‘The Honour of Giving My Opinion’: General Average, Insurance and the Compilation of the *Ordonnance de la marine* of 1681

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The *Ordonnance de la marine* of 1681 marked—at least in theory—a pivotal step forward in enshrining the unfettered maritime authority of the French state. Spearheaded by Jean-Baptiste Colbert, Louis

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XIV's famous minister, the wide-reaching *Ordonnance* assimilated a rich genealogy of customary maritime law into a single proclamation of positive law. Yet very little has been said by historians about how the *Ordonnance* was compiled. This essay sheds light on this process through studying the *Chambre générale des assurances et grosses aventures* (1668–1686), a little-known Parisian insurance institution established under the auspices of Colbert.[1] The crown consulted the *Chambre* on maritime affairs before the *Ordonnance* was issued. Yet, as an insurance institution, the *Chambre* was not an impartial source of counsel. This essay analyses the advice given by the *Chambre* on which entities should contribute to General Average costs in instances of ship redemptions, which bore clear evidence of self-interest. This forced the crown to reinterpret its advice within a broader logic that catered to the interests of other maritime stakeholders at the expense of insurers. This case study invites us to evaluate our understanding of how the *Ordonnance* was compiled and to reflect more broadly on the interests of the French state in insurance practices across France.

Contextualising the Ordonnance: Custom, Positive Law and the French State

The *Ordonnance de la marine* was a product of the French state's push for greater legal authority across all aspects of life in France, which entailed a broad, protracted and contested shift from diffuse customary and seigneurial law to state-derived positive law. Martine Grinberg has written on the transformation of seigneurial rights and customs into positive law which derived its legitimacy from the state.[2] This emerged

[1] The only works to have treated on the *Chambre* in the past century in any detail are L. Boiteux, *L'assurance maritime à Paris sous le règne de Louis XIV* (Paris 1945); and J. Thiveaud, 'La naissance des assurances maritimes et Colbert', *Revue d'économie financière*, 4 (1988): 151–156.

[2] Written medieval *aveux* enshrined seigneurial rights—i.e. the responsibilities (financial or otherwise) of tenants to their *seigneur*. Medieval and early modern French jurists broadly agreed that custom was common usage that fulfilled three criteria: it was timeless; it was consented to by the public, albeit not in an explicit manner; and it was widely known; M. Grinberg, *Écrire les coutumes: Les droits seigneuriaux en France* (Paris 2006), 67. This echoes the definition of custom widely accepted by medieval Roman law jurists such as Bartolus of Sassoferato, see E. Kadens, 'The Myth of the Customary Law Merchant', *Texas Law Review*, 90 (2012): 1153–1206, 1163–1164.

through the process of recording seigneurial rights and customs in *assemblées de redaction*. These assemblies were tasked with collating, editing and recording seigneurial rights and customs across France. To quote Grinberg, the "redaction and reformation of customs were at the same time a reality of writing, a juridical event and a political process".[3] The mere act of compiling, deliberating on and recording customs transformed them entirely, as their written nature and ratification by an assembly gave them the status of positive law that they had not enjoyed up to that point: timeless custom became time-bound law.[4]

This shift of ultimate legislative power towards the crown was pushed back, however, by the French Wars of the Religion of 1562–98. The return to peace with the reigns of Henri IV and Louis XIII kicked this process off again, but it was neither speedy nor linear. An early—but ultimately failed—effort in French legal codification, buttressed supposedly by Louis XIII's authority, emerged in the form of the *Code Michau*, promulgated in 1629. The code sought a bold 'commercial mercantilis[t]' revolution, as Bernard Allaire has called it, promoting cooperation between the crown, nobility and merchants to achieve greater cross-border trade through crown regulation of commercial and maritime practices and crown support of mercantile endeavours and shipbuilding.[5] Although the crown successfully forced the *parlement* of Paris to register the code through a *lit de justice*, whereby the king himself appeared to ensure his will was exercised, it was not registered in the *parlements* of the Midi in southern France. In any case, it soon became a 'dead letter' in its jurisdictional claims, ignored even by the crown after 1630.

The code was a failure at the time; however, while 1629 was not the time to see such reform through, it provided blueprints for a more propitious attempt by Colbert in 1667 and beyond.

What had changed between 1629 and 1667? Colbert's ability to push for legal codification stemmed from the *détente* that emerged between

[3] Grinberg, *Écrire les coutumes*, 3–4.

[4] This transformation, as conceived by medieval jurists of Roman law, is discussed in E. Kadens, 'Convergence and the Colonization of Custom in Pre-modern Europe', *Comparative Legal History*, 167 (2019): 167–185.

[5] B. Allaire, 'Between Oléron and Colbert: The Evolution of French Maritime Law Until the Seventeenth Century', in M. Fusaro, B. Allaire, R. Blakemore, and T. Vanneste eds., *Law, Labour and Empire: Comparative Perspectives on Seafarers, c. 1500–1800* (Basingstoke 2015), 79–99, 86.

the crown and the nobility in the aftermath of the *Frondes*.[6] These were a set of uprisings throughout France in the period 1648–53 with roots in municipal and provincial grievances towards Louis XIV's chief minister during his minority, Cardinal Mazarin. The failure of the resistance, led by the Grand Condé, emphasised that the French crown was too strong to be defeated by the splintered nobility; yet the French crown depended on long-entrenched patronage networks in the provinces—with nobles as linchpins—to pursue its interests and impose its will. Therefore, the *Frondes* were significant in entrenching a broadly collaborative relationship between the crown and the nobility leading into Louis XIV's personal rule.[7] This dynamic facilitated the crown's efforts to assert greater legal authority across France.

Outside of France, the geopolitical climate had also substantially shifted. Colbert's newfound capacity to pursue fiscal and maritime reforms was supported by a strong *need* to pursue such reforms in the light of the rapid naval development of England and the United Provinces in the 1650s and 1660s. After the Franco-Spanish Treaty of the Pyrenees of 1659, Louis XIV's gaze turned northwards to the new Protestant threats whose presses painted France as a paradigm for popish 'tyranny' for the remainder of the century.[8] Certainly, Colbert was truly obsessed with the economic success of the Dutch after 1648 and consciously modelled his commercial projects on Dutch archetypes.[9]

[6] This is recognised in id. p. 99.

[7] On absolutism as social collaboration, see W. Beik, 'The Absolutism of Louis XIV as Social Collaboration', *Past and Present*, 188 (2005): 195–224.

[8] C. Levillain, *Vaincre Louis XIV. Angleterre, Hollande, France: Histoire d'une relation triangulaire 1665–1688* (Seyssel 2010), 111 and 363–364.

[9] Such influence is so extensive that a monograph could easily be written discussing it. Therefore, select reading suggestions must suffice here. On Colbert and the state regulation and support of Languedoc cloth production as a response to Anglo-Dutch success in Levantine commerce, see J. Horn, *Economic Development in Early Modern France: The Privilege of Liberty, 1650–1820* (Cambridge 2015); J. Thomson, *Clermont-de-Lodève 1633–1789: Fluctuations in the Prosperity of a Languedocian Cloth-Making Town* (Cambridge 2003). On Colbert and the chartered companies and colonial ventures inspired by Dutch equivalents, see M. Ménard-Jacob, *La première compagnie des Indes: Apprentissages, échecs et héritage 1664–1704* (Rennes 2016); K. Banks, 'Financiers, Factors, and French Proprietary Companies in West Africa, 1673–1713', in L. Roper and B. Ruymbeke eds., *Constructing Early Modern Empires Proprietary Ventures in the Atlantic World, 1500–1750* (Leiden 2007), 79–116; E. Heijmans, *The Agency of Empire: Connections and Strategies in French Overseas Expansion (1686–1746)* (Leiden 2019). On Colbert and protectionist

With the crushing of the *Frondes*, the renewed support of the nobility, Louis XIV's declaration of personal rule in 1661 and the good fortune of almost uninterrupted peace until the Dutch War of 1672, Colbert pursued widespread reform with far less resistance than his predecessors, Cardinal Richelieu and Mazarin, had faced before him. Ambitious legal interventions supported Colbert's famous commercial and maritime interests. Amongst a broader administrative reform—including the *Ordonnance civile* of 1667, the *Ordonnance sur les eaux et forêts* of 1669 and the *Ordonnance criminelle* of 1670—came Colbert's famous *Ordonnance sur le commerce* of 1673 and *Ordonnance de la marine* of 1681. Together, these *Ordonnances* legislated for all aspects of French life. The *Ordonnance de la marine* (hereafter the *Ordonnance*) enshrined the authority of the admiralty courts in the first instance in a vast array of maritime disputes, including insurance and Averages. This authority was rigorously defined in the *Ordonnance*'s 730 articles.[10] Later edicts of 1691 clarified the jurisdictional field of play across France by defining the precise bounds of each admiralty's jurisdictional reach, helping to cement the crown's efforts where previous measures to assert the authority of the admiralties had failed.[11]

The significance of the *Ordonnance* is widely noted, even if the extent to which it was successfully implemented has not yet been explored extensively.[12] Yet, as Francesca Trivellato has recently noted, 'the precise itinerary that led to the formulation' of the *Ordonnance* 'is poorly documented', so little is currently known about how it was compiled.[13]

legislation which aimed to exclude Dutch ships, see F. Lane, *Profits from Power: Readings in Protection Rent and Violence Controlling Enterprise* (Albany 1979); S. Marzagalli, 'Trade Across Religious and Confessional Boundaries in Early Modern France', in F. Trivellato, L. Halevi, and C. Antunes eds., *Religion and Trade: Cross-Cultural Exchanges in World History, 1000–1900* (Oxford 2014), 169–191, 183.

[10] Allaire, 'Between Oléron and Colbert', 90. The *Ordonnance* stipulated arbitration in the first instance for insurance disputes, but arbitration judgements were ratified by the admiralty court; on this, see Wade, 'Privilege at a Premium'.

[11] J. Darsel, 'L'Amirauté de Bretagne: Des origines à la Révolution', in G. Le Bouëdec ed., *L'Amirauté en Bretagne: Des origines à la fin du XVIIIe siècle* (Rennes 2012), 53–374, 263.

[12] The essays in Le Bouëdec ed., *L'Amirauté en Bretagne* are excellent exceptions to the rule.

[13] F. Trivellato, '"Amphibious Power": The Law of Wreck, Maritime Customs, and Sovereignty in Richelieu's France', *Law and History Review*, 33 (2015): 915–944, 924.

Consequently, writers since the *ancien régime* have focussed on the influence of the legal texts preceding the *Ordonnance*. In accessing these texts, Colbert and the compilers were indebted to Richelieu and the humanist circle that emerged around him during the Cardinal's premiership.[14] Most notably, Étienne Cleirac's 1648 work *Us et coutumes de la mer* reproduced, and offered commentaries for, legal compilations that were influential in the governing of maritime affairs. Two of these compilations would go on to have a particular influence on the *Ordonnance*'s approach to General Average and insurance: the *Rôles d'Oléron* and the *Guidon de la mer*. The *Rôles* emerged originally between 1204 and 1224 as a 'code of conduct' for the merchants, ship-owners, captains and crews involved in the voyages of the wine fleet that took place annually from La Rochelle or Bordeaux to Brittany, Normandy, England, Scotland or Flanders.[15] The articles of the *Rôles* were translated and adapted more broadly in the following centuries across northern Europe. By contrast, the *Guidon* was "a collection of norms concerning primarily marine insurance emanating from Rouen in the late sixteenth century".[16] Since General Average contributions were insurable in France up to and after the *Ordonnance*, the *Guidon* also discusses the instrument extensively.

Writers have recognised the influence of these compilations on the *Ordonnance* for centuries. René-Josué Valin's extraordinary eighteenth-century commentary on the *Ordonnance* painstakingly documented the legal borrowing throughout the text, recognising that its 'principles, sense and spirit' can only be understood if it is studied alongside the legal sources which informed its construction.[17] Similarly, while the famous eighteenth-century Marseillais lawyer Balthazard-Marie Émérigon

René-Josué Valin lamented even in the eighteenth century that 'the names of these great men [i.e. the compilers] have not reached us'; R. Valin, *Nouveau commentaire sur l'Ordonnance de la marine du mois d'août 1681*, 2 vols. (La Rochelle: Jerôme Legier 1766), I, IV. On the theory that M. Bonaventure de Fourcroy was editor of the *Ordonnance*, see J. Chadelat, 'L'élaboration de l'Ordonnance de la marine d'août 1681', *Revue historique de droit français et étranger*, 31 (1954): 228–253.

[14] See Trivellato, '"Amphibious Power"; E. Thomson, 'Commerce, Law, and Erudite Culture: The Mechanics of Théodore Godefroy's Service to Cardinal Richelieu', *Journal of the History of Ideas*, 68 (2007): 407–427.

[15] J. Shephard, 'The *Rôles d'Oléron*: a *lex mercatoria* of the sea?', in V. Piergiovanni ed., *From lex mercatoria to commercial law* (Berlin 2005), 207–253.

[16] Trivellato, '"Amphibious Power"', 925.

[17] Valin, *Nouveau commentaire*, I: VII.

acknowledged in passing that provincial institutions 'were without doubt consulted' on the *Ordonnance*, his emphasis remained on the legal texts preceding it. After introducing an array of medieval compilations, including the *Rôles* and the *Guidon*, he concluded that "the *Ordonnance* of 1681 is a composite of all these ancient laws".[18] In adopting this textual focus, both men applauded the compilers' deft ability to draw on prior legal compilations to create a coherent and comprehensive document of positive law.

The significance of these compilations is indisputable. I will argue, however, that the use of these texts in compiling the *Ordonnance* needs to be reinterpreted in the light of the influence of an insurance institution whose existence has been widely ignored by historians. It is to this institution that I now turn.

The *Chambre* and the Compilation of the *Ordonnance*

The *Chambre générale des assurances et grosses aventures* was established on 5 June 1668, with the blessing of Jean-Baptiste Colbert, Louis XIV's eminent minister of financial, commercial and, after 1669, maritime affairs.[19] The *Chambre* comprised a group of notable Parisians who conducted private underwriting on *rue Quincampoix* in central Paris. Francesco Bellinzani became the *Chambre*'s president in 1670, a position he retained until his death in 1684.[20] Bellinzani was Colbert's right-hand man in commercial affairs, serving as intendant of commerce (*intendant du commerce*) in the secretariat of state for maritime affairs (*secrétariat*

[18] B. Émérigon, *Traité des assurances et des contrats à la grosse*, 2 vols. (Rennes: Chez Molliex 1827), I, XIV. On the process of gathering information about maritime law in the run up to 1681, see Chadelat, 'L'élaboration de l'Ordonnance de la marine'. On the Dutch influences on the *Guidon* and the *Ordonnance*, see R. Warlomont, 'Les sources néerlandaises de l'Ordonnance maritime de Colbert (1681)', *Revue belge de philologie et d'histoire,* 33 (1955): 333–344.

[19] D. Pouilloux, *Mémoires d'assurances: Recueil de sources françaises sur l'histoire des assurances du XVIème au XIXème siècle* (Paris 2011), 419.

[20] On Bellinzani's death, see Wade, 'Privilege at a Premium'.

Table 1 The amounts underwritten by the *Chambre* in *livres tournois* in the years 1668–1672, alongside the losses recorded in those years. N.B. this does not include Averages

Year	*Amount underwritten*	*Recorded losses*
1668	998,130	5600
1669	1,824,250	11,400
1670	3,017,445	73,500
1671	4,730,729	131,200
1672	6,086,089	614,258
Total	16,656,643	835,958

Source The AveTransRisk database, based on the data from Z/1d/75–78, *Archives nationales*; Wade, 'Privilege at a Premium'

d'état de la marine), but it is unclear whether Bellinzani had had any underwriting experience before joining the *Chambre*.[21]

From its establishment in 1668, the *Chambre*'s underwriters faced several challenges by virtue of being located in Paris, away from the key maritime networks of information. Indeed, Colbert noted in a letter of 26 December 1671 that 'the majority of disagreements' between the *Chambre*'s underwriters and policyholders were 'a product of the difficulty of having certain news about the loss of insured vessels and merchandise'.[22] Yet Table 1 illustrates that, in spite of these challenges, the insurers consistently scaled up their underwriting each year up to 1672.

This trend was reversed after the onset of the Dutch War in 1672. A flood of Dutch corsairs swarmed the Atlantic coastline of France and ravaged commercial shipping.[23] The losses were significant, and Colbert wrote in 1673 that many underwriters had withdrawn entirely from the

[21] D. Dessert, *Argent, pouvoir et société au Grand Siècle* (Paris 1984), 337. For more on Bellinzani's role in the *Chambre*, see Wade, 'Privilege at a Premium'.

[22] Jean Baptiste Colbert and Pierre Clément ed., *Lettres, instructions, et mémoires de Colbert*, 7 vols. (Paris: Imprimerie impériale 1863), II–ii: 640.

[23] Boiteux, *L'assurance maritime à Paris*, p. 45. Bellinzani was warned in a letter from Cadiz dated 12 September 1672 that five Dutch warships were threatening French Mediterranean shipping also; *Mélanges de Colbert* 161, f. 361r°, *Bibliothèque nationale de France*, Paris.

Chambre as a result.[24] Never again did underwriting in the *Chambre* reach the levels seen between 1670 and 1672.

Yet the institution's influence continued long after 1672, as revealed in the preface of Jacques Savary's bestselling commercial manual of 1675, *Le parfait négociant*. Here, Savary justified his decision to not treat extensively on maritime affairs, explaining that, having been informed of the *Ordonnance*'s ongoing process of drafting, he did not wish to make claims that would eventually contradict it. In a piece of self-fashioning common in commercial manuals of the period, Savary added that 'I even had the honour of giving my opinion in the *Chambre des assurances* of this city of Paris' on matters pertaining to the forthcoming *Ordonnance*.[25] This opportunity likely arose from his services as an external arbiter for the *Chambre* in instances of policy disputes.[26]

Sadly, much of this process does not seem to have been recorded, save for one instance noted in a register where the *Chambre* kept minutes of its general assemblies. On 7 August 1676—after *Le parfait négociant* was published, suggesting that the *Chambre*'s involvement in discussions on the *Ordonnance* was not isolated—a general assembly of the *Chambre* was held.[27] Bellinzani asked the members to give their opinion on two questions: firstly, in instances of the redemption of captured ships where the contribution of the ship and merchandise are obligatory through General Average, should the freight also contribute? Secondly, should the merchandise be valued at the rate of purchase, or at their value in the place where they are eventually unloaded?[28]

These were questions to which the members were eminently qualified to respond. Insurers were widely recognised as being liable for General Average contributions: in the *Guidon de la mer*, article 1 of the chapter

[24] Colbert and Clément, *Lettres, instructions, et mémoires de Colbert*, I–ii: 675. The early years of the *Chambre*, and the difficulties faced after 1672, are discussed at length in Wade, 'Privilege at a Premium'.

[25] J. Savary, *Le parfait négociant, ou Instruction générale pour ce qui regarde le commerce des marchandises de France et des pays étrangers*, 2 vols. (Paris: Frères Estienne 1757), I, XIII.

[26] Z/1d/73, f. 21, *Archives nationales*, Paris (hereafter AN).

[27] This was attended by *messieurs* Bellettes de Vaux, Pocquelin *frères*, Raguienne, Margas, Froment, Dorigny, Estancelin, Francois, Villain, Maillet, Formont and Mignot; id. f. 29v°.

[28] Id. f. 29v°. On issues of contribution in General Average, see also Daphne Penna, Hassan Khalilieh and Andrea Addobbati's essays in this volume.

Des avaries begins with the statement that "the insurer is obliged to indemnify the merchant [i.e. policyholder] for… [all] averages", including General Average, and other costs incurred from the moment merchandise is loaded on a vessel.[29] Indeed, General Average was recognised as a significant topic of discussion within the *Chambre* in its first ever general assembly on 17 June 1670, and the precise interpretation of the *Guidon* vis-à-vis Averages and insurance indemnities underpinned a dispute during a general assembly of 15 July 1670.[30] Consequently, the *Chambre*'s underwriters grappled with the intricacies of General Average as part of their profession. Yet this posed a problem, as the underwriters' technical knowledge of General Average was intimately intertwined with their direct stake in the direction to be taken by the *Ordonnance*: how a contribution to General Average was determined could radically alter the scale of an insurer's pay-out and the scope for further dispute with the policyholder. In response to these questions, therefore, the members opted to give clear, decisive answers based on an underlying logic of clarity—a logic that would best serve the underwriters' interests.

Answering the first question, the members concluded that the ship—alongside its equipment and 'provisions', the money advanced to the crew and 'generally all which is spent to put the ship to sea'—is liable for contribution, in addition to the merchandise.[31] The freight should not contribute to the Average, however, as it is precisely the ship and the associated costs which generate the freight—that is, the freight constitutes payment for the service provided through these investments. It would therefore be unjust, they argued, if the ship 'was to pay twice [for] the same thing, and it is for this reason that the *ordonnances de la mer* will that it is the ship or the freight which contributes, but not both'.[32]

[29] É. Cleirac, *Les us et coutumes de la mer: Divisées en trois parties* (Rouen: Jean Berthelin 1671), 199. The *Guidon* here followed commonplace practice elsewhere in Europe: from the sixteenth century, General Average came to be covered by the insurers of Antwerp, with pertinent legislation from 1551 and 1563 and the publication of commercial manuals that guided practices in the city; G. Dreijer, 'The Power and Pains of Polysemy: General Average, Maritime Trade and Normative Practice in the Southern Low Countries (Fifteenth-Sixteenth Centuries)', unpublished PhD thesis, University of Exeter/Vrije Universiteit Brussel (2021).

[30] Z/1d/73, ff. 2r°–3r° and 4v°–5r°, AN.

[31] Id. f. 29v°.

[32] Ibid.

The phrase '*ordonnances de la mer*' here most likely refers to several maritime compilations from the late-medieval period. No doubt the members had the *Rôles d'Oléron* in mind: while the earliest versions of the *Rôles* made no mention of freight, later versions—including the version in Cleirac's *Us et coutumes de la mer*—empowered the shipmaster to 'say whether to count the ship or his freightage, at his choice, to compensate the damage'.[33] This was to the benefit of the shipmaster, who could simply choose between the ship and the freight depending on which would require the smallest contribution. The *Ordinancie* of Amsterdam—which heavily influenced the *Waterrecht*, another significant medieval compilation—diverged here in giving this power of choice to the merchants.[34]

In this case, the *Chambre*'s members openly defied prior legal compilations by arguing that there should be no choice between the ship and the freight in each case: instead, the ship should always contribute while the freight should not. On the surface, this does not appear to have been a self-interested response, as freight was broadly recognised to be beyond the remit of insurers. In the *Guidon de la mer*, article 1 of the section *Des asseurances sur corps de nef* allows for insurance on the ship and its materials, but 'by no means on the freight', in conformity with the practices of Antwerp and Amsterdam.[35] If anything, the insurers stood to lose out if their suggestion was implemented, as the contribution demanded by the entities they insured would be greater than if the freight was included. The members sought greater uniformity and clarity in maritime practice here, even if it did not necessarily serve their own interests.

This logic fed into the members' answer to the second question. They suggested that the merchandise subject to contribution should be valued based on how much it cost in the place of purchase rather than its estimated value in the place of unloading, as 'the evaluation of merchandise in the latter place is a variable, uncertain thing and subject to contesting', while the cost in the place of purchase 'is always certain and is justified by

[33] E. Frankot, *'Of Laws of Ships and Shipmen': Medieval Maritime Law and Its Practice in Urban Northern Europe* (Edinburgh 2012), 39; Cleirac, *Us et coutumes de la mer*.

[34] Frankot, *'Of Laws of Ships and Shipmen'*, 42–43.

[35] Cleirac, *Us et coutumes de la mer*, 265. The *Ordonnance* proved no different, prohibiting any insurance of the freight in article 15 of the section *Des assurances*; Valin, *Nouveau commentaire*, II: 58.

invoices and other items'.[36] This was an entirely unconventional recommendation: article 8 of the *Rôles d'Oléron* suggested that merchandise subject to contribution should be valued based on the price received in the place of unloading. This was also common practice in Antwerp after the sixteenth century, per Quentin Weytsen's famous manual on Averages.[37]

Why did the members wish for the *Ordonnance* to go against the grain here? Again, they strove for certainty—but, in this instance, certainty met their own interests. Merchandise was by far the most insured effect in the *Chambre*.[38] Thus, the benefits of the *Chambre*'s logic were clear: contributions from merchandise based on the cost in the place of purchase would almost always be lower than those based on the value in the place of unloading. Even though this proposal risked underwriters being liable for greater costs in instances where they insured the ship, the contribution of the merchandise would at least be 'certain': valuing the merchandise based on invoices rather than estimates would engender confidence in the validity of the General Average *calculus*. This was all the more important for the *Chambre*'s underwriters because of the challenges they faced in gathering information on maritime affairs; set documentary standards would create a clear paper trail alleviating the information asymmetries faced in Paris.

This sheds light on why the members argued so strongly to exclude freight from contributing to redemption costs. Since they argued that the contributing merchandise should be valued based on its cost *before* the redemption, it would have been inconsistent for the members to have argued that the freight—paid at the *conclusion* of the voyage—must contribute.[39]

[36] Z/1d/73, f. 29v°, AN.

[37] Cleirac, *Us et coutumes de la mer*, 28–29; Valin, *Nouveau commentaire* vol. II, 194. On Weytsen, see the contribution of Gijs Dreijer in this volume. In instances of jettison, Hassan Khalilieh found that there was often widespread dispute in medieval Islamic discourse as to whether jettisoned goods should be ascribed a value based on the market price in the port of departure, the port of destination, the point of jettison or another point entirely; H. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden 1998), 99–100.

[38] See Wade, 'Privilege at a Premium'.

[39] I am grateful to Sabine Go for her thoughts on this.

In short, the *Chambre* stood to benefit from its own proposal. The members argued that the selection and valuation of contributing entities should be derived from documentation produced, and actions made, *before* the redemption of the ship. Consequently, they strove to exclude freight—the payment of which was a by-product of the completed voyage—from General Average contributions and to value the merchandise based on its price in the place of purchase. This *ex-ante* logic aimed to limit pay-outs and to create documentary standards that would aid the members' underwriting.

The *Ordonnance* bears the imprint of this input, but the *Chambre*'s logic apparently did not persuade the compilers. Article 20 of the section *Du fret ou nolis* mandates that 'contributions for the redemption [of ships] will be made on [1] the standard price of merchandise in the place of their unloading, deducting fees, and [2] on the total [value] of the ship and freight, deducting the consumed provisions and advances made to the sailors, who will also contribute to the benefit of the freight, in proportion to what remains due of their wages'.[40]

The *Ordonnance* therefore determined, in defiance of the earlier compilations, that both the ship and the freight should contribute, albeit with specific deductions to be made. The bipartite structuring of the article—reflecting the questions posed to the *Chambre*—and the precise deductions which were mandated indicates that the *Chambre*'s opinions were taken into account, but the *ex-ante* logic they proposed for calculating contributions was rejected. Specifically, the compilers seem to have been receptive to the members' argument that any voyage involving the freighting of merchandise depends upon a significant upfront investment. The members identified the 'provisions' and the money advanced to the crew as examples of services provided by the shipmaster and/or ship-owners for which the freight is given. While the compilers clearly did not agree with the members' conclusion that the freight should not contribute, the article specifically deducts 'consumed provisions and advances made to the sailors' from the total value of the ship and the freight. Key aspects from the members' discussion were therefore integrated into the *Ordonnance*, but through an entirely different logic.

[40] Valin, *Nouveau commentaire*, I: 663.

What was this logic? While the *Chambre*'s members sought a level of uniformity and transparency that would support their underwriting activities, the *Ordonnance* article is more complicated, reflecting a need to address the interests of all the stakeholders in a voyage. Rejecting the *Chambre*'s call for valuing merchandise based on its price in the place of purchase, the article echoed the *Rôles d'Oléron* and the practices of Antwerp in stipulating that merchandise be valued at the 'standard price' in the place of unloading. This likely aimed to anticipate and respond to the argument that would be posed by shipmasters that, without the redemption of the ship, the merchandise would never reach the eventual place of unloading; therefore, the merchandise should contribute in line with the 'added value' engendered by the redemption of the ship. The same logic holds true for the ship and the freight: since the shipmaster's control of the ship and the earning of their freight at the end of the voyage depend on the redemption of the ship, it is fair that both contribute. This is also why the sailors were required to contribute in proportion to their outstanding wages.

Therefore, while the *Chambre* argued strongly for an *ex-ante* approach to selecting and valuing any contributing entities, the *Ordonnance* enshrined an *ex-post* logic. The compilers of the *Ordonnance* focussed on the benefits generated *as a result* of the ship's redemption, thereby concluding that the freight ought to contribute and the merchandise be valued based on its 'standard price' in the place of unloading. This inversion of logic reflects the different interests that were at stake: the *ex-ante* logic proposed by the *Chambre* would have served the interests of the insurer, but not of the other parties in the voyage.

The *Ordonnance* echoed the *Guidon de la mer* in holding insurers liable for General Average costs in article 46 of the section *Des assurances*, while article 6 of the section *Des avaries* defined all costs relating to the redemption of ships and merchandise as being within the remit of General Average.[41] The fears of the *Chambre*'s underwriters were realised: the *Ordonnance* held insurers liable for redemption costs incurred by policyholders, and these costs were to be calculated based on the 'variable, uncertain' estimates of contributing merchandise in the place of

[41] Id. II: 99 and 165.

unloading. Although the crown benefited from the expertise of the *Chambre* while compiling the *Ordonnance*, the *Chambre*'s own interests had not been served in the process.

Conclusion

This case study on the *Ordonnance*'s approach to General Average offers interesting avenues for further research. Firstly, it is an important corrective to a legal literature that has understandably focussed on the *Ordonnance*'s debts to prior legal texts. I do not wish to suggest that this literature is wrong—on the contrary, these legal sources were invaluable to the *Ordonnance*'s construction—but we need to view this process of construction in a new light. As we have seen, these texts were the basis of discussions between the *Chambre* and the state for how best to serve the needs of the different stakeholders in maritime voyages. As the *Chambre*'s members recognised, these texts had a large role to play in determining what constituted commonplace practice, but texts were far from perfect vessels of legal wisdom: they required interpretation, upon which hinged the interests of numerous maritime stakeholders. François Olivier-Martin has noted that good counsel was sought for the *Ordonnance du commerce*, and the *Ordonnance* was no different here—but the counsel given in this instance was not accepted in its entirety.[42] The *Ordonnance* was therefore not simply a coherent and disinterested synthesis of prior legal compilations: these compilations were the basis for a broader process of negotiation, whereby the French state sought to mediate and reconcile the interests of various stakeholders in the maritime sphere. New evidence may shed further light on the debates underpinning the construction of the *Ordonnance*.

Furthermore, the crown's desire to consult with the *Chambre* on the *Ordonnance*, while ultimately ignoring the institution's own interests, is emblematic of the broader complexities in the state's interest in insurance under Louis XIV.[43] This interest—scarcely treated by historians up to now—continued beyond Colbert's death: in May 1686, the *Chambre* gave way to a new Parisian insurance institution, the *Compagnie générale*

[42] F. Olivier-Martin, *Histoire du droit français: Des origines à la Révolution* (Paris 2010), 399.

[43] On this, see Wade, 'Privilege at a Premium'.

des assurances et grosses aventures. This was created under the auspices of Colbert's son and successor as secretary of state for maritime affairs, the Marquis de Seignelay. Just as the Dutch War had devastated the *Chambre*, the *Compagnie* was crippled by the Nine Years' War, and the new institution had ceased any significant level of underwriting by 1710. The *Ordonnance*, therefore, was simply one piece of a far larger puzzle that becomes all the more puzzling in the light of the difficulties faced by these insurance institutions. These institutions deserve further exploration: while Amsterdam and London shone as centres of insurance in this period, Paris witnessed two false dawns that may cast the commercial history of France under the Sun King in a new light.