



NATIONAL ENDOWMENT FOR THE HUMANITIES

DIVISION OF RESEARCH PROGRAMS

Narrative Section of a Successful Application

The attached document contains the grant narrative and selected portions of a previously funded grant application. It is not intended to serve as a model, but to give you a sense of how a successful application may be crafted. Every successful application is different, and each applicant is urged to prepare a proposal that reflects its unique project and aspirations. Prospective applicants should consult the Research Programs application guidelines at <https://www.neh.gov/grants/research/fellowships> for instructions.

Note: The attachment only contains the grant narrative and selected portions, not the entire funded application. In addition, certain portions may have been redacted to protect the privacy interests of an individual and/or to protect confidential commercial and financial information and/or to protect copyrighted materials.

Project Title: Ordering Property: A Global History of Maritime Prize Law, 1498-1916

Institution: University of Southern California

Project Director: Nathan Perl-Rosenthal

Grant Program: Fellowships

Ordering Property: A Global History of Maritime Prize Law, 1498-1916

Significance and contribution

In March, 2022, after war broke out in Ukraine, a bill was introduced in the U.S. House of Representatives to allow “privately armed and equipped” U.S. citizens to seize the property of sanctioned Russian nationals. The bill sought to revive the early modern practice of privateering. Privateers were individuals authorized by their sovereign to seize the ships and cargoes of enemy subjects during wartime. Prize law, a specialized body of jurisprudence applied by judges sitting as members of “prize courts,” governed the disposition of that captured property. The House bill’s sponsors, like their early modern predecessors, saw in this practice a way to make foreign policy—to govern the world, even—through the medium of private property.

In *Ordering Property*, I show how early modern prize courts became a principal forum for private property disputes between the subjects of different empires, thrusting them into an unexpected role as makers and enforcers of the law among polities in this era before modern international law. Prize courts, charged with determining whether seized vessels were “valid prize” that ought to be “condemned” to the captors’ profit, decided the fate of tens of millions of dollars’ worth of property during the eighteenth century alone. Their jurisdiction gave them authority over the physical and legal spaces between empires, leading them to create trans- and inter-imperial legal orders as a routine part of their work. One prominent eighteenth-century British admiralty judge went so far as to call prize a kind of European “Common Law.” Empires became dependent on this jurisdiction as a way to extend their authority into regions in which imperial institutions were weak or absent. Yet constructing an inter-imperial legal order in this way, indirectly by means of private property relations, proved to be a vexed project. The prize regime was bedeviled by the gap between its jurisdiction, strictly limited to things, and the mission of governing people and institutions in motion that European sovereigns increasingly entrusted to it.

Ordering Property charts the rise and fall of maritime prize law on a global scale from 1498, date of the first Anglo-French treaty to mention maritime prize, through the aftermath of the American Civil War, the last conflict in which prize law was systematically applied by a belligerent power. It spans all four main ocean basins in which European prize law applied: Atlantic and Indian Oceans and the Mediterranean and Caribbean Seas. Prize law emerged in the sixteenth and seventeenth centuries as a dominant form of property law among empires. In the eighteenth and nineteenth century, it developed into a powerful but flawed mode of governance as a key tool in efforts to control and end the Atlantic slave trade; a significant influence on European colonization in Asia; and a terrain of combat during independence struggles in the Americas. After 1815, prize law went into a long decline, gradually supplanted by more direct (though not necessarily more efficacious) systems of international ordering.

The prize law regime, I argue, had a crucial but largely forgotten role in the history of inter-imperial governance during the era before modern international law emerged. This project will integrate and substantially revise existing scholarship on maritime prize, while demonstrating the influence of the prize regime on major processes of the early modern European world. Studies of prize law by legal scholars, even the finest, have tended to focus on a single jurisdiction and/or a short period of time. This narrow focus has obscured prize law’s inter-imperial function and its role in long-term processes of European colonization and decolonization. Scholars of slavery, empire and independence, lacking the larger picture of prize law’s reach and often daunted by its technical jargon, have relegated prize law to their footnotes or misinterpreted its case law.

Organization, concepts, and methods

Ordering Property considers the making of law as both a “top-down” and a “bottom-up” project. Legislation and high court decisions formally set down the law, but legal historians have shown persuasively that law was also created from the “bottom up” by legal consumers and lower-level legal actors, including judges in tribunals of first instance. It was often they who decided what law would be applied, to whom, and in what ways. I pay close attention to the main players in prize tribunals of first instance—ship captains, ordinary seamen, merchants and their agents, and prize commissioners (low-level judges)—alongside the work of high court judges, legislators, and legal scholars.

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The sources for the project fall primarily into two categories, which roughly mirror the from above/from below divide. Printed treatises on prize law and case law (mostly at the appellate level) represent the work of legislation and legal dictation “from above.” Manuscript records of prize proceedings and the papers of merchants and captains, held in archival collections, represent the work done by courts of first instance (trial courts) and legal consumers. I will make comprehensive use of printed treatises and case law for the period of the study, 1498 to 1865. These records include roughly 500 treatises and pamphlets (primarily English, French, and Dutch), many of which are short occasional pieces, and roughly 20 substantial published collections of decisions (primarily English/British).

The archival record for the period is far too voluminous to cover comprehensively across the entire period and region. My use of archival sources will thus be selective. In the course of my prior work I have conducted preliminary research in many of the relevant collections in both national repositories (such as the UK’s National Archives and France’s Archives Nationales in Paris and Aix-en-Provence) and less well-known local archives. The voluminous prize cases in Série B of the French departmental archives, for instance, remain a virtually untapped corpus for the study of prize law’s evolution. Colonial prize court records, such as those of Guadeloupe and Cuba, have also received far less attention from scholars than those created by courts that sat in continental Europe.

Chapter One, drawing primarily on treatises, will track the emergence of prize law as a distinctive legal regime between empires during the fifteen and sixteenth centuries. This chapter lays out the unusual features of prize law across European empires: its intermittent existence (only active during wartime), its geographical limits (primarily the high seas), and its intricate procedures, often poorly understood even by the judges of first instance. These odd features, shared across empires, paradoxically helped to solidify prize law’s trans-imperial character: experts in the field had as much in common with one another, juridically speaking, as they did with other judges in their respective empires. Early prize jurists affirmed this commonality by describing their body of jurisprudence to be one that reached across imperial borders for authorities and precedents.

Chapter Two examines how prize law became a form of inter-imperial governance in the maritime borderlands of European empires during the seventeenth century and the conflicts with other forms of inter-polity law that arose. Prize, as a form of law applied between private parties, was often the main European legal regime operating in regions where European naval and administrative forces were thin on the ground, such as maritime Asia and the Caribbean. It thus fell to prize tribunals to set the boundaries of their empires’ jurisdictions, to resolve conflicts among European settlers and traders, and to regulate relations with non-European powers. (The expansion of prize law was also a way of asserting sovereign power against pirates.) Prize law’s growing role during this century of turbulent overseas competition and expansion led to significant legal polemics about how to order relations between empires. These controversies included the celebrated *mare clausum/mare liberum* debate between John Selden and Hugo Grotius, which revolved in good measure around disputed prizes.

Chapter Three delves into the granular imperfections and frictions of prize jurisdiction—its orderly disorder—during the regime’s heyday in the long eighteenth century. Drawing on a series of exemplary manuscript prize cases—from the War of Austrian Succession (1740-1748) through the American revolutionary war (1776-1783)—I take the reader through the prize process from first pursuit to final judgment and distribution of the proceeds. Prize tribunals tried to make themselves seem “universal” by applying foreign law and through the conceit that they could smoothly extract the information they needed from merchants, captains, and sailors. Yet the tribunals often responded to imperial pressures and ceded to the influence of domestic courts, and always relied on fragmentary paperwork and testimonies that were riddled with inconsistencies and highly susceptible to fraud. *Jencks v. The Sloop Fancy*, heard in Rhode Island in 1778, was typical, involving multiple sets of ships’ papers and mariners with uncertain identities. The prize regime, even at the height of its powers, was messy and imperfect.

Chapter Four explores how the prize regime figured in contests over independence and decolonization during the age of revolutions (ca. 1760-1825). Privateering played a key role during the period of nearly continuous warfare from 1776 to 1815. As empires fractured and fragmented, prize law

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became a key terrain for claiming and contesting sovereignty. New states in the Americas were pushed to assert their independence by sponsoring privateering, which only sovereign states could do. Authorizing prize-taking also became a way for new polities, especially those like the Haitian State that faced a hostile reception, to assert themselves as sovereign entities in practice. As newly independent entities claimed the right to participate in the prize regime or to exercise “neutral rights,” the old imperial sovereigns developed new prize doctrines such as “continuous voyage” that aimed to reconstitute the imperial status quo ante. The U.S. vessel *Francis Lewis*, adjudged valid prize before France’s Conseil des Prises in 1805, turned on an inter-state dispute over the rights of neutrals to trade with independent Haiti.

Chapter Five, which overlaps in part chronologically with Chapter Four, shows how prize law was involved in the long struggle to abolish the slave trade and slavery. By making slave-trading vessels legitimate targets for privateers and other warships during the nineteenth century, European empires mobilized one arm of property law against another. A string of high-profile prize cases involving slave-trading vessels that stretched from 1807 through the American Civil War, including the case of *The Eagle* decided in 1841 by the British High Court of Admiralty, show both the strengths of this strategy and its limitations. Prize law created “bounties” that incited captains and mariners to join the state-led assault on the Atlantic slave trade. Yet the fact that enslaved people were still considered property in many jurisdictions complicated the strategy, leading to extensive litigation about whether so-called “prize negroes” (enslaved people aboard captured vessels) ought to be considered persons or property. The conflicts only came to an end with the signing of an 1862 Anglo-U.S. treaty that brought the United States fully into the anti-slave trade coalition.

A concluding Chapter Six examines how prize law declined during the decades immediately before and after the American Civil War. A new era of multilateral treaties and agreements provided an alternative framework for the international order: international private law syntheses in the 1890s, in particular, sought to erase the blurry inter-imperial legal spaces that prize law had hitherto occupied. The final section considers the work of the French Spoliation Claims Commission, a U.S. court set up to adjudicate Franco-American prize claims from the French revolutionary wars. When it ended its work in 1916—having awarded nearly \$20 million in compensation for prizes seized over a century earlier—it marked the effective end of the prize regime.

Competencies, skills, and access

This project calls for competency in both historical methods and legal scholarship. I have a proven track record as an historian and in the history of early modern law in particular, including in two articles on prize proceedings and my 2015 first book, *Citizen Sailors*, which drew on prize tribunal records, albeit to make arguments different from those in *Ordering Property*. These works and my co-edited volume with Lauren Benton (*A World at Sea*) give me a strong foundation in maritime history as well. I work with archival materials in French, Dutch, Spanish, Italian, English, and Danish.

I have demonstrated competence in legal studies more broadly. Coursework in private law at the USC Gould School of Law, and collaborating on several amicus briefs filed in Federal court (2017-present), have helped me develop an understanding of the legal scholar’s approach to the law. I have served for over five years as a member of the steering committee of USC’s Center for Law, History and Culture, collaborating with Law faculty, and served for a year as its co-director.

Final product and dissemination

The project will result in the publication of a monograph aimed at scholars in legal history, world history, maritime history, and the history of empire. Given the subject matter, I expect that this project will be best published with a university press. I have had discussions with editors at several leading presses, including Princeton and Yale, who have expressed interest in the project. In the next few months, I plan to discuss the project with others. I also expect to publish at least one additional article drawn from the project, likely in a prominent journal in legal or imperial history, such as *Law and History Review*, *Comparative Studies in Society and History*, or the *Journal of World History*.

Work Plan

I am applying for twelve months of support for *Ordering Property*, June 2023 through May 2024. Prior to the grant period, I expect to be able to complete much of the research (in published sources) for Chapters One and Two and to write up initial drafts of those chapters.

During the period of the grant, I will complete the bulk of the archival research and draft three more chapters of the manuscript. Most of the archives for this project are located outside of the United States, are not digitized, and will require an extended period of study to analyze. Being released from my university commitments and able to travel abroad for an extended period will be essential to my ability to progress on the project. I have not yet received fellowship support for this project.

I expect to be primarily based in Paris, which is located less than three hours from many of the major archival collections that I need to consult. My detailed schedule follows.

June 1, 2023-July 31, 2023 (two months)

Begin by researching French prize law from the seventeenth through early nineteenth centuries through sources in the Archives Nationales (AN) and the Service Historique de la Défense (SHD). I plan to begin with the volumes in G⁵ at the AN and the cartons of Marine FF³ at the SHD. Both include abstracts of first-instance prize procedures as well as manuscript appellate decisions covering the seventeenth, eighteenth and early nineteenth centuries. They will allow me to build a solid account of how prize law functioned in France and its empire during its heyday.

August 1, 2023-September 30, 2023 (two months)

Integrate British prize practice into my account of prize using High Court of Admiralty (HCA) records at The National Archives, Kew (TNA). TNA archivist Amanda Bevan, in charge of HCA records, will allow me to use multiple volumes in their private offices, speeding research. I expect to focus on the manuscript appellate materials in HCA 41-47. Building on Bourguignon (*Bibliography*), I will focus on how British and French prize law interacted and British jurists' role in suppressing the slave trade.

October 1, 2023-December 31, 2023 (three months)

During these months I will conduct a rapid tour of the collections in French and British outposts and smaller European jurisdictions, integrating findings there with the work of the previous months. I anticipate spending approximately a week each in Vannes, Brest, Nantes, Bordeaux, Marseille, Dunkirk, and Toulon. I will then travel to Jersey for two weeks of further research. I will spend the remaining three weeks in the Dutch archives in The Hague and Middleburg.

January 1, 2023-February 15, 2024 (six weeks)

Travel to Argentina, Colombia and Mexico to consult independence-era judicial and military archives. I am still in the process of locating the largest concentrations of these sources. The Archivo General de la Nación in Argentina is one rich depository (see *Bibliography*).

February 16, 2024-March 31, 2024 (six weeks)

Return to France; initial drafting of Chapters Three and Four based on research already conducted.

April 1, 2024-May 31, 2024 (two months)

Return to United States and conduct research at U.S. National Archives and other sites for Chapters Five and Six. This will include work on the French Spoliation Claims at the National Archives and the Phillips Library (Peabody Essex Museum, Rowley, Mass.); and manuscript antebellum case files on "prize negroes" and Civil War-era prize case files, both in the archives of the U.S. District Courts that served as courts of first instance in the United States for prize causes. These are found in regional National Archives and Records Administration facilities: the main collections for *Ordering Property* are in New York, Philadelphia, and Boston.

By the end of the grant period, I will have research substantially complete and drafts of four chapters.

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Representative archival collections to be consulted (by country)

- Argentina: S10-435-437: Corsarios, 1812-1831, Min. del Interior, Archivo General de la Nación, Buenos Aires
- Britain: HCA 41-47: High Court of Appeal for Prize, 1689-1845, National Archives, Kew
- Britain: HCA 34: Interlocutories, High Court of Admiralty, 1643-1854, National Archives, Kew
- Britain: D/Y/F1: Cour du Samedi Registers, Jersey, Jersey Archive, St. Helier
- France: Marine FF³ (entire): Jugements et liquidation des prises, 1794-1893, Service Historique de la Défense, Vincennes [45 cartons]
- France: G⁵ 218-264: Décisions du Conseil des Prises, Archives Nationales, Paris
- France: L^Z 1598-1610 (Tribunal de Commerce de Lorient) and 9B 190-236 (Amirauté de Vannes), Archives départementales du Morbihan, Vannes [and similar collections in other ADs]
- France: 2 L 3*-5* and 2 L 6-130, Tribunal des Prises de la Guadeloupe, Archives départementales de la Guadeloupe, Basse-Terre, Guadeloupe
- France: 10 DPPC 195-198: Agence des prises de la Guadeloupe, Archives Nationales d’Outre-Mer, Aix-en-Provence
- Netherlands: Prijzen en veilingen, Deel I/I.3.c, 1.04.02 Archief van de Verenigde Oost-Indische Compagnie (VOC), 1602-1795, Nationaal Archief, The Hague
- Netherlands: 2447-2569 Resoluties van de Admiraliteit in Zeeland, 1584-1790, Rijksarchief in Zeeland, Middelburg
- United States: Records of the Court of Appeals in Cases of Capture, 1776-1787 [digitized]
- United States: French Spoliation Case Records 1885-1908, RG 123, Records of the United States Court of Claims, U.S. National Archives, College Park, Maryland

Representative studies of prize law

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- Perl-Rosenthal, Nathan. “Reading Cargoes: Letters and the Problem of Nationality in the Age of Privateering.” In *A World at Sea: Maritime Practices and Global History*, Lauren Benton and Perl-Rosenthal, eds., 75-88. Philadelphia: University of Pennsylvania Press, 2020.
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