

“Something Rich and Strange”: Maritime Law in World History

In William Shakespeare’s romance *The Tempest*, the sprite Ariel envisions the “sea-change” of the purportedly drowned Alonso’s body “into something rich and strange,” a striking image that captures the essence of transformation, whether of animate, inanimate, or even immaterial things.¹ It is a metaphor especially fitting for laws, which, far from being immutable, are in constant flux and have a tendency to crop up in places and contexts far removed from their origins. As this Forum shows, laws often rise from the deep past to plod, fearsome yet familiar, through contemporary jurisprudence.

A world historical focus on maritime law is particularly apt now, in the second year of the COVID-19 pandemic, which has turned the global public’s collective attention to sea trade to a greater extent than perhaps ever before. In so doing, it has demonstrated the essentially maritime basis of globalization.

One of the first indications that the world was in the grip of something quite terrible came in February 2020, when for more than a month the British-registered cruise ship *Diamond Princess* was quarantined in Yokohama, Japan. More than 700 of its 3,711 passengers and crew contracted coronavirus, and nine died.² More recently, the news has been dominated by stories about port congestion and broken supply chains worldwide as ships pile up in improvised anchorages outside the world’s leading ports—Long Beach/Los Angeles, Shanghai, Manzanillo (Mexico), Felixstowe, and Le Havre, among them.³

Throughout the worst months of the pandemic, some 400,000 sailors worldwide remained trapped in their ships by authorities who feared they would spread COVID if they were allowed to disembark to fly home, or because the ships’ owners refused to pay for their repatriation.⁴

In the midst of all this came the story of the *Ever Given*, a massive, Japanese-owned, Taiwanese-operated, German-managed, Panama-flagged, and Indian-crewed container ship that became stuck in Egypt’s Suez Canal for six days. This blocked an artery through which passes some 12 percent of the world’s sea trade. The direct cost to the world economy was about \$10 billion, while the Egyptian government detained the *Ever Given* for

three months before the ship's owners and insurers paid nearly \$1 billion in salvage fees and damages so that it could resume its voyage.⁵

Distinct from these stories—the first three driven by the pandemic, the last merely an accident waiting to happen—are many longstanding, non-COVID-related maritime issues, some of potentially far greater consequence:

- China's expansive claims to vast swaths of, and their construction of artificial islands in, the South China Sea, and U.S. freedom of navigation operations (FONOPs) to challenge Chinese maritime claims it deems excessive;⁶
- the growing accessibility of the Arctic, where climate change is rapidly melting sea ice, thus opening the way for competing claims to previously inaccessible areas of the ocean;⁷
- the submergence of low-lying island nations as a result of ice melting in the Arctic and Antarctic;⁸
- the rapid rise in illegal, unreported, and unregulated (IUU) fishing, especially in areas beyond national jurisdiction (ABNJ)—that is, the high seas and “the seabed and ocean floor and subsoil thereof,” what the United Nations Convention on the Law of the Sea (UNCLOS) calls, somewhat ominously, “the Area”;⁹
- piracy, especially, but by no means exclusively, off the coasts of East and West Africa, and in the waters around the Strait of Malacca;¹⁰ and
- smuggling, particularly the clandestine shipping of drugs by modified or purpose-built vessels.¹¹

All of these concerns have deep histories rooted in complex domestic and international legal frameworks an understanding of and engagement with which can help us situate current and past events more firmly in historical narratives. The study of maritime law also enables us to discover through-lines that link seemingly disparate events, periods, and even cultures to one another, so that often abstract historical patterns obscure to most of us, including world historians, become accessible, allowing us to expand our understanding of historical connections across time and space.

The essays that comprise this forum on maritime legal history illustrate this in various ways. Hassan Khalilieh's “Islamic Maritime Law in Its Mediterranean and Islamic Contexts” is a striking example of the cross-cultural continuity of legal norms in the Mediterranean region from antiquity through the early and late middle ages and down to the present—that is, over thousands of years and across a multiplicity of cultures that historians traditionally silo according to religious belief, among other things. Khalilieh shows the evolution of Muslim maritime law in the context of Greek, Roman, and Byzantine antecedents, and its influence on modern jurisprudence.

The norms of what we might call the “Mediterranean orthodoxy” of maritime legal theory and practice constitute the foundation of medieval maritime laws such as the

well-known Rolls of Oléron, *Il Consolato del Mar*, and *The Black Book of Admiralty*, although these are often viewed as novel European developments. Regardless, thanks to the expansion of Islamic traders through the Monsoon Seas and later, as Guy Chet explains in “Maritime Law as Propaganda: The Case of Piracy Suppression in the British Atlantic,” the growth of European overseas empires, these spread worldwide. And as Timothy Steigelman’s article, “The Promise and Perils of Prize Law,” shows we must also be alert to the transdisciplinary character of law, in this case, how laws designed to address privateering in the eighteenth century are being examined for their possible application to cybercrime and conflict in space in the twenty-first century—a sea change rich and strange, indeed.

The likelihood that billions of people the world over all share the same understanding of the interplay of the sea and society is remote. While the Mediterranean orthodoxy has had an indelible influence on domestic and international maritime law, notably in the UN Convention on the Law of the Sea, as I show in “A Sea-Change for the Classroom: Maritime Identities—Seas, Ships, and Sailors—the Law, and Teaching World History,” the traditions and customs of indigenous people worldwide are beginning to have an outsize influence on how legal systems engage with the maritime environment, often to salutary effect.

Individually and collectively, these essays touch on only a handful of subjects of relevance to the study of world history, and their coverage is thematically and chronologically limited. The great antiquity of maritime law in the Mediterranean notwithstanding, for instance, the oldest known laws governing maritime activity are found in the Code of Hammurabi, which dates to about 1750 BCE, while the next oldest after that are from India, in the *Arthashastra* (late 4th century BCE) and *Manusmṛti* (Laws of Manu, from around the turn of the Common Era). As Antonio says in *The Tempest*, “What’s past is prologue, what to come / In yours and my discharge.”¹²

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NOTES

- 1 William Shakespeare, *The Tempest*, 2.1.400.
- 2 “All passengers and crew leave virus-hit Diamond Princess cruise ship,” *The Japan Times*, Mar. 2, 2020, <https://www.japantimes.co.jp/news/2020/03/02/national/coronavirus-diamond-princess-passengers-crew>.
- 3 Rebecca Heilweil, “Shipping is Broken. Here’s How to Fix It,” Nov. 5, 2021, *Vox Recode*, <https://www.vox.com/recode/2021/11/5/22764088/supply-chain-shipping-delays-logistics>.
- 4 Tim McDonald, “Covid: The 400,000 seafarers who can’t go home,” BBC News, Singapore, Oct. 30, 2020, <https://www.bbc.com/news/business-54549612>.
- 5 Jeff Wise, “Inflation Tarnation! Inside the Supply-Chain Snafu That Could Wreck Your Holiday Plans,” *Vanity Fair*, Nov. 18, 2021, <https://www.vanityfair.com/news/2021/11/stuck-ship-of-the-suez-canal-inside-the-supply-chain-snafu>.
- 6 United Nations Convention on the Law of the Sea (UNCLOS), art. 121: “An island is a naturally formed area of land, surrounded by water, which is above water at high tide” and that can “sustain human habitation or economic life.”
- 7 Eugene Rumer, Richard Sokolsky, and Paul Stronski, “Russia in the Arctic—A Critical Examination,” Carnegie Endowment for International Peace, Mar. 29, 2021, <https://carnegieendowment.org/2021/03/29/russia-in-arctic-critical-examination-pub-84181>.
- 8 Milinda Mishra, “CoP 26: Greening of polar ice should top agenda; here’s why,” DownToEarth, Oct. 25, 2021, <https://www.downtoearth.org.in/blog/climate-change/cop-26-greening-of-polar-ice-should-top-agenda-here-s-why-79839>.
- 9 “The Area” is defined in UNCLOS, art. 1.1.
- 10 Piracy is covered in UNCLOS, arts. 100–107.
- 11 H. I. Sutton, “Ecuadorian Navy Sailing Ship Interdicts Drug Smugglers in the Pacific,” USNI News, Oct. 23, 2021, <https://news.usni.org/2021/10/23/ecuadorian-navy-sailing-ship-interdicts-drug-smugglers-in-the-pacific>.
- 12 Shakespeare, *The Tempest*, 2.1.243–44.