The Admiralty Sessions, 1536-1834

The Admiralty Sessions, 1536-1834:

Maritime Crime and the Silver Oar

By

Gregory Durston

Cambridge
Scholars
Publishing

The Admiralty Sessions, 1536-1834: Maritime Crime and the Silver Oar

By Gregory Durston

This book first published 2017

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN (10): 1-4438-8178-3
ISBN (13): 978-1-4438-8178-4

CONTENTS

ACKNOWLEDGEMENTS

I would like to acknowledge the invaluable assistance provided by the staff of the National Archives in Kew, the Codrington Library in Oxford, the British Library, Kingston University Library, and the University of Monaco Library. Thanks are also due to Rhoda Keonig and Philippa Russell. Readers should note that abbreviated titles are sometimes used in footnotes; the full versions of these sources may be found in the bibliography. Until 1752 the year formally started on 25 March; dates prior to this time have been modernised.

Gregory Durston
London,
December, 2016

CHAPTER ONE

INTRODUCTION

Crime is largely a territorial phenomenon at common law, as it is in most other major legal systems. An Englishman who offends while abroad cannot normally be prosecuted in a domestic forum. Similarly, a British national who commits a crime on a foreign vessel, while outside territorial waters, does not usually commit an offence that can be determined by English (or Scottish) law.[1] In the modern era, this general principle is qualified by a significant number of specific, usually statutory, exceptions, such as section 92 of the Civil Aviation Act of 1982, by which English courts have jurisdiction in respect of offences committed on British-controlled aircraft whilst "in flight", even though they are outside the United Kingdom and its airspace. Historically, offences committed on English and, after 1707, British merchant vessels were a particularly important exception to the general rule of territoriality.

In the early sixteenth century, England had a substantial merchant marine. By the start of the eighteenth century, it was enormous, employing thousands of sailors in vast numbers of vessels of very disparate sizes, which sailed most of the world's oceans. It was generally agreed that, if chaos was not to ensue, these ships could not be immune from the reach of the criminal law. However, policing such an environment is inherently very difficult, even today. Prior to the modern era, with its swift and effective means of communication, pursuing justice at sea posed enormous administrative, evidential, and legal problems. This justified the use of a court and bureaucracy that were dedicated to such cases. Between 1536 and 1834, maritime crimes committed on English/British merchant vessels were normally tried at special sessions of the Court of Admiralty. It was this forum that ensured that the seas were not entirely lawless and which forms the subject of this book.

Three hundred years is a very long period of time. Although there was much continuity at Admiralty Sessions over the centuries, there were also significant changes in jurisdiction and practice. In general terms, the Tudor

[1] R v *Kelly* (1982) A.C. 655.

period was a much less "legalistic" age than the post-Restoration era, especially the years after the Glorious Revolution of 1688, so that things were done, and jurisdictional boundaries blurred, at Elizabethan Admiralty Sessions in a way that would not be possible 200 years later. There was also substantial statutory intervention in the field during the nearly three centuries concerned. These changes must always be remembered when considering the history of the court.

Sources of Information

Most of the surviving criminal records from the Admiralty Sessions are in a series of documents, kept separately from the court's civil and prize cases, held at the National Archives and filed under HCA 1. This series includes such diverse items as commissions of oyer and terminer, examination books, warrants, indictments, lists of gaol delivery, letters, etc. The civil law tradition of keeping *acta* (official records of proceedings) is also sometimes reflected in preserved minutes of evidence.[2] Prior to 1733 some formal documents were in Latin, as with those concerning 'terrestrial' felonies—this adjective shall be used throughout this book for laws and courts of the land. However, although a fairly extensive set of papers, they are sometimes fragmentary, several are missing, others have been corrupted by the elements, and many, such as those written in flowing seventeenth-century cursive hand or the diminutive script sometimes employed in the 1500s, require fairly well developed skills in palaeography and good eyes.

Nevertheless, gaps, especially those in the second half of the Admiralty Sessions' existence, can sometimes be filled by recourse to published accounts that discuss the courts' proceedings. For example, there are a number of major treatises on maritime law from the era. In 1568 William Fleetwood, the Recorder of London, although a common lawyer, wrote a treatise entitled *Certen Notes declaring Admirall Jurisdiction*. In 1675 Matthew Hale, another common lawyer and the Lord Chief Justice of King's Bench, completed *A Disquisition touching the Jurisdiction of the Common Law and Courts of Admiralty*. Unsurprisingly, civil lawyers also turned their attention to the subject, especially during the seventeenth century, when there was considerable friction over jurisdiction between the High Court of Admiralty and the Court of King's Bench, the Assizes, and other terrestrial forums. Men such as Richard Zouch, John Exton, John

[2] M.J. Prichard and D.E.C. Yale (eds.), *Hale and Fleetwood on Admiralty Jurisdiction* (London: Selden Society, 1993), p. cxxxviii.

Godolphin, and Leoline Jenkins, most of whom were or became judges of the High Court of Admiralty, all contributed. They were combed by later scholars, such as Travers Twiss (editor of the medieval *Black Book of the Admiralty*) and Reginald Marsden.[3]

There are also several popular sources for the history of maritime crime. Captain Charles Johnson's two-volume *A General History of the Robberies & Murders of the Most Notorious Pyrates* of 1724 contains valuable legal information about royal proclamations and charges to grand juries; one of the former deals with the jurisdiction of the Admiralty Court. In addition, Johnson discusses several trials at length and provides "An abstract of the civil law and statute law now in force in relation to piracy". However, this widely cited work also contains considerable embellishment and exaggeration, and includes the biographies of several individuals who may even be largely fictional. (It is possible that "Johnson" was a pen name for Daniel Defoe). There were other major works in this field, of varying degrees of reliability, and numerous chapbooks, especially when it came to piracy, which excited considerable popular interest. After the late seventeenth century, the rapid growth in newspapers provides a very valuable source of information, especially for the London area, where Admiralty Sessions were conducted.

Origins of the Admiralty Court

The origins of the Admiralty Court are uncertain. It is clear that it developed in tandem with an expansion in medieval maritime trade and did not exist before the reign of King John (1199-1216).[4] It is suggested in the *Black Book of the Admiralty* (the earliest extant copy of which dates from about 1450) that the court was founded during the reign of Edward I (1272-1307). This is supported by at least one recent analysis, which argues that it is probably traceable to the late 1200s, if not a little earlier.[5] Other modern observers have argued that it was formally established slightly later, by Edward III in the years after the Battle of Sluys of 1340, possibly between 1347 and 1357, and was initially heavily concerned with suppressing piracy in the English Channel. This had become so bad that in

[3] Graydon S. Staring, "The Admiralty Jurisdiction of Torts and Crimes and the Failed Search for Its Purposes", *Journal of Maritime Law and Commerce*, vol. 38, no. 4 (2007), pp. 436-437.

[4] G.D. Squibb, *Doctors' Commons*: *A History of the College of Advocates and Doctors of Law* (Oxford: Oxford University Press, 1977), p. 148.

[5] Damien J. Cremean, "Historic Origins of the Admiralty Court", *Journal of Business Law*, vol. 4 (2012), pp. 350-359.

1337 Edward II was forced to pay restitution to Flemish merchants for acts of piracy committed by English sailors rather than jeopardise his alliance with Flanders.[6] Piracy does not normally appear to have been determined by domestic courts after about 1343.[7]

Tracing the early history of the court is particularly difficult, as most records before 1530 have been lost. Nevertheless, it seems that, initially, there was not one court but three, with Admirals of the North, West, and Southern regions each having their own deputies and forums.[8] The unified court came about in the years after 1405/6, as a single "Admiral of England" was created (Thomas of Lancaster, the second son of Henry IV, was the first), and the three tribunals were merged into one.[9] The judge of the court, who ultimately replaced the Lord High Admiral in judicial matters, eventually became an independent official, appointed by the King. Although its civil jurisdiction was being enlarged and clarified by statute as late as 1840 (3 & 4 Vict., c. 68), the Admiralty Court was merged with other tribunals to form the High Court by the Judicature Acts of 1873 and 1875, and was abolished as an independent forum.

Admiralty Law

Whatever the date of its foundation, much of the body of law received into the Admiralty Court was already established.[10] Certainly it was different to that employed by terrestrial courts. Admiralty law had a mixed provenance, but was largely based on Roman or "civil" law, supplemented by various historic maritime codes from different parts of Europe, such as those of Rhodes and Oleron, common custom, and Acts of Parliament. The last always took precedence where applicable, so that "the Civil Law is allowed to be the Rule of their Proceedings, only so far as the same is not contradicted by the Statute of this Kingdom".[11] The Admiralty Court did

---

[6] Charles S. Cumming, "The English High Court of Admiralty", *Tulane Maritime Law Journal*, vol. 17, no. 2 (1993), p. 220.

[7] Lionel H. Laing, "Historic Origins of Admiralty Jurisdiction in England", *Michigan Law Review*, vol. 45, no. 2 (1946), p. 166.

[8] William Senior, *Doctors' Commons and the Old Court of Admiralty: A Short History of the Civilians in England* (London: Longmans, 1922), p. 16.

[9] David R. Owen and Michael C. Tolley, *Courts of Admiralty in Colonial America: The Maryland Experience, 1634-1776* (Durham: Carolina Academic Press, 1995), p. 12.

[10] Charles S. Cumming, "The English High Court of Admiralty", p. 210.

[11] Sir Matthew Hale, *The History of the Common Law of England* (London: J. Nutt, 1713), p. 37.

not use the native legal system of England for its work. As early as 1361, a suit relating to piracy asserted that it was not bound by the common law but "must administer equity and the law of the sea".[12] The same conclusion was reached that year in litigation concerning the disposal of an English ship that had sailed out of Dartmouth, been captured by the French off Winchelsea, and then recaptured by an English vessel.[13] As the distinguished Admiralty lawyer John Exton noted, the use of Roman law in a maritime context meant that the court was "widely recognised throughout the civilised world".[14]

Responsibilities

The Court of Admiralty ultimately acquired a threefold jurisdiction during the medieval and early modern period. Most important, it regulated civil matters with a maritime background in its "instance" jurisdiction, enforcing shipping and marine insurance contracts and wage agreements between shipowners and sailors, and dealing with situations in which a ship or cargo was damaged by collision with another vessel or the negligence of a crew. However, after a period of aggressive expansion, the court lost out to terrestrial, common-law forums (especially the Court of King's Bench) when it came to many commercial contracts (a particularly lucrative field) in the jurisdictional battles of the fourteenth century. Even so, in the early seventeenth century the Admiralty Court expanded its non-criminal jurisdiction to include charter parties, negotiable bills of lading, the non-delivery of cargo, and cases of negligent navigation. Unfortunately, during the political struggles of the 1600s, its civil jurisdiction was, again, greatly restricted.[15] As a result, by the middle of the seventeenth century, one of its most important responsibilities involved

---

[12] J.C. Appleby (ed.), *A calendar of material relating to Ireland from The High Court of Admiralty Examinations, 1536-1641* (Dublin: Irish Manuscripts Commission, 1992), p.ix.

[13] Edwin Welch (ed.) (1968) *The Admiralty Court Book of Southampton, 1566-1585* (Southampton: Southampton University Press, 1968), p.xiii; A.R. Myers (ed.), *English Historical Documents 1327-1485*, vol. 4 (Abingdon: Routledge, 1996), p. 294.

[14] John Exton, *Maritime Dicaeologie, or Sea-Jurisidction of England* (London: Richard Hodgkinson, 1664), pp. 170-175.

[15] Gerard J. Mangone, *United States Admiralty Law* (Boston: Martinus Nijhoff, 1997), pp. 19-20.

litigation over mariners' wages.[16] A century later, this was the main "instance" work carried out by the court. In the first session held at Easter in 1751, 25 of 29 cases recorded in the Admiralty Court's Act Book involved claims by sailors against their masters.[17]

Additionally, the Admiralty Court acquired responsibility for deciding whether "prizes" (ships or cargos captured at sea during war) had been seized legally, and for making any ensuing distribution of prize money where they had been, something that was to become a major area of jurisdiction during times of conflict, such as the eighteenth century. The origin of this responsibility can be traced to the power given to the Court of the Admiral to try cases of "spoil" involving the capture of foreign ships by English vessels. The earliest recorded example dates from 1357, when the goods of a Portuguese subject, which had been taken at sea from the French ship that had captured them earlier, were awarded to its English captors. This jurisdiction became administratively distinct from the court's ordinary instance work in the century after 1589.[18]

As a result, foreign merchants and diplomats might sue in the Admiralty Court for the return of their (or their country's) vessels and property, on the basis that they had been seized improperly. In these situations, the court would either condemn the ship and/or its cargo as lawful prize or find in favour of the original owners and declare it "not lawful prize". For example, in 1801 a British privateer, sailing out of Guernsey, seized the (neutral) Dutch vessel *Wilhelmina* off the coast of Holland, on the basis that she was carrying contraband, because her captain had initially acceded to a demand by the privateer to pay money (essentially blackmail) in lieu of capture. At first she was listed as a legitimate prize by commissioners in the Channel Islands, but when the owners challenged this decision in the Admiralty Court they succeeded. Sir William Scott, giving judgement, indignantly deprecated what had occurred as "disgraceful to the British flag." Alarmed that such practices might be prevalent, he ordered the return of the *Wilhelmina* and payment of all expenses and damages arising from the incident.[19] Similarly, English privateers used the court to settle disputes amongst themselves and with

[16] George F. Steckley, "Litigious Mariners: Wage Cases in the Seventeenth-Century Admiralty Court", *The Historical Journal*, vol. 42 (1999), pp. 315-345.
[17] Kevin Costello, "The Court of Admiralty of Ireland, 1745-1756", *The American Journal of Legal History*, vol. 50, no. 1 (2010), p. 26.
[18] Richard Hill, *The Prizes of War: The Naval Prize System in the Napoleonic Wars, 1793-1815* (Stroud: Sutton, 1998) p. 7.
[19] *The Morning Post and Gazetteer*, March 9, 1801.

the Crown (usually entitled to a share of any booty taken) over the division of captured vessels and their cargos.

However, the Admiralty Court also dealt with criminal matters connected with the sea. Indeed, the need to combat piracy had been one of the reasons for its creation in the medieval period. It also considered cases of murder, sodomy, theft, slaving (after 1807), and swindles involving vessels that were deliberately sunk after being heavily insured, as well as some lesser matters (for some of the period). The latter included such arcane crimes as foreign vessels not saluting an English warship by striking their flag or topsail while in the 'King's Seas' immediately around the British Isles (occasionally prosecuted during the late seventeenth century). Interestingly, most cases of smuggling were not dealt with by Admiralty Sessions, as the offence was completed when the goods were brought ashore, so bringing them into terrestrial jurisdictions, and some smuggling offences were not defined as felonies. Of course, serious offences committed by at sea by smugglers, such as the murder of revenue officers (see chapter 7), were dealt with by the forum. This book will consider the role of the Admiralty Court only in criminal matters.

Change in 1535/6

It seems that, during the early years of its existence, the Admiralty Court dealt with criminal allegations using a jury and, sometimes, even common law procedure. The handwritten late medieval *Black Book of the Admiralty* talks about those indicted for the theft of oars and anchors from ships being "convicted by twelve men".[20] In 1361 King Henry III issued a commission of oyer and terminer to Robert de Herle, the Lord High Admiral, to try a case of robbery and murder at sea according to common law (the "law and custom of our realme"). He was to be accompanied by up to three other named commissioners when doing so. (For well over a century after this time, commissions of oyer and terminer were rarely issued for piracy).[21] As late as 1446, a murder case referred to in the *Black Book* also mentions jury trial.[22] However, a petition to Parliament in 1371 complained that the Admiralty Court made suspects answer criminal

[20] Travers Twiss, *The Black Book of the Admiralty* vol. 1 (Cambridge: Cambridge University Press, 2012) p. 49.
[21] R.G. Marsden (ed.), *Documents relating to the law and custom of the sea; 1205-1648* (London: Navy Records Society, 1915), p. 91.
[22] Prichard and Yale, p. cxl.

charges without presentation by a grand jury, suggesting that it had been abandoned, at least on this occasion.[23]

Whatever may have happened in the early years of the court's existence, between at least the middle of the fifteenth century (if not before) and 1535 England tried maritime felons according to a modified form of Roman law criminal procedure, with the bench (sometimes just the Admiralty judge) determining all matters of law and fact, as it did in non-criminal trials. The judge Sir John Fortescue, writing a legal treatise in the 1460s (it was not published for over 70 years), appears to have been well aware of the civil law two-witness rule employed, and the unusual criminal tribunal used, in such cases, noting that "where facts are committed upon the high sea, without the body of any County, which may be afterwards brought to trial before the Admiralty-Court; facts of this kind, by the Constitution of England, are to be proved by witnesses, without a Jury".[24] Similarly, in the early summer of 1478, Sir John Asteley and other civilian lawyers were authorised to investigate recent robberies committed by pirates and to punish those found guilty "according to the law and custom of the sea and the court of Admiralty".[25] This created several problems in a maritime context.

One was that a man accused of a serious offence committed at sea might be convicted and executed as a result of the "opinion of a single judge", albeit that, by the early sixteenth century, it seems that this official was sometimes supported by several other commissioners. Even so, this was contrary to cherished common-law tradition, which prized use of the jury.[26] Another problem, as the Offences at Sea Act 1536 (28 Henry VIII, c. 15) expressly noted, lay in the evidential difficulties attendant on trying criminal matters "after the course of the civil laws". Most important, in the aftermath of the abolition of "trial by ordeal" by the Fourth Lateran Council of 1215, Roman law had developed complicated and demanding technical requirements for the number of witnesses and the quality of evidence that had to be present before a guilty verdict could be returned.

---

[23] Henry J. Bourguignon, (1987) *Sir William Scott, Lord Stowell: Judge of the High Court of Admiralty, 1798-1828* (Cambridge: Cambridge University Press, 1987), pp. 8-9.

[24] Francis Grigor, *Sir John Fortescue's Commendation of the Laws of England The Translation Into English of "De Laudibus Legum Angliae"* (London: Sweet and Maxwell, 1917), p. 52.

[25] John C. Appleby and Paul Dalton (eds.), *Outlaws in Medieval and Early Modern England: Crime, Government and Society* (Abingdon: Routledge, 2009), p. 154.

[26] William Blackstone, *Commentaries on the Laws of England*, vol. 4 (Oxford: Clarendon, 1769), p. 71.

Replacing God with man as the tribunal's decision-maker was felt to necessitate a very high standard of proof, and so precluded the use of purely circumstantial evidence to found a conviction. Normally courts needed two impartial eyewitnesses (ie, not accomplices to the crime) or a confession by the suspect himself to return a guilty verdict. This might have set the standard of proof impossibly high in many cases. However, Roman law had got round this problem by allowing suspects against whom there was a clear prima facie case to be tortured with a view to securing the required admissions.[27]

Almost uniquely in Europe, these developments had been avoided in England because common law and its attendant jury trial (rather than Roman law and trial by professional judges) had emerged there as the legal system and form of adjudication. Unlike that of most continental countries, English law did not countenance torture; it did not need to. Even so, a tiny number of pirates do appear to have been amongst the few dozen people investigated under torture by prerogative order of the Privy Council during the 1500s. They included four pirates (one of them the notorious Clinton Atkinson) who, after refusing to disclose the names of their receivers and abettors when questioned in 1583, were sent to the Tower of London to face the "torture of the Racke" to make them more co-operative.[28] Nevertheless, this was extremely unusual and (much more important) extra-legal. It was not imposed by the courts. As the Venetian diplomatic agent in London, Daniele Barbaro, noted in 1551, the English viewed torture as a violent form of investigation that made men confess to crimes they had not committed, so that it could injure both the body and life (through execution) of an innocent person. Englishmen thought that it was fairer to release a guilty person than to condemn someone who was blameless.[29]

The absence of torture from the country's legal system in the early sixteenth century meant that the Admiralty Court was bound by civil law evidential prerequisites when trying its criminal cases, but, unlike the civil law courts found in continental Europe, could not use torture to circumvent them. As the 1536 act candidly noted, maritime suspects would normally refuse to confess to their crimes "without torture or pain".

---

[27] John Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: University of Chicago Press, 1977), pp. 6-7.

[28] Claire Jowitt, *The Culture of Piracy, 1580–1630: English Literature and Seaborne Crime* (Abingdon: Routledge, 2010), p. 20.

[29] Rawdon Brown (ed.), *Calendar of State Papers Relating To English Affairs in the Archives of Venice* (London: HMSO, 1873), p. 340.

At the same time, the alternative civil law requirement for founding a conviction, that crimes be clearly proven by the testimony of at least two "indifferent" eyewitnesses: "cannot be gotten but by chance at few times".[30] Pirates were likely to murder the crews of any vessels they captured, especially during the Tudor era. For example, in May 1539, the French ambassador complained that the entire crew of a Breton vessel had been drowned by English pirates, apart from one man who had, miraculously, managed to swim six miles to shore. There were reports from around the same time of sailors captured off the Scilly Isles being thrown into the sea with their hands bound so that even this possibility was denied them.[31] Similarly, in April 1571 Guerau de Espés del Valle (1524–1572), the Spanish ambassador to England, wrote to King Phillip II, complaining: "The [English] pirates have been so cruel that it is confidently stated that they threw overboard the crews of the cutter and the Biscay ship which they recently captured".[32] Accomplices turning King's or Queen's evidence (see below) could not fill the evidential void, as they were, of course, not impartial and so did not qualify as "indifferent" witnesses.

Perhaps unsurprisingly in these circumstances, there are no records of any Admiralty Court executions for piracy in the years before 1536, although a lack of preserved documents greatly reduces the significance that can be attributed to this. That Wapping was already well established by then as a place of execution for maritime felons suggests that there must have been some. It also seems that six pirates were sentenced to death under the "old" system by the Admiralty Court in February 1535.[33] Nevertheless, the number executed prior to 1536 was probably fairly modest.

Statutory change in 1535/6 did not come "out of the blue", as these difficulties were already longstanding by then. Attempts had apparently been made during Henry VI's reign (1422 to 1461) to remedy the problems attendant on using Roman law in the sessions but, as William Blackstone later noted, the proposed statute "miscarried for want of the royal assent". It seems that in 1516 further legislation was suggested that

---

[30] G.R. Elton, *The Tudor Constitution*, 2nd ed. (Cambridge: Cambridge University Press, 1982), pp. 158-159.

[31] John C. Appleby, *Under the Bloody Flag: Pirates of the Tudor Age* (Stroud: The History Press, 2009), pp. 40-41.

[32] Martin A.S. Hume, *Calendar of State Papers, Spain (Simancas), vol. 2, 1568-1579* (London: HMSO, 1894), pp. 302-306.

[33] David Childs, *Tudor Sea Power: The Foundation of Greatness* (Barnsley: Seaforth, 2009), p. 182.

would hand over cases of piracy for determination by the common rather than civil law, again without success. However, in the decade after 1524, it became almost normal practice to include a senior common lawyer or judge in the commissions of oyer and terminer that were issued to try crimes according to maritime law. For example, Richard Lister was on such a commission when Attorney General in 1527 and again as Chief Baron of the Exchequer in 1531 and 1532.[34]

Reform was eventually achieved in 1535 and 1536, as part of a more general early Tudor drive towards better government. The timing was not a matter of chance. The sixteenth century saw greatly increased traffic on the oceans, with the spread of maritime trade and the colonial expansion of European states. This, combined with the disruption occasioned by warfare, meant that robbery at sea grew to become a troubling international phenomenon.[35] There was particular concern about piracy in British waters, especially in the English Channel. In 1527 Henry VIII ordered Viscount Lisle to inquire into and punish all maritime crimes committed within the Admiralty's jurisdiction. The following year, William Gonson reported regular clashes in the channel with French and Dutch ships seeking prizes. The legislation in 1535/6 received the express support of Thomas Cromwell, then the Principal Secretary, who was concerned about the high level of piracy seen over the preceding decade.[36] At the same time, the Royal Navy became stronger, having almost been sold off a century earlier, so that more pirates were being captured, requiring an effective justice system to deal with them.[37]

It seems that the original criminal jurisdiction of the English Admiralty became obsolete after 1535/6, so that no offence of a criminal nature could be tried by the court that did not fall within that conferred by the Henrician statutes (or other commissions). The first of them, "An Act concerning Pirates and Robbers of the Sea" (27 Hen VIII, c. 4, 5), was quickly followed by "An Act for Punishment of Pirates and Robbers of the Sea" (28 Hen VIII, c. 15). The use of two almost identical acts passed in consecutive years appears to have been a consequence of the first not specifying treason as being within its scope, something that was corrected

[34] Prichard and Yale, pp. cxli-cxlii.
[35] Michael Kempe, "'Even in the remotest corners of the world': globalized piracy and international law, 1500–1900", *Journal of Global History*, vol. 5, no. 3 (2010), p. 354.
[36] Appleby, *Bloody Flag*, p. 38.
[37] Childs, p. 182.

by the second statute. After 1536 this was the only act normally referred to.[38]

As a result of the new statute, all serious maritime crimes, whether treason, murder, piracy, or other felonies, were determined "as if the Offences were done at Land, according to the Course of the Common Law".[39] As the admiralty judge Sir Leoline Jenkins (1625-1685) later noted, after the crew of a Dutch ship were arrested for crimes against an English vessel, the usual way to punish them would therefore be at a "Sessions of Oyer and Terminer for the Admiralty. There we proceed by jury, and in all things according to the course of the common law".[40] A century further on again, Sir James Marriott (Admiralty judge from 1778 to 1798) reiterated this point, noting that the sessions procedure was "exactly the same in all its essential parts, as the ordinary form of trial at common law".[41] Thus such cases were always scrutinised by a grand jury before going for a hearing, where they were determined by a petty (trial) jury, pursuant to standard procedures of the type found at provincial assizes or the Metropolitan Old Bailey, and without technical evidential prerequisites normally being required to secure a conviction, the special exception of high treason apart (which applied wherever the crime was tried).

The incidence of successful prosecution swiftly increased as a consequence of this legislation. Eleven men were sentenced to death after the first sessions under the new system, held in 1537. In the two years between 1549 and 1551, 22 pirates were hanged. In the longer period between 1561 and 1583, it seems that 113 admiralty convicts were executed at Wapping.[42] On 30 August 1583, nine pirates were hanged on just one occasion, two days after being convicted at the sessions hall of St Margaret's parish in Southwark.[43] Most admiralty executions were carried out for piracy, murder, or treason. Smaller numbers of men were hanged for stealing goods from ships at sea, insurance or other frauds, and

[38] Prichard and Yale, p.cxxxvii and p.cxliv.
[39] Hale, *History of the Common Law*, p. 37.
[40] William Wynne, *The life of Sir Leoline Jenkins, Judge of the High-Court of Admiralty* (London: Joseph Downing, 1724), p. 774.
[41] Anon, *Admiralty Sessions, Held at the Old Bailey, On Saturday, March 30th, 1782, Before Sir James Marriott, Knight, judge of the Admiralty-Court* (London), pp. 1-6.
[42] Prichard and Yale, p. cxliii.
[43] Thomas Heywood, *A True Relation of the Lives and Deaths of the two most Famous English Pyrats, Purser and Clinton, who lived in the Reigne of Queene Elizabeth* (London: Io. Oakes, 1639), D1r – D1v.

unsuccessfully attempting to take over merchant vessels on which they were travelling contrary to statute (11 & 12 Wm. III, c. 7).

It has been observed that the effect of the 1536 statute makes it necessary to view the criminal jurisdiction of the Admiralty Court as an aspect of English common law rather than Admiralty law.[44] Nevertheless, in *theory*, the 1536 act affected procedure rather than substantive criminal law. As Sir James Marriott noted at the Admiralty Sessions that commenced on 30 March 1782, although the form of trial was conducted according to common law, the criminal law applied was not identical with that found in domestic forums. Instead, the court would apply the maritime law, which was a "mixed law, partly the law of the land [common law], and partly the laws maritime".[45]

In practice, and despite such comments, there were very few differences when it came to criminal matters. Thus, at Admiralty Sessions, the common-law rule requiring death within a year and a day of injury in murder cases was applied without question. Similarly, a defence lawyer who argued at an American Vice-Admiralty Court that, as his client was an accomplice, he was outside the reach of maritime criminal law, because the civil law did not recognize such a class of defendant in the circumstances revealed by the evidence, received short shrift. Nevertheless, as late as 1884 (long after abolition of the Admiralty Sessions), the legal writer Sir George Baker unavailingly suggested that as civil law, not common law, governed maritime offences, a defence of necessity (recognised in the former but not the latter) should be accepted for crimes committed at sea.[46]

Piracy provided one qualified exception to this general situation. In his celebrated *Institutes of the Lawes of England* of 1628-44, Sir Edward Coke suggested that it was not a common-law crime, derived from decided cases, but came from the civil-law tradition. While piracy shared elements with felonies such as robbery, it should not be regarded as a felony although treated as if it were. Before the 1536 act, "piracy was no felony, for that it could not be tried, being out of all towns and countries, but was only punishable by the civil law. This statute did not alter the offence . . . but giveth it a means of trial in the common law, and inflicteth such pains of death as if they had been attainted of any felony done upon the land". Coke reinforced this distinction by referring to *Butler's Case*, which held that, as piracy was not a felony, there could be no felonious accessories to

[44] Bourguignon, p. 9.
[45] *London Chronicle*, March 30, 1782—April 2, 1782.
[46] Brian A.W. Simpson, *Cannibalism and Common Law: A Victorian Yachting Tragedy* (London: Continuum, 2003), p. 249.

the crime.[47] This also reflected the view of common-law judges who met at Serjeants Inn in 1605 to decide whether the coronation pardon that James I had given to felons applied to piracy, which had not been expressly exempted from its ambit (unlike other serious crimes, such as murder). They concluded that it did not.[48]

Despite such views, judges at the Admiralty Sessions and other senior lawyers periodically conflated piracy with the common-law crime of robbery. According to Sir Charles Hedges, piracy was "only a sea term for robbery, piracy being robbery committed within the jurisdiction of the Admiralty. If any man be assaulted within that jurisdiction, and his ship or goods violently taken away without legal authority, this is robbery and piracy".[49] Similarly, at the Admiralty Sessions held in February 1694, the civilian advocate opening the evidence against a man named Collins for "piracy & robbery", committed by attacking ships sailing out of Biddeford and Tynemouth, noted that "piracy at sea was the same as robbery at land and the punishment was the same by ye law and the evidence that will finde the one is sufficient to convict also of the other".[50] In like manner, William Blackstone thought that piracy "consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there".[51]

Although this interpretation seems to have been accepted by many common lawyers, especially after the Restoration, the subject remained little defined, and some observers did not find it entirely satisfactory, with several feeling that piracy lacked an exact counterpart on land. Certainly for more than the first 100 years of the sessions simple theft from ships was sometimes charged as piracy and (it seems) occasionally resulted in convictions for the offence, even though violence was not used or threatened (although this was an essential element in terrestrial robbery). Thus, in a cluster of cases from the 1590s, pilfering or stealing anchors, cables, ropes, muskets, and even fish were indicted as piracy.[52] Although

[47] Douglas R. Burgess, "Piracy in the Public Sphere: The Henry Every Trials and the Battle for Meaning in Seventeenth-Century Print Culture", *Journal of British Studies*, vol. 48, no. 4 (2009), pp. 896-897.
[48] Prichard and Yale, p. cxciii.
[49] Anon, *The Tryals of Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes for several piracies and robberies by them committed in the company of Every the grand pirate* (London: John Everingham, 1696), pp. 1-28.
[50] Codrington Library, All Souls College Oxford, MS 148, p. 355.
[51] Blackstone, vol. 4, p. 72.
[52] Prichard and Yale, p.clxxxvii and p.ccxiii.

such cases were sometimes prosecuted as piracy (rather than larceny) after the early 1700s, they do not, by then, normally appear to have produced capital convictions.

Absence of Benefit of Clergy

More generally, and of vital significance, those being tried at Admiralty Sessions were "utterly excluded" from both benefit of clergy and the privilege of sanctuary by section 3 of the 1536 statute. Historically, there had never been any recognition of the former in civil law, which perhaps explains this development.[53] By the 1530s, sanctuary was a rapidly declining privilege, of very little practical importance, and it disappeared altogether in ensuing decades.

In contrast, benefit of clergy was a vital and growing legal fiction that allowed many of those convicted of less serious types of felony to escape death if (ostensibly) literate prior to 1706, and even if not thereafter, something that was determined by reading the requisite "neck verse" of scripture in court (often with some prompting from a court chaplain where a benign result was sought). Otherwise, hanging was the set punishment for all felonies apart from petty theft (under a shilling in value). Interestingly, Ireland was brought into line with the position in England when it came to clergy only in 1614, allegedly making it a popular haven for maritime felons during the late sixteenth century.[54]

Despite the apparently unequivocal language of section 3, doubt was cast on this issue by a statute passed during the brief reign of Edward VI (1 Edw. VI, c. 12, s. 9) which, on one interpretation, appeared to suggest that clergy should be granted in Admiralty matters. However, there seem to have been no cases in which it is certain that clergy *was* successfully claimed during the sixteenth century. It was alleged by contemporary observers to have been behind Thomas Cobham's escape from execution in 1565, but, as he had refused to enter a plea, and so not been arraigned, it is not easy to determine how this might have occurred. (Although prior to 1575 clergy could sometimes be applied for prior to trial, it had been withdrawn from those who stood mute in 1533). In 1605 the common-law judges expressly rejected this interpretation, so resolving the issue.[55]

The general absence of benefit of clergy meant that, until the end of the eighteenth century, a jury at Admiralty Sessions could not return, on a

[53] *Ibid.,* p.ccvii.
[54] Senior, p. 54.
[55] Prichard and Yale, p. ccx.

murder indictment, a lesser verdict of manslaughter (a clergyable felony) that allowed the accused person to escape execution, as was common practice at terrestrial sessions.[56] As a result, on one occasion in 1586, a convict was executed after receiving a manslaughter verdict, albeit that it was a slightly unusual case. In others, those convicted of manslaughter would have to petition for a reprieve to escape the noose, after being sentenced to death.[57]

Nevertheless, even in the sixteenth century, informed juries, knowing the consequences, appear to have been reluctant to convict for any offence in these circumstances. After the Restoration, this became the default position at trial, jurors being expressly advised by the judiciary to adopt such a course. For example, in 1776 Alexander Kidd was tried and acquitted of murdering a sailor, Robert Jackson, while their vessel was in the mouth of the River Tagus in Portugal. Jackson had been disciplined by Kidd for malingering in his hammock with what appears to have been a hangover, and threatened to get "satisfaction" in retaliation, prompting Kidd, the ship's mate, to knock him down. A scuffle ensued, and Jackson fell overboard and drowned, despite the best efforts of Kidd and others to recover him. The verdict (returned by the jury within two minutes of retiring) was unsurprising, given that, as the presiding judge Sir William Ashurst, from the King's Bench, expressly warned the jurors, the Admiralty Sessions "had not the privilege of what was denominated manslaughter in common law courts".[58] Similarly, in 1785, when discussing another case involving a lethal quarrel on a merchant ship, Mr. Justice Gould advised the jury that when such killings occurred at sea there were "no intermediate stages as at common law".[59] As a result, if a murder allegation did not appear to be more than a case of manslaughter, the defendant was "constantly directed to be acquitted".[60] Nine years later, Sir James Marriott warned an Admiralty jury in a homicide case that they "must totally acquit or condemn, as by the Civil law there was no such distinction as manslaughter".[61]

Indeed, whenever any type of offence was committed within the Admiralty jurisdiction that would be clergyable on land, the "constant

[56] Sir Edward East Hyde, *A treatise of the pleas of the crown*, vol. 1 (London, A. Strahan, 1803), p. 218.
[57] Prichard and Yale, pp. ccix-cccxx.
[58] *London Evening Post*, July 6, 1776–July 9, 1776.
[59] *The Times*, June 22, 1785, p. 3.
[60] Hyde, p. 218.
[61] *Morning Post*, April 29, 1794.

course is to acquit and discharge the prisoner".[62] Otherwise, the convicts would hang. However, in practice, this usually involved manslaughter, as most other felonies tried at Admiralty Sessions, such as piracy and sodomy, were not clergyable, making the issue irrelevant.

In 1759 Captain Joseph Halsey was very unfortunate in this regard. Extremely unusually, he was convicted and executed for murder by a jury that, apparently, had initially thought his case merited only a finding of manslaughter "but being informed by the court that they must find him guilty or not guilty, he was brought in guilty".[63] This was not an entirely satisfactory situation legally, as a tiny number of men, like Halsey, may have been punished beyond their deserts, while many more walked free who were deserving of some form of punishment, or at least the stigma of a conviction, especially in homicide cases.

For example, violent provocation would normally reduce a homicide allegation to manslaughter. As a result, at Admiralty Sessions, its presence usually meant that an outright acquittal would be returned, at least after 1660. Thus, in 1760, Owen Burn was accused of murdering Thomas Huggins while onboard an East Indiaman. He had stabbed him in the side with a knife, from which wound Huggins died within ten minutes.[64] Even so, Burn was acquitted, "it appearing that the accident happened thro' the fault of the deceased, and his frequent ill-usage of the prisoner".[65]

Similarly, in a murder case tried at Admiralty Sessions in 1785, a furious quarrel between two men, who were keen to fight a duel, resulted in one stabbing the other with a sword, after being physically struck by the victim. This was crucial; the provocation meant that it was manslaughter, and, as Mr. Justice Gould remarked, it was the "constant practice of the Admiralty Court in indictments for murder to find guilty, or acquit generally".[66]

In like manner, in October 1793, the third and fifth mates of the East Indiaman *Warren Hastings*, who had previously lived in amity, had a heated argument over a candle. The fifth mate, a man named Crock, punched the third mate, and a fight ensued. The third mate died as a result of the blows he received a few minutes later. Crock immediately expressed

---

[62] Blackstone, vol. 4, p. 374.
[63] Nicholas Wingfield, *The Trials of all the Pirates [N. W. and others] at the Admiralty Sessions at the Old Bailey; with the remarkable trial of Capt. J. Halsey* (London: S. Bagnell, 1759), p. 12.
[64] *Whitehall Evening Post or London Intelligencer*, October 9, 1760—October 11, 1760.
[65] *London Evening Post*, October 30, 1760—November 1, 1760.
[66] *The Times*, June 22, 1785, p. 3.

great sorrow for what had occurred. At trial the presiding judge concluded that, taken at its highest, the case "would not be murder at the common law, it would only be manslaughter; and therefore he took it that the prisoner could not be found guilty of murder in that [Admiralty Sessions] court". The jury duly acquitted, and Crock was discharged.[67]

Unforeseen deaths resulting from low-level violence produced similar results, as these, too, would bring about manslaughter verdicts if tried ashore. For example, in 1794 a sailor punched a strike-breaking colleague, who then (rather unexpectedly) died. The sailor was extremely remorseful, and the victim may have been suffering from an illness, which would have contributed to his death. In consequence, the jury unhesitatingly acquitted when told that murder was the only other option open to them.[68]

In terrestrial courts it was also sometimes possible to return a verdict of manslaughter when a death had been occasioned by gross (and therefore criminal) negligence. Again, this was not open to Admiralty Sessions, as can be seen from a case heard in 1796 in which John and William Mitchell, a father and son (presumably the owners of the vessel), were tried for murdering 57 soldiers and camp followers (half the total on board) of the Loyal Somerset Fencibles during a voyage from Jersey to Southampton in December the previous year. The 54 men and 3 women were smothered, having been locked in the cramped hold, without sufficient water, during a violent storm. However, the jury acquitted without leaving court as the defendants clearly held no malice against the troops, and were acting to save the small and overcrowded vessel (knowingly contracted for by the Army) and those aboard her, in terrible conditions, the hatches being locked to prevent water coming in. At the same sessions, and arising out of the same incident, the Mitchells were tried and acquitted following slightly more debate, for murdering one specific passenger on board the sloop, a soldier named Colin Franklin. He appears to have been reluctant to go down to the hold early in the voyage and was roughly thrown into it, being injured in the process. A third defendant was accused of the same crime, but his case was thrown out by the grand jury.[69]

It was not until 1799 and the passage of an "An Act for remedying certain Defects in the Law respecting Offences committed upon the High Seas" (39 Geo III, c. 37), that the Admiralty Court was able to convict for manslaughter or other clergyable felonies so that a defendant automatically

[67] *Ibid.*, November 8, 1794, p. 3.
[68] *Morning Post*, April 29, 1794.
[69] *Lloyd's Evening Post*, May 27, 1796—May 30, 1796.

escaped a death sentence. The new statute was employed almost immediately (see chapter 2).

Consequences of the 1536 Act

As a result of the 1536 act, the Admiralty jurisdiction in England was divided into two distinct areas, governed by different procedural systems and forms of judicial inquiry. Civil matters (including prize disputes) were normally presided over by the Admiralty judge, sitting alone, though, after the 1530s, pressure of work meant that he usually appointed a deputy to assist or cover for him if he was engaged on other business. (Some of these deputies subsequently became Admiralty judges themselves). Proceedings in this forum were conducted largely according to the forms prescribed by Roman civil law, supplemented by statute and maritime custom.

Until 1859 the legal practitioners in this court were the same as those in the ecclesiastical courts, and an entirely distinct profession from those who practised in the common-law forums. Thus advocates took the place of barristers, and proctors of solicitors and attorneys. They operated in and out of Doctors' Commons, a corporation of civil lawyers, established in London, with its own premises, in the decades prior to 1509. It acquired buildings near St. Paul's Cathedral in 1567. In 1768 it was incorporated as the College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts. It served much the same role for the civilians as the Inns of Court in and near Holborn and the Temple did for the barristers.

By contrast, the criminal jurisdiction of the Lord High Admiral passed to the Sessions of Oyer and Terminer and Gaol Delivery for the Admiralty of England or, more succinctly, the Court of Admiralty Sessions. The 1536 statute provided for jury trial and common-law procedure in this forum, which lasted for very nearly 300 years. Common lawyers, such as barristers and serjeants, often appeared to represent the parties. This forum even survived during the Interregnum.[70] Nevertheless, under the Commonwealth its criminal work declined in favour of the terrestrial common-law courts (although its examination books for suspected felons were quite extensive for most of the period). For example, in the early summer of 1649, an Interregnum statute brought the trial and punishment of Royalist rebels captured at sea in privateers within the purview of those

[70] Anon, *An Ordinance for an Explanation touching the Jurisdiction of the Court of Admiralty, Friday 2nd June* (London: William Du-Gard, 1654), pp. 1-2.

terrestrial assizes found nearest to where the prisoners were held.[71] As a result, in 1654, the Council of State ordered that English, Scottish, and Irish pirates held in Dorchester gaol be forthwith sent to Barbados, Bermuda, or other English plantations in America.[72]

However, after the Restoration in 1660, there was a slow re-establishment of regular Admiralty Sessions. In 1663 Samuel Pepys noted that the court was "but in its infancy (as to its rising again) and their design and consultation was, I could overhear them, how to proceed with the most solemnity and spend time, there being only two businesses to do, which of themselves would not spend much time".[73]

Abolition

There was considerable criticism of the delay and expense occasioned by running special Admiralty Sessions in its final century, especially during the early 1830s. By then it was estimated that each trial was costing the country at least £100.[74] There were no economies of scale. The years of peace that followed the end of the Napoleonic Wars in 1815 had hugely reduced the use of the Admiralty's prize jurisdiction and so, inevitably, focused attention on the continued existence of its criminal sessions. They were eventually brought to an end following a report from the Select Committee on the High Court of Admiralty that was published in 1833. The following year, they were abolished by the Central Criminal Court Act of 1834 (4 & 5 Will. V, c. 36), and the power to determine crimes committed within the admiralty's jurisdiction was given to the newly established Central Criminal Court (sitting at the Old Bailey). The last Admiralty Sessions were held in February 1834. On this occasion, five cases went to the grand jury for consideration. Three were thrown out. Of the remaining two, the trial of Thomas Keswick for manslaughter was postponed (for the second time) to the following sessions, as four witnesses were absent, and in the other case the witnesses did not appear (with no explanation given), so that their recognisances were estreated and the matter dismissed. As a result, and a little unusually: "The court had not

[71] Olive Anderson, "British Governments and Rebellion at Sea", *The Historical Journal*, vol. 3, no. 1 (1960), pp. 57-59.
[72] William Noel Sainsbury (ed.), *Calendar of State Papers Colonial, America and West Indies: Volume 1, 1574-1660* (London: HMSO, 1860), p. 419.
[73] R. Latham et al. (eds.) *The Diary of Samuel Pepys* (London: Bell and Hyman, 1971), vol. 4, p. 76.
[74] *The Times*, April 16, 1834, p. 5.

one case for trial, and the Petit Jury were not sworn".[75] The act abolishing the Admiralty Sessions came into force at the end of October 1834.[76] This meant that, when Keswick was eventually tried, in December of the same year, it was as an Admiralty case at the Central Criminal Court. He was acquitted in the light of medical evidence.[77]

However, the historic role of the Lord High Admiral in criminal cases committed at sea was recognised by the inclusion of the Admiralty judge in the commission of oyer and terminer and gaol delivery for the new court. Even so, by an Act of 1844 (7 & 8 Vict., c. 2), jurisdiction in criminal matters with an Admiralty background was also given to provincial assizes courts, so that they no longer had to go to London. As a consequence, and for example, in 1884, when Thomas Dudley and Edwin Stephens were, famously, accused of murder and cannibalism at sea, they were tried and convicted at the Exeter Assizes.[78]

[75] *The Morning Post*, February 12, 1834.
[76] *The Morning Chronicle*, November 3, 1834.
[77] *Ibid.*, December 18, 1834; OBSP, Trial of Thomas Keswick, December 5, 1834: t18341205-338.
[78] *The Times*, November 7, 1884, p. 11.

CHAPTER TWO

JURISDICTION

Introduction

By the mid-seventeenth century, Admiralty jurisdiction in criminal matters was largely restricted to crimes committed on board English (later British) ships at sea, cases of piracy apart. Nevertheless, this had not always been the case, and there were still a few exceptions even then, in which a matter originating on land came within its purview; some of these lingered on until just after the Restoration. Several involved violation or contempt of the court and its institutions. In *Scadding's Case,* in 1608, the Court of King's Bench held that even if the assistance provided by someone to help an Admiralty prisoner escape, such as procuring ropes for them, had occurred entirely on land, within the "body of a county", the Admiralty judge (Sir Thomas Crompton in this case) and court had jurisdiction to commit them to the Marshalsea prison and even, it seems, to try the matter.[1] In 1635 George Maes was committed to the Marshalsea, in part for his persistent refusal to submit to a formal examination in the Court of Admiralty. The Admiralty Marshal was ordered to seize Maes and carry him to the prison, to be held until further order.[2]

During the 1500s, the distinction between terrestrial and Admiralty criminal matters had been slightly less rigid. A variety of lesser matters came before the Admiralty forum that originated on land. These included the case of a mendicant who had made and used a counterfeit begging licence supposedly issued under the Admiral's seal, and even cases involving the forestalling of fish by buying up large amounts of plaice and cod landed on the Thames near the Tower of London with a view to profiting from any ensuing shortage. By the 1660s such cases had largely disappeared.

---

[1] Henry Yelverton, *The Reports of Sir Henry Yelverton, Knight and Baronet* (London: E & R Nutt, 1735), p. 135.

[2] Anon., *Journal of the House of Commons: vol. 3, 1643-1644* (London: HMSO, 1802), pp. 225-226.