CONSTITUTIONAL LAW—FEDERALISM—AS AN INCIDENT OF NATIONAL SOVEREIGNTY, THE UNITED STATES HAS PARAMOUNT RIGHTS AND POWER IN THE SEABED AND SUBSOIL OF THE OUTER CONTINENTAL SHELF.

The United States brought suit against Maine and the 12 other Atlantic Coast States alleging that these states had interfered with the federal government's exclusive proprietary rights in the Continental Shelf seaward of the three-mile marginal sea.[1] On motion by the defendant states, the Supreme Court[2] appointed a special master[3] to determine the validity of the states' historical claims to the disputed lands[4] and adopted his findings.[5] *Held,* as an

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[1] The suit was prompted in 1968 when Maine purported to lease some 3.3 million acres of submerged lands in the Atlantic Ocean to King Resources of Denver. Taylor, *The Settlement of Disputes Between Federal and State Governments Concerning Offshore Petroleum Resources: Accommodation or Adjudication?* 11 HARV. INT'L L.J. 358, 373 (1970) [hereinafter cited as Taylor].

The United States and most other littoral nations have traditionally exercised sovereignty over a three-mile marginal belt, which starts at the low-water mark on the coast and extends seaward for three marine miles. A marine mile is equivalent to about 1.15 geographical miles. Under the Submerged Lands Act, 43 U.S.C. § 1301 (1970) [hereinafter cited as SLA], the coastal states now own land under this marginal belt, but with two exceptions, their ownership extends only three "geographical" miles from the coastal low-water mark. Hereinafter, when any reference is made to the three-mile marginal belt, unless otherwise specified, the reference is to the geographical three-mile belt established by the SLA. Additionally, when mention is made of the Outer Continental Shelf lands, the reference is to all land on the Continental Shelf seaward of this geographical three-mile belt.

[2] The United States had invoked the Supreme Court's original jurisdiction under 28 U.S.C. § 1251(b)(2) (1970).

The complaint alleged that the federal government's rights in the disputed land were paramount and that "each of the [defendant] States claimed some right or title to the relevant area and was interfering with the rights of the United States." The Atlantic States answered that the federal government's rights in the area were not paramount, that the states' historical claims predominated over the federal claim, and that the SLA preserved these claims.

The United States sought a declaratory judgment of its rights in the disputed lands and such other relief as the Court deemed proper. The United States also demanded an accounting for all sums that the states may have derived from the disputed area. However, the special master recommended that this claim be denied for failure of proof, and the Supreme Court approved.

[3] The Court appointed the Honorable Albert B. Maris, Senior Judge of the United States Court of Appeals for the Third Circuit.

[4] Judge Maris was given authority to request further pleadings, to summon witnesses, and to take such evidence and submit such reports as he might deem appropriate.

[5] Since both the State of Florida and the United States took exceptions to the special master's findings with respect to Florida's boundary, the Court made a separate determination of the issues thereby raised in *United States v. Florida*, 95 S. Ct. 1162 (1975). Florida claimed the master should have recognized that under the state's 1868 constitution, its boundaries extend beyond the limits set forth in the SLA and that the Florida Keys and portions of the Straits of Florida are part of the Gulf of Mexico, rather than of the Atlantic Ocean. However, the Court adopted the findings of the special master. It referred the exceptions of the United States back to the special master for consideration.

incident of national external sovereignty, the United States has paramount rights and power in the seabed and subsoil underlying the Atlantic Ocean seaward of the three-mile marginal sea to the outer edge of the Continental Shelf. *United States v. Maine*, 95 S. Ct. 1155 (1975).

The Supreme Court recognized in many early cases that when the original colonies gained independence from England they became separate sovereign states endowed with England's former rights,[6] including ownership of some land under navigable waters within their boundaries.[7] When the colonies entered the Union, they retained ownership of these submerged lands,[8] and thereafter, all new states upon admission acquired similar ownership rights within their own boundaries.[9] However, throughout the 19th and early 20th centuries, the scope and extent of state ownership of submerged lands was largely a matter of assumption. It was established in 1845, in the landmark case of *Pollard's Lessee v. Hagan*,[10] that the states owned land under *navigable inland waters and tidelands*,[11] but the Supreme Court's language therein was broad enough to include land under *navigable waters within a state's boundaries*.[12]

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[6] Shively v. Bowlby, 152 U.S. 1, 14-15 (1894); Martin v. Waddell's Lessee, 41 U.S. (16 Pet.) 367, 410 (1842).

[7] Appleby v. City of N.Y., 271 U.S. 364, 381 (1926); Shively v. Bowlby, 152 U.S. 1, 14-15 (1894); Munford v. Wardwell, 73 U.S. (6 Wall.) 423, 436 (1867); Den v. Jersey Co., 56 U.S. (15 How.) 426 (1853); Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 229 (1845); Martin v. Waddell's Lessee, 41 U.S. (16 Pet.) 367, 418 (1842).

[8] U.S. CONST. amend. X; *see* cases cited note 7 *supra*.

[9] All new states were admitted on an "equal footing" with the original states. This provision was first legislated in the Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, passed by the Congress of the Confederation, 1787, *reenacted*, 1st Cong., 1st Sess., ch. 8, 1 Stat. 51 (1789). Note, *Conflicting State and Federal Claims of Title in Submerged Lands on the Continental Shelf*, 56 YALE L.J. 356, 358 n.15 (1947) [hereinafter cited as *Conflicting Claims*].

Unlike the original states and Texas, new states did not possess sovereignty prior to admission to the Union. The original states "retained" ownership of certain submerged lands. Since the retention theory was unavailable to the new states, the "public trust" doctrine developed. Under this theory the federal government held submerged lands under navigable waters in trust for the future states. United States v. Holt State Bank, 270 U.S. 49, 55 (1926); *accord*, Shively v. Bowlby, 152 U.S. 1 (1894); Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845); State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640 (1893). *See generally* MacGrady, *Florida's Sovereignty Submerged Lands: What Are They, Who Owns Them and Where Is the Boundary?*, 1 FLA. STATE UNIV. L. REV. 596, 597 (1973).

[10] 44 U.S. (3 How.) 212 (1845).

[11] "Inland waters are those over which a state may exercise full sovereignty as if the waters were part of the land mass; for example, rivers, bays, and historic waters." Taylor, *supra* note 1, at 359. Tidelands are the lands between the high-water mark and low-water mark which are subject to the ebb and flow of tides. Borax Consolidated Ltd. v. Los Angeles, 296 U.S. 10, 22-23 (1935).

[12] "This right of eminent domain over the shores and the soils under the navigable waters . . . belongs exclusively to the states *within their respective territorial jurisdictions*, and they, and they only, have the constitutional power to exercise it." Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 230 (1845) (emphasis added). Note that the disputed land involved in *Pollard* was land under inland waters.

Consequently, the states assumed they owned land within their boundaries which extended beyond the inland waters and tidelands into the ocean.[13] The federal government first disputed this assumption in 1937 when it claimed ownership of all submerged lands within the "marine" three-mile belt seaward of the tidelands.[14] The resulting dispute[15] led in 1947 to *United States v. California*[16] where the Court held that, irrespective of state boundaries, the federal government possessed paramount rights in the land within this belt.[17]

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[13] Two other cases are usually cited by the states for the proposition that their ownership extends into the marginal sea. *Manchester v. Massachusetts*, 139 U.S. 240 (1891), involved the power of Massachusetts to regulate fishing. While the Court found that Massachusetts had such power, no question was raised as to paramount rights in the open sea. In fact, the illegal fishing charged by the state occurred in Massachusetts inland water. In the case of *The Abby Dodge*, 223 U.S. 166 (1912), the defendant was charged with landing sponges at a Florida port in violation of an act of Congress (Act of June 20, 1906, ch. 3442, 34 Stat. 313), which regulated sponge fishing in the Gulf of Mexico. The defendant challenged the statute as an infringement on the state's police powers. The Court upheld the statute but construed it narrowly as not applying to waters within the state boundary, presumably the three-mile belt. Since these cases involve the exercise of police powers, they can be distinguished from the inquiry into proprietary rights. *See Conflicting Claims, supra* note 9, at 361.

[14] E. BARTLEY, THE TIDELANDS OIL CONTROVERSY 7, 101 (1953) [hereinafter cited as BARTLEY]. A number of bills, the first being the Nye Bill, S. 2164, 75th Cong., 1st Sess. (1937), were introduced in Congress between 1937 and 1939. The bills attempted to declare that lands seaward of the low-water mark of all coastal states were part of the public domain of the United States. Not one was enacted. BARTLEY at 101-17.

[15] During the 79th Congress (1945-1946), 19 joint resolutions, all in favor of state ownership of submerged lands in the marginal sea, were brought before the House of Representatives. One resolution, H.R.J. Res. 225, 79th Cong., 2d Sess. (1946), passed both House and Senate but was vetoed by President Truman, 92 CONG. REC. 10660 (1946), and the House failed to override the veto, 92 CONG. REC. 10745 (1946). *See* Taylor, *supra* note 1, at 361 n.18.

[16] 332 U.S. 19 (1947) [hereinafter cited as *California*]. The Court stated that:

> The complaint alleges that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California."

Id. at 22-23.

[17] *Id.* at 38. The Court reasoned that, since the federal government had actually acquired the disputed area vis-à-vis other nations and since protection and control of the area were functions of national external sovereignty, the federal government's rights in the area were predominant. *Id.* at 34. Using virtually the same reasoning, the Court reaffirmed *California* in *United States v. Louisiana*, 339 U.S. 699 (1950), and in *United States v. Texas*, 339 U.S. 707 (1950), and extended the area of federal paramountcy to submerged lands seaward of the marine three-mile belt.

Prior to these decisions, Louisiana and Texas had extended their boundaries, respectively, to 24 miles seaward of the marine three-mile belt and to the outer edge of the Continental Shelf. United States v. Louisiana, *supra* at 705; United States v. Texas, *supra* at 720. In each case, the Court held that, irrespective of such boundaries, the federal government has paramount rights in all submerged lands seaward of the low-water mark on the following basis:

> If as we held in California's case the [marine] three-mile belt is in the domain of the nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond

In order to nullify the result of *California*, Congress passed the Submerged Lands Act (SLA)[18] in 1953, which quitclaimed[19] to the states all land within a "geographical" three-mile belt seaward of the tidelands.[20] In the same year Congress affirmatively asserted federal paramountcy over lands (hereinafter outer lands) seaward of the quitclaimed area in the Outer Continental Shelf Lands Act (OCSLA).[21] The federal government assumed this latter act confirmed its exclusive proprietary rights in the outer lands.[22]

The controversy since the passage of these acts focused on defining the scope of the state-owned area acquired under the SLA.[23] However, the focus shifted

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that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea.

Id. For a discussion of the Louisiana and Texas cases see BARTLEY, *supra* note 14, at 195-212.

[18] 43 U.S.C. § 1301 (1970). The SLA was held constitutional in *Alabama v. Texas*, 347 U.S. 272 (1954).

[19] The United States has asserted in subsequent cases that the SLA granted, rather than quitclaimed, these submerged lands to the coastal states. Note, *Right, Title and Interest in the Territorial Sea: Federal and State Claims in the United States*, 4 GA. J. INT'L & COMP. L. 463, 469 n.35 (1974).

[20] The SLA also quitclaimed submerged land beyond the geographical three-mile belt out to a maximum of three marine leagues. To qualify for this extension, the state had to border on the Gulf of Mexico and to prove in judicial proceedings that its boundary extended into this additional area. SLA, 43 U.S.C. §§ 1301(b), 1312 (1970).

[21] 43 U.S.C. § 1331 (1970) [hereinafter cited as OCSLA]. In effect the SLA and the OCSLA sanctioned President Truman's 1945 proclamation that the natural resources of the soil of the Continental Shelf are within the jurisdiction and control of the United States. Proclamation No. 2667, S. REP. No. 411, 83d Cong., 1st Sess. 55 (1945). The Continental Shelf was subsequently defined in a White House press release as referring to submerged lands continguous to coasts which are covered by no more than 100 fathoms (600 feet) of water. White House Press Release of September 28, 1945, *reprinted in* S. REP. No. 411, 83d Cong., 1st Sess. 55 (1945). The definition given in the OCSLA is more flexible in that it encompasses "all submerged lands [outside of state ownership] . . . of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control . . . ." OCSLA, 43 U.S.C. § 1331(a) (1970). Therefore, the shelf can grow "as the United States from time to time expands its jurisdiction and control therein either unilaterally or by agreement with other nations." Stone, *United States Legislation Relating to the Continental Shelf*, 17 INT'L & COMP. L.Q. 103, 107-13 (1968). *See also* Henri, *The Atlantic States' Claim to Offshore Oil Rights: United States v. Maine*, 21 ENVIRONMENTAL AFF. 827, 837 n.47 (1973) [hereinafter cited as Henri].

[22] *See* United States v. Louisiana, 363 U.S. 1, 9 (1960). The federal government sought a declaration that it was entitled to exclusive possession of the lands, minerals, and other natural resources in the Outer Continental Shelf lands.

[23] In *United States v. Louisiana*, 363 U.S. 1 (1960), the Court construed the SLA as expressly confirming a geographical three-mile territorial boundary for all coastal states. In addition, the SLA preserved the right of any state bordering the Gulf of Mexico to prove, in judicial proceedings, boundaries in excess of three geographical miles but not in excess of three marine leagues. SLA, 43 U.S.C. §§ 1301(b), 1312 (1970); *see* note 20 *supra*. Gulf Coast States could thereby acquire ownership of submerged lands outside the three-mile belt. The test is set forth in *Louisiana, supra* at 27, which stated that "[s]ubsequent drafts of the bill introduced the twofold test of the present Act—boundaries which existed at the time of admission and boundaries heretofore approved by Congress."

to the outer lands when the United States filed suit in the principal case, *United States v. Maine*.[24] Ruling in favor of the federal government, the *Maine* Court adopted the findings of the special master who concluded that *California, United States v. Louisiana*,[25] and *United States v. Texas*[26] were controlling.[27] In his view, these cases held as a matter of legal principle that the federal government has paramount rights in the adjacent sea lands as attributes of its jurisdiction over foreign commerce, foreign affairs, and national defense.[28]

Addressing the states' historical claims, the Court noted that one basis of *California* had been that no ownership of the land under the three-mile belt was acquired by the colonies from England.[29] Moreover, it had held in *United States v. Texas*,[30] where the state did own land under the marginal sea prior to joining the Union, that "such prior ownership nevertheless did not survive becoming a member of the Union . . . ."[31] The Court decided that it "should not undertake to re-examine the constitutional underpinnings"[32] of these earlier decisions.

Furthermore, the transfer of land to the states under the SLA was an exercise of federal paramountcy, not as the states contended, an act inconsistent with such predominance.[33] The SLA expressly declared that nothing therein affected the rights of the federal government to the resources of the outer lands.[34]

The boundaries of Texas and Florida were established as extending three marine leagues (nine geographical miles) from the coast, whereas Louisiana, Mississippi, and Alabama failed to establish a boundary beyond the geographical three-mile limit. United States v. Louisiana, 364 U.S. 502 (1960). California also failed. United States v. California, 382 U.S. 448 (1966).

In these and other cases, the Court sought to further define the quitclaimed area. *See* United States v. Louisiana (Louisiana Boundary Case), 394 U.S. 11 (1969). In *United States v. California*, 381 U.S. 139, 165 (1965), the Court adopted the definition of inland waters used in the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205. Also, in determining subsidiary issues, 381 U.S. at 167-77, the Court adopted the "ambulatory boundary" concept whereby a state may extend its seaward boundary to cover new land created by artificial or natural accretions. *Id.* at 176-77; *see* United States v. Louisiana (Texas Boundary Case), 394 U.S. 1 (1969); United States v. Louisiana, 389 U.S. 155 (1967); Taylor, *supra* note 1, at 368.

[24] 95 S. Ct. 1155 (1975).

[25] 339 U.S. 699 (1950); *see* note 17 *supra*.

[26] 339 U.S. 707 (1950); *see* note 17 *supra*.

[27] 95 S. Ct. at 1157-58.

[28] *Id.* at 1159.

[29] *Id.* at 1158.

[30] 339 U.S. 707 (1950).

[31] 95 S. Ct. at 1159. The Court stated that:

> In deciding against [Texas], the Court did not reject the prestatehood rights of Texas as it had the rights of the 13 original States in the *California* case. On the contrary, the Court was quite willing to "assume that as a republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. . . ." 339 U.S. at 717. Such prior ownership nevertheless did not survive becoming a member of the Union . . . .

[32] 95 S. Ct. at 1160.

[33] *Id.*

[34] SLA, 43 U.S.C. § 1302 (1970).

Congress could reserve these rights to the federal government only if it already had paramount rights to the outer lands under the rule laid down in *California*.[35] Additionally, Congress "emphatically implemented" this view in the OCSLA.[36] In its conclusion the Court noted that the doctrine of stare decisis had peculiar force in the context of this case. To adopt the states' contentions, the Court would have "to disturb our prior cases, major legislation, and many years of commercial activity . . . ."[37] This action, the Court decided, would be inappropriate.[38]

Maine has the legal effect of drawing a fairly definite[39] line between state and federally owned submerged lands.[40] The practical effect is to vest in the federal government ownership of the Outer Continental Shelf's rich oil deposits[41] and potentially vast revenues. The coastal states are obviously unhappy over the loss of these revenues,[42] but from a purely legal standpoint their historical claims to the disputed lands are without merit. The language of the charters under which the original states claim title is too ambiguous to allow one to draw a definite conclusion.[43] However, the most logical construction

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[35] 95 S. Ct. at 1161.

[36] *Id.*

[37] *Id.* at 1162. The Court stated that "[w]e have long held that the doctrine of *stare decisis* carries particular force where the effect of re-examination of a prior rule would be to overturn long-accepted commercial practice." *Id.* at 1162 n.9.

[38] *Id.* at 1162.

[39] In *United States v. California*, 381 U.S. 139, 167-77 (1965), the Court adopted the ambulatory boundary concept allowing a state to extend its boundary seaward to cover new coastal land created by accretions. *See* note 23 *supra*. Under this concept, the area of federally owned land could become smaller:

> The question arises whether the United States will take unfair advantage of its power to prevent a state from constructing harbor-works into the sea, since such artificial accretions will increase the state jurisdiction (and thereby decrease federal jurisdiction) over offshore lands. But worse yet, the ambulatory nature of the boundary creates the very uncertainty which should not exist in this area of delicate federal-state relationships.

Taylor, *supra* note 1, at 368. Hence, the line between marginal belt lands and Outer Continental Shelf lands may be characterized as only "fairly definite."

[40] Under the SLA only the Gulf Coast States had the possibility of extending their boundaries past the geographical three-mile mark out to three marine leagues. *See* notes 20 and 23 *supra*. Therefore, the Atlantic Coast States own only that land beneath the geographical three-mile belt, and the federal government owns all the land seaward of this belt to the edge of the Continental Shelf.

[41] The *Maine* Court stated that:

> The Outer Continental Shelf, since 1953, has yielded over three billion barrels of oil, 19 trillion m.c.f. of natural gas, 13 million long tons of sulfur, and over four million long tons of salt.[8] In 1973 alone, 1,081,000 barrels of oil and 8.9 billion cubic feet of natural gas were extracted daily . . . .

95 S. Ct. at 1162.

[42] *See* TIME, March 31, 1975, at 84.

The coastal states were so bitter following the *California* decision that the offshore dispute became an issue in the presidential campaign of 1952. *See* Taylor, *supra* note 1, at 384.

[43] The charters of Virginia illustrate this point. The first charter of April 10, 1606, granted by King James I, purports to grant

of this language indicates that the charters granted ownership of islands within colonial boundaries, not of submerged lands.[44] Furthermore, it can be strongly and convincingly argued that England did not claim ownership of the subsoil and seabed of any part of the Atlantic Ocean.[45] Hence, the original states could not have acquired ownership of these lands from England at the time of the Revolution.

However, it is equally difficult to find justification for the federal government's proprietary claim. Obviously, the government has the constitutional power to acquire this land in fee,[46] but the manner in which it may do so is an open question.[47] The *Maine* Court adopted the theory, first expressed in *California*,[48] that the United States acquired ownership as an attribute of the exercise of external sovereign powers.[49] Even though the federal government has the duty of defending American rights in these lands against possible claims of other nations, it does not necessarily follow that the government has also acquired ownership of such lands.[50] "It would be as logical to say, that to exercise its powers of national defense or of regulation of commerce, the Federal Government needed a proprietary interest in the whole country."[51]

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all the lands soyle Groundes havens portes Ryvers Mynes Myneralls woodes Marrishes waters Fyshinges Commodities and hereditaments whatsoever from the saide place of theire firste plantacion and habitacion for the space of Fiftie like Englishe miles all alongst the saide Coaste of Virginia and America towardes the Easte and Northeast as Coaste lyeth together with all the Islandes within one hundred Miles directlie over againste the same sea Coaste . . . .

Flaherty, *Virginia and the Marginal Sea: An Example of History in the Law*, 58 VA. L. REV. 694, 696 (1972) [hereinafter cited as Flaherty]. The second charter of May 23, 1609 granted

all the islands lying within one hundred miles, along the coast of both seas of the precinct aforesaid; together with all the soils, grounds, havens, and ports, mines, as well royal mines of gold and silver, as other minerals, pearls and precious stones, quarries, woods, rivers, waters, fishings, commodities, jurisdictions, royalties, privileges, franchises and preheminences, within the said territories and the precincts thereof, whatsoever, and thereto and thereabouts, both by sea and land, being or in any sort belonging or appertaining . . . .

Id. at 697.

[44] In *United States v. Louisiana*, 363 U.S. 1 (1960), the Court itself construed similar language as granting islands only. The language construed was part of the definition of West Florida, ceded by France to Great Britain in the Treaty of Paris of February 10, 1763. West Florida was described as "bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to Lake Ponchartrain . . . ." *Id.* at 80; *see* Henri, *supra* note 21, at 833-34; *contra*, Flaherty, *supra* note 43, at 697.

[45] *See* Henri, *supra* note 21, at 834; *Conflicting Claims*, *supra* note 9, at 359-60.

[46] Congress has the power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. art. IV, § 3. The power of the executive and legislative branches to acquire new territory was upheld in *Wilson v. Shaw*, 204 U.S. 24 (1907). *See Conflicting Claims*, *supra* note 9, at 362.

[47] *Conflicting Claims*, *supra* note 9, at 362-64.

[48] 332 U.S. at 34.

[49] 95 S. Ct. at 1160.

[50] *Conflicting Claims*, *supra* note 9, at 364.

[51] *Id.*

It would appear that the government has a stronger claim by virtue of the OCSLA. Although the Act does not expressly establish federal ownership of the disputed lands, it sets up exclusive leasing procedures[52] and provides that all revenues shall go into the federal treasury.[53] However, the *Maine* Court agreed with the special master that the government had paramount proprietary rights in these lands prior to the OCSLA.[54]

Whatever its basis, the *Maine* decision establishes federal ownership of the outer lands to the total exclusion of the states. In view of the close balance of power in Congress between coastal and noncoastal states,[55] this solution may prove to be politically infeasible. Just as Congress passed the SLA to deal with *California*, it will probably enact legislation to deal with *Maine*. Indeed, the political processes may be the best means for finally settling the dispute.[56]

However, Congress is not likely to quitclaim title to the outer lands as it did to the marginal belt lands in the SLA.[57] The probable congressional solution will be to reassert federal ownership of these lands and then to provide some percentage basis for dividing revenues earned from exploitation of the area between the federal government and the coastal states.[58] This compromise is the most realistic and justifiable solution, since it recognizes certain equitable considerations in favor of the states[59] and is politically practical.

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[52] 43 U.S.C. §§ 1334-35 (1970).

[53] *Id.* § 1338.

[54] 95 S. Ct. at 1161.

[55] The 23 coastal states have a total of 46 Senators and 234 Congressmen. Note, *The Federal-State Offshore Oil Dispute*, 11 WM. & MARY L. REV. 755, 767 (1970) [hereinafter cited as *Oil Dispute*].

[56] *See* Taylor, *supra* note 1, at 384-88. The author states:

> The decision-makers in the United States . . . [were] confronted with a dispute on or near the line between disputes which are capable of settlement by adjudication and disputes which are nonjusticiable. The conditions for adjudication are neither minimal nor are they optimal. In these circumstances, the responsibility for settling the dispute should be borne by those processes of government most capable of achieving a satisfactory result, namely the *political* processes of the federal and state governments.

Id. at 399.

[57] At least one constitutional problem would result from such a quitclaim. If a state had control further out to sea than the federal government, conflicts might arise due to the state's attempting to dictate to the government matters outside the state's constitutional jurisdiction. *Oil Dispute*, *supra* note 55, at 762. In addition, coastal states' ownership of these offshore lands would decrease the revenues flowing to the federal government. The result would be a decrease in the revenue available for distribution to the noncoastal states, thereby enriching the coastal states at the expense of these inland states. Taylor, *supra* note 1, at 390. One international consideration should be noted. Allowing the states to claim more than three miles of seabed might stimulate excessive claims by other nations. *Oil Dispute*, *supra* note 55, at 761.

[58] *See Oil Dispute*, *supra* note 55, at 768-70. *See also* Taylor, *supra* note 1, at 372 n.86. While the *Maine* Court never expressly advocates revenue sharing, it defines the federal government's interest in the outer lands in terms of "paramount rights and power," which seems to avoid the quality of exclusivity embodied in other terms like title and ownership. The Court appears to be hedging in order to give the states some basis for broaching a claim to at least a portion of the revenues from these outer lands.

[59] *Oil Dispute*, *supra* note 55, at 764.

Maine has established federal ownership of the outer lands, but has not settled the controversy. The struggle for offshore oil revenues will continue. The coastal states are unlikely to give up this struggle without another long fight.

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