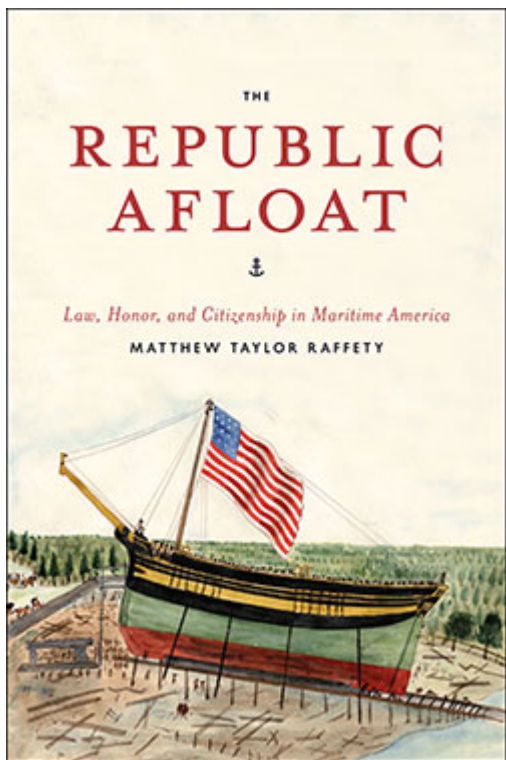


# Between the Forecastle & the Federal Government, or “Jack Tar, American”



For liability purposes, it is the sea that will kill you.  
–Pirate Captain, *The Simpsons*

“In the beginning was the land.” So states Charles Sellers’s classic look at antebellum American economic expansion, *The Market Revolution* (4). But to a swelling field of historians, the landlubber tradition in American history has led us to skip something quite fundamental: the sea. Maritime history has expanded rapidly over the past two decades, kindled in part by enthusiasm for global fields of study that examine the Atlantic, Pacific, and Indian Oceanic worlds. But we have been slower to appreciate that waterways have not simply served as conduits between distant lands, but were themselves sites of conflicts over labor, identity, and state formation.

In *The Republic Afloat*, Matthew Raffety uses violent encounters on merchant vessels in the years between the American Revolution and the Civil War to suggest that it was on the water, not on land, that Americans settled key dimensions of federal governance and citizenship. Raffety contrasts his findings with Peter Linebaugh and Marcus Rediker’s hydrarchy of revolutionary mariners in *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*. “Rather than the radical internationalists that some historians describe Atlantic seafarers as being in the eighteenth century,” he writes, “the crews of American antebellum vessels used the apparatuses of the legal system to press their case, to demand

redress, and to assert their understandings of the privileges of manhood and citizenship” (212). Through their democratic appeals, sailors of early America built the state.

The book contains three sections: law, honor, and citizenship. The first is the meatiest of the three. Raffety contends that “maritime issues made up the bulk of the work of federal courts before the Civil War” (27), and that federal judges were at the forefront of this national reach. While the Constitution explicitly gave the federal judiciary oversight of “admiralty and maritime” issues, the Judiciary Act of 1789 suggested that this did not include common law cases (35). Here, in the regulation of shipboard crime, Congress and federal judges made what may have been their strongest stand in favor of a robust national government over a loose federation.

Thus Raffety points to an overarching trend of growing “federal paternalism toward seafarers” before the Civil War (44). Two acts of 1790 formed the early basis of federal authority over mariners, requiring ship registration, establishing parameters for shipboard governance, and defining the terms of sea-based crime. Yet these acts proved vague and insufficient. While the 1790 Crimes Act provided the legal basis for punishing offenses committed at sea, the legislation gave courts little flexibility in differentiating between work stoppages and mutiny, grumbling and violence, harsh masters and the criminally abusive. Over the years, Congress increasingly limited officers’ authority. In 1835, a new Crimes Act refined and strengthened the 1790 law and its 1825 revisions. The 1835 law curtailed officers’ prerogatives in using corporal punishment to discipline their crew—or at least acts deemed in “haste” or in “excess.” Finally, in 1850, even as the use of the lash waned, Congress banned flogging.



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Of course, law differed from practice. Courts only limited punishments deemed cruel *and* unusual—not only those that were brutal, but also outside of the ordinary parameters of shipboard life. By using the weather or extreme chores, officers skirted liability. In the 1854 case of sixteen-year-old cabin boy Stephen Whatley, the captain of the *Harvard* kept the lad at the wheel for long hours until his hands and feet froze, inducing permanent disability. “Cruel and unusual punishment” often translated into overwork and deprivation of food, rest, or clothing rather than outright assault. Regular tars became increasingly conversant in legal rights even as they persisted in resorting to “forecastle law” and convention. Officers and sailors alike used travel to renegotiate their contracts: “Just as captains ‘encouraged’ men to jump ship (and by doing so, forfeit wages) in ports where seamen were cheap and plentiful, seamen exploited their advantage, either at sea or in ports where a

shortage of qualified tars meant a more lucrative berth could be found with ease" (108). The book is at its best when delving into delicious troves of newspaper accounts and case law to consider how mariners and officers wrangled over acceptable working conditions at sea.

Section two pushes into the murkier realms of custom, masculinity, and honor. Chapters five and six take us from the forecandle to the quarterdeck, from mariners' demands that "conventions of the sea mandated food and conditions above and beyond the legal minimums" to officers' tenuous claims to "mastery" (109). As older status-based models of authority came under attack, the question was, which model of authority would prevail? While in the 1843 *Somers* case, Justice Peleg Sprague upheld a naval officer's authority to serve as both judge and jury over his men, courts compared officers on merchant ships to parents, schoolmasters, and master craftsmen. For captains in particular, authority rested upon a precarious balance of navigational expertise and claims to elite status by virtue of their position. Raffety uses court and consular records, newspaper accounts, treatises, and literature to show officers and tars alike wielding shared discourses of honor and reputation as weapons that could be put to use abroad and at home.

The final section examines citizenship in the legal and cultural senses. Here we have the building not only of the state, but also the nation. What is an American? Who could lay claim to national protections? What defined the national character? Raffety offers the familiar argument that distance from home forced individuals to clarify definitions of nation and citizenship. While this is most in evidence in chapter eight's history of how the impressment crisis in the years leading up to the War of 1812 provided a template for the passport system through Seamen's Protection Certificates, Raffety also recounts the development of consuls as arbiters of American identity in chapter seven and discusses sailors as a staple of American literature and iconography in chapter nine.

*The Republic Afloat* is especially valuable as a contribution to the literature on American state formation. Raffety highlights three ways in which the maritime story diverges from narratives of American statelessness, like the invisible state depicted in Brian Balogh's *A Government Out of Sight*, or even William Novak's local and state-based "well-regulated society" in *A People's Welfare*. First, Raffety argues that articulations of nationhood and federal power flourished *through* American maritime expansion. The 1835 law sparked a surge of criminal cases from sailors and officers, ultimately shifting the center of adjudication of sea-based crime "from the quarterdeck to the courtroom" (47). Second, federal judges handled offenses that on land would be reserved for state and local authorities. While states reformed penal codes in the 1820s and 1830s, representatives of the federal government outlined criminal offenses and regulated labor relations, within the marine context. And federal judges seemed more willing to intervene than their state-based counterparts. Finally, the 1790 legislation required ships to have articles—a contract establishing the terms of a voyage—and federal courts proved

surprisingly willing to meddle in the enforcement of these contracts. Intentionally or no, sailors strengthened the federal government: “[S]eafarers’ rights became one of the first important tests of federal law, the federal courts, and a national identity. Because they pressed Congress to regulate their work environment, and the courts to delineate how those rulings would be applied, seamen prompted the machinery of the new nation for definitions and structure” (196).

Readers of *Common-Place* may well recall Gautham Rao’s [2008 article on early American marine hospitals](#) as an initial example of public health care. Like *Republic Afloat*, Rao’s article points to a broader national willingness to support federal intervention by the early American public than is commonly acknowledged, albeit for specific populations. But why was judicial intervention acceptable for mariners, but not land-bound laborers? Raffety suggests that the international context of shipping and, above all, mariners’ status as wards of the state marked them as exceptional—more akin to children or slaves than other men (10). Thus, seamen helped to establish the federal apparatus, but within the distinctive context of admiralty law. Still, if this judicial activism was *about* a desired expansion of federal power, as suggested in chapter three, why was it so circumscribed? And was judicial paternalism on the rise? Raffety himself seems conflicted. In surveying New York federal court verdicts between 1835 and 1861, Raffety found that rulings tended to uphold officers’ prerogatives: sailors were more likely to be convicted for acting against officers than vice versa. Likewise, given that support for consular service vacillated depending on the presidential administration, how does the national political context influence the book’s broader narrative, especially given its focus on Massachusetts and New York?

Yet in shifting our attention from the land to the water, Raffety persuasively establishes the importance of America’s maritime tradition to the nation’s development. Raffety’s work reveals that “Jack Tar, American” did not disappear with the Congress of Vienna, but continued to be central to the nation and state well after 1815.