Tides and Tribulations: English Prize Law and the Law of Nations in the Seventeenth Century

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1 Introduction

Embedded within the commercial-ridden seventeenth century was a competition fierce amongst nations, and wars – the Spanish Wars of 1585 to 1603; the Spanish and French Wars of 1625 to 1630 and the Anglo-Dutch Wars to name a few – that saw privateering practices as a weapon of choice, particularly for England. With ‘airy hopes, prospects, and expectations’ on the trade routes to far and rich lands, domination of the seas was gradually becoming a primary objective for England. And alongside its zealous desire to surpass the maritime power of its Dutch rival, it would eventually, through much strife, be regarded as a great maritime nation. English commercial practices and colonising aims had reached a maturity that far exceeded the preceding century.

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3 See Anderson, An Historical and Chronological Deduction, 1801 (n. 1), p. 451, for his quite apt description on the characteristics of commercial England in the seventeenth century:
As the damage of enemy trade through the capture of English enemy property intensified, so did its regulation, evidenced by the laws and rules submitted by the English sovereigns of that era. The Navigation Act implemented during the interregnum period highlights one example of the changes in maritime regulation that England was undergoing. At the same time, there was a respect for the law of nations, which regulated the relations between states.

The law of nations has a complex semantic history. There is dissension on its meaning existing amongst even the most prominent doctrinal writers. The law of nations is therefore an ambiguous term. One example of the complications of the term can be made by references to the *ius gentium*. This triggers confusion between a ‘law’ and a ‘right’. But it is not for this article to write about the deeply complex law of nations more generally. Strictly speaking, the law of nations refers to the rules that govern the behaviour and practices of states and the relations between them, as derived from general usages and opinion. It is with reference to this limited definition that most European governments conducted their business under the ‘law of nations’ during the seventeenth century and that of which this article will proceed.

The law of nations however was an emerging law and not an established body of law in the seventeenth century. When it came to prize law practice, the law of nations was respected and quite often converged with the prize law of England. This process, however, was not mutually exclusive. Prize law practice simultaneously influenced the shaping of the law of nations too. Consequentially, prize law in England had become a complicated affair, especially when trying to balance the needs of the domestic with the international. It also posed particular problems for the common lawyers, who were on a crusade to claim the right to deal with litigation involving traders, merchants and seamen.

At the heart of this story hails the institution of prize law and its jurisdiction within the English Admiralty Court. With all the difficulties a domestic court applying a-domestic rules had, its emancipation from the shackles of the English common-legal framework is evident in the seventeenth century. Although the common lawyers did eventually monopolise ordinary admiralty jurisdiction, their attempt at doing the same with prize law severely failed.

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1 In general, it will be seen that, towards the Close [of the seventeenth century], Commerce is gradually advanced to almost its very Zenith of Perfection.’