

Maritime Justice: A Commentary

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Abstract

This commentary summarizes the contributions to the thematic issue on maritime justice and aims to extend this ongoing research agenda. Maritime justice has as much to offer scholars and practitioners who work in the field of marine justice and environmental justice broadly as it does to those who work in maritime security studies and its cognate fields. Although there are many potential synergies to explore, two thematic domains offer particularly rich starting points: justice for whom and enforcement.

Keywords

enforcement; environmental justice; history; marine justice; maritime justice; resilience

1. Introduction

This thematic issue on Maritime Justice: Socio-legal Perspectives on Order-Making at Sea sets out an incredibly promising research agenda to bring together scholars, practitioners, policymakers, and many others to start a conversation that is both necessary and urgent.

The articles here highlight several important ocean-related issues—from resource overexploitation and pollution to maritime zoning and piracy—that produce complicated vulnerabilities for peoples, communities, and ecosystems around the world (Bennett et al., 2023; Martin et al., 2019). By introducing the “composite term” of maritime justice in the context of illegal fishing, oil spills, drug trafficking, among other crimes at sea, the contributors demonstrate some of the ways to interrogate the dynamics between illicit maritime activities and associated regulatory responses.

Given their aim to inspire and deepen the research agenda on maritime justice, these articles capture something quite profound that has seemed—in my mind at least—like it has been underexplored in the

marine justice literature for far too long. Namely, they crystalize the importance of maritime security governance. One might argue that these contributors are reviving earlier debates from the 1980s and 1990s about what was called “intergenerational justice” in the global ocean commons beyond state jurisdiction in the fields of international law, political science, and economics (Brown Weiss, 1990; D’Amato, 1990; Hannesson, 1985). But I would argue that this thematic issue’s emphatically socio-legal focus offers a re-imagined approach. Gathering inspiration from maritime security studies, this issue is a major contribution to the scholarship on the oceans because it offers an important approach to understanding the theory and practice of order-making (or the lack thereof) at sea.

In that spirit, I am grateful for this opportunity to reflect on what scholars working in environmental justice and socio-legal studies might learn from each other. Two thematic domains strike me as especially promising: justice for whom and justice enforcement. Although we might use different phrases or terms to capture the inequalities and vulnerabilities that grow out of peoples’ relationships with the oceans, I would argue that this conversation needs to be as inclusive as possible given the challenges facing the world’s oceans and the peoples whose lives depend on its resilience—that is to say, all of us.

2. Justice for whom?

In thinking through dimensions of maritime justice, I must begin with the richness and sophistication of the authors’ treatments of the socio-legal system itself and those who find themselves enmeshed (voluntarily and involuntarily) within those systems over time and various geographies. The first theme grows out of several of the articles as well as Larsen’s (2024) editorial. As Larsen (2024, p. 3) frames so well, maritime justice “presents a research agenda of practical and ethical import that begs the question: justice for whom? And this question, importantly, relates to both sides of the law.” As many of the contributors note, bringing together “both sides of the law” poses significant practical, methodological, and theoretical issues.

For example, VandeBerg et al. (2024) outline the evidentiary challenges of crime at sea in their examination of piracy trials in Kenyan courts from 2008 to 2012. With minimal physical evidence and the 1,000-plus pages of transcripts over eight trials, the prosecution of pirates in East Africa operationalized fear: the ways in which this emotion was expressed and circulated proved crucial for establishing the relative plausibility of the accused person’s guilt. Affect, in this case, the fear experienced and expressed by the crew and other witnesses, served to frame a maritime encounter as deviant, illicit, and punishable. In terms of the next steps to flesh out further research in maritime justice, I cannot help but wonder whether and in what ways those persons accused of crimes at sea also attempted to articulate and shape the affective dimensions of justice in the trials. In other words, whose voices will be heard by scholars and practitioners? And for what reasons?

For their part, Boelens et al. (2024) gesture at that very question when they raise the issue of restorative maritime justice. They offer a fascinating account of a collaborative initiative among policing professionals in The Netherlands called the Maritime Smuggling Project that also speaks to the question of justice for whom. The authors track how the innovation of the Maritime Smuggling Project attempted to refocus attention away from apprehending transnational organized crime groups to building resilience to protect legal businesses and professionals, such as fishers, real estate agents, and harbor masters. Crucially, Boelens et al. (2024) outline the shortcomings and nuances of the experiment as the innovations in maritime policing ran up against the institutional cultures that often valued shorter-term or measurable outcomes. Coming from

the scholarship in marine justice, what was most exciting to me was the possibilities of maritime restorative justice as an interdisciplinary framework. Again, I wonder about the possibility of hearing from both sides of the law. What could that possibly look like? Where would it happen? Dockside or in the hallways outside of a legal proceeding? As the authors concede, it is challenging to involve suspects and victims of maritime crime with consequences that are often invisible or indirect. But these are exciting directions for future conversations.

3. Regulatory Responses and Enforcement

Both marine and maritime justice address much more than who gets heard in any one particular setting. In the traditional framings of marine justice, there are concerns over procedural justice, which involves how collective decisions are made, distributive justice, which focuses on the allocation of benefits and burdens in a community or larger society, and justice as recognition, which tracks the marginalization and devaluation of some social groups through everyday and institutional interactions and unequal enforcement (Schlosberg, 2007; Walker, 2012). That is to say that enforcement and regulatory responses can and often do look different from their terrestrial analogs (notwithstanding Larsen's point in her editorial about connections between land and water), given the scale, unevenness, and complexities of the ecologies and politics of the ocean governance. In that context of the oceans, how can we begin to understand the theory and practices of enforcement? Here the contributions that come from scholarship on maritime justice and maritime security studies are absolutely vital.

In the article that addresses the complexities of enforcement, Lindley and Lothian (2024) situate Pacific Island states' efforts to use the existing instruments of international law to build their resilience against the threat of transnational maritime crime. The authors discuss how those efforts are complicated by porous ocean borders and the sheer cultural and political diversity within the region of the Pacific Islands. Perhaps it is not so surprising then that the adoption of relevant instruments of international law among these states is so varied. Furthermore, what we might describe as relevant enforcement mechanisms are also unevenly deployed. I appreciate how Lindley and Lothian (2024) remind their readers, again and again, to make space for the agency of various peoples, communities, nations, and territories across this vast ocean geography. But from a global ocean perspective, as the authors underscore, there is a disproportionate "conservation burden" on the Pacific Island region and elsewhere to work toward, much less enforce, commitments of maritime justice.

In the remaining two articles contributions, there is some overlap in topical focus, especially about instruments of international law, but there is also some productive tension in the conceptualization of maritime justice. Schandorf (2024) makes a number of incisive arguments about the decades-long negotiations that resulted in the United Nations Convention on the Law of the Sea. Its significance, according to Schandorf (2024), lies in its role as an agent of maritime justice; the United Nations Convention on the Law of the Sea reveals the dynamics of unequal power relations among states, often favoring those states with more resources but with some important exceptions that benefit those states with fewer resources. With a focus on the origins of maritime zones, the article addresses the capaciousness of maritime justice on the front-end. Thinking through the manifestations, circulations, and contestations of power is an important step to better understanding the theory and practice of enforcement for maritime justice. This is not wholly new territory for scholars and practitioners coming from the history of science or

marine justice research (Hamblin, 2005; Reidy & Rozwadowski, 2014), but it is an important reminder nonetheless to pay close attention to the relevant socio-legal perspectives.

In their treatment, McLaughlin et al. (2024) unpack the concept of maritime justice as a paradigm in conversation with environmental and marine justice literatures more broadly. The authors render a beautifully concise and nuanced taxonomy of these concepts in the service of their analysis of Sustainable Development Goal 14 “life below water” and its targets. They identify the key barrier or gap in efforts to promote maritime justice on the high seas as enforcement. Whereas Schandorf (2024) discusses the origins of international law as a front-end approach to maritime justice, McLaughlin et al. (2024) identify the enforcement gaps in two examples of environmental crimes on the high seas—piracy and oil pollution—to map out potential options to achieve maritime justice as a more a future-oriented perspective.

4. Potential Future Directions

Picking up that invitation to contemplate future directions, I would like to share a recent insight from environmental justice scholarship that I hope may serve as a potentially useful departure point that speaks to many themes about the oceans that the contributors have raised in this thematic issue—not just the two themes that I have attempted to foreground. In his 2018 monograph, *What is Critical Environmental Justice*, David Naguib Pellow makes an intervention that, however challenging to our attempts to build a conversation around maritime justice, might prove productive to explore together.

Namely, Pellow (2018, p. 12) calls into question the importance or centrality of the state itself as “one of the primary forces contributing to environmental injustices and related institutional violence.” Given how much of the academic literature tends to center the state, Pellow helps remind us that social inequalities are so “deeply embedded in society and reinforced by state power” that social movements and others that seek to address the inequalities and other challenges may want to consider carefully their strategy to “reform or transform the criminal legal system” (Pellow, 2018, pp. 54–55). There is a very real danger of co-optation, Pellow (2018) contends, in his careful language, mostly about environmental justice in a terrestrial context, especially when it comes to democratic systems. He points to the lack of enforcement around environmental laws. Ultimately, what I think Pellow is pushing all of us—scholars, practitioners, and activists—to do is to question the social order that reifies state power at the expense of the most vulnerable communities who often experience a disconnect between the theory and practice of the socio-legal systems. Perpetrators, victims, and others impacted by maritime crimes and threats from piracy to drug trafficking to illegal fishing belong in this conversation, not just scholars and practitioners in the fields of maritime security studies and environmental justice. We need to include the persons, groups, and communities whose lives are most directly touched by these issues and topics.

I hasten to add that I am not entirely sure what maritime or even marine justice could look like without the state at its center. In the context of maritime security studies, I will concede here that perhaps the oceans do represent something different, something other. Crime, security, and order-making at sea have characteristics and dynamics that distinguish them from their manifestations on land. Despite that uncertainty, I am highlighting Pellow’s (2018) question, not because I think it requires a definitive answer one way or another, but because I do wonder where this departure point might take our conversations about maritime justice into the future. Wherever that may be, I am grateful for the contributors to this

thematic issue and their role in launching us and I look forward to seeing how those of us in environmental justice and socio-legal studies who care about the oceans might continue to learn from each other.

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Conflict of Interests

The author declares no conflicts of interests.

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