



## A Challenge to State Authority: Controlling French Privateers' Violence towards Neutrals in the late 17<sup>th</sup> and 18<sup>th</sup> Century\*

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The book review of a work by the Spanish jurist Abreu, *Tratado juridico-politico sobre pressas de mar* [Juridico-political treatise on prizes at sea], which appeared in the February 1756 issue of the *Journal étranger*, begins with an expression of surprise on the part of the reviewer: "This book presents an unusual subject. It is surprising to see piracy subjected to laws, contrary to the ironic proverb about the conscience and the integrity of privateers. However, the privileges and the duties of the profession, which seem to follow no other rule other than force and violence, are here brought to light."<sup>1</sup> In fact, in French lexicography, *pirates* 'pirates' and *corsaires* 'privateers' have long been considered synonyms.<sup>2</sup> The confusion stems from the fact that violence, or the threat of violence, was inseparable from the practices of both groups, even though officially privateers were supposed to adhere to an increasingly precise set of rules. These rules were intended to define what constituted a balanced and fair use of violence at

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sea, a violence which was unleashed on enemies or their accomplices but spared truly neutral parties. In this perspective, privateering was one of the armed branches of the state.

To date, French historiography has given little attention to the relationship between the state and privateering, except for a few works by legal historians interested in questions about the jurisdiction of prizes.<sup>3</sup> Yet, the relations between the navy and a state considered 'absolutist' at the time of Louis XIV and also in the eighteenth century have been the object of numerous studies. These studies have tended to show how the centralisation and strengthening of royal authority enabled the state to respond to the financial, human, technical and logistic demands required in creating and maintaining a navy. Thus, it is not surprising to see the navy mentioned frequently by historians as an illustration of the strength of royal power and one of the means of its influence in Europe, particularly under the reign of Louis XIV.<sup>4</sup> Of course, compared to the French Navy and its heroes, such as Duquesne and Tourville, war by privateers pales in comparison. Privateering was an everyday, ordinary figure in the war at sea, much more than the dramatic clash of squadrons, which itself was clearly less frequent than land battles.<sup>5</sup> Yet, the effectiveness of privateering depended above all on controlling it and on its ability to inflict great damage on the enemy's trade while sparing neutrals. Within this framework, controlling privateers' attacks doubly tested the state's authority: first, internally, in the relationship between a king and his subjects, making sure that the legislation on privateering be followed—legislation which was supposed to limit the privateers' violence against neutrals, who should not be subjected to such assaults. Second, this authority was tested externally in France's relationships with neutral powers who had the right to ask a belligerent state for protection, which was naturally linked with their status as neutrals. With both of these perspectives in mind, this paper seeks to analyse how, during the wars of the end of the seventeenth century and of the eighteenth century, the French monarchy sought to curb the attacks of its privateers on neutral ships.

Officially, the regulation of privateering activity is based upon the legitimacy of the prize, which is a necessary condition for it to be sold. Thus, the hand of state authority was fundamental since the administration had

to decide whether the prize was lawful or not. Yet despite this theoretical framework, the states encountered considerable difficulties in carrying out this task. The crux of the problem was that privateers, although masters of vessels licensed by their state and consequently acting in the name of their king, were actually motivated by greed. They followed two aims that were, in some respects, different: they could act as military auxiliaries, or as private actors seeking their own enrichment. This meant that, in the first case, they had to attack every enemy they met, but in the second, that they sought every opportunity to earn profit no matter who their victims were. The challenge for the state was to establish an authority powerful enough to channel the privateers' quest for profit towards the state's enemies as much as possible, and to lead them to renounce, by themselves or by force, the opportunities for growing richer by attacking truly neutral ships.

### Controlling Privateering

The opening of hostilities in war signalled the onset of privateering, an activity that was recognized and encouraged by states who sought to integrate privateering into their overall efforts to destroy the enemy's commerce. While pursuing one's enemies on land was a matter for the army, which operated on territories that always belonged to a sovereign power, privateering involved civilians who were commissioned to act within a space that belonged to no one, the high seas, and on which both enemies and neutral parties crossed paths. This intermingled presence of those who could legitimately be considered victims of war with those who were supposed to be protected from the violence of war, on the same 'territory' administered by no one, posed a considerable challenge to states in maintaining control over their subjects acting in their name. Nevertheless, the period 1680-1750 reveals continued development in maritime law, through the strengthening of the legal institutions supervising the privateers' activities. Privateering law was built less on natural law concerning a specific space, as on land, and more on the ties between a king and his licensed subjects, with their vessels bearing a flag as a stamp of the state authority.<sup>6</sup>

In France, the long process of validating prizes, which at the end of the seventeenth century varied from three to six months if there were no appeals but could take more than a year and a half, radically distinguishes the privateer from the pirate.<sup>7</sup> The pirate, who in the Middle Ages was called *communis hostis omnium*, ‘the common enemy’ or the *hostis humani generis*, ‘enemy of the human race’, was a figure long held in contempt. Still in the second half of the eighteenth century, the French jurist René-Josué Valin qualified pirates as “declared enemies of society, violators of public faith and the Law of



René-Josué Valin, 1695–1765.

Nations, public thieves who are armed and use force brazenly.”<sup>8</sup> Hunting down pirates was a common goal among the European powers who agreed upon the need to eradicate this uncontrollable menace to their subjects’ commerce. In the seventeenth century, for example, the Dutch Republic signed several international treaties that prohibited piracy.<sup>9</sup> States showed increasing severity against pirates, who had little hope of escaping a death sentence if they were arrested. In France, their property was confiscated by the king as a “possession without an owner”, which underscored the illegitimacy of the pirates’ booty.<sup>10</sup> In an international society that organised itself around the coexistence of sovereign powers, pirates, who came under the authority of no prince and who acted only according to their own interest, embodied a kind of uncontrolled violence that was increasingly

# ORDONNANCE DE LA MARINE,

*Du mois d'Aoust 1681.*

Commentée & Conferée sur les anciennes  
Ordonnances, le Droit Romain,  
& les nouveaux Reglemens.



A. PARIS,

Chez CHARLES OSMONT, rue S. Jacques,  
à l'Ecu de France.

M. DCCXIV.

AVEC APPROBATION ET PRIVILEGE DU ROY.

*The Grande ordonnance de la marine d'août 1681, also known as the Ordonnance de Colbert*

unacceptable as states grew stronger. Hobbes wrote clearly: "Also amongst men, till there were constituted great Common-wealths, it was thought no dishonour to be a Pyrate, or a High-way Theefe; but rather a lawfull Trade."<sup>11</sup>

The English philosopher clearly established the connection between the formation of states and the condemnation of piracy, which had now become a crime as a result of the concentration of authority.<sup>12</sup> In fact, this different relationship to power is what constitutes the fundamental distinction between the pirate and the privateer: the latter acts under the respon-

sibility of a ruler who has delegated the authorisation to use violence in the state's name to the privateer within a predetermined framework.<sup>13</sup> The pirate, however, carries out unbridled violence, while the violence of the privateer is, in theory, under control and lawful only in wartime.

In France, Charles VI's ordinance of December 7, 1373 was the first law that regulated maritime privateering by establishing the systematic judging of prizes.<sup>14</sup> Yet as in other European countries, legislation on prizes would only grow strong enough during the sixteenth and seventeenth centuries to distinguish privateering, as a supervised activity, from piracy.<sup>15</sup> In the

Low Countries from the last decades of the sixteenth century, the war between the Spanish Crown and the Dutch rebels primarily took place on the seas. This conflict forced the Spaniards to reorganise privateering through several ordinances under the responsibility of the Supreme Council in Brussels. On the Dutch side, the Admiralty colleges were empowered to contain the “Sea Beggars” excesses. Yet in spite of these institutions, the guilty privateers were seldom punished.<sup>16</sup>

These overall developments reflect the strengthening of central authorities, but also the growing importance of the stakes of war at sea. From this point of view, the French Marine Ordinance of 1681 marked a culmination. In the area of prizes and privateering, as in others, this text clarified legislation and strengthened royal control.<sup>17</sup> Of the thirty-four articles on prizes, the first clearly subordinates privateers to royal authority: “No one can outfit vessels for war without the commission of the Admiral.” Privateers who boarded and searched enemy ships without bearing letters of marque were liable to see their prizes confiscated and to be prosecuted for piracy.<sup>18</sup> At the time of the Seven Years’ War, the famous commentator on the Ordinance, René-José Valin, explained the reasons for such an obligation. The first concerns the respect for sovereignty, which includes the exclusive right of the king to make war. In France, all theorists of royal power agreed in considering that the right to make war shall be exercised only by the king, and therefore, he can legitimately use violence and thereby distinguish war from brigandage and piracy.<sup>19</sup> The second reason for the Ordinance concerns the state, which must ensure that privateering complies with the laws of war “without excesses against enemies, and without injury to friends and allies.”<sup>20</sup> Valin’s rationale underscores well the dual problem of controlling privateer violence for both internal order and international order, which tested the authority of the state.

Privateering commissions, letters of marque, or letters of privateering were permits issued by the Admiral of France to individuals who became auxiliaries of the king. There were two types of privateering commissions: those to outfit a ship for war, which could only be issued during a conflict by order of the king and truly meant preying on the enemy’s commerce; and second, commissions to outfit the vessel for commerce as well as for war, that could be granted upon request, depending on the risks that the



Ordinance establishing the *Conseil des Prises* at the beginning of the War of Austrian Succession. Source: gallica.bnf.fr

getting a *lettre de marque*, the privateers acknowledged the criminal and civil jurisdiction of their Admiralty. Originally, in France and England, the practice of commissioning was done primarily to prevent outfitting weak ships that would have been easy prey for the enemy. Yet starting from the seventeenth century, privateering letters served more to control privateers, in order to dissuade them from committing abuses against allied or neutral ships and to restrict their activity to wartime.<sup>23</sup>

ship-owners felt they would be taking during a future journey.<sup>21</sup> The same duality can be found in Great Britain, with both vessels outfitted for privateering and armed merchantmen primarily concerned with trade and with privateering, if they had the opportunity.<sup>22</sup> These commissions enabled the people who received them to conduct war by delegation: intercepting enemy ships, boarding neutral vessels and, when appropriate, leading them to one of their sovereign's ports or possibly the port of a neutral country. Privateering commissions did not give the holders *carte blanche*, as privateers were still subject to the authority of the Admiral. By

In the process of attacking enemy trade, privateers were only involved in the first step, the capture of the ship, which did not predict the ultimate fate of the prize. After arriving with its prize, the captain would make an account of the circumstances of the capture. Then, the officers of the Admiralty would question the crew and the prisoners as well, and send a report to the *Conseil des Prises*. In the meantime, seals would be imposed on the seized merchandise. The lawfulness of maritime prizes depended on a fair determination of the nationality of the vessel and the owner of the cargo seized, and whether the captain behaved in compliance with royal regulations. According to Valin, the judgment of prizes, in other words royal assent, was essential to prevent privateering from turning into robbery.<sup>24</sup> At the end of the seventeenth century, the judgment of prizes was centralized and concentrated in the *Conseil des Prises*, which consisted of commissioners appointed by the king and who could be removed *ad nutum*. It is interesting to note that this centralisation of prize validation occurred in 1695, when the French government shifted from the *guerre d'escadre* to the *guerre de course*.<sup>25</sup> Based on the report made by the officers of the Admiralty from the port in which the prize was brought, the king's men could validate the prize, release it, or condemn the privateers to pay damages.<sup>26</sup> It was only once the prize was pronounced to be lawful that the seized ship would become property of the privateer, after paying a tenth of its value to the Admiralty—which was also a way to remind privateers that they were acting by royal delegation. Privateers were not allowed to seize property found on the ship they boarded and searched, and they had to respect passports and documents of safe conduct issued by the Admiral. These documents carried the king's words, and thus any violation of their provisions was a crime of *lèse-majesté*.<sup>27</sup>

To force privateers to comply with royal regulations and to protect neutrals or allies, article 2 of the Ordinance of 1681 required that they pay a deposit of 15 000 livres to the Registry Office of the Admiralty of their home port. The obligation to pay bonds was mentioned in three French regulations concerning neutral shipping in the eighteenth century (art. 13 of the regulation of 23 July 1704; art. 17 of the regulation of 21 October 1744; art. 13 of the regulation of 28 July 1778). The bond was paid to help prevent the abuses that might arise from arbitrary actions by priva-



teers, and to place what still remained an act of war under the authority of royal control. The potential aggression of privateers was legally regulated by state legislation and controlled by officers and commissioners who were responsible for evaluating privateers' actions.

### Controlling Privateering in the Relations between States

As the victims of privateer assaults were foreigners, the judgment of prizes thus had to be considered within an international context. According to David Starkey, the growth of overseas trade and state navies in the seventeenth century made the regulation of privateering one of the main topics under reflection in international maritime law.<sup>28</sup> In England, privateering was under the authority of the High Court of Admiralty which was responsible for issuing letters of marque and condemning prizes. According to common law, prize judges had a degree of independence from the executive branch that could lead them to refuse to validate confiscations despite the wishes of their government.<sup>29</sup> In France things were different, as evidenced by a text from the Count of Toulouse, Admiral of France and President of the *Conseil de Prises* in 1704:

It often happens that, for reasons of state, the king orders us to judge against the general clauses of the Ordinances, either to declare that we must judge as being contraband goods that the Ordinance of 1681 did not declare as such, or to release to his allies some objects that, in terms of the Ordinance of 1681, must be confiscated for having been found on an enemy vessel.<sup>30</sup>

The decisions of the *Conseil des Prises* always remained subject to the king's *Conseil*. The sovereign reserved the right to ultimately decide on final appeal at the request of his Secretaries of State for Foreign Affairs or of the Navy, who themselves had been solicited by foreign ambassadors. Diplomatic considerations were essential elements in the treatment of prizes taken from neutral vessels. This led to all sorts of compromises that could result in decisions to release the goods, even if it was obvious that the flag from a non-belligerent country covered the enemy's commerce. This was the case, for example, with the Swedish ship the *Isle of Hanoe*, which was

released in 1706 as a result of requests from the King of Sweden's (Charles XII) representative at Versailles, even though the flag was "the only thing Swedish about this [vessel]." <sup>31</sup>

Controlling privateer attacks was a challenge to the sovereignty of neutral states, which had to enforce their territory. During conflicts, neutral territorial waters were supposed to be free from fighting and their states were supposed to guarantee the safety of people in those waters, particularly against the abuses of enemy privateers. It was for this reason that the subjects of belligerent powers, who found themselves victims of prizes taken in non-belligerent waters, were entitled to take action against the neutral sovereign, who was supposed to protect them, by asking him to safeguard their vessels within his territory. The archives contain several protests from French consuls and ambassadors concerning attacks on French vessels in Norwegian waters. This was the case in 1746-1747 with the attack suffered by the *Étendard* from Calais in a Norwegian port. Maurepas, French Secretary of the Navy, in a message transmitted by Lemaire in Copenhagen, denounced the attacks by the English, which could only "hurt the glory of His Majesty of Denmark" using methods "harmful to the crown of Denmark."<sup>32</sup> Beyond the issue of security, the French listed the failures of the King of Denmark's authority and his inability to control the violence committed on the territory under his authority.

That did not mean, however, that Louis XV's privateers respected neutral territories, as many of them attacked enemy ships, sometimes even neutral ones, in waters under Danish sovereignty. This was particularly true in the summer of 1758 with the Dunkirk Captain Francis Thurot, accused by the Danes of entering the Norwegian port of Homborsund and having plundered a ship from Flensburg.<sup>33</sup> Faced with the evidence of the offense committed by Thurot, the French government agreed to compensate the victims, but it certainly wanted to reimburse itself by seizing the profit from sales that Thurot planned to make in Bergen.<sup>34</sup> Thurot was also accused of having outfitted ships for privateering on his own initiative without having received a commission from the Admiralty, which automatically invalidated the prizes he captured.<sup>35</sup> Thurot's treatment also illustrates the state's responsibility towards the victims of people who acted on the French king's behalf. It was the state's responsibility to punish privateers

who overstepped the authorisation given to them to hunt down the enemy and his trade, and it was only when it failed in this obligation that neutrals could lawfully protest.<sup>36</sup>

Controlling its own privateers and if necessary, their punishment, came under the duty of each state towards other states. This tacit obligation could also be explicitly recalled, as in Article 11 of the Anglo-Dutch Commercial Treaty of 1674.<sup>37</sup> The signatories promised to punish the privateers who inflicted harm on the other party by condemning privateers to compensate their victims. The control that each state was supposed to have over the behaviour of its privateers explains why neutral diplomats regularly protested in the courts of warring parties about the damage suffered by their compatriots. During the Seven Years' War, Erhard Wedel-Friis, the Danish ambassador at Versailles, regularly asked his French interlocutors to kindly issue the necessary orders so that the French privateers would cease their aggression and their attacks in Danish waters, which the diplomat saw as a "violation of the Law of Nations and of sovereignty" towards a crown that "professes to perfectly observe the neutrality she has adopted from the beginning of this war."<sup>38</sup> The Danes were not the only ones complaining about the violation of their waters by French privateers. The archives also contain Dutch protests, like those from the Admiralty of Amsterdam in 1760, complaining about the frequent abuses that French privateers committed in the waters of the Dutch Republic.<sup>39</sup> The condemnation of privateer attacks in neutral territorial waters was used both by belligerent parties who had had a vessel captured in waters deemed safe, as well as by non-belligerents who suffered encroachment upon their territory.

During France's wars against England in the eighteenth century, the French government sought to limit the violence of its privateers in neutral waters, especially in the Sound strait. In 1747, the French consul in Elsinore, Denmark, Jean-Georges Hanssen, was ordered to bar French privateers from crossing the strait.<sup>40</sup> In 1761, Choiseul assured the Danish government that Louis XV was determined "not to allow his subjects sailing in northern waters to break the law [by privateering in the neutral waters of the Baltic] by passing the Sound strait, and His Majesty will severely punish those who are convicted of this breach of the rules that I

communicated to the Minister of the Navy.”<sup>41</sup> Finally, during the American Revolution, Vergennes asked the ambassador at Copenhagen to convey his orders to the French consuls assigned to the Norwegian ports, asking them to be particularly vigilant concerning privateers who captured prizes in neutral waters.<sup>42</sup> The English took similar measures, prohibiting their privateers from carrying out any captures whatsoever within the territorial waters of neutral states.<sup>43</sup> However, there was a considerable gap between these orders and actually following them in practice. This fact raises questions about the extent of a king’s authority, particularly in the French case as it was considered to be absolute.

### Illusory Control

In practice, controlling privateer attacks turned out to be a difficult undertaking. In 1704, Louis XIV’s Secretary of State for Foreign Affairs, the Marquis de Torcy, responded to complaints from the Danish envoy at Versailles about the assaults by French privateers, saying that it was very difficult to prevent neutrals from being victims of their violence.<sup>44</sup> The limit of governments’ control over their privateers was even more flagrant when the privateers attacked the allies of their king. For example, in 1705, King Philip V of Spain issued no less than three decrees prohibiting privateers from the Basque country from capturing neutral ships or those of his French ally.<sup>45</sup> Despite the claim of some monarchies to be absolutist, such as France, rulers did not have the control they claimed to have over subjects who were supposedly acting directly in their monarch’s name. In this respect, in 1761, Berryer, the Secretary of the Navy, gave a rather revealing response to the Danish ambassador, who complained of abuses against his countrymen. The Secretary began by reassuring him: “Every time that the captains of French privateer ships arrest a neutral vessel whose navigation is not suspect, they will receive just punishment.” Yet after this reminder of royal power, Berryer added that “merchants who are subjects of allied or neutral powers ought to be extremely careful to leave no doubt about the legitimacy of their shipping.” In other words, it was up to the Danes not to tempt the privateers: thus, the victims had become the guilty parties.

If we believe Valin, who wrote just after the Seven Years' War, one of the endemic problems of privateering was the plundering of prizes, "an evil so inveterate that it had become incurable; & all we have won afterwards has been to mitigate it & prevent it from making more progress."<sup>46</sup> One reason for this was the tradition that the crew of the privateer may seize what belongs to the enemies, each person according to his rank. Yet as Valin recognized, this tradition led to "things contrary to honour, decency and even to humanity."<sup>47</sup> Although the difficulty in controlling privateers and in punishing those guilty of excessive violence against neutrals may reveal the limits of state authority, it should also be noted that a certain toleration of the privateers' inevitable abuses was also a means of easing social tensions that had become further strained during the war, due to the lack of supplies and the weakening of trade.

First, necessity might encourage a state to tolerate an exceptional use of privateer violence, as in 1693 and in 1709-1710 when the belligerents of the Nine Years War and of the War of Spanish Succession authorised the seizure of neutral ships carrying grain.<sup>48</sup> State control of privateering meant that it could not only rationalize its action as being directly related to the war, but also for economic purposes. In this sense, controlling privateers could become a means of political action. Second, it is important to consider that for some ports, privateering was an act of survival for merchants who could no longer conduct their business. Some places had a long tradition of privateering, for example Zeeland in the United Provinces since the fifteenth century. This long custom explains why Zeelander privateers carried out unbridled attacks against their fellow Dutchmen as well as against allies of the Dutch Republic or neutrals in the seventeenth century.<sup>49</sup>

There was also a long history of privateering in northern France, particularly at the port of Dunkirk where it could be considered as a "palliative for misery," according to Christian Pfister-Langanay.<sup>50</sup> Control of privateering not only placed the king of France in a position of authority by seeking to limit the violence of his subjects, but it also involved the issue of regulation, which enabled the preservation of a social equilibrium that was at the core of the process of early modern state-building. If we consider privateering from this internal perspective, it appears to be a field of negotiation

between the state and its subjects. When the French government adopted the *guerre de course* in 1694, privateers from Dunkirk decided to protest against the bribery of the Admiralty officials, the hassles they had to suffer, the excessive amount of the deposit and the limitations of royal regulation. Finally, the Secretary of State of the Navy, Pontchartrain, understood that if he wanted efficient privateers, he had to soften the administrative framework of their activity, a decision that explains the increase of privateering in 1695.<sup>51</sup> This particular moment shows that privateering, as with many other activities in the so-called absolutist monarchy, was based on a compromise between the king and his subjects. Since Louis XIV needed private involvement in the maritime war, even if he kept the control of prize validation, he had to make some concessions towards freeing up the privateers' activity as advocated by Vauban in his *Mémoire concernant la course* of November 1695.<sup>52</sup>

In trying to control privateer assaults, the state could be both judge and jury. In France, the development of mixed shipping, that is the loan of the king's ships to individuals who had to ensure the financing of their vessels, was one of the main methods of privateering, in particular during the late wars of the reign of Louis XIV.<sup>53</sup> These different factors created an overlap between the state and privateers that encourages us to see privateer violence not merely as a challenge to state authority but also as a means of its action, because of its inability to conduct the *guerre d'escadre*. This was even more true starting in the second half of the seventeenth century, when the escalation of war on enemy trade made privateers into indispensable auxiliaries, while at the same time providing resources for part of the maritime population and investment opportunities for government officials and courtiers.<sup>54</sup>

### Radical Condemnation of Privateer Violence

In the second half of the eighteenth century, the perspective on privateer attacks changed. It was no longer considered as one of the methods of naval warfare but as a curse because of its disorderly nature. During the American Revolution, the French regulations on neutral shipping dated

26 July 1778 were based on the principle “free ships, free goods.” Beyond commercial considerations, this regulation was also used as an element of propaganda, providing rules for commerce in wartime that were purposely designed to be different from English practices. The idea was to establish a new right for all European nations that would help to isolate England and to ensure freedom of the seas, according to the French minister Vergennes.<sup>55</sup> Under these conditions, respecting neutral ships had a real political dimension, which explains the repeated orders of Louis XVI to his admiral on limiting privateer assaults on neutral ships, in the name “of the principle of freedom of the seas.” Initially, the admiral was ordered “to exercise the utmost caution with all neutral vessels” and only to board them when there was a strong presumption that they were covering enemy trade.<sup>56</sup> The control of privateer attacks thus became a genuine diplomatic argument intended to show the rightness of a cause and to stigmatise the pillage of the enemy.

At the end of the eighteenth century, the control that states had over their own privateers served as a measure of the states’ degree of civilization and maturity. At the time of the American Revolution, many Enlightenment philosophers viewed privateering as something that persisted from a barbarous age, a practice incompatible with the existence of an enlightened and modern state. On the contrary, privateering was a private form of war that revealed the shortcomings of the state, which delegated to its subjects activities which fell within its own jurisdiction. In doing so, governments were doubly distorting the nature of war: first because, from a Rousseauian perspective, war can only involve a relationship between states, and does not require their subjects to become enemies;<sup>57</sup> second, because the very principle of privateering involves some kind of violence. For the publicist and man of letters, Simon Linguet, privateers do not serve their country, but act only by greed, taking advantage of the situation of war to use force. Privateering, in its essence, only seeks to lay hands on the property of others, which is not the purpose of war: “it is really thieving. The letter of marque may change its name but not its nature.”<sup>58</sup> Privateers were devoid of any civic sentiment, and in this sense their violence was not controllable. For the philosopher Gabriel Bonnot de Mably, privateering “is

a remnant of our ancient barbarism,” as detrimental to the one who is subjected to it as for those who practice it.<sup>59</sup> In essence, nothing distinguishes it from pillage and it cannot have any other methods than violence.

Finally, the Enlightenment philosophers revived the old assimilation of the privateer to the pirate: a brigand who acts only in his own interest, which conflicts with the interest of the many.<sup>60</sup> Implicitly, this discrediting of the privateer as an “enemy of mankind” also reveals the incapacity of states to contain maritime violence within proper bounds. In these conditions, the only solution was to ban privateering: the first two countries committed to doing so were Prussia and the United States in their treaty of 1785.<sup>61</sup> This decision, unique at that time, reveals a real evolution in the way privateering was considered. In revolutionary France in 1791 and 1792, a ban on privateering was under debate in the Legislative Assembly. A few months before the war began with Great Britain, the French ambassador in London proposed that the two countries mutually abolish privateering.<sup>62</sup> However, with the long European wars which lasted until 1815, the banning of privateering was out of question, yet the idea still survived. Finally, privateering was abolished by the first article of the treaty of Paris, April 16, 1856.

## Conclusion

The centralization of the judicial process of validating prizes, which decided the fate of vessels seized and the behaviour of privateers, allowed the king of France to have the last word on the practices of those who waged war by delegation of his authority. Controlling privateer violence had symbolic stakes because the privateers acted in the name of their sovereign, for whom they were the projection of his power at sea. The French monarchy sought to contain and direct the activity of privateers by establishing the limit between what was lawful and what was not, and by integrating and channelling their violence rather than by trying to eradicate it. This is what constituted the fundamental difference with piracy, which was itself a challenge to the state and not one of its means. Yet, the control of privateering also reveals the limits of royal authority, which had neither the resour-



ces nor the interest in putting an end to it. Calling on private individuals to exercise, by delegation, activities that were exclusively within sovereign jurisdiction marks the limit of state power at a time when the delegation of royal functions was not unusual, as for example with the leasing out of certain taxes.

In France, this type of practice was part of a larger contradiction between the absolutist claims of the monarchy and the reality of its means. The cost and extent of the areas involved generated all sorts of obligations and responsibilities that the French monarchy, like other European powers, did not have the means to fulfil—hence the need for privateering. As the term itself reveals, this activity required private involvement, even though the long trend of eradicating private violence was an essential part of the elaboration of so-called absolutism. With privateering, the king continued a double blurring of the line between the civil and the military either as the originator or the victim of violence, which was a development opposite to that of war on land. On the contrary, in warfare on land in the second half of the seventeenth century, states sought to separate the civilian from the military by improving logistics and by building barracks, as well as the behaviour of its armed forces which, in the eighteenth century, tried to spare innocent people.<sup>63</sup> Thus, the challenge of controlling privateer violence raises significant questions about a state's ability to meet all of the multiple obligations inherent in conducting war at sea.

The efforts of the French monarchy to control privateering through a legal and administrative framework have strong similarities with other countries, especially Great Britain.<sup>64</sup> Beyond the relationship between the king's authority and his subjects, control of privateering must be considered in the long-term, transnational perspective of a shift from the high seas in an unregulated state of nature, to a more Hobbesian situation where states tried to impose order on maritime violence, even beyond their jurisdictions. Privateering in the eighteenth century had to find its place within the framework of increasing administrative efficiency, the growth of states' navies, and enforcement in the struggle against piracy, which reveal the development of a maritime order that concerned every maritime nation.

## Sammanfattning

I fransk lexikografi från 1600- och 1700-talet var orden *pirat* och *kapare* mer eller mindre synonyma. Även om båda innefattade våld, var de två termerna i själva verket olika till sin natur vad gällde förhållandet till staten. Medan piratverksamheten bekämpades, var tanken med kaparverksamheten att den skulle kontrolleras. Syftet med denna uppsats är att diskutera frågan om den franska monarkins kontroll av kapare under de europeiska krigen på 1700-talet och det våld som utövades speciellt mot neutrala stater. Eftersom dessa stater och deras handelsfartyg var särskilt attraktiva mål för kapare, kan de förstnämndas öde ge god vägledning om de franska monarkernas förmåga att begränsa och styra aktiviteten av de egna aktörerna som var inblandade i denna verksamhet. Tre perspektiv väljs i artikeln. Först beskrivs den rättsliga ram inom vilken kaparverksamheten ägde rum och detta i syfte att förstå de politiska och symboliska frågor om kontroll av våldet som gällde för en s.k. absolutistisk statsmakt. För det andra, var den franske kungen upptagen med att medla mellan motstridiga inhemska intressen. Köpmännen i hamnstäderna ville skydda de neutrala eftersom de var viktiga för den egna handeln, medan kaparna tvärtom behövde platser för att härbärgera de beslagtagna fartygen. Det tredje perspektivet är internationellt. Genom sitt utövade av våld mot utlänningar uppstod frågan om kontroll av kapare vilket även kom att beröra det mellanstatliga systemet och de diplomatiska relationerna. Genom att visa hur den franska monarkin hanterade frågan om egna kapares behandlingen av neutrala aktörer ges en möjlighet att analysera styrkorna och svagheter med den franska absolutistiska statsmakten. Tre huvudsakliga källor används i artikeln: *Ordonnance de la Marine* från 1781, samt korrespondens upphittad i *Archives Nationales* (Paris) och i *Archives Diplomatiques* (La Courneuve).

## Notes

\* Translated from French by Cynthia Johnson.

<sup>1</sup> *Journal étranger*, February 1756, pp. 147-148. The article titled, “Traité de jurisprudence politique sur les courses des armateurs en mer et sur les conditions requises pour rendre leurs prises légitimes”, is a review of a work published in Madrid in 1746, which was published in French in 1758 under the title *Traité juridico-politique sur les prises maritimes et sur les moyens qui doivent concourir pour rendre ces prises légitimes*.

<sup>2</sup> Isabelle Turcan, “Les corsaires et flibustiers de la lexicographie française”, Sylvie Requemora and Sophie Linon-Chipon (dir.), *Les Tyrans des mers. Pirates corsaires et flibustiers*, Paris, PUPS, 2002, pp. 13-42.

<sup>3</sup> Sylviane Llinarès and Philippe Hroděj, “La mer et la guerre à l’époque moderne”, *Revue d’Histoire Maritime*, vol. 10-11, 2010, special issue “La recherche internationale en Histoire maritime”, pp. 317-339. For the late Eighteenth century, Florence Le Guellaff, *Armements en course et droit des prises maritimes (1792-1856)*, Nancy, Presses Universitaires de Nancy, 1999.

<sup>4</sup> For example, see Daniel Dessert, *La Royale. Vaisseaux et marins du Roi-Soleil*, Paris, Fayard, 1996, Olivier Chaline, *Le règne de Louis XIV*, Paris, Flammarion, 2005, p. 211-216, Lucien Bély, *La France au XVII<sup>e</sup> siècle. Puissance de l’État, contrôle de la société*, Paris, PUF, 2009.

<sup>5</sup> To give a general idea concerning France, its navy participated in 51 naval battles between the Dutch War (1672) and the end of the Napoleonic period (1815) according to the count by Daniel Dessert. This number is slightly smaller than the number of land battles during the reign of Louis XIV alone. D. Dessert, *La Royale, op. cit.*, pp. 332-333 and Eric Schnakenbourg, *La France, le Nord et l’Europe au début du XVIII<sup>e</sup> siècle*, Paris Honoré Champion, 2008, p. 547.

<sup>6</sup> Lauren Benton, *A Search for Sovereignty. Law and Geography in European Empires, 1400-1900*, Cambridge, Cambridge University Press, 2010, p. 111.

<sup>7</sup> Patrick Villiers, *Les corsaires du littoral. Dunkerque, Calais, Boulogne de Philippe II à Louis XIV (1568-1713)*, Villeneuve d’Ascq, Presses Universitaires du Septentrion, 2000, p. 185.

<sup>8</sup> “*d’ennemis déclarés de la société, des violateurs de la foi publique & du droit des gens, des voleurs publics à main armée & à force ouverte*”. René-Josué Valin, *Traité des prises, ou Principes de la jurisprudence française concernant les prises qui se font sur mer*, La Rochelle, t. 1, 1763, p. 29.

<sup>9</sup> Virginia W. Lunsford, *Piracy and Privateering in the Golden Age Netherlands*, New York, Palgrave Macmillan, 2005, p. 35.

<sup>10</sup> René-Josué Valin, *Traité des prises*, *op. cit.*, p. 40.

<sup>11</sup> Thomas Hobbes, *Leviathan, or The Matter, Forme & Power, of a common-wealth ecclesiasticall and Civill*, London, 1651, p. 59.

<sup>12</sup> Dominique Weber, "Hobbes, les pirates et les corsaires. Le "Léviathan échoué" selon Carl Schmitt", *Astérion*, 2 | 2004, put online 5 April 2005, consulted 14 March 2012. URL : <http://asterion.revues.org/94>, p. 21.

<sup>13</sup> Janice Thomson, *Mercenaries, pirates, sovereigns: state-building and extraterritorial violence in Early modern Europe*, Princeton, Princeton University Press, 1994, p. 22.

<sup>14</sup> Jean-Marie Pardessus, *Collection de lois maritimes antérieures au XVIII<sup>e</sup> siècle*, t. IV, Paris, Imprimerie royale, 1837, p. 224.

<sup>15</sup> Patrick Villiers, *Les corsaires du littoral*, *op. cit.*, p. 174 and Robert C. Ritchie, "Government Measures against Piracy and Privateering in the Atlantic Area, 1750-1850", in *Pirates and Privateers. New Perspectives on the War on Trade in the Eighteenth and Nineteenth Centuries*, D. Starkey, E.S. van Eck van Heslinga and J.A. de Moor, (dir.), University of Exeter Press, 1997, p. 19.

<sup>16</sup> Robert A. Stradling, *The Armada of Flanders: Spanish Maritime Policy and European war, 1568-1668*, Cambridge, Cambridge University Press, 1992, p. 204-205.

<sup>17</sup> The classic study on this monument of French maritime law is Jean Chadelat, "L'élaboration de l'ordonnance de la Marine d'août 1681", *Revue historique de droit français et étranger*, n° 2 and 3, 1954, pp. 74-98 et pp. 228-253. Also Patrick Villiers, "La législation de la course dans l'Ordonnance de la Marine de 1681", *Revue de la Saintonge et de l'Aunis*, vol. 27, 2001, pp. 205-228.

<sup>18</sup> "Aucun ne pourra armer vaisseau en guerre, sans commission de l'Amiral" There could, however, be some exceptions, if a vessel without a commission takes a prize while defending itself, René-Josué Valin, *Nouveau commentaire sur l'ordonnance de la Marine du mois d'août 1681*, La Rochelle, 1776, t. 2, p. 216 and p. 235. We find identical clauses in the Spanish ordinance of maritime privateering from 1718, according to which prizes taken from the enemies of the Crown cannot be considered legitimate without the sovereign's authorisation, Felix Joseph de Abreu Y Bertodano, *Tratado juridico-politico, sobre pressas de mar, y calidades, que deben concurrir para hacerse legitimamente el corso*, Cadix, 1746, pp. 315-332.

<sup>19</sup> Joël Cornette, *Le roi de guerre. Essai sur la souveraineté dans la France du Grand Siècle*, Paris, Payot, 2000, p. 120-123 and Jean-Mathieu Mattéi, *Histoire du droit de la guerre (1700-1819). Introduction à l'histoire du droit international*, Presses universitaires d'Aix-Marseille, 2006, t. 1, pp. 169-173.

<sup>20</sup> "Sans excès à l'égard des ennemis, comme sans injure par rapport aux amis & aux alliés", René-Josué VALIN, *Nouveau commentaire sur l'ordonnance de la Marine du mois d'août 1681*, *op. cit.*, 1776, t. 2, p. 214-215.

<sup>21</sup> Christian Schnakenbourg, *L'amirauté de France à l'époque de la monarchie administrative, 1669-1792*, thèse Paris II, 1975, vol. 1, p. 106.

<sup>22</sup> David J. Starkey, "The Origins and Regulation of Eighteenth-Century British Privateering" in R. Pennell, ed., *Bandits at Sea: A Pirate Reader*, New York, New York University Press, 2001, p. 71.

<sup>23</sup> Auguste Dumas, *Étude sur le jugement des prises maritimes en France jusqu'à la suppression de l'office d'amiral (1627)*, Paris, s.n., 1908, pp. 80-81. There were similar developments in England, as the English state tried to reserve privateering for the largest ships, see R. Ritchie, "Government Measures against Piracy and Privateering in the Atlantic Area, 1750-1850", art. cit., p. 21.

<sup>24</sup> "La raison primitive & essentielle de cette police, est en effet le maintien des loix de la course qui sans cela dégénérerait bientôt en brigandage, si la conduite tenue à l'occasion de chaque prise n'étoit plus éclairée, pour juger si elle a été faite dans les règles ou non", René-Josué Valin, *Traité des prises*, op. cit., p. 176.

<sup>25</sup> Geoffrey Symcox, *The Crisis of French Sea Power, 1688-1697. From the guerre d'escadre to the guerre de course*, The Hague, Martinus Nijhoff, 1974, pp. 175-176.

<sup>26</sup> Christian Schnakenbourg, *L'amirauté de France à l'époque de la monarchie administrative, 1669-1792*, vol. 2, op. cit., pp. 171-172, Auguste Dumas, "Le Conseil des Prises sous l'Ancien Régime, XVII<sup>e</sup>-XVIII<sup>e</sup> siècles", *Nouvelle Revue Historique de Droit*, t. XXIX, 1905, p. 337.

<sup>27</sup> Auguste Dumas, *Étude sur le jugement des prises maritimes en France*, op. cit., p. 114 and p. 116.

<sup>28</sup> D. Starkey, "The Origins and Regulation of Eighteenth-Century British Privateering", art. cit., p. 73.

<sup>29</sup> D. J. Llewelyn Davies, "The Development of Prize Law under Sir Leoline Jenkins", *Transactions of the Grotius Society*, Vol. 21, 1935, p. 152 and p. 155. Charles Hedges to Nottingham, 22 October 1689, in Reginald Marsden (ed.), *Law and custom of the sea*, vol. 2, London, Publications of the Navy Record Society, 1916, p. 132.

<sup>30</sup> Auguste Dumas, "Le Conseil des Prises sous l'Ancien Régime, XVII<sup>e</sup>-XVIII<sup>e</sup> siècle", art. cit., p. 324.

<sup>31</sup> A.N. [Archives Nationales, Paris], Affaires étrangères, B<sup>1</sup>/1071, fol. 4, Campredon to Pontchartrain, 24 February 1706.

<sup>32</sup> A.N., Affaires étrangères, B<sup>1</sup>/451, Lemaire to Schulin [Danish Foreign Affairs Minister], 14 December 1746 and Marine, B<sup>7</sup>/185, fol. 102, Maurepas to Bernstorff,

18 March 1747. We find the same kind of argument concerning English attacks in the port of Gothenburg, which were considered as “injurious to the sovereignty of the king of Sweden and the neutrality of the ports of his State,” A.N., Marine, B<sup>7</sup>/183, fol. 468, Maurepas to Lanmary, 9 October 1746. For the Seven Years’ War, see the cases in *l’Épervier*, *La Revanche* or *La Malice*, see A.N., Affaires étrangères, B<sup>1</sup>/43, fol. 245, 365, 389, Berryer to Choiseul and to Chezaulx, 7 July, 29 September and 13 October 1760 ; B<sup>1</sup>/45, fol. 52, Choiseul to Chezaulx, 15 February 1762.

<sup>33</sup> Rigsarkivet [Copenhagen], TKUA, Frankrig, vol. 280, Bernstorff to Wedel Friis, 15 August 1758.

<sup>34</sup> A.N., Affaires étrangères, B<sup>1</sup>/452, fol. 212-214, Ogier to Moras, 3 October 1758 and B<sup>1</sup>/41, fol. 628, Berryer to Chezaulx, 13 November 1758. On François Thurot, see *Journal du capitaine Thurot*, Bruxelles, 1778; *Vie du capitaine Thurot*, Paris, 1791 and Céline Bailly, *Lames de sang : la vie exemplaire de François Thurot, corsaires, capitaine des frégates du Roy*, Quétingny, Camille Bailly, 2000.

<sup>35</sup> A. N., Affaires étrangères, B<sup>1</sup>/41, fol. 628, Berryer à Chezaulx, 13 novembre 1758.

<sup>36</sup> Louis XV’s ambassador in Sweden recognized the difficulty of containing ship-owners within the proper bounds “*mais que leurs procédés injustes ne pouvaient être regardés comme de véritables griefs qu’autant qu’ils étaient soutenus et non réparés auprès des puissances dont ces armateurs sont sujets*”, A.A.E. [Archives Diplomatiques, La Courneuve], C.P., Suède, Vol. 232, Havrincourt to Rouillé, 25 March 1757.

<sup>37</sup> George Chalmers, *A collection of treaties between Great Britain and other powers*, Vol. 1, London, J. Stockdale, 1790, p.183.

<sup>38</sup> A.N., Affaires étrangères, B<sup>3</sup>/475, Wedel-Friis to Leguay, 29 September 1760.

<sup>39</sup> A.N., B<sup>7</sup>/415, Astier to Berryer, 17 July 1760.

<sup>40</sup> A.N., Marine, B<sup>7</sup>/185, fol. 360, Maurepas to Hanssen, 16 October 1747.

<sup>41</sup> A.A.E., C.P., Danemark, vol. 146, fol. 222, Choiseul to Ogier, 24 June 1761.

<sup>42</sup> A.A.E., C.P., Danemark, vol. 162, fol. 172, Vergennes to Caillard, 1 July 1779.

<sup>43</sup> Riksarkivet [Stockholm], Diplomata, Gallica, Vol. 459, fol. 23, copy of a letter from the English Secretary of State for the Northern department, Weymouth, dated July 17, 1779, transmitted by Scheffer, the chancellor of Sweden, to the ambassador in France, Creutz.

<sup>44</sup> Rigsarkivet, TKUA, Frankrig, vol. 128, Meyercrone to Frederic IV, 30 May 1704.

<sup>45</sup> A.N., F<sup>12</sup>/51, 22 April 1705, fol. 323, and A.N., Affaires étrangères, B3, Vol. 324.

<sup>46</sup> “*un mal si invétéré qu’il était devenu incurable ; & tout ce qu’on a gagné dans la suite*,

*c'a été de le pallier & de l'empêcher de faire plus de progrès*" René-Josué Valin, *Traité des prises*, op. cit., t. 1, p. 165.

<sup>47</sup> "À des choses contraires, à l'honneur, à la décence & même à l'humanité" *ibid.*, p. 167.

<sup>48</sup> Sylvain Lebeau (ed.), *Nouveau code des prises*, Vol. 1, p. 207, ordinance of September 30, 1693; R.G. MARSDEN (ed.), *Law and Custom of the Sea*, Vol. 2, op. cit., pp. 211-213 and Arthur-Michel de BOISLISLE, *Correspondance des contrôleurs généraux des finances avec les intendants des provinces*, t. 2, Paris, Imprimerie nationale, 1883, p. 176.

<sup>49</sup> V. Lunsford, *Piracy and Privateering in the Golden Age Netherlands*, op. cit., pp. 31-32.

<sup>50</sup> At Dunkerque, the number of vessels given to trade fell by nearly 90 percent during the War of Spanish Succession, and only a small business of coastal trade continued, Christian Pfister-Langanay, *Ports, navires et négociants à Dunkerque (1662-1792)*, Dunkerque Société dunkerquoise, 1985, p. 160 and 170. "[La course] avait un but essentiellement économique. Sa raison d'être était de compenser le manque à gagner provoqué par la diminution du commerce. Il faut donc, une fois pour toutes, débarrasser la guerre de course de son panache. Aussi bien était-elle peu meurtrière. Il est difficile de dire, chiffres en mains, dans quelle mesure les expéditions des corsaires ont pu remplacer les profits du commerce. Il est douteux cependant qu'elles aient pu, au total, rapporter des bénéfices aussi importants", Jean Delumeau, *Le mouvement du port de Saint Malo : 1681-1720, bilan statistique*, Paris, Klincksieck, 1966, p. xii.

<sup>51</sup> G. Symcox, *The Crisis of French Sea Power, 1688-1697*, op. cit., pp. 170-176.

<sup>52</sup> Vauban Sébastien Le Prestre de, "Mémoire concernant la course", Patrick Villiers (prés.) in Michèle Virol (dir.), *Les oisivetés du monsieur de Vauban*, Paris, Champ Vallon, 2007, pp. 323-342.

<sup>53</sup> John Bromley, "The Loan of French Naval Vessels to Privateering Enterprises, 1688-1713" John Bromley (dir.), *Corsairs and Navies*, London, Hambledon Press, 1987, pp. 213-242. There is a recent book on this subject: Jean-Yves NERZIC, *La place des armements mixtes dans la mobilisation de l'arsenal de Brest sous les deux Pontchartrain (1688-1697 et 1701-1713)*, Milon la Chapelle, Editions H & D, 2010.

<sup>54</sup> Gijs Rommelse, "Y a-t-il eu une révolution navale au début de l'époque moderne ? Les relations entre la raison économique d'État et la guerre maritime", *Revue d'Histoire Maritime*, n°14, 2011, pp. 252-253.

<sup>55</sup> It was in this way that the English interpreted it: I. De Madariaga, *Britain, Russia and the Armed Neutrality of 1780*, London, 1962, p. 59. [by the regulations of 26 July 1778] "Il [le roi] a fait connaître d'une façon bien évidente sa religion à ne pas léser non seulement les intérêts de ses alliés et amis de toutes les nations mêmes auxquelles la liberté de la mer

est nécessaire malgré ce prétendu droit exclusif et offensant que les Anglais se sont arrogé” A.A.E., C.P., Suède, Vol. 270, fol. 81, Corberon to Usson, 26 February 1779.

<sup>56</sup> Letters from the king to the admiral, 23 and 30 May, 7 August 1780, in Sylvain Lebeau (ed.), *Nouveau code des prises*, Paris, Imprimerie de la République, an 8 (1799), t. 2, pp. 240-241, 246-248, 256-257.

<sup>57</sup> “La guerre c'est donc point une relation d'homme à homme, mais une relation d'État à État, dans laquelle les particuliers ne sont ennemis qu'accidentellement, non point comme hommes, ni même comme citoyens, mais comme soldats ; non point comme membres de la patrie, comme ses défenseurs. Enfin chaque État ne peut avoir pour ennemis que d'autres États, et non pas des hommes, attendu qu'entre choses de diverses natures on ne peut fixer aucun vrai rapport” Jean Jacques Rousseau, *Du contrat social*, Paris, Pluriel, 1978, pp. 170-171.

<sup>58</sup> Simon Linguet, *Annales politiques, civiles et littéraires du dix-huitième siècle*, t. 6, London, 1779, p. 108. Many of his contemporaries shared the same opinion, such as the German jurist Eobald Toze who considered that there was just one step between privateering and piracy, *Essai sur un code maritime général Européen ...*, Leipzig, 1782, p. 25

<sup>59</sup> *Collection of the complete works of the Abbot de Mably*, t. 6, Paris, An III, p. 543.

<sup>60</sup> Marc Belissa, “Les Lumières contre les corsaires”, *XVIIIe siècle*, 2001 n° spécial “Atlantique”, pp. 119-121.

<sup>61</sup> “No citizen or subject of either of the contracting parties shall take from any power with which the other may be at war, any commission or letter of marque for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate” article 20, Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United States of America; September 10, 1785, [http://avalon.law.yale.edu/18th\\_century/prus1785.asp](http://avalon.law.yale.edu/18th_century/prus1785.asp)

<sup>62</sup> Florence Le Guellaff, *Armements en course et droit des prises maritimes (1792-1856)*, Nancy, Presses Universitaires de Nancy, 1999, pp. 79 and 124-127; and Guillaume Lallement, *Choix de rapports, opinions et discours prononcés à la tribune nationale*, t. IX, Paris, Alexis Emery, 1820, p. 128.

<sup>63</sup> David A. Bell, *La première guerre totale. L'Europe de Napoléon et la naissance de la guerre moderne*, Paris, Champ vallon, 2010, p. 55.

<sup>64</sup> David Starkey, *British Privateering Enterprise in the Eighteenth Century*, University of Exeter Press, Exeter, 1990.