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THE PUBLIC ORDER OF PORTS

Charles H. Norchi*

There lies the port; the vessel puffs her sails
Tennyson

The power, wealth, and well-being of nations depend on maritime ports. Great empires were built on those ports through which a state could project its power and conduct oceanic trade. From the empires of the Persians, Ottomans, British, French, Dutch, Portuguese, and through successive Chinese dynasties into the current era, maritime ports have both brought civilizations together and have enabled them to clash. Long before the term "interdependent" was applied to the post-Cold War international system, maritime ports were an interconnected transnational web. "Thus more than 300 years ago the *Consolato di Mare* flourished in the Mediterranean as an authoritative arrangement for the settlement of maritime disputes. Substantive and procedural rules were drafted and codified and thereafter applied by judge-consuls in the great trading ports beginning in the fifteenth century. . . This consensus-building was the product of nations and merchants maximizing their positions and settling disputes by means other than war because it was in their common interest to do so."¹

Ports were agents of globalization well before that term came into vogue to describe our current age. The early law of maritime ports was customary.² So long as seafaring nations traded, there has been a common interest transcending ports that gave rise to early transnational legal mechanisms such as the *Consolato di Mare*, as well as shared institutional

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1. Charles H. Norchi, *The Circum-Mediterranean: From Clashing Civilizations to Transnational Arbitration*, in *NAVAL STRATEGY AND POLICY IN THE MEDITERRANEAN: PAST, PRESENT AND FUTURE* 301, 306 (John B. Hattendorf ed., 2000).

2. "Custom . . . concerns the *implicit* creation of norms through the behavior of a few politically relevant actors who are frequently unaware that law is being, or has been, made." W. Michael Reisman, *The Cult of Custom in the Late 20th Century*, 17 *CAL. W. INT'L L.J.* 133, 133 (1978).

arrangements and international instruments such as the 1923 Convention on the International Regime of Maritime Ports, to the International Maritime Organization, and more recently, the international marine law instruments discussed in this volume.

Few resources are as vital to the life of a state as an effective, functioning maritime port. "The chief function of ports for the coastal state is in provision of cheap and easy access to the oceans and to the rest of the world. Without suitable land-water conformations to serve as harbors a state may be largely isolated from the life of the community outside and even a plentiful resource base will be of greatly diminished value."³ The bulk of global commerce flows through these complex installations. The demands of states concerning ports are more exclusive than inclusive; hence "the demands of states adjacent to the sea embrace the protection and promotion of all the values of a territorially organized body politic."⁴ Despite those exclusive demands, states share a common interest in effective, secure, and ordered maritime ports.⁵

The problems and interests—the incidents, commerce, and threats—common to the world's maritime ports have generated a process of authoritative decision-making that has yielded specialized laws, institutions, and mechanisms. In many legal systems practitioners and scholars treat the social and legal processes⁶ that implicate the intense spaces of seaports as a distinct field of maritime or marine law.⁷

3. MYRES S. MCDUGAL & WILLIAM T. BURKE, *THE PUBLIC ORDER OF THE OCEANS* 90 (1962).

4. *Id.* at 9.

5. "It is the perception of interdependence in community process that leads participants to appreciate the relevance of pursuing common interests and motivates them to clarify it." MYRES S. MCDUGAL, W. MICHAEL REISMAN & ANDREW R. WILLARD, *The World Community: A Planetary Social Process*, 21 U.C. DAVIS L. REV. 807, 810 (1988).

6. See JEAN-PIERRE-BEURIER, *DROITS MARITIMES* 658 (2006). Many coastal states have enacted port law legislation. For example, the new Port Law of the People's Republic of China, adopted by the Standing Committee of the Tenth National People's Congress, took effect on January 1, 2004. Port Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 2003, effective Jan. 1, 2004) 2003 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 22 (P.R.C.), available at http://english.gov.cn/laws/2005-09/06/content_29723.htm (last visited Mar. 30, 2009).

7. Certain law schools offer courses in port law and find the epistemic unit of the maritime port to be an effective pedagogical tool, especially in continental Europe. European institutions that offer maritime law include the Centre de droit maritime et océanique at the Université de Nantes (CDMO), and the law schools of the Université du Havre, Université de Perpignan, and the Université d'Aix-Marseille III—Faculté de Droit et de Sciences Politiques—Centre de Droit Maritime et des Transports [Aix-en-Provence]. In the United States, a seminar in Port Law is regularly offered at the University of Maine School of Law, where the Fall 2008 syllabus informed students: "This seminar will explore

Conceptually, the maritime port is also an organizing device for an interrelated set of legal problems that transcend public and private law. "Port law is particularly complex in that international law (like the Geneva Convention of 1923 on the International Regime of Maritime Ports), European law (like Directive 2001/96 of 2001, establishing requirements and procedures for the safe loading and unloading of bulk carriers), and French law (the Code of Maritime Ports, administrative law—like decisions of the Council of State, as well as certain aspects of private law) are all potentially applicable in a given situation."⁸ That is the view from Europe. However in the United States, the law of maritime ports is rarely conceived as a unified field within marine law. So with this Symposium volume *The Ocean and Coastal Law Journal* (OCLJ) advances, in comparative perspective, the notion of "port law" as a discipline of American marine law.

The OCLJ invited leading authorities to consider a range of maritime port law problems and policies.⁹ The ensuing articles treat port "incidents" that implicate and spawn international law including custom, conventions, and agreements and national or municipal law including case decisions, regulations, and statutes.¹⁰ The articles in this Symposium consider trends

the legal regime of maritime ports in comparative perspective. The emphasis will be upon port incidents that yield legal consequences in public and private law in the Port of Portland, other American ports and abroad. The following topics may be covered: port state authority and control, security, port management, port privatization, commercial fishing, vessel access and transit, LNG disputes, pipelines, issues in admiralty, environmental incidents including spillage, dumping and threats to marine wildlife. International organizations, multilateral treaties, regional arrangements and bilateral agreements will be examined in order to understand how the global legal regime shapes port regimes at the federal, state and local levels in the United States. The goal is to provide students with an understanding of Maritime Port Law via an examination of comparative port problems and outcomes, and via research of the legal consequences of a specific port incident." University of Maine School of Law, Port Law Seminar Syllabus (Sept. 1, 2008) (on file with author).

8. Martin A. Rogoff, *A Comprehensive Treatise On Maritime Law For Students and Practitioners*, 13 OCEAN & COASTAL L.J. 135, 140 (reviewing JEAN-PIERRE BEURIER, *DROITS MARITIMES* (2006)).

9. This approach also known as "The New Haven School of Jurisprudence," "Law, Science and Policy," and "Policy-Oriented Jurisprudence," was first applied to the law of the sea by Myres S. McDougal and William T. Burke, in their seminal work, *The Public Order of the Oceans*. MCDUGAL & BURKE, *supra* note 3.

10. An incident can give rise to the application of a legal norm. The systematic measurement of incidents is a method for appraising the formation and existence of a genre of law. "The incident . . . takes a single critical event as a prism through which the reactions of elites to particular behavior may be examined and assessed as an indication of their views of law." INTERNATIONAL INCIDENTS: THE LAW THAT COUNTS IN WORLD POLITICS 16 (W. Michael Reisman & Andrew R. Willard eds., 1988).

in diverse port contexts and cultures. They collectively remind us that any human value can be at stake: power, enlightenment, wealth, well-being, skill, affection, respect, and rectitude.¹¹ The participants and stakeholders, in what has become the world public order of maritime ports, are diverse and include public and private actors. The perspectives of many seaport actors, their identities, expectations, and demands, can be as varied as the world's cultures. Ultimately the articles illuminate the importance of maritime ports to world public order, confirming that though situated within the territorial waters of a state¹² a maritime port is of the world—a microcosm of the planet's cultures, the flotsam and jetsam of civilizations.¹³

Maritime port actors interact in a range of situations from stable commercial intercourse to outright crisis. The stakes, stakeholders, and participants in maritime port affairs: states, their coast guards and navies, shipping interests and owners, pirates and robbers, cruise ships and pleasure craft, classification societies, national port authorities, port state control officers, flag state administrators, and an array of international organizations including the: International Maritime Organization, International Organization for Standardization [ISO], UNCTAD, WTO, and vessels of every kind—fishing, military, pleasure craft and yachts. They have assets and resources at their disposal to achieve a range of goals. The strategies deployed in maritime ports cover the full spectrum of economic, military, ideological, and diplomatic. The result of the flow of interactions among the myriad maritime port participants is the spectrum of outcomes in which port actor values are indulged or deprived. These outcomes must be appraised against specific policy goals, the interests of the state, and the world community. Thus, the law of maritime ports ranges from the private law of admiralty to the public order decision processes of nation-states, government agencies, international organizations, and their effects on both public and private actors.¹⁴

11. See HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* 30-31 (1992).

12. United Nations Convention on the Law of the Sea art. 11, Dec. 10, 1982, 1833 U.M.T.S. 397 [hereinafter UNCLOS].

13. When the traveling poet Théophile Gautier came upon the port of Valetta, he wrote "Par cette porte, va et vient une foule bigarrée et cosmopolite; des Tunisiens, des Arabes, des Grecs, des Turcs . . . et les Européens de différent pays." THÉOPHILE GAUTIER, *CONSTANTINOPLE* 20-21 (1867). "By this gate goes and comes a crowd, motley and cosmopolite. Tunisians, Arabs, Greeks, Turks . . . the English, the French, and the other Europeans." ROBERT HOWE GOULD, *CONSTANTINOPLE: FROM THE FRENCH OF THÉOPHILE GAUTIER* 17-18 (1875).

14. The problems addressed by the law of Admiralty and related private law, are beyond the scope of this Symposium.

This Symposium appraises public order port problems in comparative perspective. The contributors address maritime security, ship-source pollution, and environmental degradation, substandard vessels, and the port pathologies rampant in developing countries that range from infrastructure failure to incapacity. The context of each problem, from Asia to Europe, from Africa to North America, whether the seaports of Singapore, Hong Kong, Marseille, Matadi, or Portland, determines the character of the decision process which varies by jurisdiction, expectation of authority, and the agreements, codes, and case decisions which may be international, domestic, U.S. federal or state. What links the problems and hence the articles in this Symposium, are the physical space of the seaport, state interest in seaports as bases of power and wealth, and the common interest of the world community in a global network of ports for the benefit of humankind.

The public order of the world community changed with the attacks of September 11, 2001 and this included the public order of maritime ports. The effective control of all port activity by coastal states assumed a new urgency. The United States unilaterally enhanced its port state control mechanisms with the Maritime Security Transportation Act 2002 (MTSA 2002).¹⁵ Following intense promotion by the United States and other powerful state actors, the International Maritime Organization adopted the International Ship and Port Facility (ISPS) Code.¹⁶ The MTSA 2002 and the ISPS Code greatly expanded port state control and squarely located those activities on the national security agenda of states. Thus, state power and national security, the well-being of coastal communities, and the creation of wealth via international trade, would be explicitly advanced by ever more intrusive port state control systems. The pendulum has swung from port access to greater port control in order to optimize world order goals of international security.

In our age of heightened security and enhanced port actor conflict, unilateral and multilateral control systems for port security and safety are widely and intensely applied. Every port on the planet shares a policy goal of eliminating substandard shipping to protect the population, infrastructure, and environment of coastal states. The key instrument is "port state control," through which states and other actors apply standards adopted by

15. Maritime Security Transportation Act of 2002, Pub. L. No. 107-295, 116 Stat. 2064 (2002).

16. International Maritime Organization. [IMO], *International Ship and Port Facility (ISPS) Code*, IMO Doc. SOLAS/CONF/5/34 (Dec. 17, 2002); International Maritime Organization [IMO], *Implementation of SOLAS Chapter XI-2 and the ISPS Code*, IMO Doc. MSC/Cir.1104 (Jan. 15, 2004).

key international organizations to bear upon substandard vessels in order to minimize a range of threats to seaports and coastal states is termed port state control. In this Symposium, Dr. Z. Oya Ozcayir examines innovations in a key mechanism applied by the state—port state control. She explains that in essence, “[p]ort state control is the control of foreign flagged ships in national ports by port state control officers,”¹⁷ reducing threats to the port and to the coastal state by controlling substandard vessels.

Dr. Ozcayir describes the promotion of port state control and its prescriptive evolution from the 1929 International Convention for the Safety of Life at Sea (SOLAS) and complementary regional agreements, to the key 1982 Paris Memorandum of Understanding. She notes that “[p]ort state control is not and never can be, a substitute for the proper exercise of flag state responsibility . . . under international law . . . flag states are primarily responsible for ensuring compliance with minimal standards.”¹⁸ That primary responsibility notwithstanding, port state control has evolved into a choreography of port states and flag states along with classification societies and the marine insurance industry sharing vessel intelligence and invoking marine incidents to apply and enforce the conventions of the International Maritime Organization, the International Labor Organization, and coastal state regulations. It is a ballet of multiple acts. In her contribution to this Symposium, Dr. Ozcayir clarifies the authoritative decision process in port state control and its centrality to marine law. “The goal should be creating safer ports throughout the world and increasing effective implementation of international conventions.”¹⁹

Port state control developed, in part, in response to generalized and specific threats, including maritime terrorism that may utilize weapons of mass destruction (WMD)—threats that have been called “a time bomb for global trade” and the world’s seaports.²⁰ Many of the same security, safety, and environmental challenges that underlie trends towards greater state control are addressed by Professor Robert Beckman in his article, *Singapore Strives to Enhance Safety, Security and Environmental Protection in its Port and in the Straits of Malacca and Singapore*.²¹ He

17. Z. Oya Ozcayir, *The Use of Port State Control in Maritime Industry and Application of Paris MOU*, 14 OCEAN & COASTAL L.J. (forthcoming 2009).

18. *Id.*

19. *Id.*

20. See generally MICHAEL RICHARDSON, A TIME BOMB FOR GLOBAL TRADE 121 (2004) (arguing that “if a nuclear or powerful radiological bomb was brought by sea into a major port-city or international shipping strait and exploded, it would halt or severely disrupt world trade”). See also JOHN F. FRITTELLI ET AL., PORT AND MARITIME SECURITY 2 (2003); FRED EVANS, MARITIME AND PORT SECURITY 35 (2004).

21. Robert Beckman, *Singapore Strives to Enhance Safety, Security and Environmental*

explores measures taken by the port of Singapore, one of the most important seaports for global commerce, to enhance safety and prevent ship-source pollution. “The Strait of Malacca and Singapore is one of the busiest and most important straits in the world. It is on the main shipping route between the Indian Ocean and the South China Sea, and it is vitally important for trade and commerce between Europe, the Middle East, and India to the west, and China, Japan, Korea, and Southeast Asia to the east.”²² Against a complex context, effective security measures requiring regional state cooperation have been implemented. Professor Beckman explains how Singapore has implemented IMO conventions that target security and vessel-source pollution. He appraises innovative international and inter-agency coordination of the new “Cooperative Mechanism for the Straits of Malacca and Singapore.”²³

Singapore, a global sea transport hub, is both a port state and an important flag state that has actively promoted and applied IMO conventions. The Maritime and Port Authority of Singapore (MPA) has been a key actor in the country’s accession to, and implementation of, the conventions, and in confronting and reducing security threats. Singapore has taken important steps to insure that maritime security prescriptions, in the broadest sense, are actually applied. For example, the Maritime Command and Control Centre (Changi C2 Centre), established in March 2007 and expected to become operational in 2009, was designed to “enhance Singapore’s maritime security capabilities by furthering multi-agency cooperation and interoperability among national maritime agencies. The Changi C2 Centre will house the Singapore Maritime Security Centre (SMSC), an Information Fusion Centre and a Multinational Operations and Exercise Centre.”²⁴ Recognizing the crucial importance of the intelligence function in decision-making for threat reduction, “[t]he Information Fusion Centre (IFC) will facilitate proactive sharing and fusion of information to enable analysis, planning, and coordination of maritime responses in a more collaborative and networked manner. It will house the necessary computer networks to fuse, analyze and disseminate information shared by participating militaries and agencies.”²⁵

In addition, Singapore cooperates with Indonesia and Malaysia to combat robbery and piracy. This innovative cooperative arrangement is

Protection in its Port and in the Straits of Malacca and Singapore, 14 OCEAN & COASTAL L.J. (forthcoming 2009).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

designed to meet the security needs of global shipping while accommodating the the sovereignty and power demands of coastal states.²⁶ Singapore is a critical partner with the United States in the Container Security Initiative (CSI),²⁷ under which American inspectors pre-screen containers in Singapore, and the Proliferation Security Initiative (PSI) whose goal is to interdict WMD.²⁸ In the post-9-11 world order where maritime states attempt to apply new mechanisms requiring extensive cooperation to achieve global marine and port security policy goals, Singapore has emerged as a key global actor.²⁹

While a seaport can be a weak security link for a state, it is also the life-line of a nation's people. For developing countries attempting to navigate the global trading system, a pathologically deficient port can thwart economic development and cause negative impacts for the well-being of the population. "In times of crisis and during periods of violence between states the availability of port facilities, or the lack thereof, plays a vital role in determining the influence the state may have upon world events."³⁰ A fragile state emerging from armed conflict is especially dependent on ports for stability operations, humanitarian aid, and recovery. In this Symposium, Dr. Kirongozi Ichalanga underscores these problems in, *Congolese Maritime Ports: Suggestions for Reform*.³¹

He argues for the termination of port management systems and regulations that are modeled upon, and in many respects inherited from, colonial institutional arrangements. He urges their replacement by other decision mechanisms and practices. The principal Congolese ports—Banana, Boma, and Matadi—are managed by the *Office National des Transports* (ONATRA), a state enterprise that possesses minimal capacity. Dr. Ichalanga advises that port management be transferred to a private

26. *See id.*

27. Press Release, U.S. Customs Serv., Singapore Signs Declaration to Join U.S. Customs Anti-Terrorist Container Security Initiative (Sept. 20, 2002), available at <http://usinfo.org/wf-archive/2002/020923/epf111.htm>.

28. *See generally* U.S. Dept. of State, Proliferation Security Initiative, <http://www.state.gov/t/isn/c10390.htm> (last visited Feb. 19, 2009) (providing additional information on the PSD).

29. New maritime security threat reduction mechanisms include vessel tracking and long-range identification systems as key components of Maritime Domain Awareness. *See* UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE COMMITTEE ON HOMELAND SECURITY, MARITIME SECURITY: VESSEL TRACKING SYSTEMS 38 (2009).

30. McDOUGAL & BURKE, *supra* note 3, at 90.

31. Kirongozi Ichalanga, *Congolese Maritime Ports: Suggestions for Reform*, 14 OCEAN & COASTAL L.J. (forthcoming 2009).

enterprise capable of developing Congolese seaports for a modern shipping and container traffic.

Around the maritime ports of many developing and fragile states, populations living with minimal resources and an expectation of violence, what might be called "port capacity" is lacking. This is due, in part, to the general skill deficit of a population that has experienced poverty, subjugation, and war. In developing countries, building port capacity so that reforms can be implemented is an urgently required task. In international development generally, capacity is understood as the ability of people, organizations, and society to manage their affairs successfully.³² The Organization for Economic Co-Operation and Development's (OECD) 2005 Paris Declaration on Aid Effectiveness identified capacity building as key to sustainable development.³³ The effective performance of country systems—administration, governance, goods and service delivery, a suitable policy, regulatory and legal environment for sustainable development—depends on capacity. Port capacity requires that individuals possess the skills to manage the complex affairs of a modern port from international trade to maritime security, and is the fundamental maritime port law challenge for developing countries.

A profound challenge facing all maritime ports is environmental protection. In his article, *Navigating Chartered Waters: Port Development and Environmental Planning in an Era of Sustainability*,³⁴ Robert Schuda explores the roles of the American Association of Port Authorities (AAPA) and select seaports in authoritative decision-making that can result in positive environmental outcomes. The AAPA is a vital participant in maritime port affairs and is performing a critical function in the promotion of alternative maritime port environmental policy. In promoting the twin goals of seaport sustainability and positive environmental stewardship, the AAPA has created a Port Sustainability Task Force.³⁵ The AAPA promotion efforts have encouraged ports to adopt and implement environmentally sustainable seaport policies. Mr. Schuda discusses fifteen examples of seaports that have adopted sustainable measures largely *sua*

32. Charles H. Norchi, *The Legal Architecture of Nation-Building*, 60 ME. L. REV. 281, 301 (2008); ORG. FOR ECON. CO-OPERATION AND DEV., THE CHALLENGE OF CAPACITY DEVELOPMENT: WORKING TOWARDS GOOD PRACTICE 11 (2006), available at <http://www.oecd.org/dataoecd/4/36/36326495.pdf>.

33. *See* ORG. FOR ECON. CO-OPERATION AND DEV., THE PARIS DECLARATION ON AID EFFECTIVENESS 5 (2005), available at <http://www.oecd.org/dataoecd/11/41/34428351.pdf>.

34. Robert S. Schuda, *Navigating Chartered Waters: Port Development and Environmental Planning in an Era of Sustainability*, 14 OCEAN & COASTAL L.J. (forthcoming 2009).

35. *Port Sustainability Task Force Comprises Industry Cross-Section*, AAPA SEAPORTS MAG. Fall 2008, at 40 [hereinafter *Port Sustainability Task Force*].

sponte, such as the Port of Houston which adopted an Environmental Management System (EMS) that meets the rigorous International Organization for Standardization (ISO) environmental standards.³⁶

Mr. Schuda argues that the policy goals of the major environmental prescriptions can provide guidance for environmentally sustainable seaport decision-making.³⁷ He demonstrates how seaports can be agents in the application of environmental standards by performing the intelligence function required of the National Environmental Policy Act (NEPA)³⁸ and the wildlife protection goals of the Endangered Species Act (ESA).³⁹ Drawing on positive environmental outcomes of port decision processes, Mr. Schuda identifies essential components of port planning and development to achieve that goal, including the roles of federal and state regulations. The subtext of the article urges a departure in thinking about ports as problems by considering ports as agents for achieving positive environmental policies and outcomes. While recognizing that seaports are wealth-creation engines, adopting voluntary measures to reduce pollution and enhance positive environmental values is in the interest of seaports and facilitates prescriptive compliance in a complex regulatory environment. Thus, "when the value of ports as environmental stewards is recognized, the goal of these environmental planning statutes, namely, to maximize protection of the environment in agency decision making, is enhanced."⁴⁰ Ports can be pro-active stewards of the environment while continuing to occupy a key role in American and global commerce. Because of their potentially pervasive impact on coastal communities and beyond, environmental law is a key dimension of maritime port law.

Whether treating security, port and vessel control, pollution and environmental policy, or port development and fragile states, the articles in this volume collectively convey the unifying nature of the maritime port in oceans and coastal law. Law is made by a continuing and comprehensive process of communication.⁴¹ The law of maritime ports can be treated in a holistic and unified fashion. The process around maritime ports entails vast communications from a variety of authoritative national and international agencies; with multiple target audiences; containing complex

36. *Id.* at 12.

37. *Id.*

38. National Environmental Policy Act, 42 U.S.C. §§ 4321-4370 (2000).

39. Endangered Species Act, 16 U.S.C. §§ 1531-1544 (2007).

40. *Port Sustainability Task Force*, *supra* note 35, at 2.

41. W. Michael Reisman, Professor of Law, Yale Law School, The Harold D. Lasswell Memorial Lecture, *International Lawmaking: A Process of Communication*, in 75 AM. SOC'Y. INT'L. L. PROC. 101, 105 (1981).

policy content bearing on security, the environment, and trade. Diversion from these authoritative communications may entail severe controls. In this Symposium, each article demonstrates that the law of maritime ports is contextual, problem-oriented, and interdisciplinary.⁴²

Maritime port problems and the legal process they spawn, demand the decision-maker grasp the context in which he or she operates, the objectives, any potential obstacles, and a method for making choices. Public order port problems are matters of high policy stakes, and any unified theory of the law of maritime ports should be infused with policy-oriented jurisprudence.⁴³ Thus, policy-oriented port law would incorporate procedures for decision-making and problem-solving entailing the clarification of goals; the description of historic trends in terms of the degree of goal achievement; the analysis of factors that have shaped or conditioned historic trends; the projection of a range of possible future developments; and the invention, evaluation, and selection of alternative strategies or procedures for achieving goals.⁴⁴ In varying degrees, each of those tasks was deployed by the contributors to this OCLJ Symposium. As readers consider the problems treated in this volume, they might consider their own port policy preferences and the range of available legal mechanisms to intervene in the social process to achieve preferred seaport goals and beyond. In policy-oriented jurisprudence, this important decision function is called appraisal, or "the assessment of the aggregate performance of the legal system in terms of its fundamental goals."⁴⁵ This

42. See generally DOUGLAS M. JOHNSTON *THE THEORY AND HISTORY OF OCEAN BOUNDARY-MAKING* (1988) (advocating a similar approach to maritime boundary delimitation).

43. On the method and applications of policy-oriented jurisprudence, see *id.*; MYRES S. MCDUGALETAL., *STUDIES IN WORLD PUBLIC ORDER* (1960); MCDUGAL & BURKE, *supra* note 3; HAROLD D. LASSWELL, *A PRE-VIEW OF POLICY SCIENCES* (1971); MYRES S. MCDUGAL, HAROLD D. LASSWELL & LUNG-CHU CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* (1980); W. MICHAEL REISMAN & AARON M. SCHREIBER, *JURISPRUDENCE: UNDERSTANDING AND SHAPING LAW* (1987); HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* (1991); Siegfried Wiessner & Andrew R. Willard, *Policy-Oriented Jurisprudence*, 44 F.D.G. Y.B. INT'L L. 96-112 (2001); MYRES S. MCDUGAL, & W. MICHAEL REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE, THE PUBLIC ORDER OF THE WORLD COMMUNITY* (1981); W. MICHAEL REISMAN, MAHNOUSH H. ARSANJANI, SIEGFRIED WIESSNER & GAYL S. WESTERMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE* (2004).

44. See LASSWELL, *supra* note 43; Andrew R. Willard & Charles H. Norchi, *The Decision Seminar as an Instrument of Power and Enlightenment*, 14 POL. PSYCHOL. 575, 587 (1993).

45. W. Michael Reisman, *Unilateral Action and the Transformations of World Constitutive Process: The Special Problem of Humanitarian Intervention*, 11 EUR. J. INT'L

function is continuously performed by practitioners, scholars, a range of port actors, and many thoughtful students of maritime port law. The appraisal of urgent problems in the public order of maritime ports by leading authorities writing in this volume is an important contribution to practice and scholarship by this Symposium, organized by the University of Maine School of Law's *Ocean and Coastal Law Journal*.

L. 3, 4 (2000). Appraisal is "a consideration of the aggregate effectiveness of the entire decision process in terms of whatever community policies are to be realized and recommendations for structural or personal change." REISMAN & SCHREIBER, *supra* note 43, at 15.