ENVIRONMENTAL LAW—OIL POLLUTION CONTROL—IN THE ABSENCE OF FEDERAL PREEMPTION AND ANY FATAL CONFLICT BETWEEN STATUTORY SCHEMES, A STATE MAY CONSTITUTIONALLY EXERCISE ITS POLICE POWER TO PROVIDE FOR CLEANUP OF OIL SPILLAGE AND FOR RECOUPEMENT OF COSTS CONCURRENTLY WITH THE FEDERAL GOVERNMENT.

Plaintiffs-Appellees[1] brought an action against the State of Florida[2] to enjoin application of the Florida Oil Spill Prevention and Pollution Control Act[3] (hereinafter referred to as the Florida Act). Appellees challenged the Florida Act on the grounds that the provisions for unlimited liability[4] conflicted with the Federal Water Quality Improvement Act of 1970[5] (hereinafter referred to as the Federal Act) and the Limitation of Liability Act.[6] Appellees also contended that the state's police power over sea-to-shore pollution was preempted by the Admiralty Extension Act.[7] Defendant-Appellant maintained that the Federal Act itself encouraged state regulation and cooperation.[8] A three-judge District Court[9] for the Middle District of Florida held the Florida Act was an unconstitutional intrusion into federal maritime jurisdiction, declared the Act null and void, and enjoined its enforcement.[10] *Held*, judgment reversed. The

[1]Plaintiffs-Appellees included merchant shippers, world shipping associations, members of the Florida costal barge and towing industry, and owners and operators of oil terminal facilities and heavy industries located in Florida.

[2]In the original action officials responsible for enforcing the Florida Oil Spill Prevention and Pollution Control Act, GEN. FLA. LAWS ch. 70,244 (1970), were named as defendants, but the State of Florida, asserted that her interests were much broader than those of the named defendants. Rubin O'D. Askew, governor of Florida, was thus named as defendant.

[3]GEN. FLA. LAWS ch. 70-244 (1970).

[4]*Id.* § 12 provides that anyone who "permits or suffers" a discharge shall be liable to the State for all clean-up costs and for damages resulting from injury to others; the State does not need to plead or prove negligence, only the fact of the discharge.

[5]33 U.S.C. § 1161 *et seq.* (1971).

[6]46 U.S.C. §§ 181-89 (1971).

[7]46 U.S.C. § 740 (1971):

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property caused by a vessel on navigable water notwithstanding that such damage or injury be done or consummated on land.

[8]33 U.S.C. § 1161 (o) (1971) provides:

> (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.
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> (2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.
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> (3) Nothing in this section shall be construed . . . to affect any State or local law not in conflict with this section.

[9]28 U.S.C. § 2281 (1970) (Three-judge court required to enjoin enforcement of a state statute).

[10]American Waterways Operators, Inc. v. Askew, 335 F. Supp. 1241 (M.D. Fla. 1971).

Florida Act does not invade a regulatory area preempted by the Federal Act, nor is the state's police power over sea-to-shore pollution preempted by the Admiralty Extension Act, as it does not purport to provide an exclusive remedy in this admiralty-related situation. *Askew v. American Waterways Operators, Inc.*, 93 S. Ct. 1590 (1973).

The relationship between state and federal regulation in the admiralty area has been a source of confusion in the development of maritime law. Article III of the Constitution[11] and Section 9 of the Judiciary Act of 1789[12] have together vested the federal judiciary with significant power in the maritime field. Additionally, Congress has the power to enact legislation in Admiralty under the necessary and proper clause[13] of the Constitution. Underlying these maritime law provisions is the concept that certain areas of the law require uniformity[14] throughout the United States in order to be effective. *Southern Pacific Co. v. Jensen*,[15] decided in 1917, bolstered the uniformity concept[16] by proposing that the general features of maritime law could not be changed by the states so as to defeat uniformity.[17] *Jensen* was followed by two cases[18] which in support of uniformity even prohibited Congress from delegating any maritime power to

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[11]U.S. CONST. art. III, § 2 extends the judicial power of the United States "to all Cases of admiralty and maritime Jurisdiction." Romero v. Int'l Terminal Operating Co., 358 U.S. 354 (1959); Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917).

[12]The present version of § 9 is 28 U.S.C. § 1333 (1971), which gives the district courts original jurisdiction, exclusive of any state court, of "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

[13]U.S. CONST. art. I, § 8.

[14]The Lottawanna, 88 U.S. (21 Wall.) 558, 575 (1874) where Justice Bradley stated:

> . . . [T]he Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

See also Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920) in which the Court stated that not only did the Constitution empower the federal government in admiralty, it also took from the States all power to legislate laws which might interfere with that "proper harmony and uniformity."

[15]244 U.S. 205 (1917) (New York Workman's Compensation law not validly applied to compensate longshoreman's widow for his death, which occurred on a vessel in navigable waters.)

[16]*Id.* at 217:

> If New York can subject foreign ships coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The result would be the destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded.

[17]The Court did not deny completely that there could be state action in the maritime area, but it tried to set up a definitive test which would allow the state regulation to stand.

[18]Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920); Washington v. W.C. Dawson and Co., 264 U.S. 219 (1924) (Both cases rejected Congressional efforts to apply state workmen's compensation statutes to shipboard injuries suffered by longshoremen).

the states.[19] Under the "*Jensen* rule" set forth in these cases, the Court will declare invalid any state legislation[20] which contravenes the purpose of a federal maritime act or materially prejudices "the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations."[21] However, the dividing line between the legislation a state can and cannot pass is unclear.[22] Many of the objections to the *Jensen* line of reasoning center around the contention that maritime law cannot be shown to be an independent body of law,[23] and, therefore, it is necessary to supplement it with the common law and the statutory law of the states.[24]

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[19]Washington v. W.C. Dawson and Co., 264 U.S. 219, 227 (1924):

> Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power . . . may not be delegated to the several states. The grant of admiralty and maritime jurisdiction looks to uniformity . . . . The subject is national. Local interests must yield to the common welfare. The Constitution is supreme.

[20]The opinion in Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920) went so far as to say that the clause of the provision granting otherwise exclusive admiralty and maritime jurisdiction to the Federal Courts (Judiciary Act of 1789 § 9), which saves to suitors "in all cases the right of a common law remedy, where the common law is competent to give it," refers to remedies for enforcement of the federal maritime law, and does not create substantive rights or assent to their creation by the states. *But see* Justice Holmes' strong dissent in Southern Pacific Co. v. Jensen, 244 U.S. 205, 221-22 (1917).

[21]Southern Pacific Co. v. Jensen, 244 U.S. 205, 216 (1917). Congress later passed the Longshoreman's and Harbor Workers Compensation Act, 33 U.S.C. § 901-950 (1927), which provided compensation to any worker accidentally injured while loading, unloading, or repairing any vessel larger than eighteen tons net weight, but only if the accident occurred on the navigable waters of the United States and recovery could not be validly provided for by state law.

See also Victory Carriers Inc. v. Law, 404 U.S. 202 (1971) which indicates that in spite of this attempt of Congress to provide a line of demarcation between maritime and state law, the relative roles of state and federal law nevertheless remained somewhat confused on the seaward side. The Court placed the responsibility for the confusion on the case law modification of *Jensen* which had preserved certain state remedies for accidents and deaths occuring on navigable waters.

[22]Davis v. Dept. of Labor and Industries, 317 U.S. 249, 252 (1942), where Justice Black wrote, in regard to the *Jensen* demarcation line, that "[w]hen a state could, and when it could not grant protection under a compensation act was left as a perplexing problem, for it was held 'difficult if not impossible' to define this boundary with exactness." The Court's opinion in *Jensen*, 244 U.S. at 216, also admitted that it was,

> difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied. . . . Equally well established is the rule that state statutes may not contravene an applicable act of Congress or affect the general maritime law beyond certain limits.

[23]Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 374 (1959), which states that, ". . . maritime law is not a monistic system. The State and Federal Governments jointly exert regulatory powers today as they have played joint roles in the developement of maritime law throughout our history."

[24]*Id.* at 373, where Justice Frankfurter writes that, ". . . to claim that all enforced rights pertaining to matters maritime are rooted in federal law is a destructive oversimplification of the highly intricate interplay of the States and National Government in their regulation of maritime

The demand for uniformity is often opposed by two correlative justifications for parallel state and federal regulation which are based on the so-called "gap theory" and the concept of a state's prerogatives under its police power. Under the "gap theory" a state may act in an area where the federal government has been completely silent[25] or where it has circumscribed its regulation to occupy only a portion of the area.[26] Although a state, even in the exercise of its police powers, may not "contravene" a federal law,[27] the federal regulation must clearly manifest its purpose to supersede state legislation.[28] The Supreme Court has also shown a tendency to consider the nature of the regulation under examination in light of whether the regulation attempts to control a local or a national subject.[29] A national regulation of a ship's equipment might be aimed at insuring that the ship is seaworthy; a state's regulation of that same equipment might be an attempt to protect the health and enhance the cleanliness of the local community.[30] The validity of this type of concurrent regulation is

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commerce . . ." *See also* Justice Holmes' dissent in Southern Pacific Co. v. Jensen, 244 U.S. 205, 218 (1917).

[25]Transportation Co. v. Parkersburg, 107 U.S. 691 (1882), where the Court held that since no act of Congress had been passed for the regulation of wharfage and there was nothing in the Constitution to prevent the states from regulating it, then so long as Congress saw fit to abstain from action, that subject was within the domain of state law. *Accord*, Packet Co. v. Catlettsburg, 105 U.S. 559 (1881).

[26]Kelly v. Washington, 302 U.S. 1 (1937). The Court allowed state regulations for the inspection of the hull and machinery of motor driven tugs on the theory that the federal statute of inspection was in a limited field, and, therefore state regulation was not forbidden. Skiriotes v. Florida, 313 U.S. 69 (1941), where the court held that a federal regulation limiting the size of sponges which could be gathered did not preclude a state statute dealing with diving apparatus for that gathering.

[27]Just v. Chambers, 312 U.S. 383 (1941); Skiriotes v. Florida, 313 U.S. 69 (1941).

[28]Kelly v. Washington, 302 U.S. 1, 10 (1937):

> The principle is throughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together."

Accord, Mints v. Baldwin, 289 U.S. 346 (1933); Carey v. South Dakota, 250 U.S. 118 (1919).

[29]Colley v. Board of Wardens, 53 U.S. (12 How.) 299 (1851). *Accord*, Transportation Co. v. Parkersburg, 107 U.S. 691 (1882).

[30]Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960). The Court held that the fact that vessels used in interstate commerce, and their equipment, including boilers, had been inspected, approved, and licensed by the federal government to operate in interstate commerce in accordance with a comprehensive system of regulations enacted by Congress, did not prohibit the city from enforcing its smoke abatement ordinance with respect to such vessels. However, see Justice Douglas' dissent which states that the requirements of the Detroit smoke ordinance are squarely in conflict with the federal statute because the equipment approved and licensed by the federal government for use on navigable waters cannot "pass muster" under local laws. Kelly v. Washington, 302 U.S. 1 (1937), where the Court said that a vessel which was unsafe and unseaworthy was not within the protection of the uniformity principle and the state might treat it as it would treat a diseased animal or unwholesome food. However, if the state went further and attempted to impose particular standards as to structure, design, operation, etc., then the state regulation could be judged invalid as a trespass on the federal area. *See also* Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917).

recognized in many areas of interstate commerce and maritime activities, state created liens,[31] recognition of state wrongful death actions,[32] and state laws governing the specific performance of arbitration agreements.[33] The interstate commerce of the railroad industry, an area also thought of as requiring uniformity, tolerated a state statute imposing strict liability for damages to property or persons with no abatement of the effectiveness of federal law.[34] In *Huron Cement Co. v. Detroit*,[35] the Court allowed a local ordinance regulating smoke emission from furnaces and boilers to stand, even though the Court acknowledged that ". . . Congress has maintained an extensive and comprehensive set of controls over ships and shipping."[36] The Court said that his legislation was designed to insure the seagoing safety of vessels, while the Detroit ordinance was aimed strictly at the elimination of air pollution.[37]

In *Askew v. American Waterways Operators, Inc.*,[38] the Court faced a problem similar to that in *Huron Cement Co. v. Detroit*.[39] Two issues had to be resolved: Was the Florida Act preempted by the Federal Act; and could the state still exercise its police power respecting maritime activities concurrently with the federal government?

The unanimous Court, speaking through Justice Douglas, seemed to have little problem with either issue. Comparing the two acts the Court found no fatal contravention of the Federal Act by the Florida Act. The Federal Act

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[31]Vancouver S.S. Co. v. Rice, 288 U.S. 445 (1933) (Held, Admiralty Courts have jurisdiction to enforce liens against boat or vessel in accordance with state law subjecting vessel to lien for damages); The Planter, 32 U.S. (7 Pet.) 324 (1833) (Jurisdiction of admiralty, in cases where repairs are needed upon a domestic vessel, depends upon local law of the state. If the local law gives a lien, then said law may be enforced in admiralty).

[32]Just v. Chambers, 312 U.S. 383 (1941) (Although there is no maritime right of action for wrongful death, when a state, acting within its province has created liability for wrongful death, the admiralty court will enforce it); Western Fuel Co. v. Carcia, 257 U.S. 233 (1921) (Admiralty court can give damages for death on water in a state which allows such damages).

[33]Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109 (1924) (New York arbitration law held applicable to agreements for arbitration of disputes arising under maritime contracts, where such contracts are made in New York and are to be performed there, and are valid under the general maritime law and laws of New York.

[34]St. Louis & S.F. Ry. v. Mattews, 165 U.S. 1 (1897) (A Missouri statute by which every railroad corporation owning or operating a railroad in the state was made responsible in damages for property of any person injured or destroyed by fire communicated by its locomotive engines without regard to negligence was held constitutional).

[35]362 U.S. 440 (1960) (Criminal provisions of Smoke Abatement Code of Detroit are constitutional and can be enforced to prevent air pollution even though ships docked at Port of Detroit have been inspected and licensed by the federal government).

[36]*Id.* at 444.

[37]*Id.* at 445. The Court also said, *Id.* at 442:

> The ordinance was enacted for the manifest purpose of promoting the health and welfare of the city's inhabitants. Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power.

[38]93 S.Ct. 1590 (1973) (hereinafter referred to as *Askew*.)

[39]362 U.S. 440 (1960) (hereinafter referred to as *Huron Cement*.)

provides that the guilty party or parties will be liable for the cleanup costs of oil spills to the federal government,[40] but recognizes four defenses[41] to such liability. The Federal Act also provides for a ceiling to the amount of cleanup costs[42] unless willful negligence is shown, in which case there may be unlimited liability.[43] The Florida Act provides for strict liability for the cost of cleaning up oil spills to the state[44] and at the same time provides for strict liability for damages caused by injury to persons or property.[45] There are no defenses as such to the unlimited liability the Florida Act imposes,[46] and there is no ceiling on the amount of cleanup costs assessed.[47] The Court held that because the Federal Act was concerned with cleanup costs to the federal government only and did not provide for such costs incurred by the states nor for damages suffered by private individuals, there was no federal preemption nor any fatal conflict between the statutory schemes.[48]

The Court squarely faced the question of uniformity in deciding the second issue. The problem was not in determining whether oil pollution is a maritime tort, for that question had been settled in the affirmative in earlier cases,[49] but

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[40]Water Quality Improvement Act, 33 U.S.C. § 1161 (f) (1970).

[41]*Id.* § 1161 (f) (1). The four defenses are:

1. an act of God;
2. an act of war;
3. negligence on the part of the United States government;
4. acts or omissions of third parties, without regard to negligence.

[42]*Id.* § 1161 (f)(1), (2), (3). Liability of an owner or operator of a vesel is limited to $100 per gross tone of such vessel or $14,000,000, which ever is lesser. Liability of an owner or operator of an onshore or offshore facility is limited to $8,000,000.

[43]*Id.* The willful negligence or willful misconduct must be within the privity and knowledge of the owner.

[44]Florida Oil Spill Prevention and Pollution Control Act, FLA. GEN LAWS ch. 70-244, § 12 (1970).

[45]*Id.*

[46]There is a provision for executive clemency whereby the defendant can petition the state under defenses similar to those in the Federal Act, after the defendant has been held liable. It is then within the state's discretion whether to waive reimbursement of the Florida Coastal Protection Fund which the Florida Act created. *Id.* § 11(6).

[47]*Id.* § 12.

[48]*Askew*, 93 S.Ct. at 1597 (1973).

[49]State Dept of Fish & Game v. S.S. Bournemouth, 307 F. Supp. 922 (C.D. Cal. 1969) (Where vessel discharged oil while moored in navigable waters in California, the tort was maritime in nature); Fireman's Fund Ins. Co. v. Standard Oil Co., 339 F.2d 149 (9th Cir. 1964) (Insurers as subrogees of incorporated yacht club and owners of boats brought action in admiralty under negligence against the City of Los Angeles and others for damages, caused when oil from pipeline spilled into harbor, for cleanup expenses, indemnity, and contribution); Salaky v. The Atlas Barge No. 3, 208 F.2d 174 (2d Cir. 1953) (Action for damages from oil sludge and foreign matter in the water, allegedly discharged from defendant's barges, allowed in admiralty). Liability for oil pollution damage in admiralty depends on proof of either negligence (Fireman's Fund Ins. Co. v. Standard Oil Co., *supra*) or unseaworthiness (The Southwark, 191 U.S. 1 (1903); *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY, 129-133 (1957). If liability is established through neglgence, the defendant owner may be able to avail himself of the Limitation of Liability Act, 46 U.S.C. §§ 181-189 (1970), if he can show that the loss was incurred without knowledge or privity on the part of the shipowner (§ 183 (a)).

rather in determining whether *Jensen* and its progeny constitutionally prevented the waiver of preemption by Congress in the Federal Act,[50] and, if not, whether the states had been precluded from acting in this area of maritime torts by the Admiralty Extension Act.[51] The Admiralty Extension Act was quickly disposed of:

> While Congress has extended admiralty jurisdiction beyond the boundaries contemplated by the Framers, it hardly follows from the constitutionality of that extension that we must sanctify the federal courts with exclusive jurisdiction to the exclusion of powers traditionally within the competence of the States. One can read the history of the Admiralty Extension Act without finding any clear indication that Congress intended that sea-to-shore injuries be exclusively triable in the federal courts.[52]

As for the uniformity question raised by *Jensen*, the Court relied heavily on *Huron Cement* in allowing state regulation even where Congress has acted. The Court found no clear conflict with federal law.[53] The Court refused to allow the *Jensen* rule ". . . to engulf everything that Congress chose to call 'admiralty,' preempting state action."[54] *Jensen* was limited to its facts[55] and the Florida Act placed under the protection of the "gap theory."[56]

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[50]*Supra*, note 8.

[51]*Supra*, note 7. Traditionally whether a tort was considered to be a maritime tort or not depended on the locality where the tort occurred. In Thomas v. Lane, 23 F. Cas. 957, 960 (No. 13902) (C.C. Me. 1813), Justice Story said:

> In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are committed on the high seas, or on waters within the ebb and flow of the tide.

See Victory Carriers Inc. v. Law, 404 U.S. 202, 205 (1971), in which the Court, after quoting Justice Story, says that his viewpoint has been constantly reinterated. *Contra*, Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972) (The Supreme Court held that the "locality" test alone was insufficient and that a significant relationship to traditional maritime activity must be shown).

Thus, injuries done to land or land structures were outside admiralty jurisdiction. Kenward v. The Admiral Peoples, 295 U.S. 649 (1934) (Admiralty jurisdiction in tort cases does not extend to injuries caused by a vessel to persons or property on land. Where the cause of action arises upon land, state law is applicable); Martin v. West, 222 U.S. 191 (1911) (Bridge struck by a vessel was essentially a land structure, maintained and used as an aid to commerce on land; its locality and character were such that the tort was non-maritime. GILMER & BLACK, *supra* note 49, at 432. The Admiralty Extension Act was passed to cover some of those injuries. *Id.*, at 433. The Admiralty Extension Act has been applied directly to oil pollution in In re New Jersey Barging Co., 168 F. Supp. 925 (S.D.N.Y. 1958), where the vessel's oil pollution of navigable waters, resulting in damage to shoreline property, was held to be a maritime tort within admiralty jurisdiction.

[52]*Askew*, 93 S.Ct. at 1600. The Court in a footnote then refers to H.R. REP. NO. 1523, 80th Cong., 2d Sess. (1948), S. REP. NO. 1593, 80th Cong., 2d Sess. (1948), U.S. CODE CONG. & AD. NEWS, 1898 (1948).

[53]*Askew*, 93 S.Ct. at 1600.

[54]*Id.*, at 1601.

[55]*Id.*

[56]*Id.*

Although the Court has carved out a new area for state action in the maritime area, giving support to its decision in *Huron Cement* and reaffirming a strong Congressional policy against pollution, its decision in *Askew* leaves several questions unanswered, and for this reason it is difficult to predict what the effect of the Court's opinion will be. The Court refused to decide whether the limited liability provisions of section 12 of the Florida Act will stand in the face of the Limitation of Liability Act,[57] or even whether the Federal Act removes the pre-existing liability limits of the Limitation of Liability Act.[58] Nor did the Court decide whether regulations issued pursuant to the Florida Act setting certain standards would be invalid because the subject to be regulated requires uniform federal regulation.[59] Also, the Court declined to say whether such regulations conflicted with Coast Guard regulations issued pursuant to the Federal Act.[60] The resolution of this constitutional controversy has apparently been made before all the issues are ripe, for now each issue will have to be litigated separately. If these issues are resolved in favor of the federal government it would certainly emasculate the decision in the instant case, yet what happens to the supremacy of federal law if these questions are decided in the state's favor?[61]

The decision is none too clear about the limits of admiralty jurisdiction. The district court apparently believed that the "gap theory" had been lain to rest in the Supreme Court's decision in *Moragne v. State Marine Lines, Inc.*[62] That case dealt clearly with a maritime question and was incorrectly applied to a question involving the fringes of admiralty jurisdiction.

It may be unfair to expect the Court to resolve a question long considered impossible to answer, however, it can be said that the Court's decision in Askew leaves other courts in no worse position than before when a question involving the limits of admiralty jurisdiction and uniformity is brought before them. Yet, despite the unanswered questions in the *Askew* decision, the end result will be the strengthening of a state's power to protect its environment. Shipowners and owners of terminal facilities will be put on notice that they may have to comply with state laws which are stricter than the federal laws. If the Court follows its reasoning in *Askew*, the unlimited liability provision of the Florida Act will probably be upheld, as cleanup costs to the state and the possibility of economic damage to individuals are separate expenses not covered by the Federal Act.

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[57]*Supra* note 6. *See* note 49.

[58]*Askew*, 93 S.Ct. at 1595.

[59]*Id.*, at 1597-98.

[60]*Id.*, at 1598.

[61]An argument very similar to this was made by Justice Douglas in his dissent in *Huron Cement*. *See* Huron Cement Co. v. Detroit, 362 U.S. 440, 453-55 (1960) (Douglas, J., dissenting).

[62]398 U.S. 375 (1970) (Wrongful death action recognized under general maritime law). The district court said, 335 F. Supp. 1241, 1249 (1971):

> The decision clearly reinforced the policy of uniformity and is an indication that admiralty cannot tolerate the inconsistency inherent in accommodating state remedial statutes to exclusively maritime substantive concepts.

If this is done, hopefully it will lessen the frequency of oil pollution, as few potential polluters could risk incurring unlimited liability and would protect themselves with the safest equipment.

On the other hand it can be argued that uniform regulation of oil pollution is the most effective means of combatting oil pollution.[63] If regulation were uniform, an industry could not impose economic sanctions detrimental to a state simply because that state protected its natural resources more firmly than another.[64] However, federal legislation has not proven sufficiently effective. It is neither stringent enough in its measures nor effective enough in its application. The *Torrey Canyon* disaster, which caused a massive oil slick that damaged the shorelines of England and France in 1967, illustrates the inequities that may result if limitations are placed on liability.[65] Water pollution by oil can be devastating not only to those states who rely on tourism for their major source of income by also to the ecology.[66] Hopefully the Supreme Court's decision in *Askew* will mean that the states will be free to enact stringent pollution control laws concurrently with the federal government, without the demand for "uniformity" striking them down.[67]

Mary E. Deal

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[63]Comment, *The Florida Oil Spill and Pollution Control Act, An Intrusion into the Federal Maritime Domain*, 12 J. NATURAL RESOURCES 615 (1972).

[64]*Id.*, at 625-626.

[65]If the *Torrey Canyon* had been subject to the Federal Act, liability would have been set at $6,000,000 ($100 x 60,0000 gross tons), while actual cleanup costs were approximately $20,000,000. Comment, *The Control of Pollution By Oil Under The Water Quality Improvement Act of 1970*, 27 WASH. & LEE L. REV. 278, 297-98 (1970).

[66]Comment, *Oil Pollution of the Sea*, 10 HARV. INT'L L.J. 316, 321-23 (1969).

[67]The Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500 (Oct. 18, 1972) does not change 33 U.S.C. § 1161 *et seq.*