

Michael Roe

Maritime Governance

Speed, Flow, Form, Process

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ISBN 978-3-319-21746-8 ISBN 978-3-319-21747-5 (eBook)
DOI 10.1007/978-3-319-21747-5

Library of Congress Control Number: 2015947406

Springer Cham Heidelberg New York Dordrecht London

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Printed on acid-free paper

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(www.springer.com)

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*Seven social sins: politics without principles;
wealth without work; pleasure without
conscience; knowledge without character;
commerce without morality; science without
humanity; and worship without sacrifice.*

Mahatma Gandhi

*Open to everything happy and sad
Seeing the good when it's all going bad
Seeing the sun when I can't really see
Hoping the sun will at least look at me
Focus on everything better today
All that I needed I never could say
Hold on to people they're slipping away
Hold on to this while it's slipping away*

Moby, 2005

Preface and Acknowledgments

For those with better things to do than immerse themselves in the increasingly recycled waters of Twitter - believed to have passed 700 times through the kidneys of the website - the issue is this: at around midnight on Thursday, (Michael) Fabricant (UK Conservative MP) fired off a tweet in apparent reference to a Channel 4 News debate between the journalists and authors Jasmin Alibhai-Brown and Rod Liddle. He could never appear on a discussion programme with Ms Alibhai-Brown, Fabricant explained (presumably throwing countless telly researchers' plans for Socratic dialogue into disarray). "I would either end up having a brain haemorrhage," he continued, "or be punching her in the throat".

Can I order the brain haemorrhage please? With a side of... but no. No. That was total self-abasement lies. While the knee-jerk response might be to come up with a version of Private Eye's brilliant headline verdict on Rupert Murdoch's diagnosis with prostate cancer some years ago - "Cancer has Murdoch" - the motivation for honking "Brain haemorrhage has a Michael Fabricant" should really have evaporated before you'd worked out where in haemorrhage that eye-catching double sits.

Marina Hyde, *The Guardian*, Saturday 21st June, 2014

This book examines the controversies that surround governance and policy-making in the light of globalisation and with specific reference to the most globalised of all industries—the maritime sector and international shipping in particular. It forms part two of a three-part consideration of the issues that underlie the problems faced by the maritime sector which are manifested in the death, injury, environmental degradation and inefficiency that characterises the industry. In turn, these can be represented as three dimensions.

Dimension 1 is the situation as it exists for maritime governance and policy-making and was considered in detail in the earlier volume—*Maritime Governance and Policy-Making* (Roe 2013). The impact of globalisation upon international shipping was analyzed and the inadequacies of the current hierarchical structure characterised by four features was assessed: the excessive significance still attributed to the nation-state in maritime governance; the domination of anachronistic institutions; the limited range of stakeholders; and the predominant influence of shipowners.

In this volume Dimension 2 focuses upon a fifth characteristic but one which is fundamental to good governance—the need to accommodate dynamic processes and flexibility in governance rather than the domination of stasis and form which

is currently the situation. Effective governance does not produce policies for fixed moments in time but allows for the changing industry at which it is directed—and nothing changes quite as much as the heavily globalised maritime sector.

Dimension 3 is something to look forward to in the final of the three volumes and will concentrate upon the need to understand the relationship that exists between policies and their appropriate juxtaposition if they are to maximise effectiveness. Issues such as polycentricism and metagovernance will be considered taking on the argument for dynamic governance made in this volume. But that is for the future.

Traditionally, this is where appreciation for those around me is expressed. In particular, I would like to thank my colleagues at Plymouth University especially in the light of my new existence as semi-retired with the opportunity to focus upon writing and research supervision. Those I am fortunate enough to be supervising whilst writing this book and who have contributed unknowingly to the debate include Xufan Zhang, Xuemuge Wang, Sapna Chacko, Safaa Sindi and Katerina Konsta. In addition, thanks must go to Daria Gritsenko whose contribution has been immense and who introduced me to the delights of Finnish hospitality. Others who have been important include Venus Lun at Hong Kong Polytechnic University without whom nothing would ever have appeared in print and of course to the team at Springer who are a delight to work with. Especially, thanks are also owed to Wanyu Loh in Singapore who has provided unknown (I guess) but extensive support and encouragement over the past few years.

And finally of course, enormous thanks to Liz, Joseph and Siân for making it all worthwhile and possible.

No book of mine could possibly not include a reference to the exploits of Charlton Athletic who have sustained a Championship position and have high hopes for a future in the Premiership sometime in the near future. Meanwhile on a more personal note, thanks to the marvels of modern medicine I am now the proud owner of not only a battery-driven pancreas but also a bluetooth glucose warning system, and two perspex eyes. I have become the personification of reverse logistics and look forward to further plastification in time. Thanks be to God for AAA batteries.

http://en.wikipedia.org/wiki/Implantable_collamer_lens

<http://www.cafc.co.uk/>

West Hoe, Plymouth

May 2015

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Abbreviations

ACF	Advocacy Coalition Framework
ASEAN	The Association of Southeast Asian Nations
CENSA	Committee of European National Steamship Owners' Association
CMI	Comité International Maritime
EU	European Union
GATT	General Agreement on Tariffs and Trade
GIS	Geographic Information System
ICS	International Chamber of Shipping
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organisation
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
WTO	World Trade Organisation

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Chapter 1

The Beginning

Abstract We left the story of maritime governance acknowledging that much remained to be done, and although many were contributing to resolving global problems and much had been achieved, some fundamental issues still had to be addressed. This book attempts to move the discussion further on and to suggest ways that policy-makers and those responsible for the design of maritime governance can improve upon what we have. We will venture into the dark world of the maritime administrator, shipowner, media company and politician in an attempt to unfathom the inadequacies of maritime governance, digging deep into the philosophical contexts of form, flow, time, speed and process. This chapter proceeds to examine the characteristics and problems that remain with maritime governance, in particular those relating to nation-states, institutions, the narrow definition of stakeholders, shipowner domination and the absence of fluidity in policy-making.

But in an era of bad faith, the man who does not want to renounce separating true from false is condemned to a certain kind of exile. Albert Camus (1956), quoted in Mooij and De Vos (2003: 30).

A new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it. Max Planck, *A Scientific Autobiography and Other Papers*, 1949.

The Palais Stirling was much older and smaller than the great stucco one with the lions with the blazing eyes... it was built, I should think, early in the nineteenth century, in a charming Regency style: long rooms with ceilings supported by white wooden free-standing pillars. I think with Ionic capitals, and adorned with lustres of many tear-like, glittering drops; and I remember that the parquet floors, during the few moments that these were empty of dancers, had a very slight wave to them, a faint and scarcely discernible warp, like the marquetry of a casket that age has twisted very slightly out of the true. This charm-enhancing blemish, an infinitesimal trace of some long-forgotten earthquake perhaps, gave a wonderful appearance of movement to the interior, something I have hardly ever seen since; a feeling of simultaneous stasis and flux. Patrick Leigh-Fermor (2013: 199).

Katie Holmes

Like Katie Holmes in 'Batman Begins' and her troubled relationship with the superhero, we left the story of maritime governance acknowledging that much remained to be done, and although many were contributing to resolving global problems and much had been achieved, some fundamental issues still had to be addressed. This book attempts to move the discussion further on and to suggest ways that policy-makers and those responsible for the design of maritime governance can improve upon what we have, although unlike Katie we cannot necessarily depend upon inestimable talent as well as our good looks and an irresistible taste in silk shirts. Instead, we will again venture into the dark world of the maritime administrator, shipowner, media company and politician in an attempt to unfathom the inadequacies of maritime governance, digging deep into the philosophical contexts of form, flow, time, speed and process. But first, and in the time-honoured way of Danish TV crime dramas, a swift review of what we have already seen.

For those of you with good memories, the advice is to miss the next part and get onto the new plot in Chap. 2; for the rest the story begins here (Fig. 1.1).



Fig. 1.1 Katie Holmes and The Caped Crusader © 2005 Warner Brothers Pictures

What Problems of Maritime Governance?

The Eastern paradigm looks at ocean wealth as 'value-in-existence', that is the life-giving value of the oceans – and this is something that cannot be mathematically or statistically determined. The national system of accounts... can capture neither the global, planetary dimension of the oceans nor its inestimable value to humanity as the sustainer of life. The Western paradigm aspires to be objective, value-free, based on science, technology and economics; the Eastern paradigm is, in various ways, value-loaded. The Western mind is excessively individualistic; the Eastern world view is holistic, conceiving the individual as an 'illusion', unless integrated into the community in nature, in the universe. The integration of individuality and community has implications for the concept of 'ownership' or 'property'. Thus the Lord Buddha taught, 'it is because people cherish the idea of an ego-personality that they cling to the idea of possession, but since there is no such thing as an *ego* there can be no such things as possessions. When people are able to realize this truth, they will be able to realize the truth of non-duality'. In contrast to the Roman law concept, the Eastern paradigm conceives property as a trust, to be managed responsibly for the good of the community as a whole and with due respect for nature, of which the human community is part. Borgese (1998: 91–92).

To suggest that there is any need to consider changes in maritime governance, there needs to be a case made that something at present could be improved. This is not difficult. The range of failure that maritime policy initiatives continue to display is both substantial and widespread and includes almost all aspects of the industry—all sectors (liner, bulk, ferry); all activities (safety, the environment, security and efficiency); all locations (from the European Union to the USA, and from the Far East and China to the developing countries of Africa); and in particular every part of the jurisdiction and functioning of policy-making and its underlying governance from the international and global down to the local and regional passing on the way through the supranational and national. Perhaps the most indicative and also in some ways the most shocking are the continued problems exhibited by the inadequate functioning of the United Nations International Maritime Organisation (IMO) and its strained relationships with both its supranational (in particular the EU) partners and even with its own national members. This is well documented and covers issues from climate change, environmental policy and safety to issues that stem from the organisational relationship between the IMO and its constituent members (see, e.g. the debate over maritime safety in Tradewinds 2008a, b, c; Lloyd's List 2008, 2009a, b, 2010). In the words of Jordan (2001: 204) in his discussion of the failure of institutions to agree how to approach the problems of governance; 'to all intents and purposes, the dialogue between the two paradigms is essentially one of the deaf'.

There has been considerable commentary on these problems of maritime governance and over many years. See, for example, Sletmo (2001, 2002a, b), Selkou and Roe (2004, 2005), Bloor et al. (2006), Kovats (2006), Roe (2007a, b, c, d, e, 2008a, b, 2009a, b, c, d, 2010a, b, 2013), Roe and Selkou (2006), Van Tatenhove (2008), Sampson and Bloor (2007), De Vivero and Mateos (2010), Van Leeuwen and Van Tatenhove (2010), Baidur and Vegas (2011), Vanelslander (2011), Campanelli (2012) and Wirth (2012: 224, 239); and whilst this does not provide

evidence that these governance problems are severe, it is indicative that things are not perhaps straightforward and simple. It is also a trend that can be seen across wider disciplines in their consideration of governance failure. Examples include those analysing the broadest global implications (e.g. Held 1991; Ruggie 1993; Crosby 1996; Stoker 1998; OECD 2000; Jessop 2004; Ramachandran et al. 2009; Borzel and Risse 2010). This in turn raises the issue as to why there has been so little debate about the difficulties of maritime policy-making and the fundamental governance problems that have appeared. If policy-making is problematic, then perhaps something needs to be done (or at least considered). In fact, the structure of maritime governance remains the same as it has been since the 1940s, in turn essentially based upon a framework that was developed from the 1920s and which can be traced back as far as the Treaty of Westphalia signed in 1648. Is it not time that change is considered?

Maritime governance at present has a number of fundamental characteristics that define its operation and structure and which in turn have a major effect upon what can (and cannot) be achieved and by whom. These characteristics can be summarised as follows:

- Nation based,
- Institutionally determined,
- Conservatively defined stakeholders,
- Shipowner dominated and
- A focus on form rather than process.

Each of these issues needs to be addressed if maritime governance is to be appropriate for today's and the future's shipping marketplace. Currently, none are being considered effectively. The nation-state retains its jurisdictional pre-eminence, whilst maritime governance remains essentially institutionally driven with alternative frameworks for policy-making neglected. The role of extended stakeholder involvement is at least understood (see, e.g. recent commentary by the EU on maritime stakeholders). Meanwhile, the ambitions of over-influential shipowners and associated maritime stakeholders is unlikely to change whatever developments in governance occur—these undesirable effects need to be understood and measures taken to produce policies that balance these desires. Major governance revision is not going to remove the significance of shipowners in maritime policy-making, but their ambitions could be accommodated more successfully in policies that address all sides of the environmental, safety, security and efficiency arguments.

At the same time, globalisation centres upon flows—of information, materials, money, etc.—and yet maritime policies are essentially static—designed at one point in time, for a defined situation with an inability to be flexible to accommodate change. Processes—the movement of money, information, materials—dominate the sector and effective governance structures need to accommodate this dynamism, one which takes little account of national borders and acts as the antithesis of the static policies that characterise the maritime sector.

Let us now turn to each of these characteristics in some more detail.

The Characteristics of Maritime Governance

Nation based:

...she undertook to devote her untiring active life to getting the Newts accepted as members of the League of Nations. In vain did the statesman explain to the eloquent and energetic lady that Salamanders, having no sovereignty of their own in the world, or their own State territory, could not be members of the League of Nations. Mme Dimimeau began to give currency to the view that the Newts should therefore be granted somewhere their own free territory and their submarine state. This idea, of course was rather unwelcome if not actually opposed; at last, however, a happy solution was arrived at to the effect that the League of Nations should set up a special COMMISSION FOR THE STUDY OF THE NEWT PROBLEM to which two newt delegates would also be invited.

Capek (1936), *War With The Newts*, 235–237.

‘The thing exists and no amount of conceptual restructuring can dissolve it’. Nettle’s (1968: 559) comment on the nation-state was not entirely popular at the time but may actually have had rather more foresight than envisaged and issues of stateness have remained central to debate ever since (see, e.g. Evans 1997: 62). Despite this, the nation state has been widely seen to be in decline and its political, economic and social influence has lessened over many decades with the rise of globalisation. In governance terms, this has had a marked change on the effectiveness of policy-making and the relationship that exists between increasingly influential global enterprises, the increasingly liberalised consumer and national governments. Many of the maritime policy failures that we see stem from these changes.

Despite this, the nation-state remains central to maritime policy-making forming the most significant jurisdictional element with a key role at the IMO, OECD, UNCTAD, WTO, European Commission, ASEAN and many other policy-making bodies. The inviolability of the state although questioned and threatened remains paramount. The situation is consequently curious. An overtly significant nation-state in terms of maritime policy-making finds itself impotent in terms of maritime governance within an ever-globalised world. This contrasts in particular with a more general political concentration that remains centred upon the nation-state.

The significance of the nation-state in the development of maritime policies has been unrestrained by the spread of globalisation. Shipping is an intensely globalised sector—perhaps more than any other with characteristics of ownership, operation, finance, legality, supply, demand, labour and commodities that can emerge from almost anywhere in the world—and frequently do—as well as changing location with intense and unpredictable speed. The nation-state retains its significant role at the UN (IMO), the EU and of course through the development of domestic shipping policies. This role is as important as it has ever been even though the influence that nation-based decision-making can have over a globalised sector is erratic and minimal. The shipping industry uses this conflict between globalisation and domesticity to its advantage, trading off one jurisdiction against another and involving itself at the different levels as and when it sees fit.

The maritime sector is a classic example of this contradiction but why has the nation-state survived in terms of policy-making? Why does it remain central to governance whilst at the same time largely inadequate in exercising that influence? These questions are fundamental to the nature of the maritime sector and policy-making, policy interpretation and policy implementation—where and how it succeeds and more importantly, where and how it fails.

Although Wright-Mills (1959: 135–136) was an early commentator on the significance of the nation-state, questioning its domination in society and the need for a broader ‘sociological imagination’ that looks beyond national borders, it was not until the early 1990s that the inadequacies of the nation-state were more widely realised. Walker (1991: 445) emphasises the resilience of the nation-state despite the forces of globalisation. He sees the nation-state as an:

institution, container of all cultural meaning and site of sovereign jurisdiction over territory, property and abstract space, and consequently over history, possibility and abstract time, that still shapes our capacity to affirm both collective and particular identities. It does so despite all the dislocations, accelerations and contingencies of a world less and less able to recognise itself in the fractured mirror of Cartesian coordinates.

Agnew (1994) suggests that the state is a spatial commodity defined by national boundaries which retains its superiority over other scales (local, regional, global) especially in terms of political sociology, macroeconomics and international relations.

He continues in a later paper to outline the ‘Territorial Trap’ and analyse the factors that continue to make the state all important in terms of political power, suggesting that the characteristics of bounded territory, the clear decision that remains between domestic and foreign affairs and the widespread view of the nation-state as the geographical container of modern society ensures that the state remains a timeless conception as a ‘unique source and arena of political power in the modern world’ (Agnew 1999: 503).

Scharpf (1994: 220) considers the role of nation-states in the EU and suggests that the rapid diminution of their powers is unlikely, whilst the EU remains democratically deficient—and little has so far changed. Member states continue to resist erosion of their influence. Meanwhile, Anderson (1996: 133, 135) dismisses ideas that the nation-state is being eroded from below by regionalism and above by globalisation and that it is as a result an anachronism, considering that it lacks plausibility. He suggests that new, postmodern forms of territoriality centring on the nation-state are emerging and that ideas of the death of the state and the emergence of a borderless world are far from the mark (Kaldor 1993; Anderson 1995). States are simply changing their form and function retaining their control over the majority of law and order, education, health, welfare and taxation. They remain the most significant redistributor of resources and wealth and continue to play significant parts in cross-border cooperation (Anderson and O’Dowd 1999: 601).

Brenner (1998: 468) considers that the nation-state—what he defines as a distinctive organisational-territorial locus focussing on capital circulation, class struggle and nationalist/statist ideologies—will always be significant. As such it plays