International
Theory

RESEARCH ARTICLE

Law and politics from the sea

Itamar Mann (iD)

Faculty of Law, University of Haifa, Haifa, Israel
Email: imann@univ.haifa.ac.il

Abstract

Recent scholarship in law and society has engaged in novel ways with maritime spaces, articulating how they inform legal theory more broadly. This essay builds on such scholarship, and on a broad-brushed survey of maritime history, to make two basic arguments. First, a look at political and legal processes regarding maritime spaces reveals that law is transnational 'all the way down'. Legal theorists often assume that transnational legal processes are an added layer beyond domestic and international law. But the maritime perspective reveals that transnationalism comes first, both analytically and historically, as a constant negotiation of the relationship between what is 'inside' and what is 'outside' a polity. Second, the maritime space begins, at least in dominant legal traditions, as an absolute exteriority – imagined as outside or beyond polities and jurisdictions. But with the climate crisis and the emergence of the Anthropocene we may observe an inversion, the sea now appears as a record of harmful human activity; a mirror showing a troublesome collective portrait of humanity. The inversion from a maritime exteriority to the intimacy of ubiquitous environmental harm defines the parameters of law and politics today. The essay concludes with reflections on how the maritime perspective may best be engaged today in responding to that image through political action. It conceptualizes what I call the 'commonist lifeboat' – a model of bottom-up universalism for tumultuous times.

Introduction

Traditionally, the law of the sea is one of the driest subfields of international legal research. But several events have in the recent decade or so lent a new sense of urgency within this area. Revolutions and civil wars in the Middle East and North Africa starting in 2011 projected tragedy on the Mediterranean, triggering legal debate on migrant drownings and rescues at sea.[1] Interferences with maritime supply chains during the COVID-19 pandemic raised newfound awareness of the importance and fragility of age-old shipping routes and

---

[1] Gammeltoft-Hansen 2011; Moreno-Lax 2011; Mann 2016; Markard 2016; Papastavridis 2020.

infrastructures.[2] Most importantly, oceans are protagonists in the momentous unfolding of the climate crisis.[3]

Consequently, as Renisa Mawani writes, the ocean has become a 'methodology' for legal and political thinking.[4] Applying a maritime perspective, one can reexamine their most fundamental assumptions about law and politics. Lawyers observing legal arrangements from a maritime vantage point will see a different picture compared to their colleagues tied up with territory or real estate.[5]

This essay seeks to de-exceptionalize the maritime perspective in order to offer the outlines for a general theory of law and politics from the sea.[6] It examines what we might learn if we assume the maritime perspective is not secondary, but one that encapsulates defining aspects of law and politics. I argue that the maritime perspective exposes two fundamental insights. First, despite the fact that the law of the sea is generally understood as a particularly state-centric area of international law, the sea exposes the essentially transnational nature of law. Thus, the maritime field shows that transnational law is not an additional legal layer. Law is transnational all the way down.[7] Second, a historical analysis shows that the oceans can no longer be considered a sphere outside of jurisdictions and politics, but have arrived virtually to the middle of contemporary society.

After establishing this dual understanding of the maritime perspective – both its constancy and its change – the essay explores what a maritime perspective can contribute to a theory of political action.[8] Two ideal types of vessels are suggested to explain the maritime vantage point's two opposing political–legal modes of existence. One is labelled 'the armed lifeboat'. I call the other 'the commonist lifeboat'. Both these images of law and politics are constituted transnationally, and illustrate what it means to have a transnationally situated set of commitments. But the kinds of commitments they denote are diametrically opposed. They can both help us in the political thinking we need today, with respect to the challenges mentioned above: those of migration, the global economy, and, perhaps most importantly – climate change.

From antiquity to maritime globalization
The 'outside' of politics

The most ancient descriptions of maritime travel are pictorial rather than textual.[9] Cave drawings often render a person indistinguishable from their boat[10]; the

---

[2]To be sure, this new interest began before the pandemic (Khalili 2020; Klein 2020). See also Piñeiro *et al.* 2021; Culliane and Haralambides 2021.

[3]Boyle 2012; Braverman 2018; Helmreich 2020.

[4]Mawani 2018.

[5]Observing that 'most legal thinkers observe law as fundamentally terrestrial' (Braverman 2022, 1).

[6]It follows, in that regard, the work of several scholars (Braverman 2022; Benton 2005; Treves 2010; Jillions 2012; Steinberg and Peters 2015).

[7]Jessup's classical definition of transnationalism (Jessup 1956).

[8]I refer to political action as activity in which people pursue common goals collectively, under conditions of equality, for the advancement of a better future. This notion is generally influenced by Hannah Arendt (1998), though she favours discourse as the quintessential form of political activity and focuses on the example of the Greek city-state (certainly not focusing on the sea).

[9]Ballard *et al.* 2004.

[10]Ibid., 399 (figure 5).

charcoal line tolerates no discrimination between wooden mast and human fig-ure.[11] For example, the upright figures engraved on the rock of Alta Fjord, possibly from as early as 4200 B.C., are both person and boat at one and the same time.[12] They suggest a continuity between human figures, nature, and the early technology of the boat.[13] These early etchings of maritime travel offer an analogy, simple and direct, of what it means to act politically. Before we became citizens, we had to take our roles, with others, on deck.[14]

In his *Republic*, published 380 B.C., Plato makes this analogy explicit. For him, it is an analogy between the ship and the city-state.[15] In his 'ship of state' simile, sea-farers hijack a vessel but fail to offer a skilled captain the privilege of navigation.[16] Philosopher David Keyt reconstructs some of the technical aspects of how ships sailed at the time, gathering details about oars and rudders.[17] But when he comes to Plato's most concrete description of navigation, he quickly moves to metaphysics.[18]

Plato writes: 'if he is to be truly fit to take command of a ship a real ship's cap-tain must of necessity be thoroughly familiar with the seasons of the year, the stars in the sky, the winds, and everything to do with his art'.[19] The sentence seems to be highlight practical, situated knowledge. But the Greek original, says Keyt, is not about 'the stars'. It is about 'things in the sky' (*ta meteôra*).[20] Keyt therefore argues that the captain is not really looking at the actual sky, but at Plato's *forms*: the ideal objects populating the perfect realm that is beyond the changing world presented to our senses. This Platonic flight from the particular to the general signals an early evasion from the maritime perspective on law and politics. To avoid the deeply transnational political questions opened by the sea, and prefer the city-state, is to ignore political reality altogether, favouring an idealized vision instead.

But is it not remarkable that Plato likens the life of his contemporary city-states to a means of marine transportation? The fundamental mobility echoes prehistori-cal depictions. But it is in sharp opposition with a lot of modern legal and political thought. The social contract tradition, which developed centuries later and is still

---

[11]This continuity encapsulates an insight one commentator famously articulated, millennia later, consid-ering an entirely different technology: guns. Reflecting on the conjunction *gunman*, Bruno Latour urged social scientists to stop thinking of technologies ('gun') and humans ('man') in hierarchical separation. Instead, we must learn to study the 'hybrid actor' of person and machine (Latour 1994, 29–33).

[12]UNESCO, 'Rock Art of Alta'; I owe this example to Thomas Gammeltoft-Hansen.

[13]Cf. Latour 1994, 29–33.

[14]Maritime activity in the Bronze Age was, as well, a quintessential part of life, with some (Vankilde 2021, 1) describing maritime merchant as being the 'archetypal Bronze Age agent'; others (Gates 2011, 384–85) asserting that maritime zone in Bronze Age was 'not a periphery […] [i]t instead constituted an autonomous economic entity, with its own mode of operation and contact'. Before that, emphasizing that 'the maritime network existed outside any territory where rulers could claim absolute authority'.

[15]Plato 2000, 191–93.

[16]Ibid.

[17]Keyt 2006, 189.

[18]Keyt (ibid., 197) explains that '[t]hough Socrates does not spell it out when he interprets the Ship of State simile, gazing at things in the sky symbolizes apprehending the Forms'.

[19]Plato 2000, 191–92.

[20]Keyt 2006, 197.

influential today, starts off with bounded territory.[21] Emphasizing maritime travel, on the other hand, we are led to think of political life as outward looking, in constant encounters with a changing environment[22]: stars, sky, and wind. The citizen stands on deck and looks into the atmosphere, observing transformations rather than a constant ideal realm.

Plato's analogy was not only based on philosophical imagination but also on lived historical experience.[23] Rival groups engaged in battle, and often offered service to different gods. But observing the dangers of nature at a settlement's outer limits was a common experience that cut across cultures.[24]

The first laws of the sea

Long before the modern sovereign state, maritime vessels were key to the constitution of ancient political life not only in Greece, but around the Mediterranean.[25] According to Fernand Braudel's much-celebrated interpretation, the Phoenicians did not only rely on the sea as an avenue for commerce.[26] Rather than an empire drawn within territorial borders, they reigned over a chain of coastal city-states. From Tyre to Carthage, this people was united by an expanse of salty water – agent of trade.[27]

The isle of Rhodes, which the Phoenicians briefly inhabited, is often credited with the first written code of Admiralty Law.[28] The document, which has not survived, dates to around 600–800 A.D. Roman sources refer to *Lex Rhodia* (also known as *Nomos Rhodion Nautikos*).[29] Hellenistic sources viewed the law of the sea as a scaffold for commercial activity under conditions of risk, imposed primarily by weather and piracy.[30] In all these sources, when going out to sea, one had to confront an *exteriority* beyond politics, primarily characterized by both kinds of

---

[21]But note the meaning of the word 'Leviathan'. For classical social contract theorist Thomas Hobbes this was the sovereign or the commonwealth. But as several commentators have highlighted (Bull 2009), the word has maritime sources. The Leviathan was a mythological creature in Canaanite, and later Israelite mythology, appearing in Job 41. It appears earlier in Ugaritic, Canaanite texts, as Lotan (consonants לתן), a companion of the Canaanite god of the sea, the aptly named Yam (which in modern Hebrew means 'sea'), see Van Der Toorn *et al.* 1999, 514; Baumgarten 1981, 208.

[22]Cf. Domingues 2022.

[23]As seen in Keyt (2006, 190–91), this experience was in turn also reflected in myth, in folk art, and even in methods of punishment.

[24]Amitav Ghosh contrasts (Ghosh 2017b) between Western and indigenous traditions in this regard. For him, Western traditions have regarded nature as object, constantly in the process of commodification and trade. Many indigenous traditions, on the other hand, regarded nature as having agency, subjectivity, and a capacity of storytelling; cf. where Ghosh adds (Ghosh 2017b, 197–204) however at a more fundamental commonality. According to this view both orientations begin from an awe confronting the non-human powers of nature.

[25]Abulafia 2011; Schmitt 2015; this perception is rendered beautifully in *The Dig* 2021.

[26]Braudel 1996; on the role of Phoenician merchants in the early 'globalization' of Mediterranean space, see Abulafia 2011, 223–25.

[27]Braudel 1996, 135; cf. with Jones (2016, 333) discussion on the legal construction of the sea's 'smoothness', i.e. its emergence of the sea as a space of exception to territorial jurisdiction in international law.

[28]Schomberg 1786, 4.

[29]Khalilieh 2006. Later sources claim to reconstruct the document. Schomberg 1786, 4.

[30]Khalilieh 2006, 226–27.

dangers. A recent study finds that many of the rules of the law of the sea were first articulated by Islamic jurists.[31] Rather than focusing on the Mediterranean space, the study points to maritime spaces surrounding the Hijaz and the entire Arabian Peninsula, connecting Eastwards to the Indian Ocean.

Since antiquity, the law of the sea both reflected and influenced how people imagined their place in the world. This imagination centred on mobility, perilous environmental conditions, and the benefits and risks of transnational commerce. Maritime rules were central to the emergence of distinctions between inside and outside of a polity; distinctions that lay at the basis of law and politics, whether we think of modern notions of jurisdiction, or the state. But maritime rules came before the division into separate bordered entities, and thus reflect the original transnationalism of law. And they reflected an experience, common to Western traditions, but today entirely transformed, of political life confronting nature.

Maritime globalization
Commons and commodification

Historicizing the oceans and articulating them as 'methodology', Mawani does not go back to antiquity, surely not to prehistory. She identifies later roots, turning principally to two legal–political thinkers: 17th-century Dutch jurist Hugo Grotius (1583–1645), and 20th-century Nazi German jurist Carl Schmitt (1888–1985).[32] Taking Mawani's cue, this essay returns to Grotius and Schmitt in outlining a theory of law and politics from the sea.

Grotius is often credited for the freedom of the high seas, an idea with far-reaching consequences that still apply today.[33] Representing The Netherlands' interests as a maritime power, Grotius argued that the sea cannot be divided, nor can sovereignty or private ownership be imposed upon it. As one commentator explained, the sea was an 'original gift of the world to mankind', meaning that 'The sea was common in the same way that everything was common in ancient times before the introduction of laws of private property'.[34] The oceans become global commons, or *mare liberum*, as the title Grotius gave his treatise had it (1609). This framing of the high seas as commons is an absolutely fundamental aspect of the maritime perspective on law and politics, and its fundamental transnationalism. With the exception of specific cases, still today, the movement of maritime vessels cannot be restricted beyond a limited coastal strip where countries may impose sovereignty.[35] Similarly, beyond that strip, the sea cannot be conquered or purchased for money.[36]

Grotius's political theory started from his job as a legal hired gun.[37] But, interestingly, he also premises his analysis on a question of global distributive justice.

---

[31]Khalilieh 2019.
[32]Mawani 2018, 40–60.
[33]Grotius 2004.
[34]Salter 2001, 539.
[35]UNCLOS art. 87.
[36]Ibid.; UNCLOS art. 89, 118–19; see also Probyn 2022.
[37]Cairns 2008, 91.

Consistent with the larger natural law tradition, Grotius believed property rights emanate from use in a pre-political state of nature.[38] But as soon as that happens, he says, free maritime travel also emerges as a natural right, because 'that which is wanting unto one should be supplied of that which is superfluous to another'.[39] Free movement at sea, in other words, is similarly pre-political. Only after 'immovable things began to be divided unto lords and owners' was 'trading necessary, not only between men divided by distance of places but also between neighbors…'.[40] The latter stage is when money and 'civil institution', or government, are established.[41]

Perhaps un-intuitively, for Grotius, trade does not begin from the local market. It starts from transportation across vast expanses of water. And trade supports global rather than local distribution among those who need it. Only when concentrations of wealth develop at home – and with them class society and political power – does domestic trade also emerge: 'the more honest or honorable' trade remains 'chiefly which concerneth the sea, beacause it imparteth many things to many'.[42]

Grotius relies on Pliny the Elder, who in turn reads Homer, when he adds that maritime transportation belongs to a pre-political realm of self-preservation: 'traffic was found out for the maintenance of the life of man'.[43] This connection between maritime travel and questions of human survival will reemerge powerfully in our own time against the backdrop of the climate crisis.[44]

To be sure, neither the legal idea of a 'free sea' nor the political idea of a maritime commons transformed the sea into an emancipatory or egalitarian space. Grotius was instrumental in solidifying the legal framework for slavery.[45] The idea of a commons does have an emancipatory aspect, which goes back at least to the enclosure of landed property in 17th century England.[46] But while common property was a revolutionary slogan when it came to soil, it was largely a power move when it came to the sea. Indeed, Grotius's sea and its role as platform for trade are replete with legal regulation.[47] Even in Grotius's time, every ship carried a flag, and brought its laws with it. Later jurists thus thought of maritime vessels as 'floating territory'.[48] The flag projects not only jurisdiction, but an image of the ship as an arm of the state, highlighting a 'public' or sovereign aspect of maritime travel. The phrase 'free sea' can be misleading, if by that one means free of legal regulation.[49]

Since its major articulation in the mid-20th century, transnationalism is characterized as crossing the lines between public and private law. 'Both public and

---

[38] Tuck 1979, 77.

[39] Grotius 2004, 50; cf. Van Ittersum 2006, 232.

[40] Grotius 2004, 50.

[41] Ibid.

[42] Ibid.

[43] Ibid.

[44] See onwards, Part IV. Maritime Law and Politics in the Anthropocene.

[45] Van Ittersum 2006, xxxviii.

[46] During the 1640s, the Revolutionary movement of The Diggers theorized common property (Winstanley 2011, 1983).

[47] Benton 2009, 105–6.

[48] Tanaka 2012, 152.

[49] Cf. Mann 2018.

private international law are included, as are other rules which do not wholly fit into such standard categories'.[50] The 'private' ordering of the ship is just as prevalent in Grotius's understanding of the maritime vessel, figuring as a fundamentally public and fundamentally private entity at one and the same time. Specifically, Grotius already recognized ship owners' limited liability, an economic principle later justified to mitigate risks of trade and incentivize it.[51] As he writes in 1624: 'the principle has been established that, in respect to responsibility for the acts of the captain, all the owners together are liable for no more than the value of the ship and the cargo'.[52] The work of later jurists occasionally identified limited ship owner liability as a predecessor of the limited liability firm and modern capitalist corporate law more generally.[53] The European ship foreshadows public ordering in terms of states and private ordering in terms of the limited liability corporation. But it also brings to sharp relief the way in which both realms are always-already intertwined and co-constitutive in the transnational space.[54]

Arguing for the recognition of maritime commons was just another strategy of gaining maritime control – the strategy adopted by the Netherlands thanks to its skilful lawyer. From this perspective, it is no different from Britain's attempt to *do away* with the maritime commons, which John Selden espoused in his reply to Grotius under the opposing title *Mare Clausum* (1631).[55] The European construction of global maritime commons opened a shared space for mobility; but it also illustrates how this mobility was not, in and of itself, a liberating force.

While foreshadowing political-economic formations yet to come, maritime powers exploited and transported natural resources, labourers, and slaves around the world. And with European expansion, European powers destroyed myriad forms of indigenous political organization, which did not share many of its defining aspects.[56] Indigenous cultures across the world did not share emerging distinctions between public and private life, which later led to the rise of the state and the firm (let alone their transnational entanglement). Indeed, as Antony Anghie has shown, the fundamental legal distinctions of the time emerged as a response to the encounter with indigenous cultures and in attempts to subdue them.[57]

Further, in many places indigenous politics did not share the underlying notion, which this essay starts off from, of nature and sea as exteriority and otherness.[58]

---

[50]Jessup 1956, 2.

[51]Neff 2012, 195; later the concept of limited liability was expanded, see Foard 1880; Marsden 1919.

[52]Putnam 1883, 2.

[53]Mahoney 2000, 886.

[54]The distinction between private and public arguably comes much later. According to one commentator (Kjaer 2018, 27), it only emerges in the post-1945 legal environment.

[55]Selden 2004.

[56]Wilson 2021.

[57]Anghie's focus (Anghie 2005, 15–16) is on Francisco de Vitoria, a 'forerunner' of Grotius that established international law's 'primitive origin'.

[58]Quoting Oglala Lakota chief Standing Bear: 'We did not think of the great open plains, the beautiful rolling hills, and winding streams with tangled growth as "wild". Only to the white man was Nature a "wilderness" and only to him was the land "infested" with "wild" animals and "savage" people' (Ghosh 2017b, 64, 197–204); the notion of the unmarketability of indigenous land was expressed in the Sioux Nation's Tribal Council's declaration, in response to United States *v.* Sioux Nation of Indians, 448 U.S. 371 (1980), that the Black Hills were, in fact, 'not for sale', coming from a cultural perspective that sacred

With European transportation, trade, and expansion, this exteriority will become a confrontation, bent on gradually internalizing the exterior, by way of commodifying nature and reducing it to mere goods.[59] This would have enormous costs – cultural, social, environmental, which we are confronting today.[60] The emergence of imperial maritime commons put a gradual and uneven end to numerous formations of indigenous commons, at land and at sea, across the globe. In that sense too, the phrase 'free sea' can be misleading.

Primacy of piracy

Mawani's second theoretical point of departure for her oceanic methodology, alongside the work of Grotius, is that of Carl Schmitt.[61] In *Land and Sea: A World Historical Meditation* (1942), Schmitt's description of piracy is consistent with the view that the high seas commons had no liberating valence.[62] Recall, according to this view, maritime commons emerged as the exteriority of imperial politics in a Dutch strategic and power-seeking move. The emergence of global maritime commons in international law was, at the same time, a part of a wider transformation of nature into a globally tradable commodity.[63] Correspondingly, for Schmitt, the emergence of a lifestyle that utilized this exteriority and exploited it – piracy – was at bottom an English push for power and for wealth. Selden's treatise was far from the only way the English projected dominance, and not the one to rake in the highest material gain.

Pirates are key figures for Schmitt. He explains that the 'early predatory capitalism' of the English, which relied on maritime trade and evolved long before the Industrial Revolution, was based on one formula: along with the Royal Navy and other official English power at sea, the English also built their wealth on looting and plunder throughout world oceans. International lawyers are used to think of pirates as enemies of humanity: *hostis humani generis.* Schmitt became famous for his theory of politics as a distinction between 'friend' and 'enemy'.[64] But in this context Schmitt offers a slightly more complex picture than any simple division between humanity and its foes.

For the English, says Schmitt, the distinction between 'humanity' (the powers) and 'enemies of humanity' (pirates) was never stable. In actual fact, the Royal House and other elements of the kingdom were constantly on both sides of the divide: the 'public' side of an official imperial power, and the 'private' side of pirates who exploited the emerging world system for their own material gain. It is only through this dual role that the English achieved their global dominance, and brought about a global order of capitalism: 'The connecting link between the different orders of land and sea became the island of *England*'.[65]

---

land is not a commodity, and that American-European law, in its perception of land, is foreign to Sioux conceptions (Lazarus 1999, 403–28).

[59] Ghosh 2017b, chs. 4–6.
[60] Ghosh calls this process 'terraforming'; see Ghosh 2017b, ch. 4.
[61] Mawani 2018, 40–60.
[62] Schmitt 2015.
[63] Ghosh 2017b, chs. 4–6.
[64] Schmitt 2007.
[65] Schmitt 2006.

It's hard to rely on Schmitt as a historian. For what it's worth, the determining period, for him, predated Grotius's major work. These were the 45 years from 1558 to 1603 during the reign of Queen Elizabeth. Schmitt writes that despite her air of 'virginal innocence', she did exactly what innumerable members of the English aristocracy did at the time: 'They all took part in the great business of loot. Hundreds and thousands of Englishmen and Englishwomen at that time became "corsair capitalists"'.[66]

Despite the fact that she is a better historian, Lauren Benton's contemporary analysis of piracy shares Schmitt's fundamental presumption of continuity between empire and piracy.[67] Benton describes piracy as basically another extension of imperial power. In doing so, she sheds further light on the role of piracy in understanding the maritime vantage point on law and politics. As in Schmitt, the story of piracy is part of a larger narrative in which the natural exteriority of the oceans is gradually internalized into a global politics shaped by human action.

Before Grotius, in the late 16th century, international legal theorist Alberico Gentili introduced the idea that pirates were the enemy of all – *hostis humani generis.* However, as Benton explains, 'Gentili carefully outlined the conditions under which mariners could be said to be operating as pirates. They were doing so only when raiding without authorization of a recognized polity in a state of war'.[68] Like Gentili, Grotius had to reconcile the practice of piracy, which seemed to carry on outside any legal framework, with a fact of life: all empires, not only the English, often granted letters of marquee to pirate groups, and actively encouraged raiding and privateering against their political rivals. It was a major technique of imperial rivalry; one that was recognized in patterns of division of booty, and exchanges of slaves and other captives[69]; and one that for several centuries presented lawyers with a sticky and opportunistic distinction between privacy and privateering.[70]

But if everyone engaged in it, piracy could not have been the subject of firm legal prohibition in the 17th century. It was, rather, partially recognized as one means of conducting conflict between empires. Piracy thus had to be subsumed under the law of war: the issue was not that it was absolutely prohibited, but rather when and how would it constitute a legal or illegal form of attack. Reciprocal practices sometimes developed on a regional or even bilateral level, in what Benton suggests are quasi-customary rules about *how* to engage in piracy. During its high time, piracy constantly straddled the line between inside and outside, crossing it from both directions. In that regard, it is perhaps comparable to the contemporary legal understanding of covert espionage operations[71]: illegal under domestic rules, but generally permissible under customary international law.

---

[66]Schmitt 2015, 40; see also where Schmitt (2006, 174) is quoting English marine naturalist Philip Gosse, who in a book about piracy wrote: 'Piracy in wartime had always been more or less sanctioned by the state, but under Elizabeth it was connived at while England while England was at peace with the world. As a result of this unofficial encouragement not only was much wealth brought into a poor country but, a matter of much greater importance, a race of tough seamen was evoked which was to save England in her need, bring about the downfall of her principal enemy, and make her the proud mistress of the seas'.

[67]Benton 2005, 704–5; 2009, 112–20; 2011.

[68]Benton 2011, 227.

[69]Ibid., 228.

[70]Ibid., 229.

[71]Lubin 2020.

On a general methodological level, Benton's reading gives primacy to trans-national legal processes.[72] The doctrine of universal jurisdiction, which assumes an underlying consistent practice banning a criminalized act, belongs rather to the international realm; it requires a certain universality of the prohibition, which simply did not exist. Public international law, the area of inter-state treaties and customs, is in her account a secondary and relatively less important set of doctrines. Benton thus helps reveal what I argue is a general and fundamental characteristic of law and politics from a maritime vantage point.

In developing this transnational outlook, Benton engages in historical debate with commentators who describe piracy as a proto-revolutionary activity, particularly Peter Linebaugh and Markus Rediker. The two advance the revolutionary view of piracy, which also enables an opposing understanding of the maritime *commons* (compared to the imperial commons described above).

As we move forward in time, what will become clear is that an experience of absolute exteriority is gradually made unavailable. But will this gradual internalization of the sea rely exclusively on the commodification of nature that Grotius enabled, and the imperial practices of violence that Schmitt and Benton describe? Or will it also encapsulates aspects of the revolutionary and emancipatory activity? Politically, the question will be in which direction we want to push in an era when the experience of exteriority has absolutely vanished.[73]

Linebaugh and Rediker argue that piracy emerged in an unprecedented way against the backdrop of two related historical developments.[74] One was the massive expropriation of land previously held as commons free for everyone's use.[75] Their examples come primarily from England, Wales, and Ireland. They mention forests as environments that were long available for free dwelling; and massive deforestation starting from the 17th century, needed to build ships for the settlement of the Americas – further contributing to the elimination of the forest commons.[76] The expropriated class consisted in 'hewers of wood and drawers of water',[77] and included women and men who were not only poor but also culturally marginalized. The other concomitant and formative set of events concerned the emergence of the slave trade, with slaves sourced from regions across the Western coast of Africa.

Throughout the late 16th, 17th, and 18th centuries, these processes created a large class of displaced people who were sent out to sea. They were either physically coerced (as was the case with slaves); or were hired in dire conditions on ships sailing to settle the new world, simply because they no longer had other options (as was the case with landless 'commoners'). But despite the abundantly resourceful powers that displaced them, members of this 'motley crew' were not always crushed, and indeed not containable in their subordinated maritime roles.[78] Through mutinies and other forms of uprising, the Atlantic and Caribbean spaces became arenas

---

[72]Benton 2009, 104, 240.
[73]See onwards Part IV. Maritime Law and Politics in the Anthropocene.
[74]Linebaugh and Rediker 2013; Rediker 2005.
[75]Linebaugh and Rediker 2013, 17–20.
[76]Ibid., 57.
[77]Ibid., ch. 2.
[78]Ibid., 28.

for assertions of transnational independence and Autonomy, against the British Empire.[79] Often, this autonomy was exercised and funded through piracy.

The pirate ship sailing under the Jolley Roger is imagined primarily as an alternative to empire rather than a long arm of empire: a multilingual, multiracial, and far less hierarchical form of political existence at sea.[80] Rediker and Linebaugh thus declare: 'Pirates distributed justice, elected officers, divided loot equally, and established a different discipline. They limited the authority of the captain, resisted many of the practices of the capitalist merchant shipping industry, and maintained a multicultural, multiracial, multinational social order. They sought to prove that ships did not have to be run in the brutal and oppressive ways of the merchant service and the Royal Navy'.[81] Hierarchies of gender too were often overthrown, with multiple cases of Atlantic piracy led by women. And inter-racial sexual relations led to the rise of Black Irish folk across the Caribbean.[82]

The pirate ship is not simply imagined as a vehicle for private gain and enrichment, but as an emerging political community. Comparable to the limited liability ship sailing under a state flag, it weds between 'private' and 'public' elements. But it is an egalitarian and often anarchic community, uniting the victims of colonial and imperial possession, including indigenous groups in the new world. Borrowing terminology from the Glorious Revolution, Rediker describes this maritime community as engaging in a 'commonist' plan.[83] This vision was organized around practices that emerged in the landed commons that were taken, and were now only possible – though in wholly different form – in the maritime commons.[84] There is no suggestion however that piracy was non-violent. Rather, the argument is that the violence of piracy cannot simply be understood as criminal, but was in fact also a form of constitutive violence on a transnational plain.[85]

Benton dismisses such 'romanticized representations of pirates as politically-motivated, proto-anarchists and of the unquestioned foundational place of piracy in international law'.[86] She thinks they fail in the test of historical accuracy. It is neither needed nor possible for me to judge whether Benton or Rediker are more precise in their depiction of the history of piracy. Suffice it to say that both views of piracy have a grain of truth, and indeed that they too may have been intertwined. Both the exceptionalist forces of piracy in the service of empire and the quasi-revolutionary forces of piracy in the service of common folk partook in shaping the maritime perspective on law and politics. They are bases for a fundamentally transnational understanding of the two; and they reveal a long historical process of internalizing the oceans in politics.

Consider the Muslim and Jewish pirates that acted around the Iberian Peninsula and in the Mediterranean Sea during the Spanish Inquisition. Sayyida al Hurra (literally, 'the free'), governor of the Moroccan city of Tétouan, became one of the

---

[79]Cf. Bey 2003.
[80]Linebaugh and Rediker 2013, 162.
[81]Ibid.
[82]Ibid., 126.
[83]Ibid., 277.
[84]This narrative is articulated in remarkable terms; see Spence 1982.
[85]On constitutive violence, see Benjamin 2021, 114–15.
[86]Benton 2011, 226.

most famous female privateers in history.[87] As the story has it, al Hurra was bent on anti-Christian revenge after being expelled from Granada. Experiencing the expulsion motivated her, further, to receive authorization from the Ottoman Empire and start a campaign of piracy against the hated new rulers of her home country. Similarly, Jewish pirate Samuel Pallache, who grew up in Fez but whose family originated from Córdoba, facilitated a Treaty of Friendship and Free Commerce between Sultan Zidan Abu Maali of Morocco and the Netherlands in 1608.[88] It was part of an alliance that also included raids for the property of the common enemy, Spain.

In both cases, pirates worked as instruments of inter-imperial warfare, consistent with the general view expressed by Schmitt and then by Benton in much greater detail. Yet, in both cases the 'revolutionary' or anti-imperial motivation originates from a background of expropriation and displacement, echoing Linebaugh and Rediker. The tendency of rebels against empire to join the latter's imperial rivals is familiar to us from the 20th century. But something here goes beyond familiarity: neither account rests on *national* divisions or borders, nor do we see *national* liberation movements.

Maritime law and politics in the Anthropocene
Global infrastructures of capitalism

From a political perspective, what interests Schmitt above all is how the British Empire gained near exclusive control of the world; and how, ultimately, the United States inherited the British place as global world power.[89] From a philosophical perspective, what interests him is how we live in the world; specifically, how the world was united in a 'planetary spatial revolution', until, as he writes, by the mid-20th century, 'Man holds the whole world in the palm of his hand'.[90] This essay follows his second interest, though any political conclusions drawn from the descriptive account will be vastly different.

One answer to the question of how the British Empire came to control the world focuses on the Industrial Revolution. According to this view, the Industrial Revolution was the condition that made a difference when the Britons are compared with other colonial powers.[91] Nineteenth-century England started to consume energy produced from the burning of fossil fuels. This energy released carbon dioxide accumulated over thousands of years by the Earth's flora into the atmosphere. It enabled the unprecedented spread of capitalist economy in the 20th century, and began what is now called the Anthropocene.[92]

Schmitt takes a different approach (he died in the 1980s and popular knowledge of climate change was too late to impact his writing). But his emphasis on maritime

---

[87]Karim *et al.* 2021, 35.
[88]García-Arenal and Wiegers 2007.
[89]Schmitt 2006, 100.
[90]Schmitt 2015, 55.
[91]Ward 1994.
[92]'Human activity is now global and is the dominant cause of most contemporary environmental change. The impacts of human activity will probably be observable in the geological stratigraphic record for millions of years into the future, which suggests that a new epoch has begun' (Lewis and Maslin 2015); Biber 2017.

trade as an infrastructure of capitalism before the Industrial Revolution illuminates relevant insights. According to Schmitt, the roots of British global reach originate earlier in history than the Industrial Revolution, and stem from the kingdom's control of maritime spaces.[93] With British control of the seas, says Schmitt, humanity's way of life changed beyond recognition.[94] By means of a technological and logistical revolution, humans gained, for the first time in history, dominion and domination over the world's space.[95] Schmitt knows full well that these were not *all* humans. But the humans that did so were those who ultimately got the privilege to articulate what it means to be 'universal'.[96]

Contrary to Grotius, who laid foundations for modern public international law,[97] Schmitt's relevant writings take some distance from questions about which 'normative order' prevails.[98] However, from a different perspective, it is also easy to see a continuity between the two. These are two important parts of a tradition of European legal thought that emphasizes processes of spatial expansion coupled with accumulation of property and dominion. Both thinkers are preoccupied with the elimination of empires' exteriority in a rush to consume resources at every corner of the planet. Grotius constructs this exteriority as maritime commons in order to ultimately eradicate it by the establishment of free trade. Schmitt imagines it as the realm of piracy and plunder in the service of empire. For both thinkers, this exteriority is ultimately constructed as an extension of empire. For Grotius it is the Dutch crown, his client. For Schmitt it is the British Empire, his rival.[99]

As Mawani argues, Grotius and Schmitt are both essential parts of a history that brings us all the way up to the present.[100] Specifically, they are relevant for understanding realities of collapse in global supply chains and the climate catastrophe. According to such a narrative, Grotius laid the foundations for international trade and transportation of merchandise over great distances; Schmitt identified how the United Kingdom utilized these foundations to disseminate an exploitative capitalist economy in every direction, accumulate power, and change humanity. These processes prepared conditions for use of fossil fuels to spread in immense speed, radically transforming the composition of the atmosphere, and the oceans, in a century and a half. With the Industrial Revolution, the infrastructure for worldwide capitalism that had already been established armed itself with fossil-fuel-based energy, now wreaking destruction, coupled with the usage of the maritime

---

[93]Derman 2011, 186.

[94]See (ibid., 182) clarification that Schmitt believed that 'the coming transition to an international legal order of great spaces constituted a spatial revolution comparable in significance to those of the scientific revolution and the discovery of the New World'.

[95]Ibid., 185.

[96]Derman explains (ibid., 182) that Schmitt saw the British maritime world order as the representative of a misguided universalism: 'After 1939 Schmitt began to articulate a vision of a new German Reich whose form and function stood in opposition to British imperialism: unlike the maritime British Empire, which espoused a creed of abstract universalism through its globally dispersed territories, the German Reich would seek a limited sphere of influence for its concrete völkisch ideology through a continental "great space [Großraum]"'.

[97]Papanicolopulu 2022b, 275.

[98]Schmitt 2006, 351–55; Van Gelderen 2011.

[99]Derman 2011, 182.

[100]Mawani 2018, 238.

commons as an independent source of revenue.[101] Rather than being the most efficient energy in objective terms, fossil-fuel-based energy proved to best suit patterns of accumulation and resource extraction that had already been well underway.[102]

How, then, can a maritime perspective on law and politics provide us with concepts to face our contemporary crises, first and foremost the climate crisis? In Plato's ship of state, the sea is a protagonist cast in the role of an ultimate exteriority. That trope remains but also transforms over many centuries. In its opening, this essay casts the sea in the role of ultimate otherness. It is a protagonist in a human story about law and politics signalling where law and politics end. In that respect, the sea functioned as a stand-in for nature at large. But this role of protagonist is now greatly changed. For far-travelling ships, weather is rarely ever a real threat. And the pirates we hear about are relatively unintimidating: since 2013 Somali pirates have basically been defeated by transnational private security companies, despite occasional attacks.[103]

Instead of weather and piracy as signalling some kind of outside or otherness, perhaps the most central policy issue presented by oceans and seas is the rise of sea levels due to fossil-fuel emissions. Coral reef bleaching events, more frequent as the global climate transforms, are regarded as 'canaries in the coal mine' announcing what is yet to come.[104] The sea is once again a protagonist, but it seldom shows us anything outside of ourselves. Like a collective Rorschach test for the civilization that came out of imperial traditions, it shows us what we do not want to know about who we are and especially what we have done. To be sure, this is not to say that all of the earth's human inhabitants are equally responsible for the climate crisis. Far from it. It is to say that there is hardly anyone who is not at least somewhat complicit and at least somewhat effected. In the transnational story above, lines between perceived inside and outside are constantly crossed. But there is also a certain directionality whereby compared to the exteriority we begin with, now we are confronted with threats that are thoroughly our own. When we look at nature and find the threat of rising sea levels, we are looking at a mirror that tells us the truth about ourselves.

Two vessels

Explicitly or implicitly, contemporary political thought often returns to the trope of the ship of state. This is true also about popular culture, where we often hear about leaders 'navigating' their constituencies through political 'storms'. Today, that analogy often appears in one of the two updated versions. One was advanced, for example, by historian Dipesh Chakrabarty already in his 2009 essay *The Climate*

---

[101]'Commercial interests and techno-scientific progress also contributed to a view of the sea as something more than a navigational surface or fishing commons – as containing places, in fact, for fixed capital investment' (Ranganathan 2019, 574).

[102]Malm argues (Malm 2016) that steam energy produced by water was in the 19th century just as efficient, and perhaps more so, than coal; coal was adopted due to the patterns of industrial labour in which many workers were employed in urban settings, in a centralized way, due to the availability of capital.

[103]Reva 2018; Guilfoyle; Bueger 2018.

[104]Sweet *et al.* 2021.

of History: Four Theses.[105] The basic point is that we are all similarly subject to the threat of climate change and therefore, politically, we are all in the same boat. In Chakrabarty's words[106]:

> Climate change, refracted through global capital, will no doubt accentuate the logic of inequality that runs through the rule of capital; some people will no doubt gain temporarily at the expense of others. But the whole crisis cannot be reduced to a story of capitalism. Unlike in the crises of capitalism, there are no lifeboats here for the rich and the privileged (witness the drought in Australia or recent fires in the wealthy neighborhoods of California).

In other words, there is something special about the climate crisis. To be sure, it is not simply an economic or technological crisis, as some commentators tend to think.[107] As emphasized above, the climate crisis is deeply rooted in the history of global capitalism. But unlike other crises of capitalism, which tend to generate the exploitation of labour and disproportionately harm the poor, this crisis is more equally distributed and is in fact ubiquitous. It therefore puts us all in the same boat, which – following Linebaugh and Rediker – we can call the 'commonist lifeboat'. I suggest this term to highlight an emancipatory and egalitarian aspect of the maritime commons which they help us highlight in their work on piracy.

The second boat analogy for contemporary politics, also very often invoked or implicitly assumed, is that of the armed lifeboat. In his 2016 book *The Great Derangement* Amitav Ghosh analyses the 'politics of the armed lifeboat'.[108] The image of the armed lifeboat evokes a world of multiple climate crises and rising sea levels. In this world, each nation is like an armed raft, seeking to float but aggressive towards others, shooting down anything that can add extra weight. In Ghosh's 2019 novel, *Gun Island*, it becomes ever clearer that the figure of the migrant vessel at sea is that of such extra weight.[109] It is our contemporary image of the *Zong*, in Turner's famous rendition: unwanted Black men were thrown overboard for insurance claims against the lost cargo.[110] For Ghosh, the *Zong* is reenacted in contemporary migrant drownings off the Italian coast. As he points out, many more of these than we realize are, in fact, climate migrants (particularly from Ghosh's homeland of the Bay of Bengal).

But the ocean is central to the image of the commonist lifeboat beyond questions of migration (which are doubtless central both to the commonist boat and to the armed lifeboat). Consider, for example, the emergence of desalination technologies in the context of the climate crisis.[111] Desalination is perhaps the most extreme and illustrative example of commodifying seawater, and transforming it into something that is intimately our own, drinking water that sustains our bodies. But as desalination remains expensive, and consumes abundant energy often dependent on fossil

---

[105]Chakrabarty 2009.
[106]Ibid., 221.
[107]Alexander and Rutherford 2019.
[108]Ghosh 2017a, 143–48.
[109]Ghosh 2019.
[110]Oldham 2007, 299.
[111]Fountain 2019.

fuels, fundamental questions have been raised about its value as a climate adaptation strategy.[112] Desalinated water may help nations float as armed lifeboats.

These two images of boats are central to the task of developing a contemporary theory of political action. They are countervailing metaphors, each encapsulating certain existing patterns of political action. As such, they may help us better imagine and articulate what options we may have for action, and for our present and future of continuously unfolding climate disasters. In the analysis of the ship of state simile above, I noted that a reading exclusively centred on Plato's realm of ideals, may amount to an evasion of embodied experience. The images of the armed and commonist lifeboats may thus be objected to on the same basis: they are idealized abstractions that do not fully capture or represent any concrete pattern of politics. Such an objection, however, would not be entirely fair. Rather than a philosophical account of truth beyond observable experience, these two vessels aim to capture general categories in observable experience. They are more in the tradition of *ideal types* than along the lines of Plato's understanding of *ideals*.[113]

Coming from an international law background, it is tempting to characterize these two figures of vessels as representing two familiar bases for legal argumentation: sovereignty and universal principles. Indeed, it may be that some contemporary invocations of the ship of state metaphor are intended to advance sovereignty-based or universally oriented arguments. But these two images of vessels should not be understood as a universalist boat for humanity and an 'armed lifeboat' for domestic nationalism. In light of the longer view of law and politics from the sea, we should read them as two transnational options. Indeed, each corresponds to a different possibility of transnational politics: a different understanding of the space of the commons and its elimination, and a different imagination of the pirate ship. The maritime perspective is transnational 'all the way down', meaning that we are always-already in a transnational condition.

As others have pointed out, the defensive nationalism reflected in the politics of the armed lifeboat is never really projected from the confines of a closed or unitary sovereign entity. Just like empire at its time, white nationalism directed at migrants is thoroughly transnational and interconnected across borders. Whether reflected in fantasies of 'replacement',[114] or in the actions of private volunteer groups travelling to enforce borders,[115] exclusionary politics do not remain in the boundaries of territorial sovereignty.[116] The armed lifeboat corresponds to the image of the pirate ship painted first by Schmitt and more recently by Benton. Just like the pirates described by the two, today's actors seeking to protect and enrich the few in expense of the many and the environment depend on networks of public and private authorities. The armed lifeboat is in service of forces that want to use nature,

---

[112]March 2015.

[113]Oxford Reference, 'Ideal Type', accessed 20 October 2022, https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095956574.

[114]Brockwell 2022.

[115]Wright 2009; Gregory 2019.

[116]Holthouse 2017.

now commodified and subjected to human rendition, to save some and drown others.

Similarly, the commonist lifeboat is also not available for us in any truly universal or international way. Law and politics from the sea teach us that any basis we may have for solidarity has to be anchored in bottom-up transnationalism. Contrary to the armed lifeboat, this transnationalism harks back to the image of piracy that Rediker and Linebaugh offer.[117] In this line of analysis, transnationalism means sharing multiple racial affinities without eliminating difference. Beyond any soft vision of multiculturalism, it reflects and attempts to articulate cosmopolitanism 'from below'.[118]

The law of the sea used to create a framework of mutual solidarity among the world's seafarers, all exposed to sudden storms and unforeseen weather damage in the maritime space. What enabled rival powers to come together and formulate rules for mutual assistance between their ships was a common external enemy – nature. Conditions today are different.[119] And yet, the element of maritime commons necessary for human survival can be seized upon from the historical examples discussed above, and reapplied today in multiple forms.

To reiterate, most actual ships are much less vulnerable to extreme weather events. In that regard, maritime travel and human survival seem decoupled. But as was the case for Grotius, the link between the two is deeper and vaster that the mere reference to a legal doctrine of rescue at sea. You need ships to get your garments from China. But for a long time they have been stuck, not because of any natural cause but due to the ways in which globalized trade became interconnected with the spread of a global pandemic. People across the world need ships to get their grain. But they are stuck, not due to nature, but due to war fuelled by dependencies on natural gas.[120] The threat of survival at the background of all these crises, namely the climate crisis, does not come from the outside. It is a direct result of the actions of all the developed countries – production, but also transportation of course. The sea is our mirror.

The task facing us today is to take advantage of the distinct legal and political perspective the sea presents to us in order to open up opportunities for transnational solidarity. We might learn something from the pirates, who applied, for the first time and most acutely, the maritime perspective as a methodology. Presumably we cannot, nor should we, completely disengage from the territorial perspective available when standing on firm land. But is it not possible, as with Schmitt's buccaneering British Empire and with the displaced commoners and slaves, to utilize the now-internalized exteriority of the maritime perspective in our favour?

If maritime trade has indeed culminated in the final unification of global space, as per Schmitt, the question is how this unification can serve global solidarity. How can the maritime space enable mitigation of the disastrous effects of the climate

---

[117]Paul Gilroy's accounts of slave culture can also be a place to start from. Gilroy 1993.

[118]Cf. Kurasawa 2004; Gilroy 2005.

[119]See Braverman quoting (Braverman and Johnson 2020, 8) Elizabeth DeLoughrey: '[O]ur planetary future is becoming more oceanic […] producing a new sense of planetary scale and interconnectedness through the rising of a world ocean'.

[120]FAO 2022, 36.

threat, while hopefully dismantling exploitative power dynamics that lead to the sacrifice, now or in the near future, of large parts of humanity?

Perhaps the best-known example of this kind of action relates to the movement of migrants and refugees, many of whom have been uprooted due to circumstances caused by the climate crisis.[121] When asylum seekers move across the sea to a new country, they try to help themselves.[122] But they also rely on the legal assumption of unrestricted movement at sea; and they further depend on the duty of rescue at sea, also part of Grotius's old legacy. Writing about the duty of rescue, Grotius thought of merchants in need of assistance during a storm.[123] Today, however, refugees and migrants trigger these duties with their bodies for other objectives: to protect themselves from a life that may not be worth living (including due to climate-related degradation). Groups of rescuers and volunteers moving across the Mediterranean Sea to extend a helping hand also frequently make use of laws that were enacted in an era of maritime exteriority.[124] They carefully choose flags with a view to the unique system of authorities created at sea.[125] They rely on rules that were created to allow unrestricted movement for merchants and colonialists.[126]

The law of the sea now opens up a potential for new forms of solidarity. Frédéric Mégret writes about solidarity with refugees, but also underscores how the maritime space enabled new forms of action for Greenpeace activists who sail the seas to protect the sea and sea life; and also, how the feminist group Women on Waves took to sea in order to operate exterritorial abortion clinics off the coasts of countries that prohibit abortion.[127] These are all examples of commonist boats. They are not premised on waiting for an international or federalist government that might bring incremental positive change through democratic process. They are premised on doing what we can do now, moving through the cracks of transnationalism to stake a position that is always between statism and universalism, but never firmly situated in either one.

Some may dismiss this reference to commoner pirates as a form of romanticism, just like Benton does in the context of her historical work. I can only go back to Sayyida al Hurra and Samuel Pallache, to say that revolutionary maritime politics does not have to cut ties from all powerful political interests at all times. This is not a call to exit politics, but an attempt to characterize a particular kind of channel into it.

All these actors, migrants, environmental activists, and seaborne feminists, tell us something simple: in the face of the current crisis, there is a need to rethink the basic, legal, economic, and political categories of our shared living. Moreover, there is a need to take advantage of opportunities for action inherent in transnational ambiguities. Perhaps it is no coincidence that political parties experimenting with new forms of democratization have frequently returned to the Jolly

---

[121]Scheffran 2020, 55; Pasini and Amendola 2019; Linares *et al.* 2020.
[122]Mann 2016, 60; Embiricos 2020, 255–56; *The Economist*, 4 February 2017.
[123]Grotius 2004, 11–12; Papanicolopulu 2022b, 155–56.
[124]Mann 2020, 608–9.
[125]De Wolff 2019.
[126]Chung 2015; Wilson 2021, 397.
[127]Mégret 2021.

Roger.[128] If we can benefit from the shifted perspective created by the law of the sea, as pirates and slaves did, the sea may provide us with new opportunities for action.

Conclusion

As lawyers, we are often accustomed to 'seeing like a state'.[129] But the truth is we actually see is like a maritime vessel. In this essay, I hoped to show by way of the maritime perspective I developed, that seeing like a state is engaging in an exercise of make-believe, in good or bad faith. We do not have a truly domestic or international vantage point think from, nor can we rely on 'methodological nationalism' as a basis for action.[130] Those are unavailable abstractions that may be occasionally useful, but do not rely on accurate descriptions of politics. Oceanic methodology may help us start legal and political studies from a more appropriate set of assumptions which is thoroughly transnational. Analytically, transnational existence precedes the domestic vantage point that still dominates a lot of legal and political thought (even purportedly transnational approaches). International and inter-state conceptions of law only come after transnational legal experience.

The question we confront is which transnationalism do we adopt. I suggest adopting the imagination of a commonist boat as guidance for political actions.[131]

References

Abulafia, David. 2011. "Mediterranean History as Global History." *History and Theory* 50 (2): 220–28.

Alexander, Samuel, and Jonathan Rutherford. 2019. "A Critique of Techno-Optimism: Efficiency without Sufficiency is Lost." In *Routledge Handbook of Global Sustainability Governance*, edited by Agni Kalfagianni, Doris Fuchs and Andres Hayden, 273–84. Abingdon: Routledge.

Anghie, Antony. 2005. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press.

Arendt, Hannah. 1998. *The Human Condition*. 2nd ed. Chicago: University of Chicago Press.

Ballard, Chris, Richard Bradley, Lise Nordenborg Myhre, and Meredith Wilson. 2004. "The Ship as Symbol in the Prehistory of Scandinavia and Southeast Asia." *World Archaeology* 35 (3): 385–403.

Baumgarten, Albert I. 1981. *The Phoenician History of Philo of Byblos: A Commentary*. Leiden: Brill Publishers.

Beck, Ulrich. 2007. "The Cosmopolitan Condition: Why Methodological Nationalism Fails." *Theory, Culture & Society* 27 (7–8): 286–90.

---

[128]E.g. the Swedish Pirate Party with the representation of internet piracy as a digital-era equivalent to the perceived personal liberty-affirming age of sea-piracy (Fredriksson 2015); pirate parties as representing a transnational community, through the internet, united in a desire to implement political change (Otjes 2019).

[129]Scott 1998.

[130]Beck 2007; Chernilo 2011.

[131]I rely on Hannah Arendt's notion of political action, which generally refers to how people act in common in order to collectively participate in shaping their own futures (Arendt 1998; d'Entreves 2019).

Benjamin, Walter. 2021. *Toward the Critique of Violence: A Critical Edition*, edited by Peter Fenves and Julia Ng. Redwood City, CA: Stanford University Press.

Benton, Lauren. 2005. "Legal Spaces of Empire: Piracy and the Origins of Ocean Regionalism." *Comparative Studies in Society and History* 47 (4): 700–24.

Benton, Lauren. 2009. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge: Cambridge University Press.

Benton, Lauren. 2011. "Toward a New Legal History of Piracy: Maritime Legalities and the Myth of Universal Jurisdiction." *International Journal of Maritime History* 23 (1): 225–40.

Bey, Hakim. 2003. *TAZ: The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*. New York: Autonomedia Press.

Biber, Eric. 2017. "Law in the Anthropocene Epoch." *The Georgetown Law Journal* 106 (1): 1–68.

Boyle, Alan. 2012. "Law of the Sea Perspectives on Climate Change." *The International Journal of Marine and Coastal Law* 27 (4): 831–38.

Braudel, Fernand. 1996. *The Mediterranean and the Mediterranean World in the Age of Philip II*, vol. 1. Berkeley, CA: University of California Press.

Braverman, Irus. 2018. *Coral Whisperers: Scientists on the Brink*. Berkeley, CA: University of California Press.

Braverman, Irus, ed. 2022. *Laws of the Sea: Interdisciplinary Currents*. Abingdon: Routledge.

Braverman, Irus, and Elizabeth R. Johnson, eds. 2020. *Blue Legalities: The Life and Laws of the Sea*. Durham, NC: Duke University Press.

Brockwell, Gillian. "The Father of 'Great Replacement': An Ex-Socialist French Writer." *The Washington Post*, 17 May 2022. Available at https://www.washingtonpost.com/history/2022/05/17/renaud-camus-great-replacement-history/. Accessed 20 October 2022.

Bueger, Christian. 2018. "Territory, Authority, Expertise: Global Governance and the Counter-Piracy Assemblage." *European Journal of International Relations* 24 (3): 614–37.

Bull, Malcolm. 2009. "The Whale Inside." *London Review of Books* 30 (1). Available at https://www.lrb.co.uk/the-paper/v31/n01/malcolm-bull/the-whale-inside. Accessed 20 October 2022.

Cairns, John. 2008. "Profit and Principle. Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595–1615)." *Journal of Early Modern History* 12 (1): 89–91.

Chakrabarty, Dipesh. 2009. "The Climate of History: Four Theses." *Critical Inquiry* 35 (2): 197–222.

Chernilo, Daniel. 2011. "The Critique of Methodological Nationalism: Theory and History." *Thesis Eleven* 106 (1): 98–117.

Chung, John J. 2015. "The Role of Naval Power in the Development of Customary International Law." *Quinnipiac Law Review* 34 (1): 39–74.

Culliane, Kevin, and Hercules Haralambides. 2021. "Global Trends in Maritime and Port Economics: The COVID-19 Pandemic and Beyond." *Maritime Economics & Logistics* 24 (3): 369–80.

d'Entreves, Maurizio Passerin. 2019. "Hannah Arendt." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta. Available at https://plato.stanford.edu/archives/fall2019/entries/arendt/. Accessed 20 October 2022.

De Wolff, Daisy. 2019. "Hiding Behind the Flag: Jurisdictional Impediments Imposed by the Law of the Flag on the Enforcement of Violations of Annex I of MARPOL 73/78 Pursuant to the Act to Prevent Pollution from Ships." *Fordham International Law Journal* 42 (5): 1474–518.

Derman, Joshua. 2011. "Carl Schmitt on Land and Sea." *History of European Ideas* 37 (2): 181–89.

Domingues, José Maurício. 2022. "The Political Dimension of Modernity and the Unsurpassable Exteriority of 'Nature'." *International Journal of Social Imaginaries* 1 (1): 17–41.

Embiricos, Alexandra. 2020. "From Refugee to Entrepreneur? Challenges to Refugee Self-Reliance in Berlin, Germany." *Journal of Refugee Studies* 33 (1): 245–67.

FAO. 2022. "The Importance of Ukraine and the Russian Federation for Global Agricultural Markets and the Risks Associated with the War in Ukraine." Available at https://www.fao.org/3/cb9013en/cb9013en.pdf. Accessed 20 October 2022.

Foard, James T. 1880. *Treatise on the Law of Merchant Shipping*. London: Stevens & Sons.

Fountain, Henry. "The World Can Make More Water From the Sea, but at What Cost?" *The New York Times*, 22 October 2019. Available at https://www.nytimes.com/2019/10/22/climate/desalination-water-climate-change.html. Accessed 20 October 2022.

Fredriksson, Martin. 2015. "The Pirate Party and the Politics of Communication." *International Journal of Communication* 9 (1): 909–24.

Gammeltoft-Hansen, Thomas. 2011. *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*. Cambridge: Cambridge University Press.

García-Arenal, Mercedes, and Gerard Wiegers. 2007. *A Man of Three Worlds: Samuel Pallache, a Moroccan Jew in Catholic and Protestant Europe*. Baltimore, MD: Johns Hopkins University Press.

Gates, Marie-Henriette. 2011. "Maritime Business in the Bronze Age Eastern Mediterranean: The View from Its Ports." In *Intercultural Contacts in the Ancient Mediterranean*, edited by Kim Duistermaat and Ilona Regulski, 381–94. Leuven: Peeters Publishers.

Ghosh, Amitav. 2017a. *The Great Derangement: Climate Change and the Unthinkable*. Chicago: University of Chicago Press.

Ghosh, Amitav. 2017b. *The Nutmeg's Curse: Parables for a Planet in Crisis*. Chicago: University of Chicago Press.

Ghosh, Amitav. 2019. *Gun Island: A Novel*. New York: Farrar, Straus and Giroux.

Gilroy, Paul. 1993. *The Black Atlantic: Modernity and Double-Consciousness*. Reissue ed. Cambridge, MA: Harvard University Press.

Gilroy, Paul. 2005. "A New Cosmopolitanism." *Interventions* 7 (3): 287–92.

Gregory, Andy. 2019. "Members of Far-Right Group Generation Identity Jailed After Anti-Migrant Operation in French Alps." *The Independent*. Available at https://www.independent.co.uk/news/world/europe/far-right-generation-identity-members-jailed-alps-france-asylum-seekers-a9084976.html. Accessed 20 October 2022.

Grotius, Hugo. 2004. *The Free Sea*, edited by David Armitage. Translated by Richard Hakluyt. Carmel, IN: Liberty Fund.

Helmreich, Stefan. 2020. "Wave Law." In *Blue Legalities: The Life and Laws of the Sea*, edited by Irus Braverman and Elizabeth R. Johnson, 129–46. Durham, NC: Duke University Press.

Holthouse, David. 2017. "Full of Ship: Behind Generation Identity's High Seas Publicity Stunt." Southern Poverty Law Center. Available at https://www.splcenter.org/hatewatch/2017/11/13/full-ship-behind-generation-identitys-high-seas-publicity-stunt. Accessed 20 October 2022.

Jessup, Philip C. 1956. *Transnational Law*. New Haven, CT: Yale University Press.

Jillions, Andrew. 2012. "Commanding the Commons: Constitutional Enforcement and the Law of the Sea." *Global Constitutionalism* 1 (3): 429–54.

Jones, Henry. 2016. "Lines in the Ocean: Thinking with the Sea about Territory and International Law." *London Review of International Law* 4 (2): 307–43.

Karim, Ahmed A., Radwa Khalil, and Ahmed Moustafa. 2021. *Female Pioneers from Ancient Egypt and the Middle East: On the Influence of History on Gender Psychology*. Singapore: Springer Singapore Publishing.

Keyt, David. 2006. "Plato and the Ship of State." In *The Blackwell Guide to Plato's Republic*, edited by Grasimos Xenophon Santas, 189–213. Hoboken, NJ: Wiley-Blackwell.

Khalili, Laleh. 2020. *Sinews of War and Trade: Shipping and Capitalism in the Arabian Peninsula*. London: Verso Books.

Khalilieh, Hassan. 2006. *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800–1050): The Kitāb Akriyat al-Sufun vis-à-vis the Nomos Rhodion Nautikos*. Leiden: Brill Publishers.

Khalilieh, Hassan. 2019. *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*. Cambridge: Cambridge University Press.

Kjaer, Poul F. 2018. "From the Private to the Public to the Private? Historicizing the Evolution of Public and Private Authority." *Indiana Journal of Global Legal Studies* 25 (1): 13–36.

Klein, Natalie. 2020. "International Law Perspectives on Cruise Ships and COVID-19." *Journal of International Humanitarian Legal Studies* 11 (2): 282–94.

Kurasawa, Fuyuki. 2004. "A Cosmopolitanism from Below: Alternative Globalization and the Creation of a Solidarity without Bounds." *European Journal of Sociology* 45 (2): 233–55.

Latour, Bruno. 1994. "On Technical Mediation – Philosophy, Sociology, Genealogy." *Common Knowledge* 3 (2): 29–64.

Lazarus, Edward. 1999. *Black Hills White Justice: The Sioux Nation versus the United States, 1775 to the Present*. Lincoln, NE: University of Nebraska Press.

Lewis, Simon L., and Mark A. Maslin. 2015. "Defining the Anthropocene." *Nature* 519 (7542): 171–80.

Linares, Cristina, Julio Díaz, Maya Negev, Gerardo Sánchez Martínez, Roberto Debono, and Shlomit Paz. 2020. "Impacts of Climate Change on the Public Health of the Mediterranean Basin Population – Current Situation, Projections, Preparedness and Adaptation." *Environmental Research* 182. Available at https://doi.org/10.1016/j.envres.2019.109107. Accessed 20 October 2022.

Linebaugh, Peter, and Marcus Rediker. 2013. *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic.* 2nd ed. Boston: Beacon Press.

Lubin, Asaf. 2020. "The Liberty to Spy." *Harvard International Law Journal* 61 (1): 185–244.

Mahoney, Paul G. 2000. "Contract or Concession – An Essay on the History of Corporate Law Symposium: Business Law Education." *Georgia Law Review* 34 (2): 873–94.

Malm, Andreas. 2016. *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming.* London: Verso Books.

Mann, Itamar. 2016. *Humanity at Sea: Maritime Migration and the Foundations of International Law.* Cambridge: Cambridge University Press.

Mann, Itamar. 2018. "Maritime Legal Black Holes: Migration and Rightlessness in International Law." *European Journal of International Law* 29 (2): 347–72.

Mann, Itamar. 2020. "The Right to Perform Rescue at Sea: Jurisprudence and Drowning." *German Law Review* 21 (3): 598–619.

March, Hug. 2015. "The Politics, Geography, and Economics of Desalination: A Critical Review." *WIREs Water* 2 (3): 231–43.

Markard, Nora. 2016. "The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries." *European Journal of International Law* 27 (3): 591–616.

Marsden, Reginald Godfrey. 1919. *A Treatise on the Law of Collisions at Sea.* 7th ed. London: Stevens & Sons.

Mawani, Renisa. 2018. *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire.* Durham, NC: Duke University Press.

Mégret, Frédéric. 2021. "Activists on the High Seas: Reinventing International Law from the Mare Liberum?" *International Community Law Review* 23 (4): 367–402.

Moreno-Lax, Violeta. 2011. "Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea." *International Journal of Refugee Law* 23 (2): 174–220.

Neff, Stephen C., ed. 2012. *Hugo Grotius on the Law of War and Peace: Student Edition.* Cambridge: Cambridge University Press.

Oldham, James. 2007. "Insurance Litigation Involving the Zong and Other British Slave Ships, 1780–1807." *The Journal of Legal History* 28 (3): 299–318.

Otjes, Simon. 2019. "All On the Same Boat? Voting for Pirate Parties in Comparative Perspective." *Politics* 40 (1): 38–53.

Oxford Reference. "Ideal Type." Available at https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095956574. Accessed 20 October 2022.

Papanicolopulu, Irini. 2022a. "On the Nature of the Law of the Sea." In *Trends and Challenges in International Law: Selected Issues in Human Rights, Cultural Heritage, Environment and Sea*, edited by Laura Pineschi, Irini Papanicolopulu and Maurizio Arcari, 275–93. New York: Springer Publishing.

Papanicolopulu, Irini. 2022b. "The Historical Origins of the Duty to Save Life at Sea in International Law." *Journal of the History of International Law* 24 (2): 149–88.

Papastavridis, Efthymios. 2020. "The European Convention of Human Rights and Migration at Sea: Reading the 'Jurisdictional Threshold' of the Convention Under the Law of the Sea Paradigm." *German Law Journal* 21 (3): 417–35.

Pasini, Antonello, and Stefano Amendola. 2019. "Linear and Nonlinear Influences of Climatic Changes on Migration Flows: A Case Study for the 'Mediterranean Bridge'." *Environmental Research Communications* 1. Available at https://doi.org/10.1088/2515-7620/ab0464. Accessed 20 October 2022.

Piñeiro, Laura Carballo, Maximo Q. Mejia, and Fabio Ballini. 2021. "Beyond COVID-19: The Future of Maritime Transport." *WMU Journal of Maritime Affairs* 20 (2): 127–33.

Plato. 2000. *The Republic*, edited by G.R.F. Ferrari. Translated by Tom Griffith. Cambridge: Cambridge University Press.

Probyn, Elspeth. 2022. "UNCLOS as a Geopolitical Chokepoint." In *Laws of the Sea: Interdisciplinary Currents*, edited by Irus Braverman, 185–203. Abingdon: Routledge.

Putnam, Harrington. 1883. "The Limited Liability of Ship-Owners for Master's Faults Note." *The American Law Review* 17 (8): 1–20.

Ranganathan, Surabhi. 2019. "Ocean Floor Grab: International Law and the Making of an Extractive Imaginary." *European Journal of International Law* 30 (2): 573–600.

Rediker, Marcus. 2005. *Villains of All Nations: Atlantic Pirates in the Golden Age*. Boston: Beacon Press.

Reva, Denys. 2018. "Ten Years on, is Somali Piracy Still a Threat?" *Institute for Security Studies*. Available at https://issafrica.org/iss-today/ten-years-on-is-somali-piracy-still-a-threat. Accessed 20 October 2022.

Salter, John. 2001. "Hugo Grotius: Property and Consent." *Political Theory* 29 (4): 537–55.

Scheffran, Jürgen. 2020. "The Geopolitical Impact of Climate Change in the Mediterranean Region: Climate Change as a Trigger of Conflict and Migration." In *IEMed Mediterranean Yearbook 2020. Directed by Senén Florensa*, 55–61.

Schmitt, Carl. 2006. *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*. Translated by G.L. Ulmen. Candor, NY: Telos Press Publishing.

Schmitt, Carl. 2007. *The Concept of the Political*. 2nd ed. Translated by George Schwab. Chicago: University of Chicago Press.

Schmitt, Carl. 2015. *Land and Sea: A World-Historical Meditation*, edited by Samuel Garret Zeitlin and Russell A. Berman. Candor, NY: Telos Press Publishing.

Schomberg, Alexander Crowcher. 1786. *A Treatise on the Maritime Laws of Rhodes*. Oxford: D. Prince and J. Cooke Publishing.

Scott, James C. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale University Press.

Selden, John. 2004. *Mare Clausum: Of the Dominion, Or, Ownership of the Sea*. Clark, NJ: Lawbook Exchange Reprints.

Spence, Thomas. 1982. "The Marine Republic." In *Pig's Meat: The Selected Writings of Thomas Spence, Radical and Pioneer Land Reformer*, 76–79. Nottingham: Spokesman Books. Available at https://msuweb.montclair.edu/~furrg/gbi/docs/spencemarinerep.pdf. Accessed 20 October 2022.

Steinberg, Philip, and Kimberley Peters. 2015. "Wet Ontologies, Fluid Spaces: Giving Depth to Volume through Oceanic Thinking." *Environment and Planning D: Society and Space* 33 (2): 247–64.

Sweet, Michael, Alfred Burian, and Mark Bulling. 2021. "Corals as Canaries in the Coalmine: Towards the Incorporation of Marine Ecosystems into the 'One Health' Concept." *Journal of Invertebrate Pathology* 186. Available at https://doi.org/10.1016/j.jip.2021.107538. Accessed 20 October 2022.

Tanaka, Yoshifumi. 2012. *The International Law of the Sea*. Cambridge: Cambridge University Press.

The Economist. "Immigrants are Bringing Entrepreneurial Flair to Germany." *The Economist*, 4 February 2017. Available at https://www.economist.com/europe/2017/02/04/immigrants-are-bringing-entrepreneurial-flair-to-germany. Accessed 20 October 2022.

Treves, Tullio. 2010. "Human Rights and the Law of the Sea." *Berkeley Journal of International Law* 28 (1): 1–14.

Tuck, Richard. 1979. *Natural Rights Theories: Their Origin and Development*. Cambridge: Cambridge University Press.

Van der Toorn, Karel, Bob Becking, and Pieter Willem van der Horst. 1999. *Dictionary of Deities and Demons in the Bible*. 2nd ed. Leiden: Brill Publishers.

Van Gelderen, Martin. 2011. "'Iustitiam Non Includo': Carl Schmitt, Hugo Grotius and the Ius Publicum Europaeum." *History of European Ideas* 37 (2): 154–59.

Van Ittersum, Martine. 2006. *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595–1615*. Leiden: Brill Publishers.

Vankilde, Helle. 2021. "Trading and Weighing Metals in Bronze Age Western Eurasia." *PNAS* 118 (30): 1. Available at https://doi.org/10.1073/pnas.2110552118. Accessed 20 October 2022.

Ward, J. R. 1994. "The Industrial Revolution and British Imperialism, 1750–1850." *The Economic History Review* 47 (1): 44–65.

Wilson, David. 2021. "European Colonisation, Law, and Indigenous Marine Dispossession: Historical Perspectives on the Construction and Entrenchment of Unequal Marine Governance." *Maritime Studies* 20 (1): 387–407.

Winstanley, Gerrard. 1983. "A Declaration from the Poor Oppressed People of England." In *The Law of Freedom and Other Writings*, edited by Christopher Hill, 97–108. Cambridge: Cambridge University Press.

Winstanley, Gerrard. 2011. *A Common Treasury (Revolutions)*. Reprint ed. London: Verso Books.
Wright, Stuart A. 2009. "Strategic Framing of Racial-Nationalism in North America and Europe: An Analysis of a Burgeoning Transnational Network." *Terrorism and Political Violence* 21 (2): 189–201.