CHAPTER II

WHETHER A MARITIME BELT CAN BE OCCUPIED AND HELD UNDER SOVEREIGNTY, AND IF SO, IN WHAT WAY IT MAY BE DONE

When, as the poet puts it, “a road was a thoroughfare for everybody, and there was a common use of all things,” we need not suppose that access to the seas was closed any more than to the land. Access to the land was open to everybody, in order that it might fall, as a reward of industry, to the possession of him who occupied it; as for access to the sea, we shall say that also has lain open for the same end, whether it is occupied by a private person or by a people.

Nothing was left “in medio” which could be held separately. Whether as a result of the occupation of the coast lands, the sea could be occupied, and if so, what part of it? The ancients said only the coast waters could be occupied; therefore no other part of the sea was held than the maritime belt adjacent to the land.

Nothing was left in medio which could be held separately; indeed, so great was the greed of primitive man and such his passion for possession that, to express it, we have the ancient fable that he aimed at heaven itself. We may not say, therefore, that the sea was spared. Moreover, he must be regarded as having occupied the sea, who came with that intent, with a single ship or more, into an unoccupied possession of it. But, as the beginnings of all things are very simple, when lands were occupied, only that sea can seem to have been occupied which washed upon those lands; for the ancients used to skirt only the shores, and did not venture further out “to intrust their frail bark to the boisterous sea.” Accordingly, when they entered into a maritime belt with the intention of having it as their own, for the sake of fishing, or transportation, or any other reason, they acquired control of it by possession; at least in our opinion they should be regarded as having acquired it.

1 [PSEUDO-SENeca, Octavia, ii. 402-403: “pervium cunctis iter, communis usus omnium rerum fuit.”]
2 [Cf. OVID, Amores, bk. iii, 8, ii. 49-51: “quid tibi cum pelago? terra contenta fuisses! qua licet, adfectas caelum quoque.”]
3 [HORACE, Odes, bk. i, 3, ii. 40-11.]

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Real ownership has been acquired if such shall have been the intention of those occupying and possessing the "res" in question.

But indeed since by the law of nations we do not recognize ownership without possession, we must examine how far the ownership of a maritime belt seems to have extended. I for my part say, in accordance with a passage of the Digest, that when part of an estate is possessed, the whole of it is possessed all the way to its boundary, provided that is the intent of the possessor; but if there is no definite boundary, and the part held is thus indefinite, there is no acquisition of possession. Here, however, if you look at the "boundless" sea, there was either no definite boundary at all, or at any rate it was unknown. Nay, if you cared to set down some such boundary, and were able to do so, we should have to consider that it was not a matter of the mere law of nations, as the Digest says.

Sovereignty over a maritime belt is not to be adduced from the Digest, and why. A "res" is held as a particular possession, only so far as it is truly possessed.

For according to that law, possession is not acquired, unless the entire ‘res’ in question is brought under the control of the man who wishes to possess it, as we said in the preceding chapter. And in fact by the mere law of nations that matter can not be explained in any other way; for otherwise each single individual would have occupied the universe.

Since, therefore, by the law of nations the lords of the lands can not rule the sea, except where they are in possession of it, and since when possession is lost, ownership also is lost, the situation requires us to go on and examine how far a people, or the ruler of a state into which individuals have united themselves, may seem to hold a maritime belt by perpetual possession; as for the outer seas, we shall treat of them later on. Of course, the literal consequence of what I have just maintained is that the sea should be understood as possessed only so far as it is navigated, and navigated perpetually. But who could navigate perpetually, and be always skirting the shores? Who could navigate with intent of ownership always, and always at the same interval from the land? That is hardly to be admitted, except in a very broad sense.

4L. 3, § 1, ff., De aquirenda vel amittenda possessione [=Dig., 41, 2, 3, § 1, which is an excerpt from PAULUS].
4 The above-mentioned l. 3, § 2.
4 The above-mentioned § 1.
In what way may possession of the sea be kept by continuous navigation? How far may its possession be recognized by reason of the control from the mainland? Possession seems to extend out so far in the sea as the sea can be held in subjection from the land.

I should think, therefore, that the possession of a maritime belt ought to be regarded as extending just as far as it can be held in subjection to the mainland; for in that way, although it is not navigated perpetually, still the possession acquired by law is properly defended and maintained; for there can be no question that he possesses a thing continuously who so holds it that another can not hold it against his will. Hence we do not concede ownership of a maritime belt any farther out than it can be ruled from the land, and yet we do concede it that far; for there can be no reason for saying that the sea which is under some one man's command and control is any less his than a ditch in his territory.

What sort of power, however, is to be understood in order to have the sea subject to the mainland, is a matter hard to define, because of the danger of the logical sophism which the Greeks call \( \Sigma \varphi \iota \iota \rho \iota \iota \nu \tau \); the smallest is not enough, and of course we do not require the greatest, but a power which can be perceived by the intellect rather than unfolded in words, as Julian\(^7\) once said of such things as have no definite limit. Hence you may see that the early jurists who ventured to recognize dominion over a maritime belt wander about in great uncertainty in regulating its limits.

The precise distance from land that dominion over a maritime belt may seem to extend is a hard question to answer.

Some authorities extend it to a hundred miles, some to sixty; for both classes see Bodin,\(^8\) Selden,\(^9\) and, to add him also, Pacius.\(^10\) Some extend it to a two days' voyage, as you may learn, if it is worth while, from Hieronymus of Brescia.\(^11\) Others again set various other limits; for these see Gryphiander.\(^12\) But no one could easily approve the reasoning on which all these rules are based, or that reasoning either by which it is accepted that dominion over the sea extends as far as the eye can reach.

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\(^7\) L. 13, \( \beta \), \( \text{De relationibus} \) [=Dig., 46, 3, 13].
\(^8\) \( \text{De re publica} \), bk. 1, ch. 10 [p. 267 in the 1609 edition].
\(^9\) \( \text{Mare clausum} \), bk. 1, ch. 22.
\(^10\) In his disquisition \( \text{De dominio maris Hadriatici} \), p. 22 in my copy [1663 edition?].
\(^11\) \( \text{De insultis} \), ch. 7, no. 12 and 13.
\(^12\) \( \text{De insultis} \), ch. 14, no. 20 et seqq. [In no. 22 mention is made of \( \text{Hieronymus de Monte} \), ch. 7, no. 13.]
The early legal authorities differed very widely in this matter. Philip II, King of the Spains, in the Nautical Laws given to the Netherlands in 1563 had no more fixed rule. The opinion that a maritime belt extends as far as one can see from the land is neither a fixed nor a just one.

And yet this seems to be also the way it is defined by Philip II, King of the Spains, in the Nautical Laws, which he gave to the Netherlanders on the last day of October, 1563; for there foreigners are forbidden to attack their enemies within sight of the land. It is settled, therefore, that the subject sea extends that far. But this also is too loose and variable a rule, or at any rate it is not very definite. For does he mean the longest possible distance a man can see from the land, and that from any land whatever, from a shore, from a citadel, from a city? As far as a man can see with the naked eye? or with the recently invented telescope? As far as the ordinary man can see, or he that has sharp eye-sight? Surely not as far as the keenest of sight can see, for in the ancient writers we are told of people who could see all the way from Sicily to Carthage. And so this rule also is wavering and indefinite.

The power of the land properly ends where the force of arms ends. Therefore the sea can be considered subject as far as the range of cannon extends. This interpretation seems to have been used by the Estates of the Belgic Confederation in their decree of January 3, 1671, which is considered and praised.

Wherefore on the whole it seems a better rule that the control of the land [over the sea] extends as far as cannon will carry; for that is as far as we seem to have both command and possession. I am speaking, however, of our own times, in which we use those engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men’s weapons ends; for it is this, as we have said, that guarantees possession. This seems to have been the opinion followed by the Estates of the Belgic Confederation who decreed on the third of January, 1671, that the commanders of vessels off the coast of foreign princes should salute at sea as far out as cannon will carry from their cities and forts, according as the prince of the shore in question might prescribe; as for his caring to return the salute, that must be left to him to decide.

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13 Tit. 1, § 27.
14 [Cf. PLINY, Natural History, bk. vii, ch. 21, § 85: “solitum autem Punico bello a Lilybaeo Sicilliae promontorio, exeunte classe e Carthaginis portu, etiam numerum navium dicere.”]
And they said further that every man is an absolute lord in his own domain, and every foreigner subject unto him. And they were right, in my judgment, though other princes have been wrong in this particular matter. But of these we shall have something to say, after we have discussed the occupation of the outer sea.\footnote{[See end of Chapter IV, below, pp. 58-59.]}