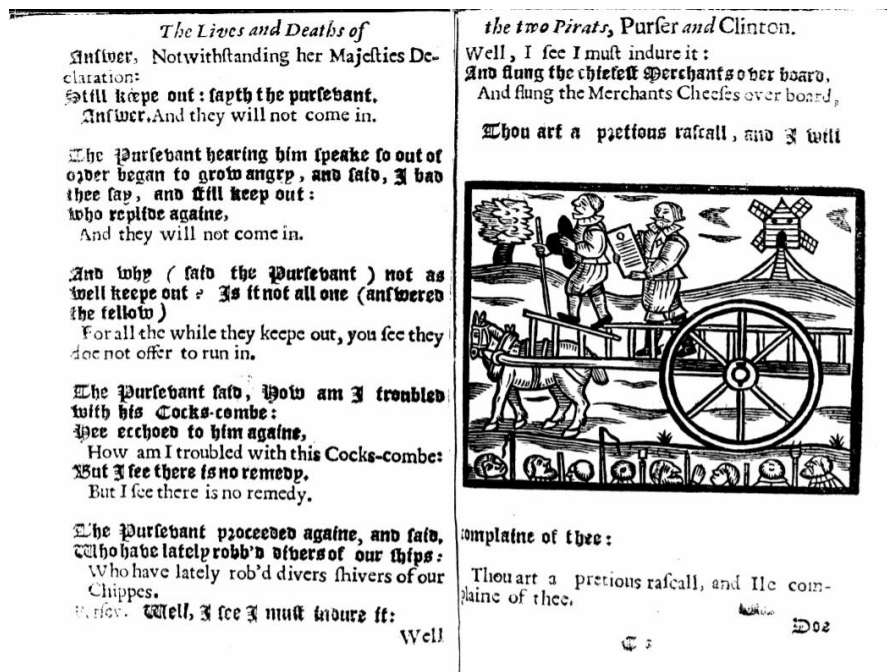


Fig. 2.10 *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton*, C1<sup>v</sup> and C2<sup>r</sup>

Image: Bodleian Library

Source: Early English Books Online



Fig. 2.11 *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton*, title page, woodcut. Repeats B2<sup>r</sup>, B6<sup>v</sup>, C3<sup>v</sup>, and C4<sup>v</sup>

Image: Bodleian Library

Source: Early English Books Online



Fig. 2.12 *A True Relation, of the Lives and Deaths of the two most Famous English Pyrats, Purser, and Clinton*, C5<sup>r</sup>, woodcut

Image: Bodleian Library

Source: Early English Books Online





Fig. 2.13 Willem van de Velde, *An English Ship in Action with Barbary Vessels* (1678)  
Oil on canvas, 109.2 cm x 198.1 cm  
Image and Source: National Maritime Museum, Greenwich

*Fortune by Land and Sea.* 33

*Purs.* Long since proclaimed Pirates. *Clow:* Long since proclaimed spirats. *Purs:* Notwithstanding her Majesties commission.  
*Clow:* Notwithstanding her Majesties condition. *Pur:* Stil keep out.  
*Clow:* And will not come in. *Pur:* And have of late spoyled a Ship of *Exeter*.  
*Clow:* And have of late spoyled all the sheep in the Exchequer. *Pur:* And thrown the chief Merchant over board.  
*Clow.* And thrown the Merchants cheefes over-board.  
*Purs:* I therefore in her Majesties name. *Clow:* I therefore in the name of her Majesty. *Purs:* Proclaim to him or them.  
*Clow:* Proclaim to them or him. *Pur:* That can bring in these Pirates Ships or Heads. *Clow:* That can bring in these Pyecrafts or Sheeps-heads. *Pur:* A thousand pound sterling. *Clow:* A thousand Stares and Starlings. *Pur:* If a banisht man his country.  
*Clow:* If a man he shall be banisht his country. *Pur:* If a condemned man liberty. *Clow:* I a man at liberty condemned.  
*Pur:* Besides her Majesties especial favour. *Clow:* Besides her Majesties spectacles and favour. *Pur:* And so God save the Queen.

Fig. 2.14 *Fortune by Land and Sea*, Scene 3.4, 33  
Image: Boston Public Library  
Source: Internet Archive

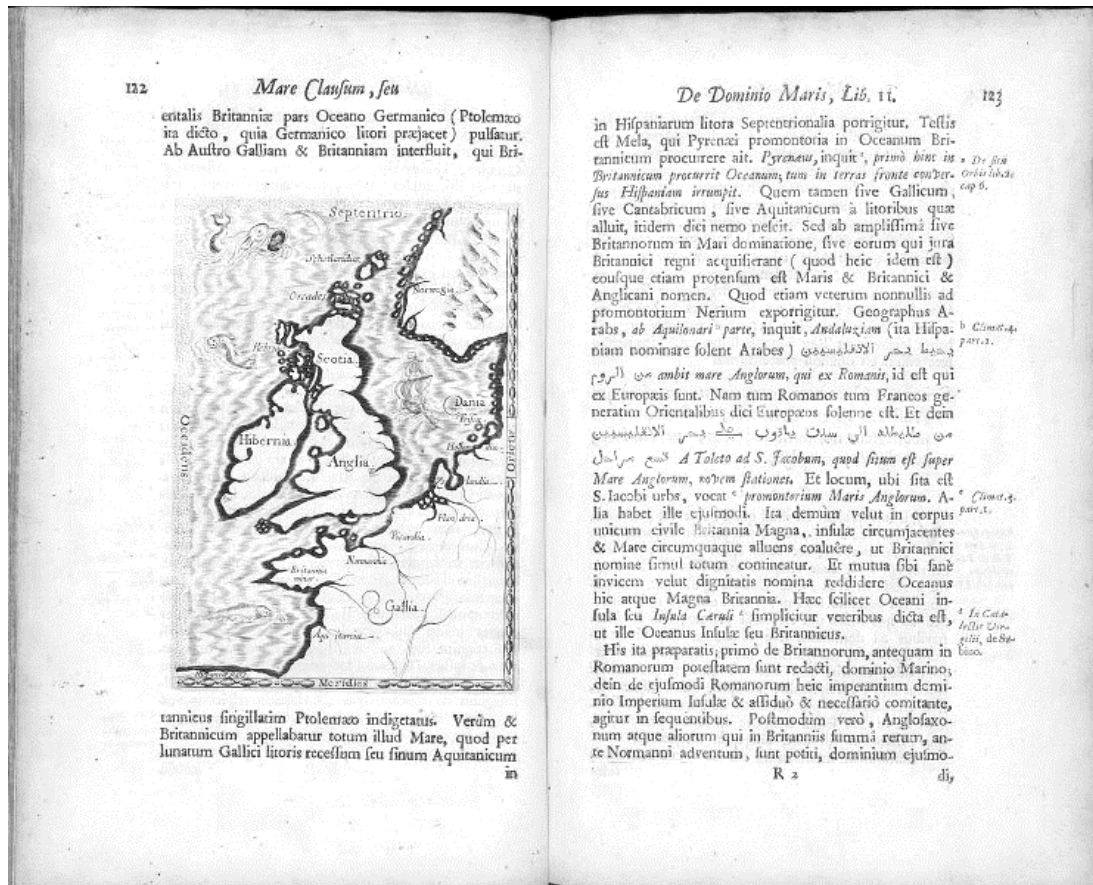


Fig. 4.1 *Mare clausum* (London, 1635), 122-3  
Image and Source: Lillian Goldman Law Library

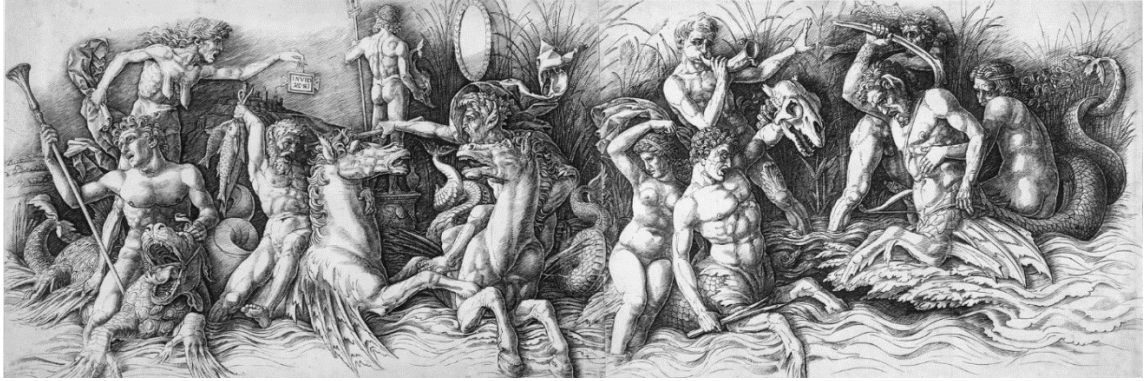


Fig. 4.2 Andrea Mantegna, *Battle of the Sea Gods* (c.1485–88)  
Engraving, 28.6 cm x 37.5 cm  
Image and Source: The Metropolitan Museum of Art



Fig. 4.3 (detail of 4.2)



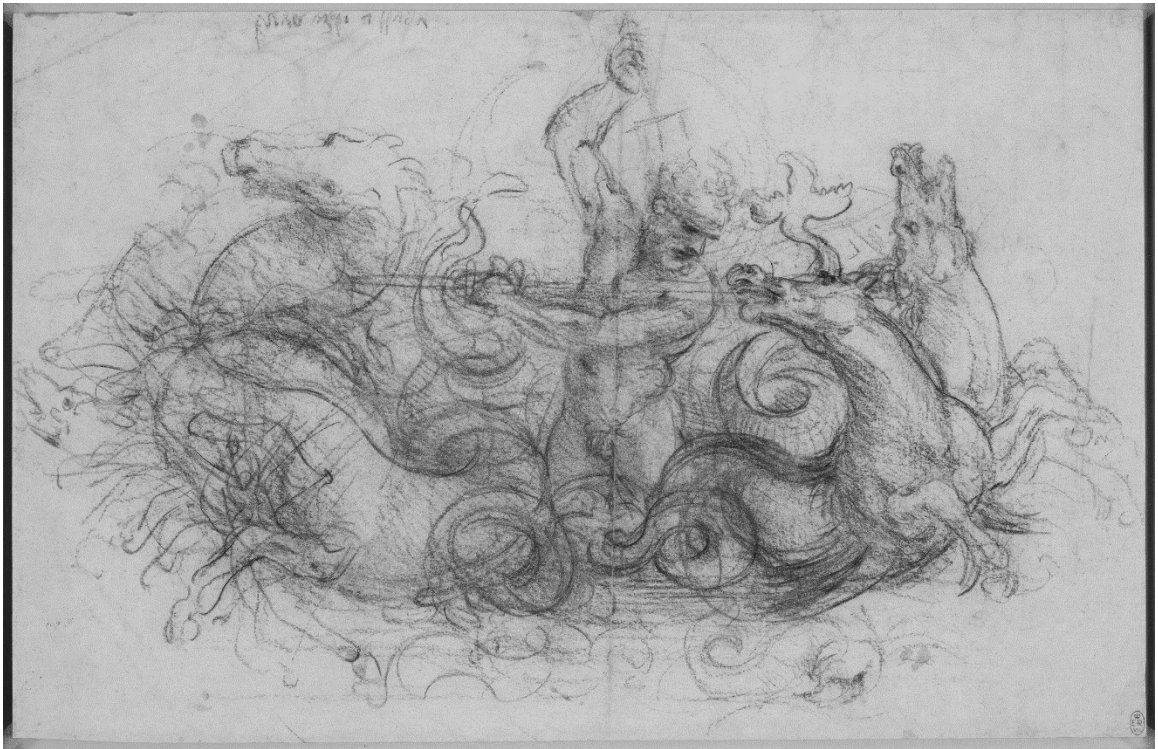


Fig. 4.4 Leonardo, Drawing of *Neptune* c.1504-5  
Charcoal on paper, 25.1 cm x 39.2 cm  
Image and Source: Royal Collection Trust





Fig. 4.5 Baccio Bandinelli, *Drawing of Andrea Doria as Neptune* (after 1528)  
Pen and brown ink on paper, 42.7 cm x 27.5 cm  
Image and Source: British Library



Fig. 4.6 Agnolo Bronzino, *Portrait of Andrea Doria as Neptune* (c.1530s)

Oil on canvas, 115 cm x 53 cm

Image: Pinacoteca di Brera

Source: Wikipedia Commons

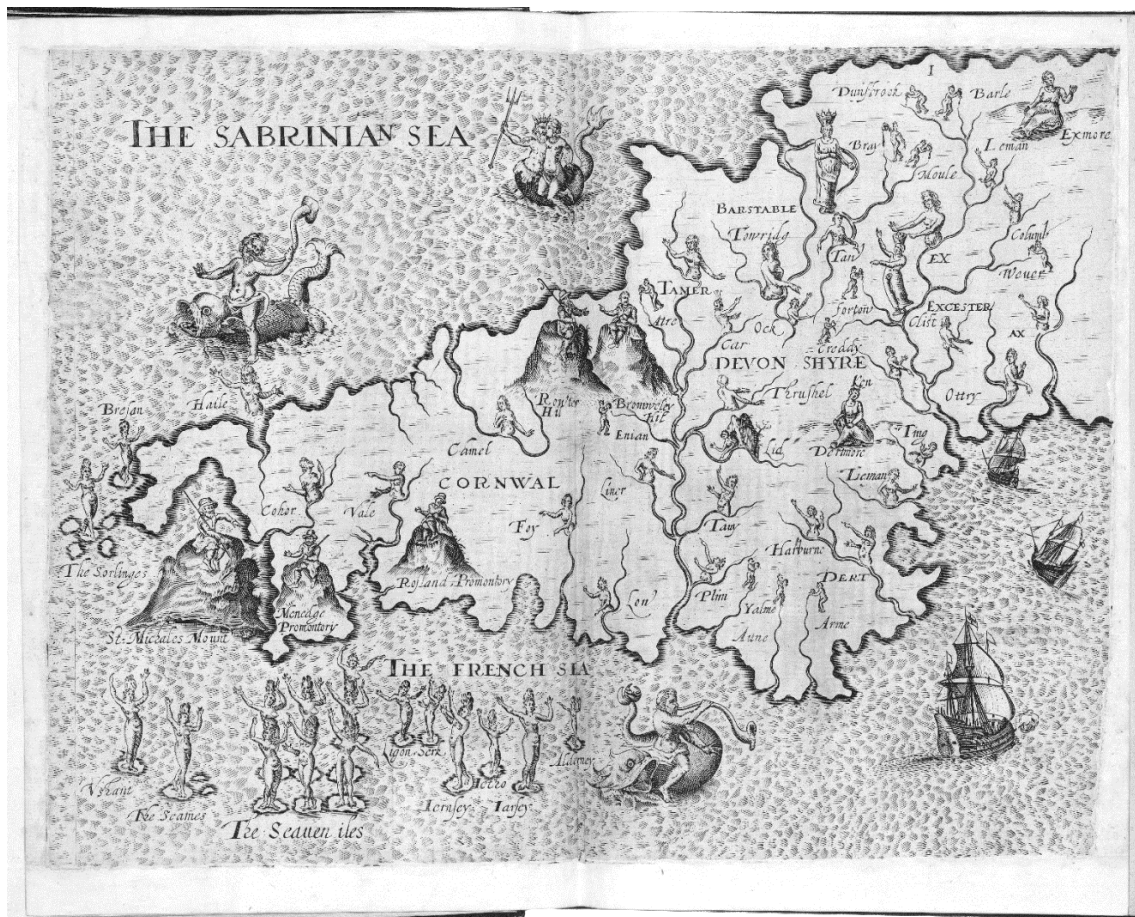


Fig. 4.7 William Hole, Cornwall, Devonshire, and The Channel Islands (1612)  
Engraving

Image and Source: Folger Shakespeare Library



Fig. 4.8 (detail of 4.7)





Fig. 4.9 William Hole, The Island of Lundy, Glamorgan, Monmouthshire, part of Brecknockshire (1612)

Engraving

Image and Source: Folger Shakespeare Library



Fig. 4.10 (detail of 4.9)

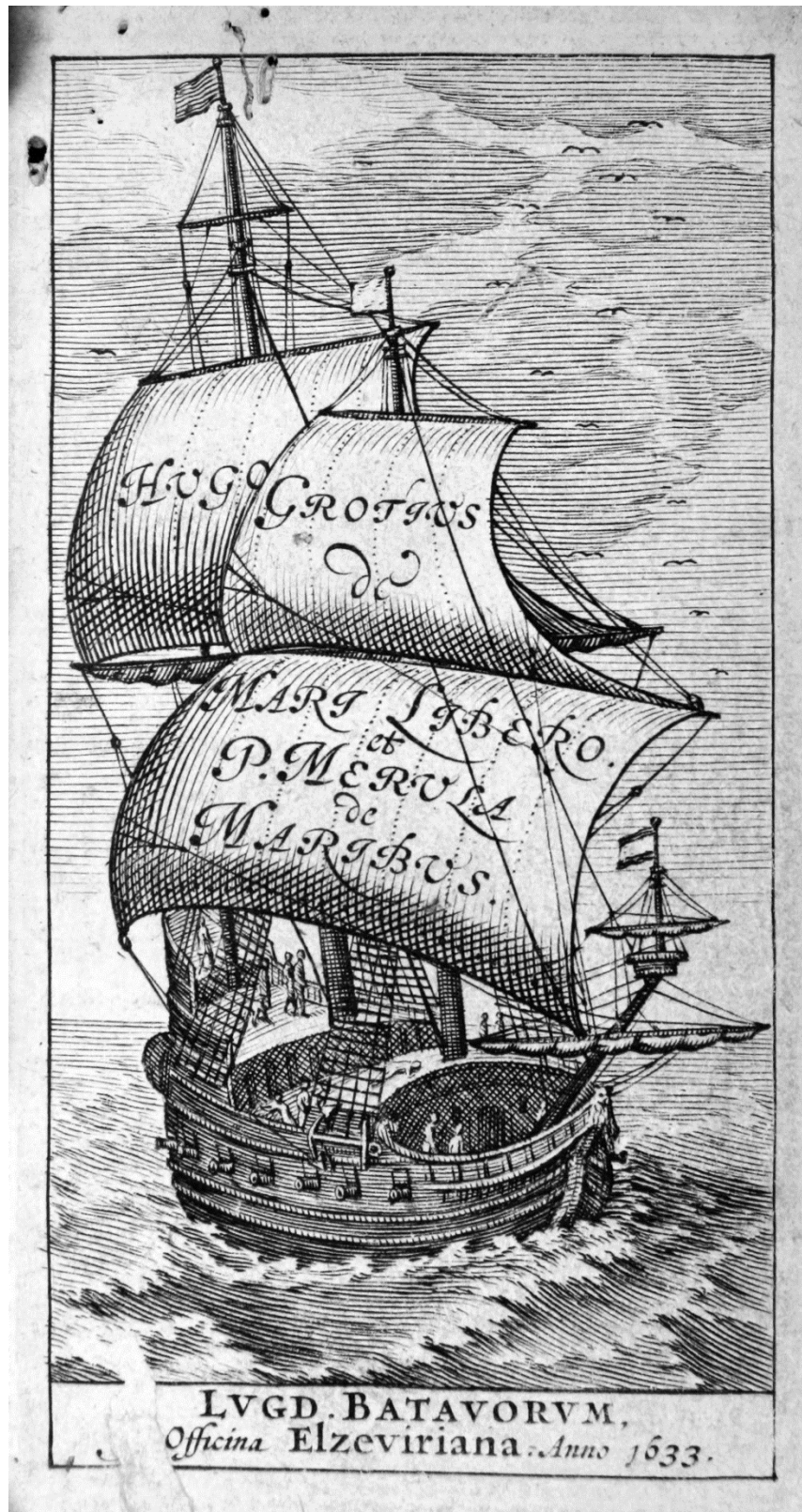


Fig. C.1 *De mari libero* (Leiden, 1633), title page, engraving  
Image and Source: University of Minnesota Law School



Fig. C.2 Franz Cleyne and Pierre Lombart, *Of the dominion, or, ownership of the sea* (London, 1652), frontispiece, engraving

Image: University of California Berkeley

Source: Wikipedia Commons

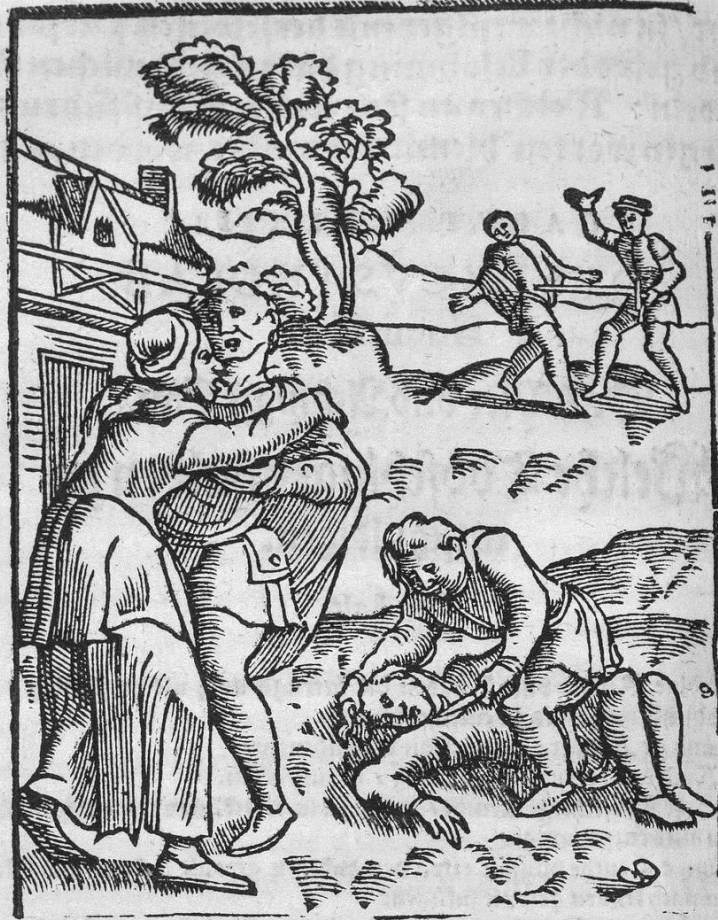


**I**n Mann der wissenlich vnnnd mit willen  
 verhelte vnnnd gestattet / daß sein Weib Ehe  
 brecherei treibt / also / daß er weder mit wor  
 ten / noch mit der Thate / ihr in solchem we  
 sen widersteht / sie vom Ehebrecher nicht abhelt / oder  
 von sich hinweg weist / derselbig ist / von wegen der  
 verhelunge seines Weibes Ehebruchs / mit Verban  
 nung oder eyner andern gleichmäßiger straffe / nach  
 v iij crach-

Figure C.3 *Praxis rerum criminalium* (Frankfurt, 1565), 171<sup>r</sup>, woodcut  
 Image and Source: Universitätsbibliothek Heidelberg



# Practica Gerichtlicher vbung



- 13 Ein trunckener bewilligt nit in seine that / jedoch wann zc.
- 14 Trunckenheit entschuldigt zum theyle / aber nicht gänglich.
- 15 Zergemelte stücke seind von gar vbermäßiger trunckenheit zuuersehen.
- 16 Keyser Carls des Fünffte Ordnung wider die vnsug behende Vollsaffer.
- 17 Die durch vnuersehenlichen zufall vhngefährd etwa töden / seind auch zuentschuldigen.
- 18 Keen Mensch kan vnuermutlichen zufall vorsehen.
- 19 Zufälliger Togschlag mag keynen von seiner empfangenen weihe bringen
- 20 Die auß Göttlicher eingebung zu todschlahen / werden entschuldigt.
- 21 Desgleichen / der im Ringen oder Fechten / seinen Gegenthyl vmbbringt.

22

Figure C.4 *Praxis rerum criminalium* (Frankfurt, 1565), 152<sup>v</sup>, woodcut  
Image and Source: Universitätsbibliothek Heidelberg



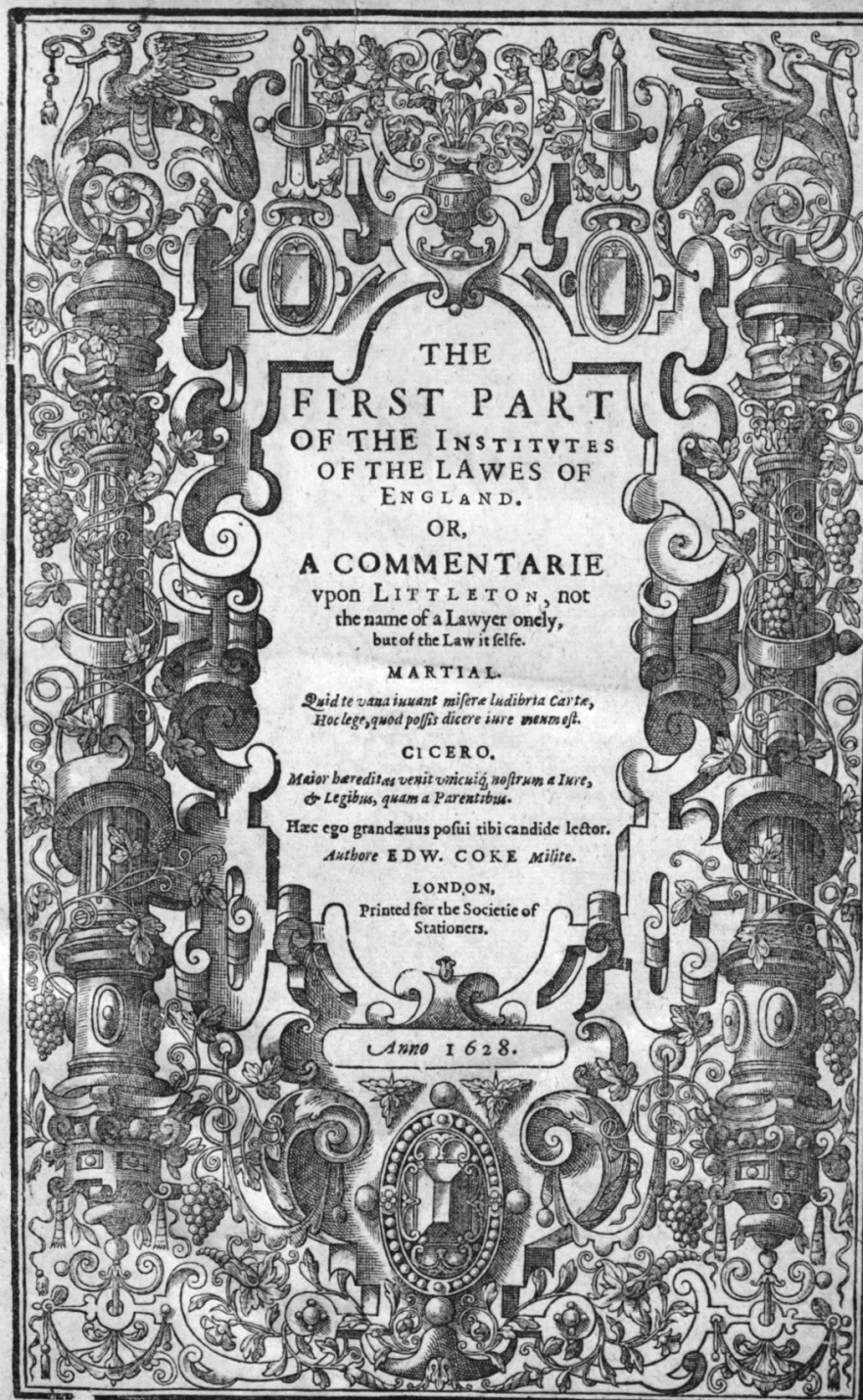


Fig. C.5 The first part of the Institutes of the lawes of England.  
Or, A commentarie vpon Littleton (London, 1628), title page, engraving  
Image: Hathi Trust  
Source: The Ohio State University



Fig. C.6 Robert Vaughan, Thomas de Littleton (1629), engraving

Image: Hathi Trust

Source: University of Michigan

nemy le mulnes, haue the land by dis-  
cent & not the middle,  
pur ceo que leigne cent & not the middle,  
est plus digne de for that the eldest is  
sanke. most worthy of blood.

For the female, and the female of the part of the father before the male of the part of the mother, &c. because the female of the part of the father is of the worthiest blood, (c) And therefore among the males the eldest brother and his posterity shall inherit lands in fee simple as heire before any younger brother, or any descending from him, because as Littleton saith he is plus digne de sanke. Quod prius est dignius est, and qui prior est tempore potior est iure. Si quis plures filios habuerit ius proprietatis primo descendit ad primogenitum, eo quod inuentus est primo in rerum natura. In King Alfred's time Knights were descended to the eldest sonne, for that by division of them betwene males the defence of the Realme might be weakened, but in those dayes Storage for was deuised betwene the heires males, and therewith agreeth Glanvill. Cum quis hereditatem habens moriatur, &c. si plures reliquerit filios, tunc distinguitur utrum ille fuerit miles, siue per feudum militare tenens, aut liber Sockmannus quia si miles fuerit aut per militiam tenens tunc secundum ius regni Anglie primogenitus filius patri succedit in toto, &c. si vero fuerit liber Sockmannus, tunc quidem diuidetur hereditas inter omnes filios, &c. But hereof more shall be said hereafter in his proper place.

Leigne est plus  
digne de sanke. It is a

maxime in Law, that the next  
of the worthiest blood shall  
enue inherit, as the male and  
all descendant from him doe

(c) Britton cap. 119.  
Bract. lib. 2. cap. 30. 277. 279.  
3. E. 3. 26. 3. E. 11. 218.  
Stanford prout. 52. 58.  
3. E. 1. 118. 119. 215.  
3. E. 3. 26. 3. E. 11. 218.  
Bract. lib. 2. 211.  
Glanvill. lib. 6. ca. 2.  
Mirror cap. 1. 5. 3.  
Glanvill. lib. 7. ca. 3. 6. 1.  
Vid. Pl. com. 229. 6.

### Section 6.

Item est a sauoir,  
que nul auera  
terre de fee simple  
per descent come  
heire a aucun home,  
si non que il soit son  
heire dentire sanke.  
Car si home ad issue  
deux firs per diuers  
venters & leigne  
purchate terres en  
fee simple & mozt  
sans issue, le puisne  
frere nauera la terre,  
mes luncle leigne  
frere, ou auter son  
prochein cousin ceo  
auera, pur ceo que le  
puisne frere est de  
demp sanke al eigne  
frere.

Also it is to bee  
vnderstood, that  
none shall haue land of  
fee simple by descent  
as heire to any man,  
vlesse he be his heire  
of the whole blood,  
for if a man hath issue  
two sonnes by diuers  
venters, and the elder  
purchate lands in fee  
simple, and die with-  
out issue, the younger  
brother shall not haue  
the land but the Vncle  
of the elder brother,  
or some other his next  
cousin shall haue the  
same, because the  
younger brother is but  
of halfe blood to the  
elder.

None can bee heire  
to a fee simple by  
the Common Law,

(d) but he that hath sangui-  
nem duplicatum the whole  
blood, that is both of the fa-  
ther and of the mother, so as  
the halfe blood is no blood in-  
heritable by descent because  
that he that is but of the  
halfe blood cannot be a com-  
pleat heire, for that he hath  
not the whole and compleat  
blood, and the Law in dis-  
cents in fee simple doth re-  
spect that which is compleat  
and perfect. And this maxime  
doth not only hold where  
lands (whereof Littleton here  
speaketh) are claymed or de-  
manded as heire (e) but also  
in case of appeal of death,  
for, if one brother be slain,  
the other brother of the halfe  
blood shall neuer haue an ap-  
peale (albeit hee shall recover  
nothing therein either in the  
realty or personalty) because  
in the eye of the Law hee is  
not heire to him. Also this  
rule extends to a warrantie  
as our Autho. himselfe el-  
ewhere holdeth.

(a) Bract. lib. 4. 279. 6.  
idem lib. 2. 56. 65.  
Britton. ca. 119.  
Flita. lib. 6. ca. 1.  
3. E. 3. 19. Iohn Gifford cap. 2.  
3. E. 3. 26. 3. E. 11. 218.  
40. Aff. 6.  
4. E. 2. Formed. 40.  
Vid. Ratcliff case lib. 3.  
p. 40. 41.

(e) 7. E. 4. 15.

See. 7. 37.

### Section 7.

Et si home ad  
issue firs & ale

And if a man hath  
issue a sonne and a

This is put for an  
example to illustrate  
that which hath  
been

Fig. C.7 First Part of the Institutes of the Laws of England (London, 1628), 14

Image: Hathi Trust

Source: The Ohio State University





*The High Court of Parliament. Cap.1.*

there: whereunto answer was made that errors, by the law, in the Common place are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament and not otherwise.

1 R. 2. nu. 28, 29. 2 R. 2. nu. 31. A writ of Error in Parliament between William Mountacute Earl of Sarum, and Roger of Mortimer Earl of March of a judgment in the Kings Bench.

<sup>a</sup> The Dean and Chapter of Lichfield recovered in the Common place against the Prior of Newport Pagnell: the Prior by writ of Error reverfeth the judgment in the Kings Bench: the Dean and Chapter by writ of Error in Parliament reverfeth the judgment in the Kings Bench, and affirmeth the judgment in the Common place, and a commandment given to the Chancellor, that the judgement in the Common place be executed by proceffe by him to be made.

<sup>b</sup> John Sheppy complains of a judgement in the Kings Bench in a writ of Error.

<sup>c</sup> Error in Parliament between William Mountacute Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, Town, and honour of Denbeigh, &c. upon a judgment given in the Kings Bench, and had a Scire fac' returnable the next Parliament.

<sup>d</sup> William Seward alias Chedde complaineth, that where he by that name was presented and inducted to the Parsonage of Wotton Under Egge in the County of Glouc', and thereof continued the possession by the space of four years, untill the King by untrue suggestion presented Sir John Dawry to the Parsonage of Underhegge in that County, where there was no such Parsonage called Underhegge, as the said William pleaded in a Quare Impedit brought by the King in the Kings Bench; upon which writ the King recovered by the default the Parsonage of Underhegge, and not Under Egge, whereby upon a writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge: for which mistaking and error, the judgment for the said John in full Parliament was reversed, and a writ awarded to the said Bishop for the restitution of the said William.

The Record and Judgment given in the Kings Bench for the King, against Edmond Bassor for certain lands, &c. was for divers errors reversed in Parliament, and restitution of the premises with the mean profits restored to the said Edmond.

In error in Parliament between Roger Deyneourt, and Ralph de Adderlye for a judgement given in the Kings Bench for the Spannow of Anlye in Com' Warr'. Sir William Gascoign Chief Justice delivered a copy of the Record and proceffe, word for word, under his hand, &c. to the Clerk of the Parliament, &c.

In error in Parliament between Richard Quatermayns and William Hore, &c. upon an erroneous judgement given in the Kings Bench in an action of trespass, and the Plaintiff entred his Attorny of Record to proceed therein.

John Beauchamp Lord Abergavenny complained in Parliament upon an erroneous judgement given upon a verdict in the Kings Bench in a Scire fac' upon a recognisance in the Chancery for keeping the peace. In the Record whereof are excellent points of learning, as well touching the recognisance, as the proceffe, and issue.

Error in Parliament, Pasch. 31 H. 6. upon a judgment given in an Assise in the Kings Bench, & intrator super marginem. Rot. mittitur in Parliamentum per Johannem Fortescue Termino Pasche anno 31 H. 6.

And to omit many others, to descend to some of latter times, Richard Whalley recovered in Assise by verdict against divers tenants, who brought a writ of Error in the Kings Bench, where the judgment in the Assise was affirmed, the tenant complained in Parliament for error in the Kings Bench.

Error in Parliament upon complaint of Sir Christopher Heydon Knight of a judgment in a writ of Error in the Kings bench, between the said Sir Christopher Plaintiff, and Roger Godsalve and others Defendants, upon a judgment

<sup>a</sup> Ro. Par. 15 R. 2. nu. 23. & 18 R. 2. nu. 11, 12, 13, 14, 15. This Parliament of 18 R. 2. is not mentioned in the printed book, because no Act passed at this Parliament. See 2 H. 4. nu. 40.

<sup>b</sup> Ro. Par. 15 R. 2. nu. 22.

<sup>c</sup> 21 R. 2. nu. 25. 2 H. 4. nu. 13.

<sup>d</sup> Rot. Par. 1 H. 4. nu. 91.

Rot. Par. 15 R. 2. nu. 24. & 2 H. 4. nu. 38.

5 H. 4. nu. 40.

Rot. Par. 3 H. 5. nu. 19.

Rot. Par. 10 H. 6. nu. 51. & 11 H. 6. nu. 40.

Rot. Par. 31 H. 6.

Rot. Par. 23 El. Dier 23 El. f. 373.

Rot. Par. 12 Jac.

Fig. C.10 *The fourth part of the Institutes of the laws of England: concerning the jurisdiction of courts* (London, 1644), 12

Image: Hathi Trust

Source: The Ohio State University

que Anglofaxonum imperio recentiora, à viris nihilominus historie Anglicanæ receptissimarumque de dominio maris Anglicano sententiarum callentissimis, utpote à maioribus edoctis, posteritati relinquuntur. Habetur apud Galfredum Chaucerum, non celeberrimum tantum Poëtam sed etiam virum sanè, pro seculo quo vixit, doctrina omnigena refertissimum, Fabula in itinere quod fingit versus Cantuariam à Iurisconsulto suo narrata quam ad Allæ Regis Northumbrorum ævum spectare voluit. Regnavit ille annos x x x. Caput autem anno salutis <sup>a</sup> D L I x. Fingitur ibi, Constantiam Imperatoris, nescio cuius, Romani filiam Syriæ Regi nuptam, nave in mare propugnaculo cuidam litoris Northumbrici vicinum devectam esse atque arena hæsisse. Christianam eam fuisse, eoque nomine extorrem, atque à propugnaculi regio præfecto captam. Inter describendum autem Constantiæ infortunium, Christianissimum ait (quod verum est) nondum fuisse territorio in illo ullibi receptum, sed Septentrionales illas plagas tam per Mare quam per terram à paganis devictas tunc esse atque occupatas. Verba eius quæ idem sonant, sunt,

**In all that lond dursten non Christen rout;  
All Christen folk been fled from the Countre  
Through Dapnims that conquerd all about  
The plagues of Northumberland by land and See.**

Mare vicinum æque ac Tellurem victoribus huius insulæ cessisse, appositè dixit, receptissimæ ea de re apud maiores sententiæ non nescius. Floruit ante annos c o x x x, sub Richardi secundi tempora. Nec minuitur auctoritas hæc, ex eo quòd cetera sunt ibi fabulosa. Scimus enim ex fabulis Heliodori, Achillis Tatii, Theodori Prodromi, Eustathii, eiusmodi aliis sive Eroticis sive generis qualiscunque, ritus, mores, ac receptas sententiæ tum hominum apud quos agi finguntur, tum seculorum quibus tribuuntur, non inutiliter subinde observari. Ioannes item Hardingus qui historiam de rebus Anglicis metricè sub Edwardo I V rege conscripsit, ubi principes memorat qui fidei iuramenta, ut clientes beneficiarii, Canuto Regi præstitissent, adjicit <sup>b</sup>;

**So did the kings of Wales of hie parage  
And all the North-west Occian  
For their kingdomes and for their landes than;**  
id est, idem fecere tunc Cambro Britannia Reges nobilissimi, uti etiam totius Oceani sub Cauro positi, nomine regnorum & territoriorum suorum. Oceani illius

Fig. C.11 *Mare clausum* (London [Leiden?], 1636), 148

Image: Hathi Trust

Source: Universidad Complutense de Madrid



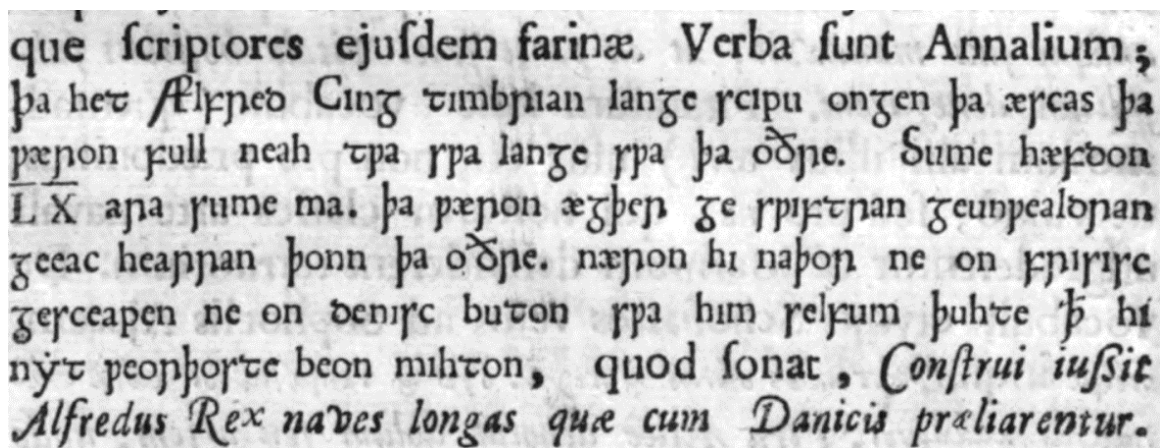


Fig. C.12 *Mare clausum* (London [Leiden?], 1636), detail of page 164

Image: Hathi Trust

Source: Universidad Complutense de Madrid

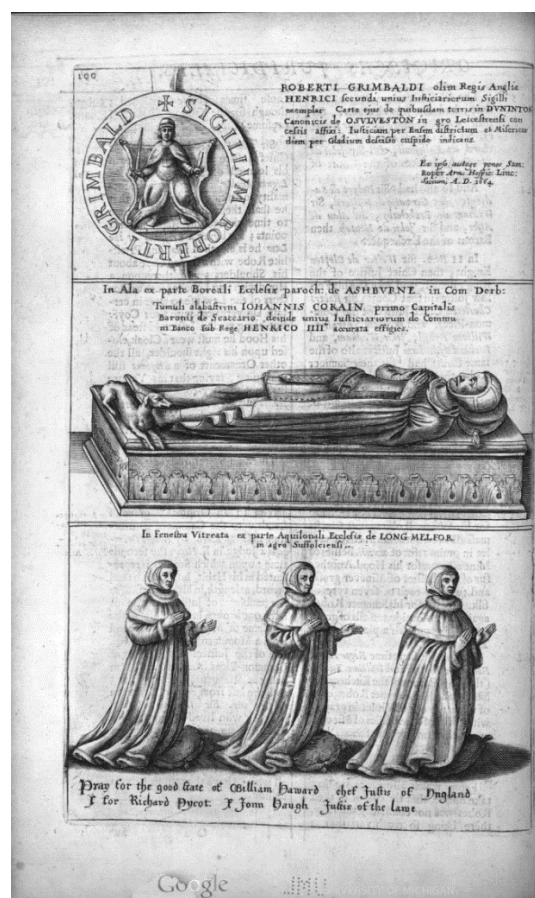


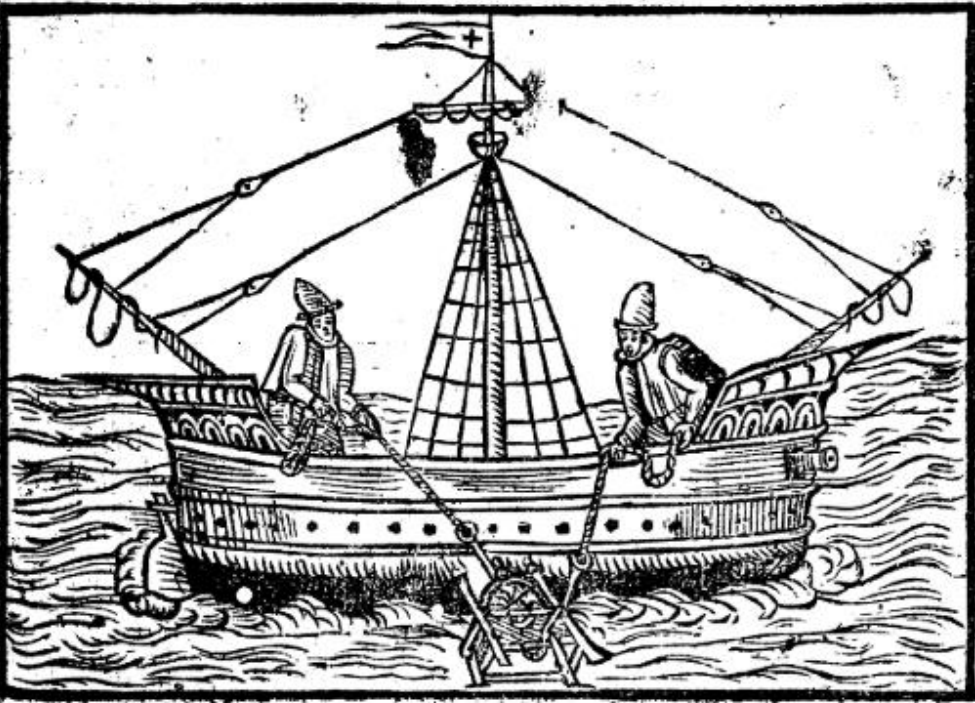
Fig. C.13 *Origines juridicales, or, Historical memorials of the English laws* (London, 1671), 100, engraving

Image: Hathi Trust

Source: The Ohio State University

6.

**L A M E N T A B L E**  
**Newes,**  
**Shewing the wonderfull de-**  
**liuerance of Maister Edmond Pet Sayler, and** 77  
**Maister of a Ship, dwelling in Seething**  
**Lane in London, neere Barking**  
Church. With other strange things late-  
ly happed concerning these great  
windes and tempestuous wea-  
ther, both at Sea and  
Lande.



Imprinted at London by T.C. for William Barley, dwelling ouer  
against Cree-church, neere Algate. 1613.

Fig. C.14 *Lamentable newes, shewing the wonderfull deliuerance of Maister Edmond Pet sayler, and maister of a ship* (London, 1613), title page, woodcut

Image: British Library

Source: Early English Books Online



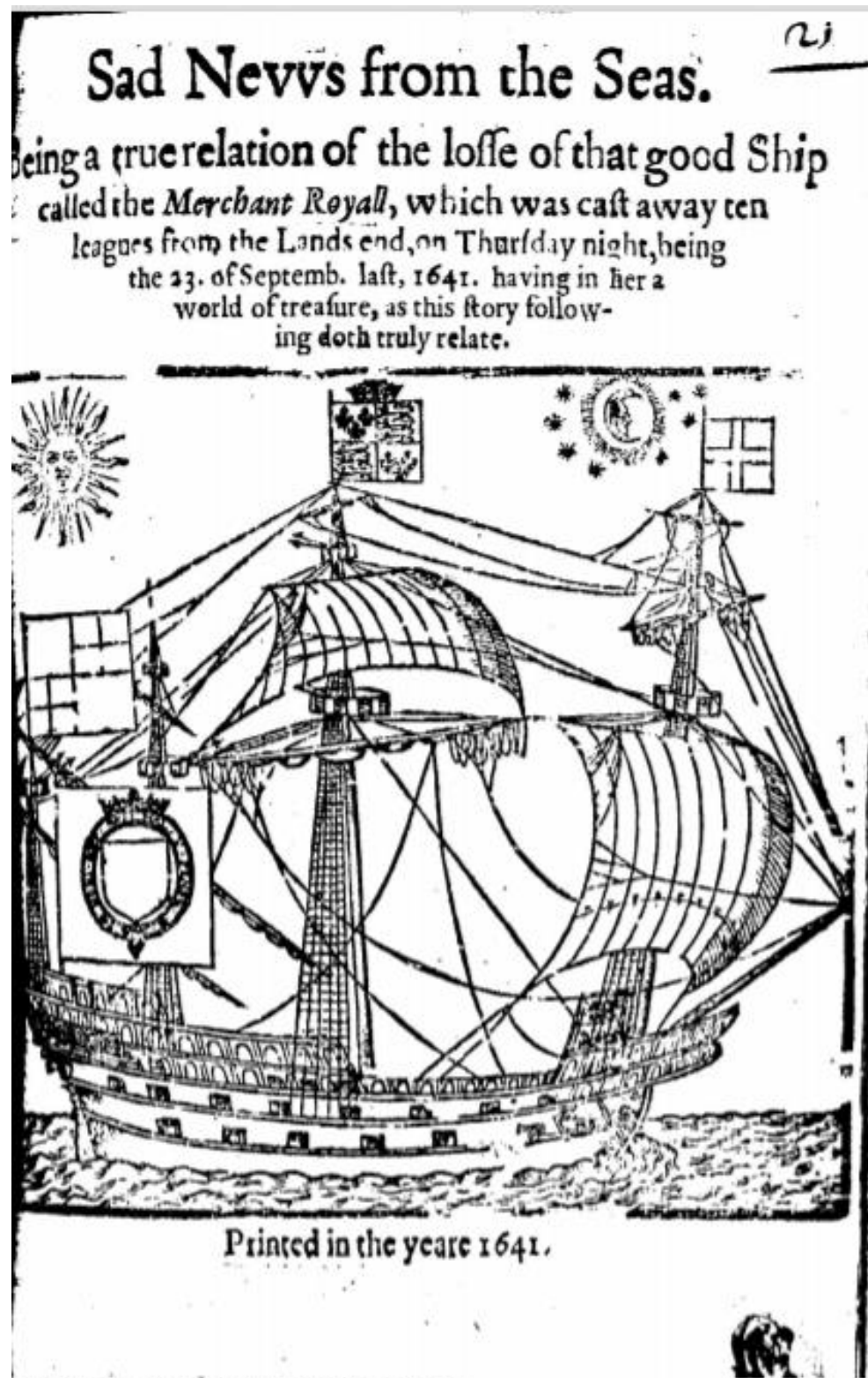


Fig. C.15 *Sad news from the seas. Being a true relation of the losse of that good ship called the Merchant Royall* (London, 1641), title page, woodcut

Image: British Library

Source: Early English Books Online

# The VVonders of the windie winter.

*By terrible stormes and tempests, to the losse of liues and goods of  
many thousands of men, women and children.*

The like by Sea and Land, hath not beene scene, nor heard of in  
this age of the World.



L O N D O N.

Printed by G. Eld, for Iohn Wright, and are to bee sold at his Shop neere  
Christ-Church-dore. 1613.

Fig. C.16 *The wonders of this windie winter. By terrible stormes and tempests* (London, 1613), title page, woodcut

Image: British Library

Source: Early English Books Online

*The raging Tempest stilled.*

# THE HISTORIE

of CHRIST his passage, with his Disci-  
ples, over the Sea of *Galilee*, and the memo-  
rable and miraculous occurrents therein.

Opened and explaned in weekly Lectures (and the  
Doctrines and Vses fitly applied to these times, for the direction  
and comfort of all such as feare Gods Iudgements) in  
the Cathedrall and Metropolitall Church  
of CHRIST, *Canterb.*

By THOMAS JACKSON, Doctor of Divinitie, and one  
of the Prebends, and Lecturer there.



LONDON,  
Printed by JOHN HAVILAND for Godfrey Emondson and  
Nicolas Vavasour. 1623.

Fig. C.17 *The raging tempest stilled* (London, 1623), title page, woodcut

Image: British Library

Source: Early English Books Online

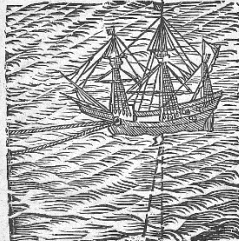
# Neptunes raging fury,

OR,  
The Gallant Sea-mens Sufferings.

Being a Relation of their Perils, and Dangers, and of the extraordinary  
bazaards they undergo in their Noble Adventures.  
Together with their undaunted valour, and rare constancy in all their extremities,  
And the manner of their rejoicing on Shore at their return home.

To the Tune of, When the Stormy Windes doe blow.

By J. P.



Y ou Gentils men of England  
Whet lives at home at ease,  
Full little doe you think upon  
The dangers of the Seas;  
The ear unto the Sparrows,  
And they will plainly shew,  
The cares and the fears,  
When the stormy windes doe blow.

All you that will be Sea-men,  
Youll bear a valiant heart,  
For when you come upon the Seas  
You must not think to start;  
For once to be faine hatched  
In Dile, Rain, no, Snow;  
For to fly, no, to fly,  
When the stormy windes doe blow.

The bitter frosts and Tempests  
Booze Sea-men must endure,  
Both day a night with many a fright  
And seldom rest secure;  
For day it is withered,  
With ditions strange to know,  
And with dreams on the streams,  
When the stormy windes doe blow.

In Claps of roaring thunder,  
Which darkness doth enforce,  
We often finde our ships to stray  
Beyond our wanted course,  
Which causeth great distractions,  
And singes our hearts full low;  
As in vain to complain  
When the stormy windes doe blow.

Sometimes in Neptune's bosome,  
For to us is lost with waves,  
And every man expecting  
The Sea to be their Graves,  
Then up aloft the mountain,  
And down again to loe;  
As with waves, with waves,  
When the stormy windes doe blow.

Then when we fall to prayers,  
With all our might and thought,  
When refuge all both fails us,  
This that must bear us out,  
To God we call for succour,  
For he it is we know  
That must aid us, and so be us  
When stormy windes doe blow.

The Second Part, to the same Tune.



The Lawyer and the Writer,  
What fits in Colours of their  
In Claps of roaring thunder,  
Which darkness doth enforce,  
We often finde our ships to stray  
Beyond our wanted course,  
Which causeth great distractions,  
And singes our hearts full low;  
As in vain to complain  
When the stormy windes doe blow.

We bring home costely Merchandise  
And Jewels of great price,  
To serve our English Gallantries,  
With many a rare device,  
To please the Noble Gentles  
Our gains we freely shew,  
For the love and the people,  
When the stormy windes doe blow.

We sometimes sail to the Indies,  
To fetch home Spices rare;  
Sometimes again, to France & Spain  
For wines beyond compare,  
Which Gallants are receiving  
In Taverns at a rate;  
Then we sleep o'er the deep,  
When the stormy windes doe blow.

When Tempests are blown over  
And gratefull fears are past;  
In weather faire and temperate air  
We straight fly down to rest;  
But when the Whirlwinds tumble,  
And waves doe furious grow;  
Then we roble, up we roble,  
When the stormy windes doe blow.

If Enemies oppose us,  
When England is at war,  
We fight our foreign Nations,  
We fear not wounds and scars;  
Our roaring Guns shall teach the  
Our valour for to know,  
Which they recite, in the Reels,  
When the stormy windes doe blow.

We are no Colward's Spintlers,  
But English-men true bred hearts,  
We le play our parts, like valiant  
And never fly for dread;  
We le ply our business nimble,  
Which are we come o'ge,  
We le our mates to the Straits,  
When the stormy windes doe blow.

Then Courage all brave Spintlers,  
Am I ever be dismayed,  
Whilst we have bold Adventurers  
We ne shall want a trade;  
Our Merchants will employ us,  
To fetch them wealth & gold;  
Then to be bold, work for Gold,  
When the stormy windes doe blow.

When we return in safety,  
With lugges for our gains;  
The Captain and the Steward  
Will help to share our gains;  
We le call for liquors roundly,  
And pay before we go;  
Then we le roble, on the floor,  
When the stormy windes doe blow.

F I N I S.

London, Printed by T. Mabb, for Ric. Burson, at the Horse-shoe in Smith-field

Fig. C.18 Neptune's raging fury, or, The Gallant Sea-mens Sufferings  
(London, c.1650), woodcut

Image and Source: English Broadside Ballad Archive



Fig. C.19 (detail of C.18)



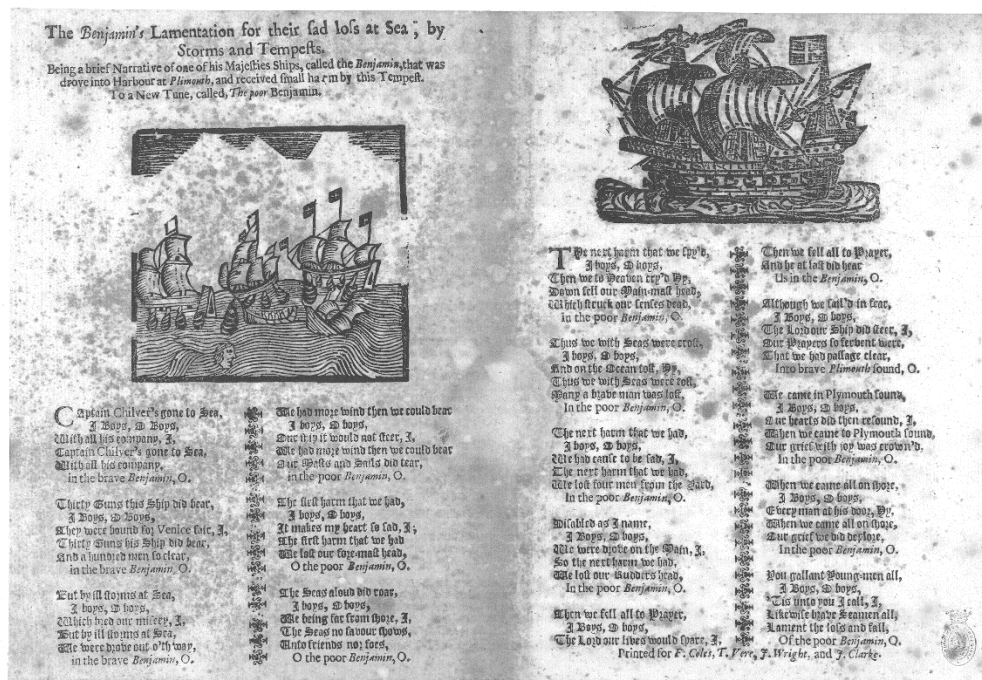


Fig. C.20 *The Benjamin's lamentation for their sad loss at sea, by storms and tempests* (London, c.1674), woodcut  
 Image and Source: English Broadside Ballad Archive

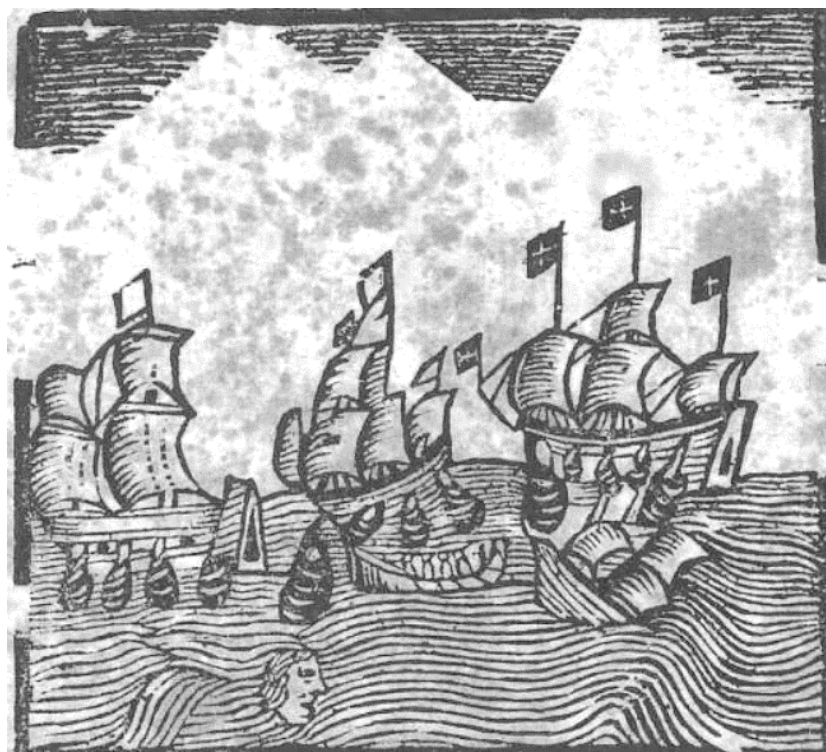


Fig. C.21 (detail of C.20)

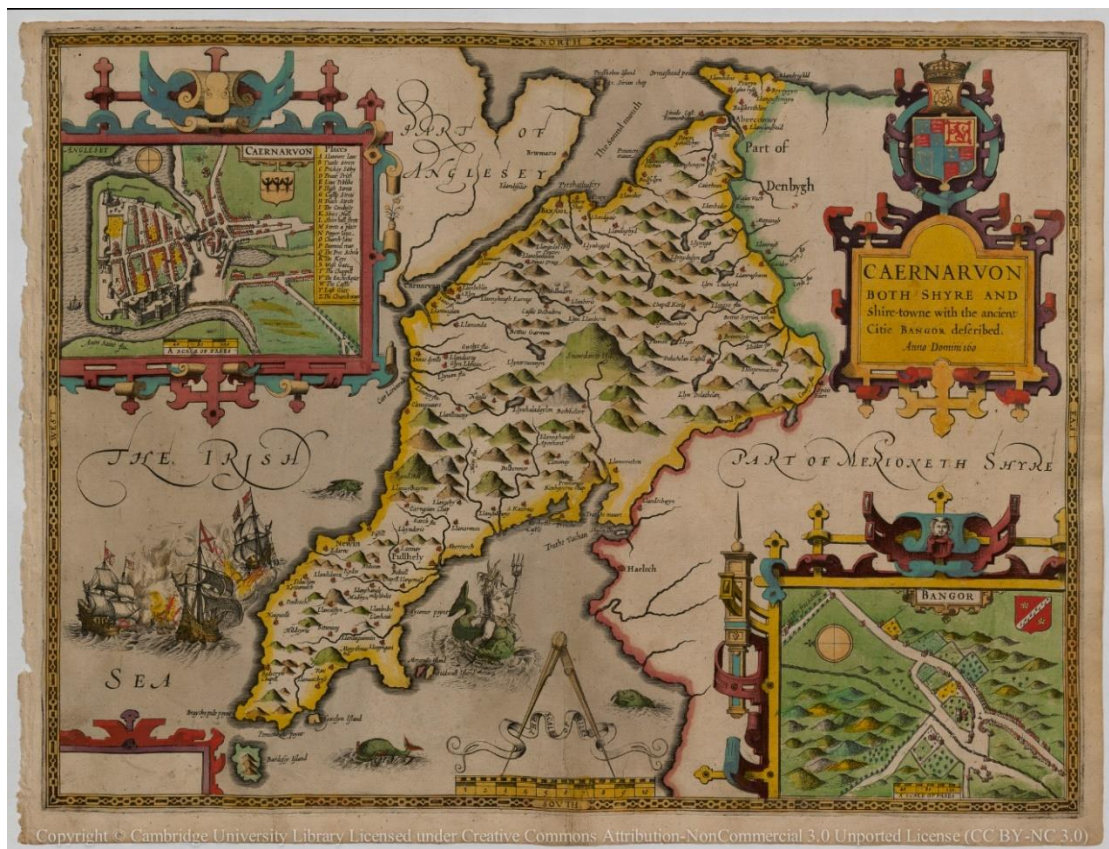


Fig. C.22 Map of Caernarvon, John Speed (1603-1611)  
Engraved with hand coloring, 37.5 cm by 51 cm  
Image and Source: Cambridge University Library



Fig. C.23 (detail of C.22)





Fig. C.24 Map of Denbighshire, John Speed (1603-1611)  
Engraved with hand coloring, 37.5 cm by 51 cm  
Image and Source: Cambridge University Library



Fig. C.25 (detail of C.24)



Fig. C.26 Bartolomeo Ammannati. *Neptune Fountain* (begun 1565), Florence  
Marble

Image: Artstor





Fig. C.27 Giambologna, *Neptune Fountain* (1563-67), Bologna  
Bronze and marble  
Image: Artstor



Fig. C.28 Giovanni A Montorsoli, *Fountain of Neptune* (1551-1557), Messina  
Marble  
Image: Artstor



Fig. C.29 Historiated T, *Stultifera nauis, qua omnium mortalium narratur stultitia* (London, 1570)

Image: Hathi Trust

Source: Getty Research Institute



Fig. C.30 Historiated N, *La montagna Circea torneamento*  
(Bologna, 1600)

Image: Hathi Trust

Source: Getty Research Institute



Fig. C.31 Historiated N, *Orlando Furioso* (Venice, 1556)

Image: Hathi Trust

Source: Duke University

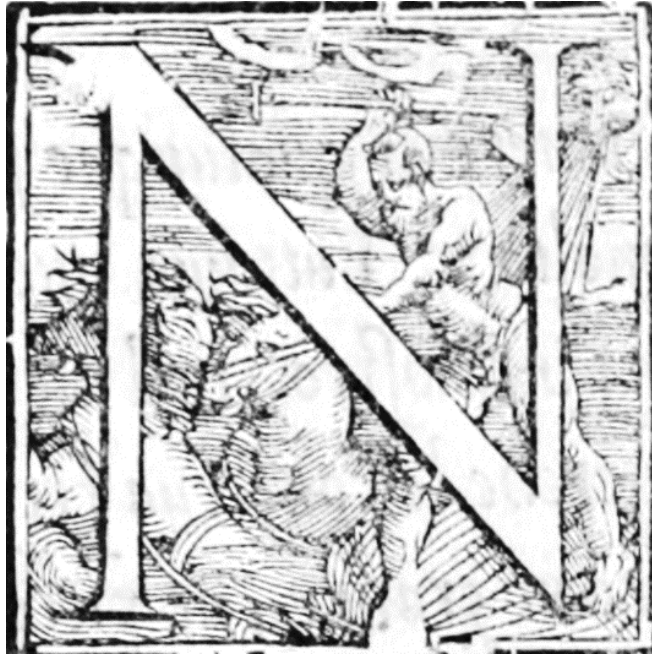


Fig. C.32 Historiated N, *Libro di M. Giovambattista Palatino cittadino romano* (Rome, 1550)

Image: Hathi Trust

Source: Getty Research Institute



Fig. C.33 Historiated N, *La Repubblica e i magistrati di Vinegia* (Venice, 1564)

Image: Hathi Trust

Source: Universidad Complutense de Madrid



Fig. C.34 Historiated N, *Descrittione di tutta Italia* (Bologna, 1550)

Image: Hathi Trust

Source: Getty Research Institute



Fig. C.35 Historiated N, *Historia continente da l'origine di Milano tutti li gesti* (Venice, 1554)

Image: Google Books

Source: The Bavarian State Library



Fig. C.36 Historiated A, *Lexicon ivris civilis* (Lyon, 1552)

Image: Google Books

Source: Ghent University

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