

# Maritime Exceptionalism – is it justified?

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# Maritime Exceptionalism

*Admiralty is special-everyone knows this. The cases are named after ships; admiralty practitioners are “proctors,” not mere lawyers: until 1966 admiralty proceedings operated under different procedural rules; and federal judges sitting in their admiralty jurisdiction are wont to display a silver oar on the bench.*

Ernest Young “It’s Just Water: Toward the Normalization of Admiralty”

# Jurisprudence

## Natural Law

Sir Christopher Robin - *The Calypso*:

*There is a general principle of natural equity: and it was considered as giving a cause of action in Roman law; and from that source it was adopted, by jurisdictions of this nature, in different countries of Europe.*

# Jurisprudence

## Pragmatism and Legal Realism

The Rosalie – Dr Lushington

*Say what you will, so long as human motives operate on conduct, unless you give a reward, you must take away all incitement to service. It is all very well to talk of the abstract question of fulfilling duty and obeying commands; and I have no doubt that, so long as men can execute the duty and perform the commands, entrusted to them, they will do so, but in cases of doubt or difficulty, and where great and extraordinary exertions have to be made, reward according to human exertion is the only great stimulus to their performance.*

# Myths

Rolland Barthes *Mythologies*

*In actual fact, the knowledge contained in a mythical concept is confused, made yielding, shapeless associations. One must firmly stress this open character of the concept; it is not at all an abstract, purified essence; it is a formless, unstable, nebulous condensation, whose unity and coherence are above all due to its function*



# The Blaze

Baragwanath J, quoting Lord Esher from *Emmens v Pottle*:

*Any proposition the result of which would be to show that the Common Law of England is wholly unreasonable and unjust, cannot be part of the Common Law of England.*

# The Sam Hawk



Two step approach to foreign maritime liens:

- (1) Interest is characterized by the law of the forum.
- (2) Recognition of the foreign right as characterised by the substantive law.

# Conclusion

Should we focus on the history of maritime law?

What function do the myths play in admiralty jurisprudence?



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