10-1-1975

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Andrew W. Anderson

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Recommended Citation
Andrew W. Anderson, States' Rights in the Outer Continental Shelf Denied by the United States Supreme Court, 30 U. Miami L. Rev. 203 (1975)
Available at: http://repository.law.miami.edu/umlr/vol30/iss1/6

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CASES NOTED

States’ Rights in the Outer Continental Shelf Denied by the United States Supreme Court

In 1969 the State of Maine issued a permit for oil and gas exploration of the outer continental shelf lands1 off its coast.2 Invoking the original jurisdiction of the United States Supreme Court, the United States filed suit against Maine, and joined 12 other states which bordered on the Atlantic Ocean,3 seeking a declaration that these states had no rights in outer continental shelf lands and that these lands were subject to the exclusive sovereignty of the United States. At stake was not only the right to royalties from the exploita-

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1. The term “outer continental shelf” refers to that portion of the continental shelf lying beyond the three-mile territorial sea. The concept of legal rights in the continental shelf was first announced in 1945 by President Truman. Pres. Proc. No. 2667, 3 C.F.R. 67 (1943-48 Comp.), 59 Stat. 884 (1945). On the same day that the Truman Proclamation was issued, the United States, also for the first time, defined a juridic, as contrasted to a geologic, continental shelf when it was stated: “Generally, submerged land which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf.” Pres. Press Release, Sept. 28, 1945, in 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 757, 758 (1965). The concept of a juridic continental shelf was important to the development of legal rights in the continental shelf because geomorphic factors cause the depth and distance from shore of the geologic continental shelf to vary widely around the world, thereby frequently making it difficult to determine the exact location of its outer boundary. The idea of a juridic continental shelf was subsequently adopted by many nations and it is now part of international law. International recognition of the rights of coastal nations in their continental shelves out to a depth of 200 meters occurred in 1958. Convention on the Continental Shelf, opened for signature April 29, 1958, art. 1, [1964] 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter cited as Shelf Convention].

2. The permit covered 3.3 million acres of land which was located 88 miles from the coast. This constituted only a fraction of the 64 million acres of Atlantic outer continental shelf lands. See 1 BUREAU OF LAND MANAGEMENT, U.S. DEP’T OF INTERIOR, DRAFT ENVIRONMENTAL STATEMENT—PROPOSED INCREASE IN ACREAGE TO BE OFFERED FOR OIL AND GAS LEASING IN THE OUTER CONTINENTAL SHELF 173 (1975) [hereinafter cited as ENVIRONMENTAL STATEMENT].

3. The states were New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. Connecticut was not joined because it borders only on Long Island Sound, which is regarded as internal waters, thus making the legal issues in dispute not applicable.

The action against Florida was later severed because of unique legal and factual issues. United States v. Maine, 403 U.S. 949 (1971). Florida asserted that Congress had expressly approved her claimed boundaries by the Act of June 25, 1868, ch. 70, 15 Stat. 73. The exact boundary between the Gulf of Mexico and the Atlantic Ocean was also in dispute. The severed action was consolidated with a related United States-Florida proceeding which was before the Court and a decision in the combined action was announced on the same day as that of the noted case. United States v. Florida, 95 S. Ct. 1162 (1975).
tion of rich oil and gas deposits, but also the right to control the ecological conditions under which such exploitation would take place. Similar rights of non-party states in the other outer continental shelf areas would, by necessity, also be affected by the outcome of the decision. Having been appointed by the Supreme Court to direct the proceedings and take evidence, a special master entered a report which recommended that a decision be rendered in favor of the United States. After oral arguments on the master's report, and the exceptions to it which had been filed by the states, the United States Supreme Court held: As an incident of national sovereignty, the United States, to the exclusion of the Atlantic coastal states, has sovereign rights over the seabed and subsoil underlying the Atlantic Ocean from the boundary of the three-mile territorial sea to the outer edge of the continental shelf. United States v. Maine, 95 S. Ct. 1155 (1975).

The Maine decision represents yet another attempt to settle the continuing federal-state dispute over the power to control offshore mineral rights. For most of our nation's history, it had been universally assumed that title to lands lying under the territorial sea was vested in the states. Indeed, when the United States needed parcels of submerged lands, it obtained deeds to them from the states. The United States repeatedly refused to issue oil leases for lands under the territorial sea, declaring that title was in the states. This assumption rested on an unbroken line of Supreme Court rulings that

4. Estimated at 12 billion barrels of oil and 75 trillion cubic feet of gas. ENVIRONMENTAL STATEMENT, supra note 2, Table 13, at 168.
5. Id. at 169. At stake for non-party states were the rights to another 100 billion barrels of oil and 600 trillion cubic feet of gas.
8. The Court indicated that the boundary of the territorial sea was three geographical miles seaward from the ordinary low watermark and from the outer limits of inland waters on the coast. The term "ordinary low watermark" has its origin in the Court's decision in United States v. California, 332 U.S. 19 (1947). Presently, however, the term is without true legal significance. Under international law, the low water baseline used for measuring territorial seas is that which is chosen by the individual coastal nation. The United States normally uses the mean low watermark, which is the mean mark of all low tides over a lunar cycle of 18.6 years.
9. The concept of a territorial sea as such did not exist in the early years of the United States, but as rights in the marginal belt of coastal waters developed, they were assumed to be in the states. E.g., Martin v. Waddell, 41 U.S. (16 Pet.) 367 (1842); see United States v. California, 332 U.S. 19 (1947).
11. Id. at 1417.
all right, title and interest of the English Crown in lands lying under
navigable waters passed not to the United States, but to the people
of the several states as sovereigns at the time of the Revolution. This
doctrine, used repeatedly, was extended to states admitted to
the Union after the Revolution on the basis of "equal footing." The
cases applying this doctrine, however, dealt primarily with property
rights in the land beneath inland navigable waters. The question
of title to lands lying under the territorial sea was never expressly
decided, but the language employed was sufficiently strong to cre-
ate the impression that the states owned these lands as well.

The United States first thought to question the title of the
states to offshore oil lands in 1937, after great pressure from groups
interested in federal, rather than state, control of offshore leasing.
Early attempts to obtain legislative abrogation of the states' rights
by oil company interests and Navy supporters seeking fuel reserves,
however, were repeatedly rejected by Congress, which refused to
declare title to be in the United States, both before and after World
War II.

Finally, in 1947 the Attorney General of the United States
turned to the Supreme Court to have the matter settled in the case
of United States v. California. In finding for the United States, the
Court for the first time distinguished between lands lying under
inland navigable waters and those lying under the territorial sea.

12. E.g., Martin v. Waddell, 41 U.S. (16 Pet.) 367 (1842). Citations to other cases can
be found in the articles cited in note 16 infra.
15. For many years the dividing line between "inland" navigable waters (e.g., rivers,
bays, and lakes) and "marginal" navigable waters (the territorial sea) was unsettled. Finally,
in United States v. California, 381 U.S. 139 (1965), the Supreme Court adopted as the
boundary line the baseline from which the territorial sea is measured as defined in the
Convention on the Territorial Sea and the Contiguous Zone, opened for signature April 29,
Territorial Sea Convention].
16. The Supreme Court cases deciding rights of the coastal states in various submerged
lands prior to 1947 are collected in Note, Conflicting State and Federal Claims of Title in
Submerged Lands of the Continental Shelf, 56 Yale L.J. 356, 360 n.35 (1947). See also Note,
Right, Title, and Interest in the Territorial Sea: Federal and State Claims in the United
17. United States v. California, 332 U.S. 19, 36 (1947). For example, one case upheld the
title of the State of Illinois to lands under Lake Michigan on the basis that its title and rights
were analogous to "the dominion and sovereignty over and ownership of lands under tidewa-
The Court rejected California's contention that the original thirteen colonies acquired ownership over the territorial sea from the English Crown, under which title California could claim on the basis of equal footing, because it found that the concept of a territorial sea was largely the result of later actions by the national government. The Court, however, indicated that insufficient evidence as to the historic title of the states was not the basis of its holding. Rather, the Court found that paramount rights in and power over the territorial sea adhered to the federal government on the basis of its constitutional role in national defense and its existence as the external sovereign under domestic and international law. These paramount responsibilities, the Court reasoned, necessitated dominion over such submerged lands as an incident of national sovereignty.20

Shortly after the California case was decided, its doctrine was applied by the Court in United States v. Louisiana21 and United States v. Texas.22 The State of Louisiana claimed title to a 27-mile belt of the seabed off her coast on the basis that she had exercised unchallenged sovereignty over the land since her admission to the Union. The Supreme Court rejected Louisiana's claim to the three-mile belt under the territorial sea, on the basis that it could find no material differences in either the preadmission or postadmission history of Louisiana that made her case stronger than that of California. Louisiana's claim to the 24 miles beyond the territorial sea was also rejected by the Court, with the Court reasoning:

If, as we held in California's case, the 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 that limit also is. The

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20. Mr. Justice Reed dissented because he found California's historic title argument persuasive. Mr. Justice Frankfurter dissented on the grounds that it was improper for the Court to have considered the merits of the case. He criticized the majority for having confused dominion, which concerns property and ownership rights, with imperium, which relates to political sovereignty, and then stated:

To declare that the Government has "national dominion" is merely a way of saying that vis-a-vis all other nations the Government is the sovereign. If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States.

Let us assume, for the present, that ownership by California cannot be proven. On a fair analysis of all the evidence bearing on ownership, then, this area is, I believe, to be deemed unclaimed land, and the determination to claim it on the part of the United States is a political decision not for this Court.

Id. at 45.


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.\textsuperscript{23}

Texas' claim to the land off her coast was based on the fact that she had been recognized as an independent and sovereign nation by the United States prior to her admission to the Union. Thus, the same types of rights which the United States, as an external sovereign, has over the territorial sea had also been possessed by Texas prior to her admission to the Union. Texas' claim was, therefore, arguably stronger than that of Louisiana. Nonetheless, it too was rejected. The Court reasoned that since Texas had been admitted to the Union on an equal footing with the other states, it did not matter what claim Texas had to submerged lands as a nation prior to admission; all such rights were relinquished and passed to the United States upon admission to the Union since the United States, as external sovereign, required paramount rights.

In 1953 Congress responded to the \textit{California, Louisiana,} and \textit{Texas} cases with the \textit{Submerged Lands Act.}\textsuperscript{24} The Act quitclaimed the lands under the territorial sea to the states for the express purpose of abrogating the \textit{California} doctrine and restoring to the states that which everyone previously believed to have been theirs.\textsuperscript{25} With title of the states to the submerged lands established, the course of litigation then turned to the construction and effect of the terms of the \textit{Submerged Lands Act}. Since Congress could not grant more than the three miles which the United States claimed as territorial sea without recognizing similar claims by other nations, the limitation of the quitclaim to three miles led to disputes as to the exact location of the outer limits of the states' lands. Problems dealt with in this series of litigation included: (1) the definition of "coastline,"\textsuperscript{26} (2) the effect of preadmission Mexican and Spanish land grants which included submerged lands,\textsuperscript{27} (3) the interpretation of states' acts of admission and of any recognition by Congress of marine boundaries greater than three miles,\textsuperscript{28} and (4) the use and con-

\begin{thebibliography}{28}
\bibitem{23}339 U.S. at 705.
\bibitem{25}Legislative History, supra note 10, at 1399, 1498-99.
\bibitem{26}United States v. Louisiana, 364 U.S. 502 (1960).
\bibitem{27}United States v. Louisiana, 363 U.S. 1 (1960).
\bibitem{28}Id. Texas and Florida were found to be entitled to a nine-mile boundary by virtue of the Congressional resolution annexing Texas, \textit{id.} at 65, and Congressional approval of Florida's constitution which claimed nine miles upon her readmission to the Union following the Civil War pursuant to a Reconstruction act. \textit{Id.} at 121. Oddly, such boundaries of a state beyond those claimed by the United States have not been found to be at variance with the paramount rights doctrine of \textit{California}.
\end{thebibliography}
struction of "closing lines," "baselines," "historic bays," and other technical details of boundary measurement. 29

Prior to the Maine decision, no case had dealt with the offshore rights of a state which had originally been a colony. Thus, none of the colonial states were bound under the doctrine of res judicata by the holding in California that they had failed to obtain dominion over the territorial sea. Since all eleven of the colonial states bordering the Atlantic were parties to Maine, it could be expected, as did in fact occur, that the historic title issue would be vigorously contested before the special master. The states sought to show, through various charters, treaties, and other historical documents, that the English Crown had established a claim of sovereign jurisdiction and ownership over coastal waters which passed to the states either at, or before, the Declaration of Independence. 30 The United States, on the other hand, in addition to arguing that United States v. California was controlling, on the basis of stare decisis, sought to show that the sovereign rights of the Crown, if any, passed not to the states, but rather to the Continental Congress, and then to the United States. 31 In support of this contention, the United States alluded to an assumption of sovereignty by the Continental Congress based on acts such as the conduct of international affairs, the negotiation of treaties, the direction of the national defense, and the assertion of superior admiralty jurisdiction over the states. 32

The report submitted by the special master recommended that the historic title argument of the states be rejected, and the Supreme Court agreed. The Court further stated, however, that even if such rights of external sovereignty did exist in the states as alleged, they passed to the United States upon ratification of the Constitution on the basis of the Court's prior holding in United States v. Texas. The Court's decision in Maine thus extends the constitutional foundation upon which United States v. California

30. Maine was not an original colony, but was created out of Massachusetts and admitted to the Union in 1820. 8 Mass. Acts 248 (1819); Henri, The Atlantic States, Claim to Offshore Oil Rights: United States v. Maine, 2 Envtl. Affairs 827, 832-33 (1973).
32. For an exhaustive treatment of the historical arguments supporting the United States' position, see Morris, supra note 31.
33. For example, the Continental Congress passed an act creating a "Court of Appeal in Cases of Capture," with power to reverse prize proceedings of the highest court of any state. The jurisdiction of this court was upheld in Penhallow v. Doane, 3 U.S. (3 Dall.) 33 (1795). Other examples may be found in Morris, supra note 31, at 1074-83.
was decided to the Atlantic outer continental shelf lands by the reasoning of *United States v. Louisiana*. In holding that exclusive sovereignty by the United States in outer continental shelf lands is necessary, the Court was effectively restating the federal paramount rights doctrine, which was supposedly abrogated by Congress in the Submerged Lands Act.

The Court dealt with the contention that Congress, in passing the Submerged Lands Act, had repudiated the doctrine enunciated in *United States v. California* by stating that it was their view that the premise was embraced rather than repudiated by Congress in the Submerged Lands Act of 1953. . . . [T]his transfer was in no wise inconsistent with paramount national power but was merely an exercise of that authority.\(^{34}\)

The Court, in support of this view, emphasized a provision of the Act which stated that the transfer did not affect the rights of the United States in the outer continental shelf and which reasserted the United States’ rights of jurisdiction over shelf resources.\(^{35}\) This declaration by Congress was found to be "squarely at odds with the assertions of the States"\(^{36}\) that Congress had repudiated *California*. Furthermore, the Court stated that Congress had "emphatically implemented"\(^{37}\) the Court’s view that the United States, rather than the states, has paramount rights in the seabed when Congress enacted the Outer Continental Shelf Lands Act.\(^{38}\) In support of its statement, the Court cited the provision of the Act which declared [it] to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition . . . .\(^{39}\)

The Court then reasoned that in light of the commercial practices and activities which had grown up in reliance on the *California* decision (which had been “embraced” by Congress), the case was

\(^{34}\) 95 S. Ct. at 1160.

\(^{35}\) Nothing in this chapter shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, . . . all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is confirmed.


\(^{37}\) Id.


binding and must be given full stare decisis effect. The Court stated its reluctance to disturb the established commercial practices, as well as the statutory and regulatory framework which has grown up around them.

Although the usage of the federal paramount rights doctrine in Maine may reasonably be disputed, the Court's decision to disregard the historic title claim of the states is well founded. On a purely historic basis, it is highly unlikely that the English Crown claimed any sovereign rights in the territorial sea. The better view is that the concept of the territorial sea as a recognized principle of international law did not emerge until much later. Even if such rights did exist and did pass to the states, they existed at that time simply as legal rights under international law vis-a-vis other nations, and the question of mineral rights was never considered. As international rights they had to pass from the individual states to the United States either upon ratification of the Constitution or upon admission of the state to the Union under both international law and the rationale of United States v. Texas. That this requires the exclusion of the states from participation in development of the outer continental shelf is true, however, only if one accepts the Court's underlying assumption that the United States in its role as an external sovereign requires exclusive and paramount rights amounting to ownership of the outer continental shelf lands.

In resting its holding in United States v. Maine on its previously criticized and arguably abrogated holding in United States v. California, the Court has brought into question once again the "constitutional underpinnings" of that case. As pointed out by Mr. Justice Frankfurter in his California dissent, the holding of the Court can be criticized as confusing dominion over mineral resources and property rights by the states with the imperium necessary on the part of the United States to act as a sovereign in the international arena. Moreover, international law does not concern itself with the domestic allocation of the benefits which accrue as a result of the recognition of the exclusive rights of a nation to the resources of its continental shelf.

40. In R. v. Keyn, 2 Ex. D. 63, 175 (1876), the English court expressly rejected arguments as to such a claim by the Crown before that date and expressed doubt as to its existence at that time. It is generally held that while the concept of a protective buffer zone existed as early as 1776, it did not settle into a legal concept with appurtenant property rights until the 19th century. Master's Report, supra note 7, at 76.
42. 95 S. Ct. at 1160.
43. See note 20 supra.
While the paramount right of the United States to act in national defense matters and to conduct foreign affairs is indisputable, it does not require exclusive federal rights in the outer continental shelf, as the Court in Maine found, any more than it requires federal ownership of seacoast beaches or a three-mile strip of land along our borders with Mexico and Canada. Property rights and state laws are always subject to the paramount necessities of the national interest, but the exercise of such rights by states or individuals is not incompatible with national sovereignty unless there is a direct conflict. The absence of such a direct conflict between private property rights and national sovereignty is graphically illustrated by the numerous leases granted to private companies by the United States in these very waters. And the logic of this argument is not lessened by the fact that the nature of rights in outer continental shelf lands differs from the nature of rights in the territorial sea. While every coastal nation exercises full sovereignty (dominion and imperium) over both the submerged lands and waters of its territorial sea, rights in continental shelf lands beyond the territorial sea are limited by international law to resource exploration and exploitation. Since continental shelf rights are a creature of international law, they can be claimed only by the external sovereign. The necessity of claiming such international rights under the United States, however, does not preclude their domestic allocation to either states or individuals (as was done, for example, under the Submerged Lands Act). The Supreme Court has itself recognized this fact in stating that the exercise of territorial jurisdiction by a state for "purely domestic purposes" beyond the limits of the territorial sea claimed by the United States under international law was not in conflict with the government's foreign relations policy.

Even if the constitutional policy underlying the holding in United States v. California was valid at the time of its adoption, it is highly debatable whether Congress "embraced" that policy so that it survived the Submerged Lands Act to be "emphatically implemented" in the Outer Continental Shelf Lands Act. A reading of the legislative history of the Submerged Lands Act establishes no clear cut "embracing" of the California decision, but rather gives the contrary impression. The grant of a three-mile boundary to the

45. Territorial Sea Convention, supra note 15, art. 1.
46. Shelf Convention, supra note 1, art. 2.
49. Id. at 1498-99.
states may reasonably be read as a confirmation of at least that amount of land, but it can hardly be read as a limitation on additional jurisdiction since the Act was expressly without prejudice to any claim which a state might have that its boundary extended beyond three miles. The statutory language can reasonably be interpreted that Congress intended to limit state claims concerning the outer continental shelf, but the same language is equally susceptible to an interpretation that Congress intended to make a claim in the international arena for the United States on behalf of the people and the states. Because the United States Government alone, as external sovereign can claim such rights under international law, the use of language of exclusivity and the failure to grant outer continental shelf rights to the states may be indicative only of a desire to assert a strong claim and to take no steps which could be prejudicial to national rights under a concept which was then vague and ambiguous and which could give foundation to extravagant claims by other nations. The strong language in the Outer Continental Shelf Lands Act and its legislative history, which the Court reads as a claim of exclusive federal jurisdiction against the states, may, then, in a similar manner, have been only the assertion of a United States claim to shelf resources for its people and states. The question of Congressional intent to grant rights in the continental shelf to the states may be moot, however, in light of the argument advanced by some scholars that these rights have always existed in the states by virtue of the allocation of powers under the Constitution.

50. Id. at 1484-85.
52. 43 U.S.C. § 1302 (1970). See note 35 supra. The original text of this section provided that nothing in the Act should be deemed to affect the issues between the United States and the respective states relating to the outer continental shelf lands. It was later changed to its present text, vesting such lands in the United States. Legislative History, supra note 10, at 1491.
53. Many other nations have made assertions to a similar effect with respect to their continental shelves, and the committee believes it proper and necessary that the Congress make such an assertion on behalf of the United States. . . . H. R. 4198 asserts as against the other nations of the world the claim of the United States to the natural resources in the Continental Shelf. Legislative History, supra note 10, at 1391 (emphasis added).
55. But see 43 U.S.C.A. § 1333(a)(3) (Supp. Feb. 1975), providing that: The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof . . . .
56. See Note, Right, Title and Interest in the Territorial Sea: Federal and State Claims
Regardless of whether the Submerged Lands Act and Outer Continental Shelf Lands Act are interpreted as intending to expressly nullify or embrace California, the very passage of the Submerged Land Act can only be interpreted as resulting in the de facto repudiation of the Court's holding and rationale in the California, Louisiana, and Texas cases. The viability of the doctrine that the national defense and the conduct of foreign affairs and world commerce require paramount federal rights in coastal waters is highly doubtful when it is considered that such rights have been exercised for only six years out of the nearly 200 years of the nation's history. The paramount necessity of United States ownership of submerged lands has never been demonstrated and is defeated by its factual non-existence. Yet the Court used it as the foundation of its holding in Maine.

Absent the underlying constitutional policy which ostensibly led to the decision in California, the decisions in Texas and Louisiana lose much of their value as precedent. Accordingly, the way might be opened to historic and constitutional claims to outer continental shelf lands by states who were not parties to Maine—particularly by Alaska and Hawaii, which were admitted to the union after 1953 and thus could not have surrendered their claims by the operation of non-existent constitutional necessity. Since neither of these states is presently bound by any decision in this area, the claims of Hawaii and Alaska might be based on their prior status as independent nation and foreign possession, respectively. Successful claims by either of these states might pave the way for successful reassertion of claims by other states to similar rights on historic or constitutional grounds.

At the very least, the recognition that the Constitution does not require paramount federal rights would permit the implementation of Mr. Justice Frankfurter's dissent in California to the effect that the allocation of rights in the outer continental shelf is not suitable for adjudication, but is in reality a political question concerning the allocation of powers under our federal system. Such a proposal was set forth in an amicus curiae brief in Maine, but was implicitly rejected by the Court. Recognition must be given to the fact that states are a major part of our political system and have vital concerns regarding these submerged lands.

\[\text{In the United States, 4 Ga. J. Int'l \\& Comp. L. 463 (1974).}\]

57. From the California decision in 1947 until the passage of the Submerged Lands Act in 1953.

Coastal states suffer not only the ecological impact of offshore development and oil spills, but also the economic and social impact of onshore support facilities. Recent legislation has recognized these important state interests, and proposed legislation would further recognize these impacts and have the states participating in the revenues from offshore operations. If the Congress takes such great pains to recognize the interests of the states in the outer continental shelf, it would seem that the Supreme Court should do no less. Such recognition should not be impeded by the Court's professed reluctance to disturb established commercial practice and reliance since the Court was more than willing to upset practices of over 170 years by its original holding in California.

Unless the Court, or Congress, adopts another solution to the entire problem, the outlook for the future is that in all likelihood this "interminable litigation" will continue. The questionable constitutional policy basis of United States v. California and United States v. Maine will only encourage litigation by other states hoping to persuade yet another Court of their rights. The vast amount of money at stake and the increasing sensitivity to vital environmental issues virtually ensures this. Developments in the international law of the sea may also prove fertile ground for further federal-state submerged lands litigation. International rights in offshore resources are currently in a state of flux, and the expansion of the United States territorial sea to 12 miles or the recognition of a 200-mile economic resource zone jurisdiction will no doubt lead to state claims for participation in the new rights under the auspices of federalism. Without a more rational and comprehensive allocation...

59. For example, California would have been spared, in all likelihood, from the ecological consequences of the Santa Barbara oil spill if the rigs operating just a few miles off its coast had been operating under its standards for drilling safety rather than the laxer federal standards. Nanda & Stiles, Offshore Oil Spills: An Evaluation of Recent United States Responses, 7 SAN DIEGO L. REV. 519, 528 (1970).


61. Bills introduced into the First Session of the 94th Congress include H.R. 376 and S. 130 dealing with revenue sharing; S. 81 giving coastal state governors veto power over offshore leases and S. 521 and S. 426 dealing with compensation of coastal states for the impact of offshore development.

62. Legislative History, supra note 10, at 1386.

63. While there has been no resolution of these issues by the current United Nations Conference on the Law of the Sea, there seems to be a widespread consensus that a 12-mile territorial sea as well as a 200-mile economic resource zone jurisdiction will be a reality in the near future. See generally ANONYMOUS DRAFT TREATY ON THE LAW OF THE SEA (U. Miami Sea Grant Technical Bulletin No. 29, March 1975).
of rights in the outer continental shelf, litigation may well continue into the next century until the issues are finally rendered moot by the exhaustion of the oil and gas reserves—unless, of course, there is something else of value out there to be exploited.

ANDREW W. ANDERSON

**Florida’s Slice of the Offshore Pie**

The multibillion dollar question of who owns the seabed and natural resources in the seabed off Florida’s coastline was answered by the United States Supreme Court, which, in affirming its special master’s report, held: Under the Submerged Lands Act of 1953, Congress granted the State of Florida title to and ownership of the seabed and the natural resources of the seabed lying within the state boundaries approved by Congress, but in no event more than 3 geographical miles into the Atlantic Ocean or 3 marine leagues into

1. A special master may be appointed by the Court to aid it in obtaining facts and deciding issues in complicated litigation. His powers are specified by the Court and his reports and recommendations are advisory only, subject to objections and exceptions by the parties. The Court will determine all critical motions and grant or deny the ultimate relief. It will, however, accept the master’s report unless it is clearly erroneous. R. Stern & E. Grossman, SUPREME COURT PRACTICE 408-09 (4th ed. 1969).

2. The Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-15 (1970), is an affirmative quitclaim grant from the federal government to the states of the title to and ownership of the lands beneath the navigable waters within the boundaries of the states, as those terms are defined under the Act. See note 3 infra.

3. The Submerged Lands Act of 1953, 43 U.S.C. § 1301(b) (1970), defines the term “boundaries” to include: the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1321 of this title but in no event shall the term “boundaries” or the term “lands beneath navigable waters” be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean or more than three marine leagues into the Gulf of Mexico. (emphasis added).

The Court generally approved the special master’s findings as to the location of these boundaries. The exceptions of the United States to the finding that a portion of Florida Bay was a “juridical” bay and to the drawing of “closing” lines around three groups of islands (Dry Tortugas, Marquesas Keys, and “lower” Florida Keys) were referred back to the special master for further consideration. See notes 38-40 infra and text accompanying notes 37-45 infra.

4. A geographical or nautical mile equals 6,076.11549 feet.

5. A league is approximately 9 geographical miles. Florida’s claim of up to a 3 league boundary off its Gulf coast under the authority of the Submerged Lands Act was previously established in United States v. Florida, 363 U.S. 121 (1960). This decision left several important questions unanswered, however, such as the location of the boundary between the Atlantic Ocean and the Gulf of Mexico.