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REVIEW ARTICLE

ON BEAUTY, SCHOLARSHIP, AND FUNCTION – THE LESSONS FROM, AND IMPORTANCE OF, LEGAL HISTORY IN THE DEVELOPMENT OF THE LAW OF MARINE INSURANCE

Marine Insurance – A Legal History by Rob **Merkin** KC [Cheltenham: Edward Elgar Publishing, 2021. 2 volumes. clviii + 527 pp (Vol 1). xx + 830 pp (Vol 2). Hardcover: £420.00]

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I. Introduction

A few words of explanation at the outset are perhaps necessary – if nothing else than to explain the apparently cryptic title of this review essay. What in fact began as a somewhat straightforward review of a book on the history of marine insurance took a wholly unexpected turn and morphed into a general essay on the beauty, scholarship and function of legal history as viewed through the lenses of marine insurance. Indeed, in addition to being a magisterial two-volume history of the law of marine insurance, the present work demonstrates – in the most vividly possible way – at least three fundamental aspects (or, more accurately, benefits) of legal history as a whole.[1]

II. The Importance of Legal History

The law cannot be divorced from its wider context.[2] In particular, the *historical context* is often invaluable. As I have observed elsewhere:[3]

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1 In many ways, this essay is a follow-up to an earlier article on legal history: see Andrew Phang, "Which Road To The Past? – Some Reflections on Legal History" [2013] Sing JLS 1 [*Phang, Some Reflections on Legal History*].

2 This is, in fact, one of the central themes of Andrew Phang Boon Leong, *The Development of Singapore Law – Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) at 1 [Phang, *The Development of Singapore Law*].

3 See Andrew Phang, *From Foundation to Legacy: The Second Charter of Justice* (Singapore: Singapore Academy of Law, 2006) at 1.

> Historical foundations do not exist for their own sake. On them, institutions are built and (more importantly) have a secure base from which to flourish. Without them, institutions are more likely to become anaemic and may even deteriorate over time. An historical memory enables us both to be encouraged by the successes of the past as well as to learn from its failures. It also guides us in the present and helps us to plan wisely for the future.

More specifically, the historical context is of the first importance from not merely an informative point of view but also a practical one as well. In so far as the former is concerned, there are at least two related aspects. *First*, it is often fascinating – in and of itself – to trace the historical sources of a particular legal principle. Put simply, legal history often permits the reader to enjoy the ***beauty*** of the development of the law – especially when the relevant (*extralegal*) historical backdrop is integrated smoothly into the overall narrative. At this juncture, the oft cited observation that the law is dry and arcane as well as possibly mechanistic is thrown completely out of the window. To reiterate, when done at its best, legal history can truly be a thing of beauty – simply in and of itself. It does not require the additional sheen of practical benefit. It is much like the situation where one would simply sit back and admire a work of art. As we shall see, the present book is much like that (although it is also more than that). More importantly, it reminded me of this particular aspect of legal history that I had, frankly, not hitherto thought of.[4] Perhaps this was because we are often too busy to realise that there are beautiful legal roses out there and that we should stop and take the time to enjoy them.

As already alluded to above, there is a *second* informational aspect with respect to legal history. And this is indeed quite often the key aspect as well as benefit of legal history – the ***scholarship*** that results. Indeed, on occasion at least, the historical context sheds light on the origins and/or meaning of a specific legal principle. And it has been my experience that legal history – when done well – invariably leads to a better understanding of the field of law concerned as well.[5] I should add that the aforementioned historical context also includes historical biographies – whether in books or essays and articles.[6] I must admit that perhaps not every account in this

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4 *Cf* Phang, *Some Reflections on Legal History*, *supra* note 1.

5 Including the socio-economic and political forces that shaped a particular law; in so far as the Singapore Torrens System is concerned, see the masterful article by Alvin W-L See, "The Torrens System in Singapore: 75 Years from Conception to Commencement" (2022) 62 Am J Leg Hist 66. See also generally Phang, *The Development of Singapore Law*, *supra* note 2 (with regard to the development of Singapore law).

6 See, *eg*, James Goudkamp & Donal Nolan, eds, *Scholars of Tort Law* (Oxford: Hart Publishing, 2019); James Goudkamp & Donal Nolan, eds, *Scholars of Contract Law* (Oxford: Hart Publishing, 2022); Susan Bartie, *Free Hands and Minds – Pioneering Australian Legal Scholars* (Oxford: Hart Publishing, 2019); and (much more generally) James Gordley, *The Jurists – A Critical History* (Oxford: Oxford University Press, 2013) as well as Mark Hill & RH Helmholz, eds, *Great Christian Jurists in English History* (Cambridge: Cambridge University Press, 2017). Reference may also be made to Professor Ayres's work, *infra* note 28. For a local – and pioneering – effort, see Dora Neo, Tang Hang Wu & Michael Hor, eds, *Lives in the Law – Essays in Honour of Peter Ellinger, Koh Kheng Lian & Tan Sook Yee* (Singapore: National University of Singapore & Academy Publishing, 2007). In so far as my own (more modest) writings are concerned, see, *eg*, "Mr Young Cheng Wah: A Personal Appreciation" (1995) 16 Sing LR 23; "Exploring and Expanding Horizons: The Influence and Scholarship of Professor J L Montrose" (1997) 18 Sing LR 13; "Founding Father and Legal Scholar – The Life and

regard necessarily casts light on the origins and/or meaning of a specific legal principle.[7] Most are nevertheless – and this brings us back to my first point – things of beauty in themselves. I must confess that I am personally fascinated by such biographies – whether or not they actually throw any theoretical or practical light on the legal principles themselves.

One clear illustration of this particular aspect as well as benefit of legal history from my *personal* experience relates to the doctrine of a "term implied in fact" at common law. In particular, I was fascinated for the longest time by the reference by MacKinnon LJ in the English Court of Appeal decision of *Shirlaw v Southern Foundries (1926) Limited*[8] to an essay that he had written even as he set out the famous "officious bystander test".[9] Although this reference was (and, indeed, continues to be) referred to in virtually all the major contract textbooks across the Commonwealth, it was never (to the best of my knowledge) ever identified. As I have recounted elsewhere, I finally located the aforementioned essay in – of all places – the bowels of Langdell Library at Harvard Law School whilst on sabbatical leave.[10] It was, in fact, a public lecture delivered by MacKinnon LJ at the London School of Economics in the University of London.[11]

I was then inspired to take on *further* historical research – specifically, with regard to the biographical data for not only MacKinnon LJ but also for Bowen LJ (as he then was), who famously set out (in the English Court of Appeal decision of *The Moorcock*[12]) the *other* famous test, *viz*, the "business efficacy test". All this – and more – led to an essay which contained various propositions not only with regard to both these tests but also (and perhaps more importantly) the relationship between these tests as well as how they were to be applied in practice.[13] This last-mentioned aspect

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Work of Professor L A Sheridan" [1999] Sing JLS 335; "Contract as Assumption – The Scholarship and Influence of Professor Brian Coote" (2011) 27 JCL 247; "Theory as Practice and Practice as Theory – The Integrated and Integral Contract Scholarship of Professor Michael Furmston" (2014) 31 JCL 12; "A Legal Giant Revisited – Thomas Edward Scrutton and the Development of English Commercial Law" (2015) 32 JCL 119; "Obituary – Professor Michael Philip Furmston, 1 May 1933 – 28 June 2020" (2020) 36 JCL 201; as well as "Giants of Contract Law – Some Personal Reflections" (2022) 2 Sing LJ (Lexicon) 1.

7 Though *cf* the discussion in the main text to *infra* notes 24 to 44.

8 [1939] 2 KB 206 at 227 (affirmed, [1940] AC 701).

9 This is what the learned judge stated ([1939] 2 KB 206 at 227):

> If I may quote from an essay which I wrote some years ago, I then said: "Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!'"
>
> At least it is true, I think, that, if a term were never implied by a judge unless it could pass that test, he could not be held to be wrong.

10 See Andrew Phang, "Implied Terms, Business Efficacy and the Officious Bystander – A Modern History" [1998] JBL 1 at 14, note 85 [Phang, *Implied Terms, Business Efficacy and the Officious Bystander*].

11 See Sir Frank MacKinnon, *Some Aspects of Commercial Law – A Lecture Delivered at the London School of Economics on 3 March 1926* (London and New York: Oxford University Press, 1926); and see, especially, at 13.

12 (1889) 14 PD 64.

13 As to which see generally Phang, *Implied Terms, Business Efficacy and the Officious Bystander*, *supra* note 10.

demonstrates the *third* aspect as well as benefit of legal history that is found in the title of the present essay – the *practical* ***function*** of the important *practical* effect of such historical research. Indeed, I had occasion to cite this particular essay in an actual court decision as I attempted to suggest what the (practical) relationship between the tests ought to be.[14] I should also mention that this was not the first time that legal history had played an important *practical* role in the development of Singapore law.

As far back as a decade ago, I had occasion to refer, in an essay, to two Singapore Court of Appeal decisions in which legal history had played an essential role in the results arrived at in both cases.[15] In the context of the present review essay, it would not be amiss to not only revisit these decisions[16] but also add a third, fourth, fifth and sixth as well.

The first decision (which was the first of two decisions considered in my previous article[17]) is that of the Singapore Court of Appeal in *Seiko Epson Corporation v Sepoms Technology Pte Ltd.*[18] In this particular case, the court explored the history of section 69 of the Singapore Patents Act;[19] in particular, it looked at the relevant English parliamentary debates with respect to various English statutes – more specifically, the Patents Act 1977,[20] the Patents Act 1949,[21] the Patents and Designs (Amendment) Act 1907,[22] and the Patents and Designs Act 1907.[23]

In the *Seiko Epson Corporation* case itself, the court had to deal with an issue which had hitherto not appeared to have been considered by any other court previously. The issue related to the question as to whether or not the defence of innocent infringement (contained in section 69(1) of the Singapore Patents Act) was a defence to liability or was, instead, merely a restriction on the relief awardable to a claimant. The court considered the text of the provision, its legislative history in both the Singapore as well as English contexts, the relevant case law, as well as relevant textbook commentary, and concluded that the aforementioned provision merely operated as a restriction on the relief to be awarded to a claimant.

A second decision is that of the Singapore High Court in *ABD Pte Ltd v Comptroller of Income Tax*.[24] In considering the various tests which were supposed to aid courts in ascertaining whether or not a specific item (or specific items) of expenditure were

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[14] See *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR(R) 927 at [31]; and see generally at [31]–[40].

[15] I did, in fact, refer (in the briefest of terms) to a third (*viz*, *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [126] and [128] (where Andrew Phang Boon Leong, "Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments of Singapore" (1989) 31 Mal LR 46 was cited in the process of describing the background to the Penal Code 1860 (Act No 45 of 1860) (India) (which was adopted in Singapore))): see Phang, *Some Reflections on Legal History*, *supra note* 1 at 17–18.

[16] Drawing heavily upon what I had said earlier – simply because it is not possible to state it any better.

[17] See Phang, *Some Reflections on Legal History*, *supra* note 1 at 17–18.

[18] [2008] 1 SLR(R) 269.

[19] (Cap 221, 2005 Rev Ed); see now the Patents Act 1994 (2020 Rev Ed).

[20] (c 37) (UK).

[21] (c 87) (UK).

[22] (c 28) (UK).

[23] (c 29) (UK).

[24] [2010] 3 SLR 609. This particular decision is discussed in some detail in Vincent Ooi, "Formulating General Principles in a Difficult Area: Andrew Phang and Revenue Law" in Goh Yihan, ed, *Pursuing Justice and Justice Alone – The Heart and Humanity of Andrew Phang's Jurisprudence* (Singapore: Academy Publishing, 2022) 423–447, especially at 429–447.

either capital or revenue in nature, the court had occasion to refer (in its analysis)[25] to the very helpful guidelines set out in the judgment of Dixon J (as he then was) in the High Court of Australia decision in *Sun Newspapers Ltd v Federal Commissioner of Taxation*.[26] And in elaborating upon this judgment, the court also had occasion to refer to a "very comprehensive and erudite biography"[27] of Dixon J by Professor Philip Ayres which referred to the *Sun Newspapers* case.[28] On a more general level, the court also referred to R B Heasman, *Income Tax: A Report to Their Excellencies the Governors of the Malayan Union and Singapore, with Recommendations, including a Draft Bill and Proposals for Administration and Staffing*.[29]

Whilst on the topic of revenue law, there are a couple of other decisions that might be referred to briefly. One (and the third decision considered in the present essay) is that of the Singapore Court of Appeal in *ZF v Comptroller of Income Tax*,[30] where the court had to determine the scope of the concept of "plant" in relation to capital allowances pursuant to section 19 and section 19A of the Singapore Income Tax Act[31] (only capital assets falling within the scope of "plant" would qualify for such allowances). As a commentator has pertinently noted, the court did have recourse to the relevant UK legislation in historical context in arriving at its decision.[32]

There was also another Singapore Court of Appeal decision (the fourth considered in this essay) which dealt with yet another aspect of revenue law – *Skyventure VWT Singapore Pte Ltd v Chief Assessor*.[33] In this case, the court had to determine as one of the issues the scope of the term "article" in the context of property tax law in general and section 2(2) of the Property Tax Act in particular.[34] In this regard, the enhanced value attributable to any machinery used to make, alter, repair, ornament, finish or adapt for sale, any article would be disregarded for the purposes of assessing the property tax payable.[35] Once again, the court examined the relevant local and UK statutory provisions in historical context. In particular, the court held that the word "article" in section 2(2), whilst notionally capable of referring to any matter in existence, could not be interpreted in such a broad manner, given the particular statutory context as well as the legislative intention underlying it. In the circumstances, therefore, the court held that the term "article" in the context of section 2(2) referred to matter which was intended to be sold or which was the subject matter of a sale of services to make, alter, repair, ornament, finish or adapt for sale the same. In this case, since the article concerned was used for social events (here, as the setting or facility for simulated skydiving to take place) and not for any industrial purpose, it was not machinery to which section 2(2) was intended to apply.

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25 [2010] 3 SLR 609 at [73].

26 (1938) 61 CLR 337.

27 [2010] 3 SLR 609 at [73].

28 See Philip Ayres, *Owen Dixon* (Melbourne: The Meigunyah Press, 2003) at 93.

29 (Kuala Lumpur: Malayan Union Government Press, 1947) (and popularly referred to as "the *Heasman Report*"). This was also a point noted by Ooi, *supra* note 24 at 427.

30 [2011] 1 SLR 1044.

31 (Cap 134, 2008 Rev Ed); see now the Income Tax Act 1947 (2020 Rev Ed).

32 As well as the *Heasman Report* (*supra* note 29): see Ooi, *supra* note 24 at 427–428.

33 [2021] 2 SLR 116. And see Ooi, *supra* note 24 at 428–429.

34 See s 2(2) of the Property Tax Act (Cap 254, 2005 Rev Ed); see now the Property Tax Act 1960 (2020 Rev Ed).

35 See *ibid*.

A fifth decision (which was in fact the other (and second) decision considered in my previous article[36]) is that of the Singapore Court of Appeal in *ADP v ADQ*.[37] This particular case concerned an important point of Singapore law which had also not hitherto come before the Singapore courts for a definitive ruling. The main issue which arose was whether or not the Singapore courts had jurisdiction under sections 112 and 113 of the Singapore Women's Charter[38] to order, pursuant to the respective provisions, a division of matrimonial assets and maintenance in a *void* (as opposed to a *voidable*) marriage. In arriving at the conclusion that the Singapore courts did in fact have such jurisdiction, the court in the *ADP* case looked not only at the express language of the aforementioned provisions but also undertook a comprehensive (and historical) review of the relevant Singapore, Malaysian and English statutes as well as the historical origins of the distinction between void and voidable marriages in English law.

Finally (and the sixth decision considered in the present essay), it may be appropriate to refer to yet another Singapore Court of Appeal decision (this time in the context of the criminal law). This is the decision in *Public Prosecutor v Lam Leng Hung and others*.[39] In essence, the defendants were charged with having conspired to commit the aggravated offence of criminal breach of trust under section 409 of the Singapore Penal Code.[40] The main question of law before the court was whether, for the purposes of the aforesaid provision, the expression therein "in the way of his business … as an agent" referred only to a person who was a *professional* agent (*ie*, one who professed to offer his agency services to the community at large and from which he made is living) ***or*** referred more broadly so as to encompass persons such as directors and board members of corporations, charities and societies. The judgment delivered by the court was a lengthy one. It suffices for the purposes of the present essay to note that the court held that the abovementioned expression should be construed in the *former* (*ie*, narrower) sense. In arriving at this conclusion, the court relied not only upon the language and structure of section 409 of the Penal Code itself but also *the legislative history* of the provision. In this latter regard, the court examined – in granular detail – the relevant historical material (including relevant UK legislation as well as the relevant parliamentary debates and case law stretching back a further 50 years before the enactment of the Indian Penal Code (upon which the Singapore Penal Code was in fact based) as well as those relating to the passage of the Indian Penal Code itself).[41] Indeed, the court also referred to historical material (both legal as well as (significantly, particularly in the context of the present essay) extralegal[42]) which clearly established that there was already

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36 See Phang, *Some Reflections on Legal History*, *supra* note 1 at 18.

37 [2012] 2 SLR 143.

38 (Cap 353, 2009 Rev Ed); see now the Women's Charter 1961 (2020 Rev Ed).

39 [2018] 1 SLR 659.

40 (Cap 224, 2008 Rev Ed); see now the Penal Code 1871 (2020 Rev Ed).

41 See generally [2018] 1 SLR 659 at [170]–[219].

42 These included George Windsor Earl, *The Eastern Seas* (London: Wm H Allen and Co, 1837 (Oxford: Oxford University Press, Reprint, 1971)); Peter Drake, *Merchants, Bankers, Governors: British Enterprise in Singapore and Malaya 1786–1920* (Singapore: World Scientific, 2017); and an unpublished academic exercise by Loh Wen Fong, *Singapore Agency Houses: 1819–1900* (1958)

a recognised and distinct class of *professional* agents that existed[43] at the time the predecessor provisions of section 409 of the Singapore Penal Code were enacted.[44]

All this brings me, finally, to yet another aspect of legal history that does not, however, figure in the title of this essay – given the benefits of legal history as set out briefly above, in so far as ***legal education*** is concerned, a historical perspective is, as I have argued elsewhere, one of the essential qualities that helps a student become a "complete lawyer".[45] In this regard, the following observations bear repeating:[46]

> Put simply, such a lawyer must integrate the past, present and future into his or her repertoire of legal skills. The *present* involves a good understanding of the legal rules and principles which are essential to everyday legal practice. The *future* involves an at least minimal understanding of theory—with the concomitant ability to think as well as analyse *conceptually*—which ability transcends both space and time. Indeed, the *methodology* inherent in *legal theory* has helped the courts on many occasions in making connections which arid legal reasoning would never have permitted—for example, in seeing the connections between what appear to be disparate legal rules. And, in making such connections, we have managed to develop the law and (more importantly) achieve justice in the case at hand. However, the *past* is no less important. Consistent with the views just quoted, a sense of history and context is important in the practical sphere as well. Often, in the courts, knowing the precise historical origins of a particular legal rule helps us to understand and apply it to the facts before us. Indeed, the entire methodology of the common law itself is (as alluded to at the outset of this part of the paper) historical (or, put in simple terms, is *backward-looking*). For completeness, I should add that there is also a fourth attribute that binds all these qualities together is the integration of *character and ideals*. In my view, when you have both character and ideals, you will want to do the right thing—and will always find ways of doing the right thing.

Let us now turn to the present book proper.

III. Prologue – An Adventure into History

The author's mission in the present book is – at first blush – a deceptively simple one: to trace the history of marine insurance law through the relevant case law, culminating in the enactment of the Marine Insurance Act 1906[47] (which attempted to

(unpublished B.A. (Hons.) academic exercise, University of Malaya in Singapore, archived at the National University of Singapore).

43 These included mercantile agents such as factors, brokers and the like.

44 See generally [2018] 1 SLR 659 at [220]–[227].

45 See Phang, *Some Reflections on Legal History*, *supra* note 1 at 17.

46 *Ibid* [emphasis in original].

47 (c 41) (UK).

codify the legal principles embodied in the case law itself). As the author himself put it in the *Preface* to the book itself:[48]

> The initial intention of the author was to compare the old cases with the 1906 legislation and to produce a definitive analysis of how and where the 1906 Act operated as a less than perfect statement of the law.

He soon discovered that "the law was divisible into quite distinct eras".[49] Beginning in 1756,[50] the first was a period where the law was developed in the context of *war* – specifically, in relation to England's battles against her various enemies.[51] The result was a focus on "perils *on* the sea".[52] The second period (commencing after 1815) witnessed the development of the law in the context of "the expansion of trade in general and the British Empire in particular".[53] There was a resultant shift in focus from "perils on the sea" to "perils *of* the sea",[54] not least because the expansion of trade was accompanied by the development of "faster and more resilient vessels",[55] with the result that such vessels "were capable of inflicting as well as suffering loss, and the law of collision – both with other vessels and with docks and harbours – developed apace".[56] And it was precisely the aforementioned contexts that led the author to appreciate "that the development of legal principles could not be analysed context-free" and which (in turn) led him to have to consider "how much context was appropriate".[57] In this last-mentioned regard, the author was led to the decision that instead of examining the development of specific legal doctrines in marine insurance law on "a thematic, chapter by chapter, basis", the book would proceed on an historical trajectory; in his words:[58]

> It was a close call, but it was decided instead to divide the text into eras, characterised by external events to which the insurance market had to respond: origins; total war; comparative peace; neutrality in the wars of others; the move to free trade; and the development of empire.

With such an approach, an adventure into history was inevitable. And so began the author's own fascinating voyage that is chronicled in the present work.

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48 Rob Merkin KC, *Marine Insurance – A Legal History* (Cheltenham: Edward Elgar Publishing, 2021) vol 1 at xxiii [*Marine Insurance*].

49 *Marine Insurance*, vol 1 at xxiv.

50 Which marked the opening salvos of the Seven Years War which involved many European nations (amongst other events, including the appointment of Lord Mansfield as Chief Justice of England and the publication of William Blackstone's seminal four volume treatise, *Commentaries on The Laws of England*): see *Marine Insurance*, vol 1 at xxv–xxvi.

51 *Marine Insurance*, vol 1 at xxiv.

52 *Ibid* [emphasis added].

53 *Ibid*.

54 *Ibid* [emphasis added].

55 As a result of the shift, *inter alia*, from sail to steam as well as from wood to iron: see *ibid*.

56 *Ibid*.

57 *Ibid*.

58 *Marine Insurance*, vol 1 at xxv.

IV. Of Wars and Piracy – The History of Maritime Law as A Thing of Historical Beauty

We encounter the first main theme of the present essay immediately in the very first chapter of this work.[59] In just 100 pages, the author presents us with both a wonderfully readable as well as sweeping history of the law of the sea both before as well as during 1756 (which was, it will be recalled, the commencement of the Seven Years War[60]). Indeed, it is the historical backdrop that necessarily takes centrestage. For many of us, the history of England begins and ends with William the Conqueror and the Battle of Hastings in 1066. In this chapter, the author furnishes us with a much richer historical tapestry. The event just mentioned does, of course, figure in the overall historical narrative but Professor Merkin takes us both before and beyond. It is, if I may say so, a veritable thing of beauty. Put simply, it was a joy to simply sit back and take in the detail as well as overall beauty of the historical narrative. Although the reader has obviously to read the book in order to truly *experience* such (historical) ***beauty***, a couple of illustrations may be given here. Take, for example, the following – and fascinating – description of naval tactics then:[61]

> Naval tactics were crude, and actual fighting was conducted as if it had been on land, albeit in a confined space and with no calvary. Ships were troop carriers, with fighting conducted not by the crew but by the forces on board. Archers would soften up the troops on enemy vessels, followed by grappling, boarding and hand-to-hand fighting.

Interesting accounts are also given of the importance of vessel-type in naval warfare; the author tells us, for example, that "[t]he Spanish, using the advantage of the height of their vessels, employed, with much success, the tactic of throwing iron bars into the English vessels alongside them".[62] Another example consists in his vivid description of the development of the capacity of the vessels to wage war more effectively (including the use of cannons with the invention of gunpowder, thus replacing the cruder hand-to-hand fighting that has just been referred to above).[63]

There was, in fact, a potential danger that the beauty of the historical narrative would distract from the other – and simultaneous – function which the chapter is intended to serve, but Professor Merkin has ensured that this would never be the case. He is always cognisant of the relevance of the historical narrative to the key elements that contribute to the legal history of the law of marine insurance, placing just the right emphasis on specific historical events.[64] As already alluded to above, the author is concerned primarily with resources and power in the context of naval warfare – in particular, between (albeit not limited to) England and France. He

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59 Ch 1, entitled "The Framework of the Law of the Sea".

60 See also *supra* note 50 as well as the accompanying main text to that note.

61 *Marine Insurance*, vol 1 at 8.

62 *Ibid*.

63 *Marine Insurance*, vol 1 at 10.

64 For example, he does not deal excessively with the civil war on land between the Lancastrian and Yorkist claimants to the throne in the War of the Roses (fought between 1455 and 1487): see *Marine Insurance*, vol 1 at 9.

traces expertly the ebb and flow of such resources and power in relation to the various kings of the aforementioned nations. As just mentioned, despite the enormous amount of historical detail, Professor Merkin never loses sight of the larger picture and, therefore, describes (at the outset of the very first chapter) the three key influences behind the development of maritime might, *viz*, defence, trade and Empire, respectively.[65] All this is elaborated upon in meticulous detail in the present chapter – at all times being interwoven with the relevant case law as well as legislation[66] and the relevant institutions (in particular, the High Court of Admiralty but also the Cinque Ports[67]). It should be noted that the author also devotes a whole part of the chapter to the law relating to piracy[68] as well as another to prize law.[69]

Although Professor Merkin notes in his *Preface* that he had "relied heavily on the multiple volumes constituting the *Oxford History of England* and the *Cambridge Modern History*",[70] an even cursory glance at the footnotes in the present chapter reveals the immense amount of historical literature[71] that he had ploughed through in order to assemble it into the seamless and eminently readable narrative we now have before us.[72] Of particular interest to lawyers, perhaps, is the reference at footnote 27 of this first chapter to Lord Sumption's four volumes of his ongoing[73] (and magisterial) historical account of the Hundred Years War.[74] In addition to being a brilliant lawyer as well as Law Lord, Lord Sumption was of course an equally brilliant historian (who taught medieval history at Oxford University before embarking on his stellar career in the law).

V. The State of Marine Insurance in 1756

Having set out the general historical framework in the first chapter, Professor Merkin then proceeds to delve into the particulars of the subject matter of the book proper – commencing with an account of the state of marine insurance in 1756 itself.[75] It bears reminding the reader at this particular juncture that 1756 not only marks (in

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65 *Marine Insurance*, vol 1 at 2–3.

66 In particular, the Navigation Acts as well as legislation in relation to merchant seamen (although, in the latter respect, the accepted practice on trading vessels as recognised by the courts already provided the necessary legal coverage). Also of great importance was legislation regulating the navy.

67 See generally *Marine Insurance*, vol 1 at 55–68. The Cinque Ports were located on the Kent and Sussex coast.

68 See generally *Marine Insurance*, vol 1 at 68–77.

69 And the Prize Court, as well as "privateers" who were authorised to engage in economic war on the seas as well: see generally *Marine Insurance*, vol 1 at 77–100.

70 *Marine Insurance*, vol 1 at xxvii.

71 Both legal as well as extralegal.

72 Indeed, ch 1 alone contains 847 footnotes. One reviewer goes further and informs us that this work as a whole contains 7,585 footnotes! (see Martin Davies, Book Review: *Marine Insurance: A Legal History* [2021] LMCLQ 695 at 695).

73 There will ultimately be five volumes in this magnificent (and meticulously chronicled) series.

74 Which lasted from 1337 to 1453.

75 Ch 2, entitled "Marine Insurance in 1756".

the main[76]) the commencement of the Seven Years War but also constitutes the formal starting-point of the present book itself.

The second chapter itself continues the fascinating historical approach that was so evident in the first – this time in relation to the very (and more specific) origins of marine insurance itself (which was used together with other devices, such as bottomry bonds[77]). Moving from the insurance market[78] as well as a description of the earliest insurance disputes,[79] insurers,[80] and the then uncertain state of the law,[81] Professor Merkin then proceeds to consider the prevailing law in relation to what constituted an insurable interest – both at common law as well as pursuant to the Marine Insurance Act 1745.[82] He observes that the latter was far from comprehensive,[83] and was later supplemented by the Marine Insurance Act 1906.[84] The author then considers the law relating to coverage of marine policies,[85] before dealing with the extremely important topic relating to the growth of insurance law doctrines.[86] I found this last-mentioned part of the chapter particularly fascinating – especially as it furnished a unique historical insight into the earliest cases that were the respective starting-points for many of the doctrines in insurance law that we otherwise take for granted today. This second chapter then concludes with an examination of shipowner liabilities.[87]

VI. Scholarship, History and The Development of The Law of Marine Insurance (I) – 1756 To 1815

What follows in the subsequent chapters is ***scholarship*** of the first rank – the largely chronological analysis of how the law of marine insurance developed from 1756 onwards (and in the first instance, in relation to the aforementioned "perils *on* the sea",[88] during the period from 1756 to 1815), which was effected in tandem with the relevant historical context and circumstances. Whilst it is true that, at many points,

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[76] *Cf supra* note 50.

[77] Which "were a hybrid of loan and insurance, the lender bearing the risk of loss": see *Marine Insurance*, vol 1 at 104.

[78] Where he also describes the various classes of insurance: see *Marine Insurance*, vol 1 at 105–106.

[79] The earliest known claim was apparently filed in 1524 in the Court of Admiralty: see *Marine Insurance*, vol 1 at 106.

[80] *Marine Insurance*, vol 1 at 108–109 and (especially) 113–116 (documenting the emergence and growth of Lloyd's).

[81] Which was heavily influenced by the relevant Continental jurisprudence: see generally *Marine Insurance*, vol 1 at 116–117.

[82] (c 37) (UK); and see generally *Marine Insurance*, vol 1 at 117–124.

[83] *Marine Insurance*, vol 1 at 122.

[84] (c 41) (UK); and see *Marine Insurance*, vol 1 at 124.

[85] *Marine Insurance*, vol 1 at 124–131.

[86] Including non-disclosure and misrepresentation; warranties; illegal insurances; loss, salvage and indemnity; subrogation; as well as insurance frauds: see generally *Marine Insurance*, vol 1 at 131–142.

[87] Including wreck and wreckers; rescuers and salvage rights (a unique development under maritime law in the absence of the conferral of any reward at common law); as well as other relevant liabilities (for damage to, or short delivery of, cargo as well as for damage caused by collision): see generally *Marine Insurance*, vol 1 at 142–146.

[88] See the main text to *supra* notes 50 to 52.

the latter still remains a thing of beauty, the extralegal historical narrative serves a much more practical function inasmuch as it is utilised more as a foil to help the reader to understand how (and at what rate) the relevant law had to be developed – in particular, prize law[89] (which is, of course, not surprising in view of the then historical backdrop during the first main period that related to trade in the context of *conflict and war*, literally, it should be added, across the globe). It bears noting that the extralegal historical narrative remains both informative as well as fascinating: we are, for example, brought through the American War of Independence as well as the War Against Napoleon. Put simply, scholarship and the beauty referred to earlier in this essay interact in a very seamless (even organic) fashion in these various chapters. At this juncture, I should state that – on a personal note (and I should add from the perspective of a total non-expert in the field) – I nevertheless found that part of the book on the law relating to *neutrality* of special interest.[90]

Although, as already mentioned, the historical narrative was interwoven with an account of the relevant legal developments, the author does pause (after a further three chapters[91]) to collect (in the sixth chapter) the expressly *legal* threads together (in historical context of course, and having set out the relevant historical contexts in some detail in the three preceding chapters).[92] In this regard, it is interesting to note the author's observations that, by 1756 itself, "there were only a dozen or so important decisions on marine insurance";[93] he proceeds to add that:[94]

> Contemporary English texts were largely commentaries on continental law and practice, although two in particular – *Park on Marine Insurance* (1786) and *Marshall's Treatise on the Law of Insurance* (1802) – later proved to be influential for their analysis of decided cases, for their collation of otherwise unrecorded or poorly recorded decisions and for their discussion of Continental practice. Those texts in particular give important insights into what was and was not thought significant at the time, and just how much remained uncertain. The accepted tradition was that an author was not treated as an 'authority' until his passing, so judgments themselves make only rare references to these texts although they feature heavily in the arguments… The years 1756–1815 constituted the formative period for marine insurance. Some 700 cases were reported, and numerous others were referred to in those judgments as well as in Park and Marshall. A number of those cases are cited on a regular basis by today's

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89 Reference may be made, especially, to the various Prize Acts; the Rule of 1756 (which converted into enemy vessels any neutral vessels entering ports closed to Britain); as well as the doctrine of continuous voyage (which evaded the prohibition on neutral trading via transhipment in a neutral port onto a neutral vessel). Of interest, too (in relation to other contexts), were the various Navigation Acts; the procedure that was applied in relation to the capture of enemy property; as well as the development of the law relating to blockades.

90 Together with the exception relating to contraband of war as well as how neutrality could be lost: see generally *Marine Insurance*, vol 1 at 258–268 and at 335–342 (the latter in relation to the legal implications of neutrality in the context of American trade and relations between 1783 and 1815).

91 See ch 3, entitled "War, Diplomacy and the Americas: 1756 to 1783; ch 4, entitled "Perils on the Seas: 1783 to 1815"; and ch 5, entitled "Anglo-American Trade and Relations: 1783 to 1815".

92 See ch 6, entitled "Marine Insurance in An Era of War: 1756 to 1815 I".

93 *Marine Insurance*, vol 1 at 378.

94 *Marine Insurance*, vol 1 at 378–379.

> lawyers. The reasons for this boom were obvious. Some were based on the market: the development of Lloyd's since 1720 had provided a focus for merchants who wished to insure; policy wordings had become more or less standardised, as had insuring procedures through the use of brokers; the London market had become international; the underwriters developed greater skill in assessing risks. Others reflected the times: piracy and war had been constant for a millennium, but the present era produced a new intensity where merchant shipping faced almost unprecedented hazards; the Seven Years War was the most widespread and ferocious yet known; trade with the Indies and the Americas had expanded, but British protectionism had caused the revolt of the American colonies; the French Wars had led to blockades and embargoes on an unprecedented scale; and the 1812–1814 War had turned American privateering over British vessels into a national pastime. Policies began to exclude capture and seizure, and where such risks were insured there were warranties as to neutrality and possession of documentation proving neutrality. Vessels sailed only in convoys, thereby giving rise to questions as to the consequences of missing a convoy rendezvous or becoming separated. Embargoes and blockades were in constant operation. The history of marine insurance in the formative period covered by this chapter is largely that of market responses to war at sea.

I have quoted the author at length to demonstrate not only his hitherto mastery of the historical detail but also the ability to translate (or, more accurately, summarise) what had gone on in the preceding *200 pages* or so in approximately a page of text. This latter ability not only bears *true* testimony to his mastery of the historical material but also serves both as an *aide-mémoire* for the diligent reader and as an excellent summary for the reader in a terrible hurry who has not the time to savour the full beauty and historical flavour of the preceding chapters. On a more general level, the ability of the author to skilfully modulate the pace of his writing is, in my view at least, exemplary.

To return to this (sixth) chapter, it is hitherto the most "legal" of all the chapters. It also repays close reading. In particular, Professor Merkin's description of the insurance market (including, not surprisingly, the development of Lloyd's) is a fascinating as well as informative one – as is his examination of the concept of insurable interest pursuant to the Marine Insurance Acts (and their interaction with the common law). In this last-mentioned regard, insurance lawyers and students of insurance law will be particularly fascinated by the author's masterful analysis of the leading decision in *Lucena v Craufurd* (which in fact constituted a series of at least six related proceedings[95]).

The important doctrine of good faith and fair presentation of the risk forms the next main part of this chapter – with (not surprisingly) an in-depth description as

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[95] (1802) 3 Bos & Pul 75, (1806) 2 Bos & Pul NR 269, (1808) 1 Taunt 325; and see generally *Marine Insurance*, vol 1 at 400–408.

well as analysis of the leading (and well-known[96]) decision in *Carter v Boehm*[97] (which was only recently superseded by the Insurance Act 2015[98]).

The final main part of the chapter deals with the equally important doctrine of insurance warranties.[99]

In the following chapter,[100] the author continues to draw the legal threads together in a substantial chapter that deals with the other substantive doctrines in the law of marine insurance during the period between 1756 and 1815 (which, it will be recalled, is the first of the two major periods considered by the author in the present work). These include the law relating to illegality, the voyage, insured and excluded perils, the free of capture and seizure warranty, the meaning of loss, the measure of indemnity, brokers, other marine insurance principles, as well as shipowner liabilities (in this last-mentioned regard, including salvage, general average, charterparties and cargo, collision and limitation). It is noteworthy that, at this particular juncture in the present work, insurance lawyers would probably feel that they had arrived in familiar territory, so to speak.

VII. Scholarship, History and The Development of The Law of Marine Insurance (II) – 1815 To 1875

In the *second* volume of this work, Professor Merkin deals with the *second* major period, *viz*, from 1815, and culminating in the enactment of the Marine Insurance Act 1906.[101] It will be recalled that this second period marked a shift from "perils *on* the sea" (in the context of *war*) to "perils *of* the sea" (in the context of *trade*).[102]

As was the case with the first major period (from 1756 to 1815), Professor Merkin similarly paints a rich historical tapestry with respect to the second major period (from 1815 to 1906). It is obvious that conflict has since shifted and morphed into trade and, in the very first chapter (the eighth overall[103]), the author explores, amongst other things, freedom of trade (that also resulted in the repeal of the Navigation Acts). However, the spectre of war was not wholly dispelled – as the Crimean War demonstrated.[104] True peace was, nevertheless, on the horizon and is the subject of the next chapter (and the ninth overall, covering the specific period between 1815 and 1861[105]). In this chapter, the author first explores the insurance market generally before delving into the development of (as was the case in the previous chapter and by logical extension therefrom) the various aspects of the law

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96 It figures, for example, in the law of contracts *uberrimae fidei* (which constitute an exception to the duty of disclosure under the law of misrepresentation); and see generally, *eg*, Edwin Peel, *Treitel's Law of Contract*, 15th ed (London: Thomson Reuters, 2020) at 491–494.

97 (1766) 3 Burr 1905; and see generally *Marine Insurance*, vol 1 at 414–419.

98 (c 4) (UK).

99 *Marine Insurance*, vol 1 at 426–447.

100 Ch 7, entitled "Marine Insurance in an Era of War: 1756 to 1815 II".

101 (c 41) (UK).

102 See also the main text to *supra* notes 49 to 56.

103 Ch 8, entitled "Trade and Diplomacy After 1815".

104 *Marine Insurance*, vol 2 at 34–55. *Cf* also the author's very first footnote in the next chapter at 60, note 1.

105 Ch 9, entitled "Marine Insurance in An Era of Peace: 1815 to 1861".

– including that relating to insurable interest, good faith and fair presentation of the risk, warranties, illegality, the voyage, insured perils, loss and indemnity, brokers, return of premium, insurance fraud, as well as legal liability insurance (including, in this last-mentioned regard, wreck, salvage, general average, cargo claims, crew claims, collision liability, legislation regulating the construction and operation of harbours, docks and piers, as well as limitation).

The next chapter (the tenth overall) was, for me at least, one of the most interesting and fascinating in the book – dealing with slavery and slave trade.[106] Literally thousands of books have been written about slavery. However, for anyone desiring a simple – albeit not simplistic – history of slavery, they can do no better than to read this fascinating chapter. In just under 80 pages, the reader is provided with a surprisingly nuanced history of slavery not only in England and the United States but also across the globe as well.[107] This is a unique "book within a book" – an unexpected bonus for the reader. Although slaves were insured, it is the story of the abolition of the slave trade that takes centrestage in the present chapter (with the central focus, not surprisingly, being on the abolition of the same in England and the United States).

Professor Merkin continues his brilliant historical survey with a survey – in the next (and eleventh) chapter – of the impact of the American Civil War upon British trade.[108] As with the preceding chapter, this chapter also constitutes a unique "book within a book" – and is recommended highly for those who desire a succinct account of the American Civil War (albeit, here, more within the context of economics as well as that pertaining to British neutrality). The next (and twelfth) chapter continues the historical survey as well as narrative, focusing on the Confederate navy.[109] Interestingly, major Confederate vessels were in fact built in Britain (including as far north as Scotland) – much to the chagrin of the Union. As the author states, "[t]he most notorious and dangerous of the Confederate cruisers was the *Alabama*".[110] Indeed, in the aftermath of the American Civil War came the *Alabama* Arbitration (as well as its own aftermath, in particular, the various international conventions that ensued) – which constitutes, in fact, the subject matter of the next (and thirteenth chapter).[111] The reader is also given a fascinating insight into arbitration in an early as well as international context; indeed, this particular chapter would, for this very reason, be of special interest to those interested in arbitration.

The next chapter (fourteen) brings us further into the future – dealing with the development of marine insurance in the specific period between 1861 and 1875.[112] The author continues to trace the development of marine insurance law in all its crucial aspects (as last considered in the ninth chapter[113]); not surprisingly, he adopts – for clarity of exposition – a very similar structure of topics. Not surprisingly too, however, there are also differences – not least because the law of marine

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[106] Ch 10, entitled "Slavery and the Slave Trade".

[107] Indeed, an interesting snippet of information (amongst the veritable wealth of information contained in this chapter) is that Denmark was the first nation to abolish the slave trade.

[108] Ch 11, entitled "The American Civil War and British Neutrality".

[109] Ch 12, entitled "The Confederate Cruisers".

[110] *Marine Insurance*, vol 2 at 361; and see generally at 361–381.

[111] Ch 13, entitled "The *Alabama* Arbitration".

[112] Ch 14, entitled "Marine Insurance in An Era of Neutrality: 1861 to 1875".

[113] Ch 9, entitled "Marine Insurance in An Era of Peace: 1815 to 1861".

insurance has obviously developed further since the previous period (between 1815 and 1861). For example, the heading of "Good Faith and Fair Presentation of Risk" in the ninth chapter is now renamed as "Utmost Good Faith". There are also new topics – for example, there is a new section on the suing and labouring clause[114] and (perhaps most importantly) subrogation.[115]

Chapter 15 surveys the state of the British Empire as a whole.[116] It was a vast Empire indeed, and, after some general background in the initial part of this chapter, the author takes us round the globe – from Canada to Africa to South Asia and China as well as to the antipodes.

VIII. Scholarship, History, Function and The Development of The Law of Marine Insurance (III) – 1875 To 1906

The penultimate chapter (Chapter 16) then proceeds to another (and final) era – the specific period between 1875 and 1906 (the latter date of which marks the enactment of the Marine Insurance Act 1906[117]).[118] As with the ninth and fourteenth chapters, this chapter sets out the various salient topics in relation to the law of marine insurance during this specific period leading up to the enactment of the 1906 Act. This is a particularly important chapter as the legal rules and principles contained therein (including the relevant provisions of related legislation[119]) constitute the legal backdrop as well as substantive law which was later codified in the 1906 Act. The chapter itself is extremely scholarly and, of course, its practical ***function*** is obvious. And this is *a fortiori* the case for the final chapter (Chapter 17) which is appropriately – and simply – entitled "The Marine Insurance Act 1906".

Indeed the final chapter itself is divided into two main parts. The first chronicles the *passing* of the Marine Insurance Act 1906,[120] whilst the second sets out the *content* of that Act. Interestingly, the draftsman of the Act was none other than Sir Mackenzie Chalmers, who was also the draftsman of the Bills of Exchange Act 1882[121] and the Sale of Goods Act 1893.[122] He was supported in this particular legislative endeavour by Farrer Herschell QC (better known as Lord Herschell, who was Solicitor General and also Lord Chancellor for two terms, in 1886 and from

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114 *Marine Insurance*, vol 2 at 582–586.

115 *Marine Insurance*, vol 2 at 587–597. And in so far as the doctrine of subrogation is concerned, see also Prof Rob Merkin KC & Aybüke Naz Durmuş, *Subrogation and Maritime Claims*, National University of Singapore Centre for Maritime Law Working Paper 22/06 (25 October 2022) <https://law.nus.edu.sg/cml/wp-content/uploads/sites/8/2022/10/CML-WPS-2206.pdf> (This working paper is an extended version of the speech delivered by Professor Merkin at the Singapore Shipping Law Forum 2022 hosted by the Centre for Maritime Law, National University of Singapore, and held in Singapore on 20 October 2022, and forthcoming in the *Singapore Academy of Law Journal*).

116 Ch 15, entitled "Consolidating the Empire".

117 (c 41) (UK).

118 Ch 16, entitled "Marine Insurance in An Era of Empire: 1875 to 1906".

119 Of these the Merchant Shipping Act 1894 (c 60) (UK) appears to have been the most significant.

120 (c 41) (UK).

121 (c 61) (UK).

122 (c 71) (UK).

1892 to 1895). Professor Merkin notes that the entire legislative process "took over 12 years to bring to a conclusion" and that "[t]he progress of the Bill was impeded for the most part by the surrounding political circumstances" (which included the running out of parliamentary time as well as the three general elections that were held during this period).[123] The learned author notes that "[a]s a result, there was a series of drafts of the Bill, although there were relatively few changes made in its lengthy gestation period".[124] He proceeds to note that:[125]

> Unfortunately, the reports of the committees discussing the Bill have not been preserved for posterity, although it is possible to trace the changes made to the Bill from its various versions, which are fortunately still available in the House of Lords' library.

The story of the passage of the 1906 Act through Parliament is an interesting – and, indeed, fascinating – one, as is the author's postscript:[126]

> By way of postscript, this was Chalmers' last major effort at drafting English legislation.[127] He spent the years 1896–1899 in India as a member of the Viceroy's Council, assisting with the drafting of a code of criminal procedure. In 1902 he became assistant parliamentary counsel, and the following year permanent under-secretary for the Home Office. He received his knighthood in 1906[128] and retired in 1908, although continued to play an active role in diplomacy. He died on 22 December 1927. Lord Herschell passed away on 1 March 1899, destined never to see the Marine Insurance Bill reach the statute book. Herschell's role was nevertheless integral, both in encouraging Chalmers' efforts and in bringing the measure before Parliament. Fittingly a judgment delivered by him in 1891, *Bank of England v Vagliano Brothers*,[129] on the proper interpretation of the Bills of Exchange Act 1882 has subsequently been widely cited as directly applicable to the Marine Insurance Act 1906.

Professor Merkin then sets out the actual text of the Act, with each provision being accompanied by scholarly commentary that is at once both practical and functional whilst (where relevant as well as consistent with the entire approach underlying the present work) drawing simultaneously upon the relevant historical context. It is a fitting conclusion to a fascinating and thoroughly absorbing account of the history of marine insurance stretching across one and a half centuries.

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123 *Marine Insurance*, vol 2 at 767.
124 *Ibid*.
125 *Ibid*.
126 *Marine Insurance*, vol 2 at 772.
127 See also *supra* notes 120 and 121.
128 Significantly, perhaps, the year the Marine Insurance Act 1906 (c 41) (UK) was enacted.
129 [1891] AC 107.

IX. Concluding Thoughts

It is not irrelevant in the least to note that I am not a typical reviewer. I have no knowledge whatsoever of marine insurance. What, then, prompted me to not only review this book but also embark upon a more extensive review essay? Indeed, to the best of my knowledge, all of the other reviewers of this work are experts in the field (I should add that they have all also given glowing reviews of this book (which, as this essay itself demonstrates, is not surprising in the least)[130]).

It is important to note at the outset that I am extremely interested in legal history in all its various forms, although I do not claim (and have never claimed) to be a legal historian.[131] It was, in fact, that interest that prompted me to look at this work more closely and it did not take me long to realise that there was something in it that transcended marine insurance. And I was correct on at least two counts.

First, as I have already sought to demonstrate above, this is more than an arid and didactic history of the law of marine insurance. It is rich in historical detail and narrative. Indeed, as I have observed, there are even a couple of chapters that are "books within books"[132] and worth, as they say, the price of admission in and of themselves.

Secondly (and on a closely related note), this is an occasion to not only affirm the benefits of legal history that I had already referred to elsewhere[133] but also to discover a new one altogether – what I have referred to as the *beauty* (in and of itself) of legal history.[134]

Perhaps the beauty, scholarship and function of this brilliant work is best summarised by Dame Sara Cockerill, Judge of the Commercial Court, in her *Foreword* to the book (which, in my view, bears extensive quotation as follows):[135]

> Rob told me that he had written a history of marine insurance up to the 1906 Act, which had taken on a "slight life of its own' because the Act has holes and because it simply was not possible to explain some of the cases without setting out their context. That context, it turns out, translates into a fascinating, detailed and often revelatory legal (and sometimes social) history of trade, war and empire up to 1906. In reading it I have been both appalled and humbled by the amount of work which has gone into it. But I have been simply delighted to read it, for it fills in so many gaps in so many stories. In many ways this is a book that has been waiting to be written; that it has not been written before may be in part because its scope is so grand, but may well be much to do with the fact that the sources are legal cases, where most historians would not think to look.

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[130] See Davies, *supra* note 72; Peter MacDonald Eggers KC, Book Review: *Marine Insurance – A Legal History Volumes 1 and 2* (2022) 28 J Intl Maritime L; and Sinem Ogis, Book Review: *Marine Insurance: A Legal History Volumes I & II* (2023) 35 Intl J Maritime History 142. Reference may also be made to the observations by Dame Sara Cockerill, quoted below at *infra* note 135.

[131] See generally Phang, *Some Reflections on Legal History*, *supra* note 1 at 1.

[132] See the main text to *supra* notes 106 to 111.

[133] See generally Phang, *Some Reflections on Legal History*, *supra* note 1.

[134] Though *cf* Davies, *supra* note 72 at 696; though *cf* (in turn), by the same author, at 697 as well as Eggers, *supra* note 130 and Ogis, *supra* note 130.

[135] *Marine Insurance*, vol 1 at xxi–xxii.

> …
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> I do think that this book will be invaluable to students of marine insurance now, and will be cited to contextualise legal arguments in twenty-first century courts. Yes, of course it will be a joy to practitioners in the shipping and insurance worlds…
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> But it will also prove invaluable to anyone who loves the novels of Patrick O'Brian,[136] and wants to understand the legal basis of Letters of Marque, or the origins and workings of the Prize Court (as I did constantly when reading them). It will also be a great resource to (to give but two examples) those trying to understand either the history of colonialism or the workings of the East India Company. My sense, reading the book, was that into each chapter was condensed material which could have yielded a considerable general interest history book[137] – the story of the Confederate Cruisers not being the least among them. This would be one which Lord Bingham, author of the seminal article on the Alabama Claims Arbitration, would most assuredly have welcomed. And the book will, as Rob notes, make this rich vein of source material more accessible to other historians of the period. …
>
> Overall what Rob has produced is a book which will answer questions produced by cases, by other historical reading, and by general ponding on the state of the world. Whether reading for work, recreation or curiosity one is equally assured of education and interest.

I trust that in addition to furnishing the reader with a summary of this magisterial two-volume treatise, I have also managed to unpack as well as elaborate upon the various benefits of legal history as set out above. That this work could capture the attention as well as imagination of a non-expert in the field such as myself over almost 1,350 pages of text bears testimony to the excellence of the work. This is a book that deserves to be read not only by lawyers and students of marine insurance but also by anyone who is even remotely interested in legal and/or world history. In short, this is a brilliant and eminently readable work that will both inform as well as inspire.

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[136] Who was famous for his naval fiction (including *Master and Commander* (Philadelphia and New York: J B Lippincott Company, 1969)).

[137] See also the main text to *supra* notes 106 to 111.