

Maritime Transport: the Evolution of International Marine Policy and Law by Edgar Gold

Robert C. Evans

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Book Review

Maritime Transport: The Evolution of International Marine Policy and Law, by Edgar Gold. Lexington, Massachusetts: D.C. Heath and Company, 1981. 425 pp.

Professor Gold's *Maritime Transport* must have been a pleasure to research and write. The text, divided chronologically into seven chapters spanning the dawn of history to the present, is adorned with over fifteen hundred footnotes. The subtitle, *The Evolution of International Marine Policy and Law*, only hints at the ambitiousness of its scope: *Maritime Transport* is an attempt at an ordered, unified history of the regulation of merchant shipping. In the end, however, the scholarship is too much weight for its analytical skeleton and the substantial effort does not seem worth it.

In the introduction, Professor Gold writes at page xix that

[M]arine transport has been discussed in an almost abstract manner, as if it did not really fit or belong within the public domain but needed to be confined to the more "private" region of international commerce, which was considered to be outside the scope of the law of the sea. This book intends to show that this is an anomaly and that there is a clearly discernible thread linking maritime transport from the earliest times up to the present debate on the ocean.

The treatise is devoted to destroying the view of merchant shipping as one of purely private law, and to achieve this end the author emphasizes the public law aspect of merchant shipping. The ultimate purpose of Gold's history is to expose the ineffectiveness of private controls over maritime transport in today's world.

Emphasizing the public law aspect, Professor Gold details a paradigm of remarkable complexity in the history of the regulation of merchant shipping. However, it is difficult to believe that ancient governments paid much attention to the merchants who traded along their shores. The reason is simple: the seas are not easily patrolled, and laws governing the itinerant are the hardest to enforce. Early merchants must have been left to prosper or perish according to their own fortunes, without the systematic aid (or hindrance) of national governments. Discontent with leaving their fortunes to fate, the early merchants developed a customary law that secured their profits by guaranteeing some predictability in the marketplace.

For Professor Gold, a highly speculative pattern of regulation in the ancient world foreshadowed the development of the modern law of the sea:

[F]irst, the aspiring maritime state with an embryonic fleet of merchant ships . . . would seek to espouse [the principal of freedom of the seas] and attempt to give it the force of international law because it would be advantageous to do so.

However, in the second stage, "freedom of trade" would become a liability. By then, the state would have developed its economy, which, for Mediterranean littoral states, was always a maritime one, having as its main aim the protection of its commerce and the regulation of competition. . . .

During the next stage, the aspiring maritime state had developed into a maritime power and controlled both the sea and the trade by means of its ownership of large merchant and naval fleets and, of course, by being the locus of the major markets. At this time the freedom of the sea and maritime commerce would once again be espoused by a state which now had nothing to fear from it and which, on the contrary, could use its influence to advantage.

Maritime Transport at 9–10.

Undoubtedly, ancient nations had ambivalent policies with respect to port usage by aliens or carriage of government-owned commodities. *Maritime Transport* assimilates such domestic experiments to regular responses to predictable economic cycles. Gold forgets that world trade did not always wax and wane with the fate of empires, but stood in a large measure outside of the will of kings. Merchant shipping has always been a practical response to a real need. Experiments in regulation, whether to aggrandize the ego of a despot or to accommodate the prevailing economic theory, have always been the veneer that sometimes shields or fosters trade, and sometimes weakens it and rots it. Shipping may have long been the subject of government regulation, but history, as recounted by Gold in *Maritime Transport*, is replete with examples that demonstrate the strength of the shipping industry and show how the customary law that has evolved has prevailed through the centuries despite government regulation (and rarely because of it).

Professor Gold fashioned the early chapters of *Maritime Transport* to lead the reader to expect that a better future for shipping law lies with the public sector, reincarnated in a more organized, more absolute authority. Professor Gold chronicles maritime law from the time of the Phoenicians to the emergence of the modern European law of the sea. The thread that emerges, rather than emphasizing the success of public regulation, is a theme of alienation of government from shipping interests — a cleavage between

the practices of merchants and the dictates of political empires. *Maritime Transport* is replete with indictments of both early and modern domestic governments on this score. The clear villains of national shipping policies are the domestic shipping lobbies — the voice of the private sector in public government.

Professor Gold identifies the great successes of maritime law, which were the results of voluntary international adaptation of workable, comprehensive national legislation such as the *Consolato Del Mare* of the fourteenth century, the *Ordonnance de la Marine* (1806) and the British Merchant Shipping Act of 1894. The polarized, hyperbolic results of the various international conventions emerge in agonized detail. In contrast to the customary law of the sea which saw large scale, voluntary compliance, Professor Gold reports that the eleven Comite Maritime International Conferences between 1897 and 1913 “discussed a great variety of maritime law subjects and achieved consensus and codification in [only] two areas.” *Maritime Transport* at 152.

While Professor Gold’s account of these international conventions leaves no doubt of their tedium and expense, Gold himself joins the ranks of their perpetuators. Certainly much good can be derived from discussions among antagonistic interests, even if their meetings fail to produce a charter, a code or a treaty. Professor Gold seems to retain either the hope for a convention that will end all conventions or the belief that host nations have limitless treasuries from which to fund conventions. However, where will he find the necessary reservoir of patience by private interests to endure the endless meetings? Nations and individuals are more eager to harness the economic benefits of the oceans for personal or national enrichment, than to seek long-term commitment to binding laws.

Professor Gold also fails to recognize the divisive effect of the open international convention. In the bright light of world publicity, mutual desires to achieve common ends encounter myriad complexities. Domestic political pressures, as well as pressures from regional interest groups, often stymie needed give-and-take in the negotiating process. Repeatedly, international conventions have borne no more fruit than confirmation of several sets of opposing slogans — each one imperfectly stating the interests of its supporters.

Maritime Transport is, in a sense, more a work about the failure of bureaucracies, than a praise of them. However, Gold’s solution to bureaucracy is a mirror-image of the problem: the creation of another international bureaucracy to assume the task that the nations have botched. Gold’s indictment of the substance of international maritime law fails to recognize that the underlying problem is the structural failure of national bureaucracies to achieve the political compromises necessary to promote the development of maritime law.

Political leaders seeking change in the law of the sea would be wise to look beyond the skeleton of international regulation of maritime transport that Gold treats as a sacred cow. Opportunities for bilateral agreements on a case-by-case basis are always within reach. These bilateral agreements can serve as a spawning ground for equality among trading partners and for the mutual benefits of trade. The lesson of *Maritime Transport* is that we have not strayed so far from the days of the wooden-ship traders who, for their own benefit and protection, created their own laws and loaned them to the nations they served. Commercial adventure and bilateral political initiative are capable of forging new and responsive international laws. Professor Gold's well-detailed frustration with the current international legal bureaucracy is incomplete as long as he hesitates at the brink of a structural solution.

*Robert C. Evans**

* Associate in the Admiralty Section of Phelps, Dunbar, Marks, Claverie & Sims, New Orleans, La. A.B., Columbia College in the City of New York, 1975. J.D., University of Maryland School of Law, 1980. Member of the State Bars of Maryland and Louisiana.