The Atlantic States’ Claim to Offshore Oil Rights: 
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I. INTRODUCTION

The industrial world has come to realize that its natural energy supply is limited. The realization that petroleum supplies will soon be exhausted has given rise to a growing debate over the proper way to manage and conserve fuel resources. Specifically, in the United States, one critical question is which level of government is best able to manage marine mineral resources. Proponents of federal control assert that meaningful management and ecological control can be achieved only through a uniform, federal system of regulation. Proponents of state control insist that the states should have control over local resources. Furthermore, the states argue that they are more sensitive to local environmental problems caused by mineral or fuel extraction. In addition to these policy issues, the question of whether the federal government or the states have legal title to the offshore areas and the right to the revenues derived from their exploitation remains to be answered.

United States v. Maine, presently before the United States Supreme Court, will affect the solution of these problems. Here, the original thirteen colonies are claiming for themselves the right to ownership and control of the seabed and subsoil of the Atlantic Coast in excess of three geographic miles from their coast lines. These claims are based on grants from the British Crown to the colonies in the colonial charters.

The federal government, on the other hand, claims ownership of this area on the basis of the Submerged Lands Act.

The outcome of this case will have significant economic and environmental consequences. At stake is a vast supply of untapped natural fuel resources. In 1971, geological exploration indicated

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that the Atlantic continental shelf possesses 5.5 billion barrels of oil, 37 trillion cubic feet of gas and 1.1 billion barrels of natural gas liquids. As a means of comparison, the Gulf Coast supply has been estimated at somewhat more than 5 billion barrels.

This article will initially consider the question of ownership and control of the seabed and subsoil of the ocean from an historical perspective. Particular attention will be given to the United States Supreme Court decision in *United States v. California,* which established that the federal government, rather than the states, had dominion and control over offshore areas.

Next will be discussed the Congressional action taken to adjust the situation created by the *California* decision. The Submerged Lands Act and subsequent litigation concerning the Act's meaning will be analyzed. While the Submerged Lands Act is asserted by Maine to have no effect on the present controversy, it is submitted that the cases litigating the scope of the Act, most notably *United States v. Louisiana,* will determine the issues in Maine. It will be shown that the test devised by the Court in *Louisiana* to determine the extent of state ownership, even though dealing narrowly with a provision of the Submerged Lands Act, is applicable to the present controversy.

Finally this article will examine in detail the claims of both the United States and Maine in the present controversy. Particular attention will be given to Maine's claim that historical grants and charters operate to give it control over the area in dispute notwithstanding the Submerged Lands Act. The claims of the state will probably not prevail, however, when measured against the rule developed in *Louisiana.* It is submitted that whether Maine's claims are measured against the terms of the Submerged Lands Act, as the United States asserts, or whether they are tested as to the efficacy of the grants, as the states assert, the federal government should prevail in either case.

**II. Historical Ownership**

It was not until after World War II that technological advances made it feasible to extract mineral resources from the subsoil of the continental shelf. These technological advances paralleled the discovery of vast quantities of mineral resources beneath the subsoil. Therefore, the question of ownership and control of the ocean adjacent to the coastal states has only recently become important.
Prior to this time, however, a considerable body of law had developed concerning dominion and control over inland waters. In 1845 the United States Supreme Court in Pollard's Lessee v. Hagan held that as a result of the American Revolution each state became sovereign and that the states held the absolute right to all navigable waters and the soil under them, subject only to the rights surrendered to the United States by the Constitution. The Pollard Court held that navigable waters between the high and low water mark within each of the original thirteen states' boundaries is held in trust for the people of the state. States admitted to the Union after its formation enjoyed similar rights. This ruling was commonly understood to mean that all waters within the boundaries of a state were held by the state, rather than by the federal government. Pollard was upheld in the ensuing one hundred years.

However, the development and refinement of geological techniques in the early twentieth century brought about a renewed interest in the ownership and control of offshore waters. In 1947 the United States Supreme Court in United States v. California severely limited the application of the Pollard rule of state ownership of offshore waters.

In California the United States sought a declaration of its rights as against California. California claimed ownership of the area of the Pacific Ocean lying outside the ordinary low water mark of the coast of California and outside the inland waters of the state, extending seaward three nautical miles. As a result of this claim, California had negotiated and issued numerous leases for the extraction of minerals. The federal government argued that although California was "acting pursuant to state statutes," there was no authority from the United States. California claimed that the Pollard rule of ownership extended to offshore waters. The Court, in upholding the United States' claim, did not find Pollard controlling, holding that the Pollard rule of ownership as an incident of state sovereignty applied to inland waters only (i.e., waters within the territory of the state, such as rivers and harbors) and not to offshore waters and subsoil. Having thus disposed of the restraints of Pollard, the Court, considering the question of offshore ownership, stated:

we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their Revolution against it.
The ultimate result of California was the vesting of control of all offshore waters and the soil under them in the United States rather than in California. This decision reversed long-standing notions of state ownership and control of offshore areas.

Almost immediately, Congress began working toward a legislative adjustment of the situation. On May 22, 1953 the Submerged Lands Act became law. 

III. THE SUBMERGED LANDS ACT

The records of the Congressional hearings held before the passage of the Submerged Lands Act state that Congress was acting "to clear up the controversy between the States and Federal Government as to the resources in and beneath navigable waters within State boundaries." The legislative intent is explicit in the explanatory preface of the Act:

> Its purpose is to confirm and establish the rights and claims of the 48 States, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters within their boundaries; subject . . . to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters.

Section 1312 establishes that "[T]he seaward boundary of each original coastal State is approved and confirmed as a line three geographic miles distant from its coast line . . ." Section 1312 further provides that "[N]othing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographic miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union . . ." Additionally, section 1301(b) states that "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 geographic miles into the Atlantic Ocean or more than three marine leagues into the Gulf of Mexico."

Legislative debate prior to the passage of the Act demonstrates that Congress intended to re-establish the commonly understood rule of seaward boundaries existing prior to California, that the states, rather than the federal government, controlled all waters within the boundaries of the states. However, the problem of what constituted the seaward boundary before California engendered
considerable debate. It appears that Congress had no intention of extending any Atlantic state's boundary beyond three geographic miles. It is clear that the provision set forth in section 1312 was inserted in recognition of the historic claims of some Gulf states to areas beyond the three mile limit set out in the Act.\textsuperscript{21}

The Court considered the meaning of the Submerged Lands Act for the first time in \textit{United States v. Louisiana.}\textsuperscript{22} Here, the United States sought a declaration that it was entitled to exclusive possession of the lands, minerals and other natural resources underlying the Gulf of Mexico more than three geographic miles seaward from the coast of each state. The states, relying on section 1301(b), claimed that their control extended three marine leagues (approximately ten and one-half miles) into the Gulf.\textsuperscript{23}

The Court rejected the states' argument that section 1301(b) automatically grants to the Gulf states a seaward boundary of three marine leagues into the Gulf\textsuperscript{24} if the states could establish the existence of such a pre-admission boundary.\textsuperscript{25} In developing the extent to which the state must bear this burden, the Court enunciated a two-fold test. First, a state's claim to a boundary in excess of three geographic miles must be based on "its Constitution or laws prior to or at the time such a state became a member of the Union."\textsuperscript{26} Second, a state's claim must be supported by the action of Congress in admitting the state to the Union.\textsuperscript{27} The Court, therefore, rejected the state's contention "that pre-admission boundaries, standing alone, suffice to meet the requirements of the statute . . ."\textsuperscript{28}

The only successful claim was that of Texas. In applying the two-fold test that it had developed, the Court determined that Texas had met the burden of proof in both instances.\textsuperscript{29}

The claims of the remaining Gulf states were denied, however, for failure to comply with the two-fold test. After discussing the pre-admission history of the states in some detail,\textsuperscript{30} the Court considered the Congressional legislation admitting the states into the Union.\textsuperscript{31} In each case the act of admission established boundaries to include all islands within three (or more) leagues of the shore.\textsuperscript{32} For example, Louisiana's southern boundary, as described in the act of Congress admitting it to the Union in 1812,\textsuperscript{33} extended to the Gulf of Mexico "then bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast."\textsuperscript{34}

The Court reasoned that the use of this language was not a manifestation of Congressional acceptance of the boundaries.\textsuperscript{35} This holding was based on contemporaneous documents that indicate
only the islands were recognized as belonging to Louisiana, not the waters between the coast line and the islands.36

IV. The Present Controversy

In April, 1969 the United States filed a motion in the United States Supreme Court for leave to file a complaint against the thirteen Atlantic coastal states.37 In May, 1969 Maine filed its brief in opposition to the motion.38 The Court granted the United States' motion and the defendant states were allowed sixty days to answer.39

The United States, invoking the original jurisdiction of the Supreme Court,40 sought a declaratory judgment as to its rights over the seabed and subsoil underlying the Atlantic Ocean extending seaward from the ordinary low water mark and from the outer limit of inland waters on the coast to the outer edge of the continental shelf, for the purpose of exploring the area and exploiting its natural resources41 to the exclusion of the defendant states except to the extent of the rights granted to the states in the Submerged Lands Act.42 The complaint further alleged that Maine, claiming some interest in the seabed and subsoil under the ocean in excess of three miles, had leased exploration rights to approximately 3.3 million acres in the disputed area.43 The United States sought an accounting for the sums derived from the leasing.44

Maine in its answer denied that the Submerged Lands Act contains any limitation upon its rights to dominion and control over the exploration of the seabed and subsoil underlying the marginal sea adjacent to its coast and affirmatively asserted that grants from the British Crown give it title to such seabed and subsoil to the exclusion of the United States.45

The issues are in some ways similar to those raised in Louisiana.46 However, in Louisiana the defendant states relied on the Submerged Lands Act as the basis for their claim. In Maine the defendants deny that the Act may be construed to infer that prior to its effective date defendants were without power to exercise dominion and control over the area in question.

While the jurisdiction of the United States over the exploration and exploitation of the continental shelf is generally settled in an international context,47 the question of jurisdiction as between federal and state government is still the subject of controversy.

Maine alleges that the Submerged Lands Act does not affect its dominion and control over the disputed area in any way, since as
successor in title to certain grantees of the Crown of England it is and always has been entitled to exercise dominion and control over the exploration and development of the seabed and subsoil of the Atlantic Ocean adjacent to its coast line. Maine asserts that this fact distinguishes the present situation from that in both California and Louisiana, since the grantees of the Crown pre-existed the Union, the Union holding only that power which the individual states granted to it in the Constitution. In fact, the basis of this claim by Maine is traceable to the earliest colonial grants and charters. The Charter of Massachusetts Bay, granted by Charles I in 1629, included "all Islands in America aforesaide, in the [saide] Seas, or either of them, on the Westerne or Easterne Coastes"; its successor, the Charter of the Province of the Massachusetts Bay in New England, granted in 1691 "all islands and islets lying within ten leagues directly opposite to the main land within said bounds." The Treaty of Paris in 1783, formally ending the American Revolution, declared "His Britannic Majesty acknowledges . . . Massachusetts Bay . . . to be free, sovereign and independent . . . (He) relinquishes all claims to the Government, propriety and territorial rights of the same, and every part thereof." When Massachusetts entered the Union it retained all these rights, with the exception of those specifically surrendered to the new federal government. Subsequently in 1820 Maine became a separate state pursuant to an act of the Massachusetts legislature giving it the same rights of territory which Massachusetts formerly enjoyed. Early rulings by the United States Supreme Court indicated that these grants and charters were considered effective to pass property and territorial grants to the states. However, the United States asserts that the Submerged Lands Act was enacted to establish the extent of both state and federal control. It is further argued by the United States that Louisiana established a test by which the claims of the coastal states should be tested. Applying this test to the states' contention in Maine, a result similar to Louisiana appears to be dictated, even though unlike the Gulf states, Maine's predecessor grantor (Massachusetts) pre-existed the Union. Maine relies on the Charter of Massachusetts Bay (1629) and the Charter of the Province of Massachusetts Bay in New England (1691), as well as the Treaty of Paris of 1783 as the basis of its claims. In each of these documents the granting language is almost identical to that cited in Louisiana. For example, the Treaty
of Paris of 1763 established the boundary of Mississippi as "the gulf of Mexico, including all islands within six leagues of the coast."55 Louisiana held that only the islands were granted, not the territorial waters between the coast and the islands.56

There is an even more persuasive argument stressed by the United States. It claimed that only limited sovereignty passed from the British king to the colonies as a result of the Revolution. The colonies can only claim what the British charters granted them. At the time that the charters were granted, the British government did not claim sovereignty over the seabed in excess of three miles.57 This would imply that even though the Crown's sovereignty did pass to the colonies as a result of the Revolution, it did not include sovereignty to the subsoil and seabed of the Atlantic Ocean.58

This interpretation assumes added validity when the historical attitudes of the new states and the United States are examined. As the Court pointed out in California, at the time of the Revolution the notion of adjacent sea ownership was at best nebulous.59 In fact, it was not until 1793 that international law began to recognize the concept that a nation had control over the adjacent sea to the extent of three miles, the range of cannon. In that year Thomas Jefferson, then Secretary of State, noted that the extent of the marginal sea was "for the present to the distance of one sea league, or three geographic miles from the seashore."60 Additionally, Massachusetts, the grantor of Maine, did not enact a statute proclaiming its seaward boundary at three miles until 1859.61 It is difficult for the states to claim, therefore, that their dominion and control of the area in question preceded that of the United States.62 Consequently, it does not appear possible that Maine can successfully maintain either that the Crown grants of England effectively passed title to offshore areas or that the United States, as a sovereign, recognized the validity of the states' claims to the areas in question.

V. Conclusion

Both the United States and the Atlantic coast states claim ownership and control, with the attending exploration rights, of the seabed and subsoil of the continental shelf. The United States asserts that the Submerged Lands Act clearly affirms its ownership of the area. The states claim that certain colonial grants and charters operate to vest control of the area in them, notwithstanding the Submerged Lands Act. It is submitted that whether the claims of
the states are measured against the Submerged Lands Act, or against the early colonial grants, they must fail.

The Submerged Lands Act affirms that the ownership and control of the seabed and subsoil in excess of three geographic miles from the coast is vested in the United States. Any Atlantic coastal state claim to the area in question must fail when measured against the Act.

The states contend, however, that the Submerged Lands Act is inapplicable to the present controversy, and that the Crown grants to them as colonies operate to give them dominion and control over the offshore areas. It is submitted that this contention must fail when subjected to historical analysis.

Initially, the history of international law indicates that at the time the Crown grants were made there was no recognized rule of offshore ownership. It is then a tenuous contention that the grants were effective to pass such ownership to the colonies. However, even if the efficacy of these grants is assumed, the states' contention should still fail. The Court in Louisiana developed a two-part test against which state claims should be measured. The test indicates that a state must demonstrate Congressional approval of its boundaries at the time of its admission to the Union. Analysis of the United States' policies at the time the colonies became states indicates that there was no recognition of offshore boundaries in excess of three miles. Thus, under either legal analysis, the claims of the states should fail.

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FOOTNOTES

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2 Id.
5 44 U.S. (3 How.) 212 (1845) (hereinafter cited as Pollard). This controversy arose as a result of a Congressional grant of certain land to Pollard, which between the years 1819 and 1823 was covered by water of the Mobile River at common high tide.
6 Id.
7 See, e.g., The Abby Dodge, 223 U.S. 166 (1912).
(exclusive of the Atlantic coast states) at 214 million barrels proven resources and over 15 billion barrels potential resources.

10 Id. at 23.
11 Id. at 36.
12 Id. at 31.
13 Id.
16 Id.
18 Id.
20 S. Rep. No. 133, 83d Cong., 1st Sess. (1953). This report makes clear the intention of re-establishing the Pollard rule:

The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters, within their territorial jurisdiction, whether inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution.

21 99 CONG. REC. 2746 (1953). Thus, the Court's language in United States v. Louisiana, 363 U.S. 1 (1960) "... that no boundary in excess of three miles was fixed for any State, but that State would have to establish the existence of such a boundary in judicial proceedings" should be understood to apply solely to the Gulf states.

23 Id. at 5.
24 Id. at 13.
25 Id. at 25.
26 Id. at 29.
27 Id. at 30.
28 Id.
29 In Louisiana, the Court discussed the historical basis for the Texas claims. In 1836 Texas declared its independence from Mexico; in that same year the Texas Congress passed the Texas Boundary Act, which declared that nation's boundary in the Gulf of Mexico to be "three leagues from land..." This satisfied the first phase of the Court's two-part test discussed supra. The Court further determined that the Annexation Resolution of Texas, 5 STAT. 797 (1845), passed by the Congress and signed by President Tyler in 1845 implicitly recognized the validity of the Boundary Act. Further, the 1848 Treaty of Guadalupe-Hidalgo, 9 STAT. 922 (1848), explicitly recognized as the boundary between the United States and Mexico the boundary that had been
defined in the Texas Boundary Act. This, the Court reasoned, was Congressional recognition of the three marine league boundary, the second phase of the test.

31 3 STAT. 489 (1819) (Alabama); 2 STAT. 701 (1812) (Louisiana); 3 STAT. 348 (1817) (Mississippi).
32 Id.
33 2 STAT. 701 (1812).
34 Id.
35 363 U.S. 1, 68 (1960).
36 Id. at 68–69. (Correspondence between Jefferson and the British and French Ministers.)
37 United States v. Maine, supra n.1.
38 Id.
39 Id.
40 U.S. CONST. ART. III, §2, ¶2; 28 U.S.C. §1251(b)(2); Brief for Plaintiff at 1, United States v. Maine.
41 Brief for Plaintiff at 2, United States v. Maine.
42 Id. The Submerged Lands Act, 43 U.S.C. §§1301 et seq., granted to coastal states the title to and ownership of the submerged lands and natural resources within the boundaries of the states, up to three geographic miles from the ordinary low-water mark or from the outer limit of the inland waters.
43 Id.
44 Id.
45 Answer of Maine at 3, United States v. Maine.
47 At the outset it should be understood that there is no real question that in international law the United States, as a sovereign state, has the right to exploration and exploitation of the area in question, vis-a-vis other sovereign states. As early as September, 1945, the United States asserted its claim to this right in President Truman's Proclamation on the Continental Shelf, 10 FED. REG. 12304 (1945); 59 STAT. 885. At that time a White House Press Release of September 28, 1945 stated that "The policy proclaimed by the President in regard to the jurisdiction over the continental shelf . . . is concerned solely with establishing the jurisdiction of the United States from an international standpoint." The Outer Continental Shelf Land Act, 43 U.S.C. §§1331 et seq. (1953), contemporaneous with the Submerged Lands Act, also asserts this claim. These assertions by the United States have been accepted as valid in international law. More importantly, international treaties adopted subsequent to the Proclamation on the Continental Shelf are clear in their recognition of the United States' claims. The Convention on the Continental Shelf, 499 U.N.T.S. 311, T.I.A.S. No. 5578 (1958), adopted in
1964 by twenty-two nations, states in Article 2 that "(t)he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." In Article 1 the term "continental shelf" is defined as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superadjacent waters admits of the exploitation of the natural resources of the said areas, and the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

49 The Charter of Massachusetts Bay of 1629.
50 The Charter of the Province of the Massachusetts Bay in New England, 1691.
51 Treaty of Paris of 1783, 8 Stat. 80, 82, Article I.
52 U.S. Const. Amend. X.
53 8 Massachusetts Acts 248 (1819).
54 In Shively v. Bowlby, 151 U.S. 1 (1893), the Court held that:
The various charters granted by different monarchs ... conveyed to the grantees both the territory described and the powers of government, including the property and the dominion of lands under tidal waters. And upon the American Revolution, all rights ... vested in the several States, subject to the rights surrendered to the national government by the Constitution of the United States.

In Commonwealth v. Manchester, 139 U.S. 240 (1890), the Court held that "there is no belt of land under the sea adjacent to the Coast which is the property of the United States and not the property of the States." Thus while the seaward limit of the states' control was never expressly defined by the Court in these early cases, the Court did accept the assertion that the original states, rather than the United States, were the successors to the charters and grants of the English Sovereign.

This judicial interpretation was however first challenged in the dicta in California, discussed supra. It was this decision by the Court that provided impetus to the Congressional passage of the Submerged Lands Act in 1953. 99 Cong. Rec. 2997–2998, 3000–3001 (1953).

55 363 U.S. 1, 80 (1960).
56 See, In re Marinovich, 48 Cal. App. 474, 192 P. 156 (1920); State v. Ruvido, 137 Me. 102, 15 A.2d 293 (1940).
57 See, Queen v. Keyn, L.R. 2 Ex. 63, 175 (Ex. 1876), in which the court refused to hold as a general proposition the right of the crown to the bed of the sea over the three mile distance. See also, 56 Yale L.J. 356 (1947).
58 "The relatively recent appearance of the three-mile limit in English law, the distinction between inland and coastal waters, and the denial of the crown's general title to submerged lands under coastal waters all negate (the) contention that title to the disputed lands was
an incident of royal sovereignty when the original colonies acquired the crown's rights.” 56 Yale L.J. 356, 360 (1947).


61 Id. at 68.

62 Further support for this position can be found in United States v. Texas, 339 U.S. 699 (1949). Defendant claimed ownership of the subsoil and seabed seaward of the ordinary low water mark. In denying this claim the Court enunciated its reasoning: to establish ownership a state must have had both dominium (ownership or proprietary rights) and imperium (governmental powers of regulation and control).

In the case of California we found that she, like the original thirteen colonies, never had dominium over that area (the marginal sea). The first claim to the marginal sea was asserted by the National Government. We held that protection and control of it were indeed a function of national sovereignty.

Thus diplomatic history indicates that at the time of the Revolution and the formation of the Union shortly thereafter, the concept of dominion and control over areas of the ocean and its subsoil was almost non-existent.