

The Discovery of Islands and Pirates

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Introduction

Struggles for territory often underlie the history of mankind. Territorial disputes develop into wars, which end with the conclusion of peace treaties. With few exceptions, peace treaties include clauses of territory.

As titles to acquire national territory, leading books of international law usually cite six methods: discovery, cession, annexation, prior occupation, conquest, and prescription. In fact, until the first half of the 16th century, scholars stood for discovery as a complete title to territory, but later it was believed that discovery was just an inchoate title and that this title needed to be completed by effective prior occupation within a reasonable time.

It is said that in the Middle Ages, the size of feudal lords' territory was determined according to their power. As years go by, such a way of thinking seemed to lay the foundation for overseas expansion in the Age of Exploration.

“The discovery of America and that of the passage to East India via the Cape of Good Hope are two of the greatest and most important events recorded in the history of mankind.” This is the famous remark made by Adam Smith¹ (1723-1790), and it would be safe to say that these two discoveries, in other words, the discovery of the American continents and that of the passage to India, led to the development of world history to the present day with Western Europe as its center.

Why, then, are they called “discovery”? Discovery requires something unknown. It was the Europeans that they were unknown to, and they might not have been unknown to native Americans and Indians. Until the 15th century, the Europeans did not know regions other than Europe, nor did they show any interest therein. Formerly, this period was often called the “Age of Discovery,” but objections were raised to the discovery of America by Christopher Columbus, and today, it is called

¹ “The Wealth of Nations III” by Adam Smith, translation supervised by Kazuo Okouchi, Chuokoron-Shinsha, 2010, p. 227.

not “discovery” but “encounter” and the “Age of Exploration.”

Even in the 20th century, there are cases in which the acquisition of territory through discovery was mentioned in international arbitral awards, and therefore, discovery is not necessarily an issue of the past. This article sheds light on the act of discovering islands and examines what effects discovery had on the world in subsequent years with focus on the remarkable activities of pirates in particular.

1. Individuals and States in the Middle Ages

The so-called feudal system dominated medieval Europe, and its society was a feudal one. The characteristics of medieval feudal society are, for example, summarized by Akihiko Tanaka as follows²:

One of the characteristics is the diversity of entities. Medieval Europe consisted of various entities, including the Pope, Holy Roman Emperor, kings, and feudal lords, as well as networks of entities. No sovereign state existed there. Another is the complexity of relationships among such entities; since there were various entities, the relationships among the entities naturally got complicated. For this reason, there was no uniformity of relationships among states as found today. Still another is the liquidity of relationships between territory and entities, and the distinction between territory and land was ambiguous, and the boundaries of territory and land were frequently changed through inheritance and marriage. There was no exclusivity of territory as found today. Last is the ambiguity of whether a particular tract of land was inside or outside the territory of a particular entity. It was not clear how far the territory of a particular entity stretched and where that of another began.

Incidentally, it is said that it was not individuals but groups that were important in medieval society. In the medieval period, individuals were grasped in the networks of dependence, obedience, and solidarity, and these networks connected individuals to each other and subordinated individuals to men in power and groups such as families³.

Vengeance as a countermeasure against an illegal act committed by another group had been known since ancient times, but individuals could not do anything. In medieval feudal society, the relief institution was complemented by groups that shared the same blood relationships, and groups with strong family feelings responded to illegal acts by personal revenge or blood feud. Bonds of blood among family groups or blood relatives displayed their power particularly in vengeance, and in feudal days, people lived under the banner of personal revenge⁴. Personal revenge was the most sacred duty

2 “The New Middle Ages: The World System in the 21st Century” by Akihiko Tanaka, *Nikkei Shinbun*, 1996, pp. 169–171.

3 Refer to “Dictionnaire de la société médiévale Européenne” by A. Gerhards, translated by Kenji Ikeda, Fujiwara Shoten, 1991, pp. 127-128.

4 Refer to “Feudal Society I” by Marc Bloch, translation supervised by Yozo Horigome, Iwanami Shoten, 1995, pp.

of individuals.

In those days, piracy was criticized, but on the other hand, pillage was widespread, causing damage to not only the property of individuals but also their body. Battles were considered economic acts to plunder, and in low-productivity society, plundering the property of others was more efficient than producing something on one's own⁵.

Pirates were said to be the enemy of mankind, but when did they start to be described as such? In ancient times, Greek myths depicted piracy as an act of pillage performed by heroes who were loved and empowered by gods as they made a show of military force. Such an act was described not as a shameful misdeed but as an episode that demonstrated the absolute power of gods.

It was natural that people armed their ships when they planned to meet and trade with unknown people or traveled to the unknown world beyond the uncharted sea, but as the functions of ships improved, ships that aimed at personal revenge often became rapidly merchant ships, and in practice, the distinction between such ships and pirates became ambiguous.

In ancient Roman times, this view changed completely, and Marcus T. Cicero (106-43 BC) condemned pirates as the enemy of all mankind. And in the medieval period, groups of pirates started to appear in northern Africa and Scandinavia around the 13th century. They attacked and destroyed merchant ships, and as they repeatedly plundered them, they came to be hated. In those days, when the power of states was not unified enough, the rampancy of pirates was conspicuous⁶. Therefore, navigation taxes were imposed in compensation for maintaining the safety of navigation in sea areas by cracking down pirates, or codes of etiquette were forced as a means of distinguishing commercial ships and pirate ones.

Toward the end of the medieval period, in order to protect the honor of their ships, crowned heads such as kings came to issue permits. This was the so-called privateering licenses issued by monarchs. Such licenses somewhat legalized personal revenge by privateers. Even in early modern times, it is true that private revenge gave the impression that it was a synonym for piracy, but it is believed that

162–163; and “The Individual and Society in the Middle Ages” by W. Ullmann, translated by Toshiaki Suzuki, Minerva Shobo, 1970, pp. 68–69.

5 Refer to “Enemy of Mankind: Pirates and Freedom of Navigation/Trade by Hugo Grotius” by Susumu Yamauchi; in “A Pirate's View of World History: A Reversed Perception of the Order of Things” edited by Shigemi Inaga, Shibunkaku, 2017, p. 334. Keeping in mind the above-mentioned term “A Pirate's View of World History,” verifying whether “Study of Responsibility for Internationally Wrongful Act: Basic Issues on the Theory of State Responsibility” by Hiroyuki Banzai, Seibundo, 2015 is sufficient as a tome should be carried out.

6 Refer to “World History of Pirates: From Ancient Greece to the Age of Exploration and Modern Somalia” by Jiro Momoi, Chuko-Shinsho, 2017, pp. 8 and 28–31, and “Pirate Family Tree” by Tatsuo Besshi, Seibundo-Shinkosha, 1980, pp. 28–29. In addition, refer to “Legal Study of Piracy” by Tadao Iida, Yushindo, 1967, p.17.

privateering licenses were issued to maintain the legitimacy of an individual's demands, avoid being suspected of piracy, or escape the risk of war between monarchs⁷.

In medieval society, piracy became the target of criticism as mentioned above; partly because of underdeveloped means of transport and communications, traveling abroad itself was extremely dangerous if risks such as the rampancy of pirates were taken into consideration. For this reason, opportunities of exchanging with foreigners were rare. In a foreign country people visited with much effort, if they suffered damage, they could not expect to be treated justly because there was no notion of justice by the local authorities concerned; they had no one to rely on, except their own strength. In other words, if they crossed a border, self-help was the only way of protecting them. In addition, foreigners were regarded as persons without legal capacity and received various kinds of discriminatory treatment⁸.

Then, what kind of entity was a state in the Middle Ages? Today, we live in the international community where sovereign states exist together and take it for granted that a state governs individuals. In the medieval period between the fall of the Roman Empire and the Reformation, did what we call "states" today exist?⁹

We tend to imagine states as something extremely strong and powerful, but it could be said that medieval states were extremely exceptional.

Nowhere in medieval European society did state communities exist in a form that could clearly be recognized as such¹⁰. In the medieval period, self-relief was permitted because the power of states was not fully established with their power largely decentralized.

The first point to which we should pay attention is that in the early Middle Ages, church states emerged in which there was no distinction between the church and the state¹¹. Furthermore, even in

7 Refer to "Concept of and Change in Medieval International Law of the Sea: Conclusion of the Treaty of Tordesillas (1494)" by Soji Yamamoto, *Kumamoto University Law Review* No. 9 (Law School Edition), 1957, p. 47; and "Power and Law" by Hajime Terasawa, University of Tokyo Press, 2005, pp. 117, 120, and 126.

8 Terasawa, *ibid.* Main discriminatory treatments include the right to confiscate property and the right to exemption. In addition, refer to "Status of Foreigners and Their Protection by Home Country in Early Modern Europe: An Introduction to Historical Study of Modern Diplomatic Protection System" by Kaoru Obata; "Legal Structure of International Society: History and Current State" edited by Haruyuki Yamate and Shigeru Kozai, Toshindo, 2003, p.326; and "International Law Accepted by Japan After Opening the Country" by Yukio Shimada, Seibundo, 2013, p. 8.

9 Refer to "Structure of State in the Medieval Society" by Yozo Horigome, Nippon Hyoron-sha, 1949, p. 7.

10 Refer to "Europe II: Middle Ages" by Norman Davies, translated by Sadanori Bekku, Kyodo News, 2000, p. 156.

11 Refer to "About Frankish Empire" in "From Church to State: Europe of Antiquity" by Kingo Yamada ("Studies in History of Western Medieval State Institutions Part I"), Sobunsha, 1992, p. 19.

the second half of the Middle Ages, for example, there were some 30 states in Europe at the end of the 15th century, but none of them has remained to the present day as independent as they were. It could be said that medieval states were so fragile and subjective and entirely lacked in sovereignty.

Let us take the Holy Roman Empire¹² as an example. The Holy Roman Empire existed from the medieval period to the 19th century, and it is said that it had its origin in the coronation of Otto the Great in 962. The Emperor was elected by prince-electors based on the ancestral lines of candidates, but the range of territory effectively ruled by the Emperor expanded or shrank according to the circumstances of the time. The imperial government system, which was supported by the churches and monasteries directly controlled by the Emperor to hold the lay princes in check, reached the highest of prosperity in the 11th century. After the disputes over the right to appoint bishops and abbots, the union of the Empire with the churches and monasteries weakened, prompting territorial states to become independent. From the second half of the 13th century, the Emperor came to be elected simply by prince-electors, and during the Great Interregnum and thereafter, many territorial states came into being. The Peace of Westphalia in 1648 stipulated that each of the 300 princes in Germany should have the right to enter into foreign alliances, which left the Holy Roman Empire entirely moribund.

The Peace of Westphalia is considered to be a death certificate for the Empire. Referring to the Empire, Samuel von Pufendorf (1632-94) said, “Germany is an irregular body and like some misshapen monster.” In 1753, Voltaire (1694-1778) called the Empire “neither Holy, nor Roman, nor Empire.” Later, in the 19th century, in his essay “The German Constitution,” Georg W.F. Hegel (1770-1831) said, “Germany is no longer a state,” declaring that the Empire had been terminated¹³, and finally in 1806, the Holy Roman Empire collapsed.

This is the reality of medieval states. Whether individuals existed or not is discussed, and at the same time, even the existence of states was extremely uncertain. With few exceptions, it could be said that the majority of medieval states could not even imagine that they were able to square off against pirates.

2. The Age of Exploration and the energetic activities of privateers

According to Immanuel Wallerstein (1930-2019), at the end of the medieval period, the European world, which was plunged into a serious crisis in terms of politics, economy, and population, underwent significant social changes. Amidst this crisis, the Europeans devised the capitalist-

12 Refer to “The Holy Roman Empire 1495–1806” by Peter H. Wilson, translated by Fumihiko Yamamoto, Iwanami Shoten, 2005. Regarding state formation within the empire, refer to “The Civilizing Process (Vol. II): State Formation and Civilization” by Elias Norbert, translated by Setsuo Hata, Keiichi Mizobe, Hiroshi Hada, and Hiroyuki Tohei, Hosei University Press, 1978, p.154.

13 Refer to “Can Civilization Overcome Violence?” by Susumu Yamauchi, Chikumashobo, 2012, pp. 173–174.

dominated World Economy, and one of the decisive conditions to establish such a world economy was global expansion¹⁴, which marked the beginning of the Age of Exploration.

Europeans travelled abroad to propagate Christianity and exploit natural resources. In 1492, Columbus “discovered” America, but in 1493, the Line of Demarcation of Pope Alexander VI was drawn to determine the areas to be ruled by Spain and Portugal, followed by the Treaty of Tordesillas in 1494. Later, in 1498, Vasco da Gama reached India’s Calicut, and from 1519 to 1522, Ferdinand Magellan succeeded in the circumnavigation of the earth. In 1519, Hernán Cortés conquered the Aztec Empire, and in 1531, Francisco Pizarro conquered the Inca Empire.

As John Selden (1584-1654) and Cornelius van Bynkershoek (1673-1743) said, it is clear that in those days, both Spain and Portugal in fact lacked in naval power, which was made possible by the establishment of feudal contracts (Vasallat) with foreign navigators who entered inner sea areas¹⁵.

The Treaty of Tordesillas of 1494 divided the world into two parts with Portugal and Spain advancing eastward and westward, respectively. Portugal, which had a population of 1-1.5 million at that time, found its way into the Indian Ocean with focus on the trading of spices while it became the first state to monopolize the trade with the New World. The Portuguese were followed by the Spaniards, who recovered their national land in what was called “Reconquista” and built its Golden Age as it gained power through the discovery of silver mines in the New World. The 16th century is called the “Century of Spain.” Large volumes of silver flowed into Europe from the New World, prompting commercial economy to develop and helping build the framework for triangular trade across the Atlantic Ocean. The Spaniards were followed by the Dutch, and the 17th century is called the “Century of the Netherlands.”

As mentioned earlier, in the medieval period, personal revenge was widespread, and Letter of Marque was issued, but in the middle of the 16th century, major changes took place in the history of privateers in Europe; in other words, the way privateering licenses were issued developed in a unique way in England.

In those days, England was a developing country with its exports limited only to wool and woolen textiles. What it introduced as part of its policy for building up a rich country with a strong army was to attack Spanish and Portuguese ships on the sea, which was, so to speak, piracy. Privateering reached its zenith in the middle of the 16th century, when Elizabeth I (reign: 1558-1603) ascended the throne, and English ships assaulted Spanish and Portuguese ones, which transported gold and silver from the New World. Legally, there was a large difference between privateers which sought personal revenge

14 Refer to “The Modern World-System I” by I. Wallerstein, translated by Minoru Kawakita, Iwanami Shoten, 2006, pp. 36~, p. 41 in particular.

15 Regarding “Vasallat,” a feudal contract based on reciprocal rights and duties between suzerain and vassal, refer to Yamamoto (footnote 7), p. 43, p. 66 in particular.

and those which were engaged in piracy, and in any sense, privateers authorized by Elizabeth I were originally pirate ships¹⁶. Privately owned armed ships became the supporters of “public” battles as long as they were authorized as privateers and were sometimes even hailed as national heroes.

Without a doubt, explorers and adventurers played the leading role in what we call the Age of Discovery. There is no proof that they were pirates, nor is such proof left though this may not be proven. It is said, for example, that even Vasco da Gama, who left his name in world history for his discovery of the sea route to India, was mistaken for a pirate. If so, it would have been natural that other explorers were confused with pirates. Was Vasco da Gama, who is said to have taken precious spices by force by firing cannons, really a pirate or an explorer?¹⁷

In fact, privateers could practically not be distinguished from pirate ships. A navy required national and economic systems and spent huge amounts of money. Monarchs who could not shoulder this burden issued privateering licenses to make plunderers look like an instrument of state power. Privateers acquired licenses (Letters of Marque) from a king or the like to attack ships of warring nations or seize territory, but what they did was pillage, and it was considered to be part of hostile acts¹⁸.

After all, privateering licenses, which were just theoretical documents issued by a state, were intended only to legalize piracy in a different name. These licenses temporarily granted pirates the right to attack enemy ships, rob money and valuables, and take enemy soldiers as hostage; worded differently, privateering was nothing but piracy as authorized by the state. Therefore, the distinction between pirates and privateers was subjective, and the difference lay only in how to judge them. It is said that even the fleet of the East India Company, the cornerstone of the United Kingdom’s supremacy over the world, consisted mainly of pirate ships¹⁹.

3. Grotius and pirates

In the 17th and 18th centuries, privateering was permitted to make up for the lack of naval power, and in particular, it was used by France whose navy was weak. In conflicts such as the War of Independence, American privateers were highly evaluated for their operations as they fought against

16 Britain is said to be founded by pirates. Refer to “Pirates Who Shaped World History” by Isami Takeda, Chikuma Shinsho, 2011, pp. 11 and 20–23; and “Her Majesty Was a Pirate: Britain Fought with Privateers” by Shoichiro Sakurai, Minerva Shobo, 2012, p. 3.

17 Refer to “World Pirate Encyclopedia,” by Creative Sweet, Takarajimasha, 2015, pp. 55–57.

18 Refer to Momoi (footnote 6), p. 157.

19 Refer to “The Pirate Organization: Lessons from the Fringes of Capitalism” by Rodolphe Durand and Jean-Philippe Vergne, translated by China Nagata, Hankyu Communications, 2014, pp. 42 and 46–48; and Takeda (footnote 16) pp. 119–121.

the British navy together with France.

In early modern times, centrally governed, modern states emerged, causing the personal revenge system to decline. As modern times progressed, the personal revenge system collapsed toward the end of the 18th century, and states themselves came to wreak vengeance. On the other hand, the granting of privateering licenses, as mentioned earlier, played an important role in the struggle for colonies until the first half of the 19th century, but with the building of standing navies, privateering was abolished. Here began the history of real navies²⁰.

Let us pay attention to the time when Hugo Grotius (1583-1645) lived. As is well known, Jean Bodin (1530-1596) discussed about sovereign states in the 16th century, while Grotius, who witnessed the ravages of the Thirty Years' War and deplored war of which even barbarous races should be ashamed of, wrote a book entitled *On the Law of War and Peace* in 1625. In the period when he lived, sovereign states did not exist together in Europe, but the European society consisted of multiple layers of independent princes that existed in a mesh of feudal relationships of lords and vassals and alliances among them. This society represented the medieval times itself.

Grotius had a clear view of pirates. He considered it to be official war for two states with absolute power to use armed forces mutually by declaring war. From this point of view, it was clear that the use of armed forces by pirates was not included in acts of war. The reason is that pirates did not represent the state²¹.

There was no problem with plunder because it was self-explanatory to Grotius. He defended the interests of the Dutch in those days because he believed that they were closely linked to the interests of all mankind, in other words, mutual commercial activities among various nations. Yamauchi states²², "Grotius argued that it was God's wish that people who belonged to the human society traded through the sea and promoted their reciprocal relationships; that pirates who destroyed these relationships were therefore the enemy of all humanity; and that states that performed similar acts were the same as pirates. His argument was not only clear but also highly ethical and religious."

4. The discovery of islands by pirates

Even in the 20th century, as mentioned above, discovery was not something past, and there appeared international arbitral awards as related to and discussed about the occupation of islands. For example, in the Island of Palmas Case, the United States insisted that its title as a successor state of Spain was derived from the discovery of the island by Spain. Furthermore, in the Clipperton Island Case, the

20 Refer to Momoi (footnote 6), p. 181; and "World History of Sea Power (1): Birth of Navy and Development of Sailing Navy" by Eiichi Aoki, Shuppan Kyodosha, 1982, pp. 115–116 and 280–283.

21 Refer to Yamauchi (footnote 5), p. 343.

22 Refer to Yamauchi, *ibid.*, pp. 343 and 357.

Mexicans argued that the island had been discovered by Spain²³.

In early modern times, the Spaniards and Portuguese, who launched overseas early, believed that they could take advantage of the Pope's authority to acquire unknown territory by discovering it. There was a period in which islands or the like became a territory of a state through "discovery" even if they were not uninhabited. Both Spain and Portugal attempted to exclude competitors from all regions of the New World based on the fact that they had been discovered by their explorers. What made the situation more complicated was that states other than Spain and Portugal did not entirely deny titles that arose from discovery but actively claimed them if they were advantageous to their own interests. It is said that the act of discovery should require approval by the state in its name after it is performed by a warship dispatched by the state or a private ship commissioned thereby rather than just performed privately²⁴.

Let us turn our eyes to the discovery of islands. Portuguese Prince Henry the Navigator (1394-1460) went on an expedition to the west coast of Africa, discovering one island after another: Porto Santo Island (1419), the Canary Islands (1421), the Azores Islands (1431), and the Cavo Verde Islands (1446). When he discovered them, he claimed, by putting up a notice of the discoverer or giving a name to the place discovered, that he had acquired them.

The Pope approved Spain's and Portugal's right to monopolize trade with and colonies in various places through discovery. If people of other states approached their territory, the Spain and Portugal assumed them to be smugglers or pirates and used armed forces to drive them away or capture and imprison them, thus amassing immense wealth²⁵.

It is well-known that Sir Francis Drake, who won fame for his plunder and attacks and is said to be the greatest captain of privateers in history, discovered islands and sea routes every time he sailed and later gained honor for his discoveries²⁶.

Information on discoveries, particularly information on navigation matters, was classified by the government authorities as the state's top secrets, and agreements were reached to keep accounts of navigation by the parties concerned confidential. It seems that only a really small portion of such

23 Regarding the Island of Palmas Case, refer to "Doctrine of the Acquisition of Territorial Title" by Eiichi Fukatsu, *Journal of International Law and Diplomacy*, vol. 60-3 (1963), p. 84; and regarding the Clipperton Island Case, refer to "Principles of Occupation of Terra Nullius on Islands and Precedents" by Sakutaro Tachi, *Journal of International Law and Diplomacy*, vol. 32-8, p. 30, for example.

24 Refer to "International Law of Territorial Attribution" by Kanae Taijudo, Toshindo, 1998, pp. 30-31. In addition, refer to Tachi, *ibid.*, pp. 3-4.

25 Refer to Besshi (footnote 6), p. 31; and Sakurai (footnote 16), p. 3.

26 Refer to Sakurai (footnote 16), p. 74.

accounts has been handed down to the present day²⁷.

In those days, accurate charts required for navigation were not available, nor was astronomy fully developed, and furthermore, there was no regulation for distance. One can easily imagine that the experience and knowledge of navigators were considered to be the state's secrets and assets and that they were anything but those who should be depreciated as pirates or the like.

Conclusion

As repeatedly mentioned above, pirates are said to be the enemy of mankind. Then, how about privateers? The line between privateers and pirates is a fine one, isn't it? Didn't privateers as viewed in that way actually play the leading role in the Age of Discovery? It is quite unthinkable that unarmed privateers were able to perform the great job of discovering islands. It is ironical that whether it was achieved by privateers or pirates, who were condemned as the enemy of mankind, the discovery of islands later came to be considered an act of the state to which they belonged and claimed as a title to dominium under international law.

A look at the circumstances under which the current international law was established shows that Grotius, the author of *On the Law of War and Peace*, can be called the "father of international law." By depressing the fighting spirit of self-centered, disobedient princes as it grew day by day during the Thirty Years' War, this book is said to have prevented the massive damage that would have been caused²⁸.

It could be said, on the other hand, that while *The Free Sea*, written by Grotius in 1609, helped curb the unlawful monopoly of the sea by Spain and Portugal, it led the newly-arisen Netherlands to open the way for maritime trade, thus contributing greatly to the Dutch dominance in the 17th century. In that sense, the hackneyed phrase "Grotius is the father of international law" might lose luster²⁹.

What was the reality behind this? To put it plainly, it must have been rampages of privateers in a state of lawlessness. In Chapter 14 of *On the Law of Prize and Booty*, even Grotius astutely observed, "The Portuguese pretend to be merchants but are not far from being pirates."³⁰

The foregoing shows that it is an unmistakable fact that during a certain period of the time when

27 Refer to "Travel and Discovery in the Renaissance, 1420-1620" by Boies Penrose, translated by Katsumi Arao, Chikuma Shobo, 1985, pp. 218 and 339. In addition, refer to Aoki (footnote 20) p. 129.

28 "Group of History of International Law: Visiting People and Thoughts" by Kiyoshi Matsukuma, Sakai Shoten, 1992, p. 149.

29 For example, refer to "A Normative Approach to War: Peace, War, and Justice in Hugo Grotius" edited by Yasuaki Onuma, Toshindo, 1987, pp. 10 and 596. In addition, refer to "Political Thought of Hugo Grotius" by Yoshiki Ota, Minerva Shobo, 2003, p. 7.

30 Refer to Yamauchi (footnote 5), p. 354.

modern states rose, pirates, who are usually hated by many people as the enemy of mankind, played an important role under or on behalf of the state.

In his *The Closed Sea*, which rivaled with Grotius's *The Free Sea*, John Selden argued that it was legally and physically possible to possess seas as territory and that the seas around England had long been part of the empire because of what it had done over the years³¹. But no matter how it was interpreted in those days, this argument of Selden's indicates pioneering concepts that led to the definition of the 200-nautical-mile territorial sea and exclusive economic zones in the second half of the 20th century. It could be said that it is not an absurd idea but is a quite natural logic, which considers the sea subordinate to the land of the coastal state.

Dr. Yukio Shimada [Profile]

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After graduating from Waseda University School of Law in 1967, he completed the requirements for doctoral course at Waseda University Graduate School of Law in 1972 but was not conferred a doctoral degree. After assuming the positions of an assistant, a junior associate professor, and an associate professor, he became a professor at Waseda University School of Law in 1981. He studied at Oxford University in the U.K. from 1981 to 1983, earned a doctoral degree from Waseda University (dissertation "The Study on the Right of Asylum, 1985), and studied at Harvard University in the U.S. from 2004 to 2005. He specializes in international law, in particular refugee law, the law of the sea, and the theory of sources of the law. Main publications include "The Study on the Right of Asylum" (Seibundo, 1983); joint translation of "Principles of Public International Law" by Ian Brownlie with Susumu Takai, Mamoru Koga, Tomiki Saeki, Hozumi Tanaka, and Koshi Yamazaki (Seibundo, 1989, revised in 1992); "International Law" (Koubundou, 1992–2011); joint edited/authored book "Internally Displaced Persons and International Law" (Shinzansha, 2005); "International Law of the Sea" jointly authored by Moritaka Hayashi and Mamoru Koga (Yushindo, 2005–2016); an edited book "An Introduction of International Law" (Seibundo, 2011); and "International Law Accepted by Japan After Opening the Country" (Seibundo, 2013).

31 Refer to "Hugo Grotius's Mare Liberum" by Fujio Ito, Yuhikaku, 1984, pp. 120–121.