

A Law of the Poor and Disenfranchised in Maritime Law – Is There One?

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Outline

- Purpose: controversy?
- Rationale
- Is there one maritime law?
- Who are the under-resourced or disadvantaged litigants?
- What are the applicable principles and rules of maritime law under consideration?
- Are the principles and rules fair, constitutionally acceptable?
- Conclusion

'[L]aw is a particular re-creation, or reinstitutionalization, of social relations in a narrower, relatively discrete, and professionally managed context. We know that the uses of law come to define its content. But the professional command of law, although often essential for accessing law, does not fully describe its use. To know the uses of law, we need to know not only how and by whom the law is used, but also when and by whom it is not used. The ways in which the law is experienced and understood by ordinary citizens as they choose to invoke the law, to avoid it, or to resist it, is an essential part of the life of the law.'

Patricia Ewick & Susan S Silbey, 'Conformity, Contestation, and Resistance: An Account of Legal Consciousness' (1992) 26 New Eng L. Rev 731, 736-737 (citations omitted)



UN Sustainable Development Goals

Is there one maritime law?

National

- Maritime law is a chunk of all law, ie, civil, commercial, public, private, environmental, constitutional, criminal etc. (see William Tetley, *International Maritime and Admiralty Law* (Blais: 2002))
- Maritime law varies from one country to another.
- Maritime law varies from one sector to another; ie, the rules are not the same for all the subjects of maritime law.

International

- Maritime law is found in international law, in both treaty form and customary law.
- Different treaties apply different rules on similar topics.

**Is there one
maritime law?
- Probably not.**

Who are the under-resourced or disadvantaged litigants?

Non-professional, small or uninsured shippers

- Cargo claims are an essential part of maritime law
- Around 80% of world trade travels by ship.
- Claims handling is a big business and it is geared towards corporate magnates, particularly in the insurance markets.
- Non-professional vs professional shippers
- Small shippers are referred to in UNCTAD's annual Review of Maritime Transport
- Prevalence of marine insurance but *The Ever Given* showed that some cargo will be uninsured
- Historic codification of the law of contracts of carriage of goods by sea
- Are the above unprivileged, poor or disenfranchised?

Seafarers

- Seafarers are essential to the operation of the ship.
- Typically a weak party due to systemic maritime law
 - exclusive flag state jurisdiction
 - special maritime labour law
 - going after fleeting companies in fleeting jurisdictions
 - MLC is a minimum standard and does not set forth all the parameters of maritime labour.
- Insurance
 - P&I Clubs
- Access to justice

Mediterranean Situation

Select location



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

Most common nationalities of Mediterranean sea and land arrivals from January 2021

NOTE: Detailed data on countries of origin of arrivals to Spain in 2021 has yet to be made available by relevant authorities.

Country of origin	Source	Data date	Population
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Total arrivals in 2022

92,691

Last updated 04 Sep 2022

Sea arrivals in 2022

Includes refugees and migrants arriving by sea to Italy, Greece, Spain, Cyprus and Malta

86,791

Last updated 04 Sep 2022

Land arrivals in 2022

Includes refugees and migrants arriving by land to Greece and Spain.

5,900

Last updated 04 Sep 2022

Dead and missing in 2022 (estimate)

1,072

Last updated 04 Sep 2022

Sea migrants

- The shame of maritime transport
- The laws of maritime safety and security seem to work against sea migrants
- Definitional challenges
- Seeking a better life does not go down well with maritime law

Looking for a reference point

Are the principles and rules fair, constitutionally acceptable?

- Maritime law is subject to typical legal controls
- There is a sizeable body of case law concerning challenges to maritime law for all the groups identified above.

Conclusion

Conclusion

- Is this a pertinent topic?
- Is it timely?
- Law as a sword or shield
- Access to justice
- Human rights
- Decent work
- Consumer protection
- Corporate social responsibility
- What more can be said about this topic?
 - Other areas
 - Environmental claimants
 - Indigineous people
 - People under occupation or siege
 - Specific socio-legal methodologies