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## THE FEDERAL-STATE OFFSHORE OIL DISPUTE

The depth of the sea increases gradually for a distance of several miles from the coast. Experts have estimated that this submerged land contains over ten billion barrels of oil.<sup>1</sup> The discovery of this oil, and the development of technological advances allowing its extraction, have led to what has been aptly described as "the greatest land case in history."<sup>2</sup> For years the right of ownership of the seabed mineral wealth has been vigorously contested. Claimants have included the federal government, various state governments, American Indians,<sup>3</sup> farm co-operatives,<sup>4</sup> and private land speculators.<sup>5</sup> The only serious contestants for ownership of the seabed wealth, however, have been the federal and coastal state governments.

### HISTORY OF LITIGATION AND LEGISLATION

#### *Ownership of the Seabed*

Until 1937 the coastal states exercised control over the seabed without dispute from the federal government.<sup>6</sup> The states collected taxes in connection with fishing rights<sup>7</sup> and exercised general police powers in the area.<sup>8</sup> This exercise of dominion was allowed to continue by the United States Supreme Court.<sup>9</sup> When the federal government desired possession of submerged coastal land, it purchased such land from a state.<sup>10</sup> In 1937, the Secretary of the Interior threatened to reverse the prior policy of his department by issuing federal leases to offshore

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1. S. REP. NO. 1143, 82d Cong., 2d Sess. 5 (1952).

2. Hanna, *The Submerged Land Cases*, 3 STAN. L. REV. 193, 218 (1951).

3. Kleck, *Applicants After Tidelands as Private Wealth Source*, Times-Picayune and New Orleans States as reprinted in 97 CONG. REC. A5371, A5372 (1951).

4. *Id.* at A5372-A5373.

5. Kleck, *Cord Serious in Scrip Grab Try for Gulf Oil Millions*, Times-Picayune & New Orleans States as reprinted in 97 CONG. REC. A5589 (1951).

6. H.R. REP. NO. 1778, 80th Cong., 2d Sess. 17 (1948).

7. 99 CONG. REC. 2499 (1953) (remarks of Congressman Nicholson).

8. 99 CONG. REC. 2501 (1953) (remarks of Congressman Reed).

9. H.R. REP. NO. 1778, *supra* note 6, at 16; Gross, *The Maritime Boundaries of the States*, 64 MICH. L. REV. 639, 640 (1966); Hardwicke, Illig, & Patterson, *The Constitution and the Continental Shelf*, 26 TEXAS L. REV. 398, 402 (1948); Illig, *Tidelands—An Unsolved Problem*, 24 TUL. L. REV. 51, 52 (1949).

10. H.R. REP. NO. 1778, *supra* note 6, at 12-13.

lands.<sup>11</sup> In the same year an unsuccessful effort was made to have Congress establish federal ownership of the seabed for a distance of three miles from the coast.<sup>12</sup>

Serious court action was initiated in 1945 when the federal government brought suit against the state of California in the United States Supreme Court.<sup>13</sup> In holding for the federal government, the Court decided only that the state of California did not own the seabed.<sup>14</sup> It refused to expressly acknowledge ownership by the United States.<sup>15</sup> The rationale of the decision appears to have been that the federal government should prevail because of its responsibilities for national security and international relations.<sup>16</sup> The Court rejected arguments that federal claims should be estopped because of past failure to assert authority in the area,<sup>17</sup> that the state had acquired ownership by prescription, that the present federal action was barred by the principle of *res judicata*, and that the state was admitted to the union while owning the seabed.<sup>18</sup>

In 1950 the Court discouraged the ambitions of Louisiana<sup>19</sup> and Texas<sup>20</sup> in much the same manner as it had those of California. Again the decision was based upon considerations of federal responsibility for the national interest.<sup>21</sup>

The rulings on the claims of these three states resulted in a cessation of the expansion of offshore oil operations,<sup>22</sup> and "changed the battle-

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11. Hardwicke, *supra* note 9, at 401.

12. *Id.*

13. Hardwicke, *supra* note 9, at 403.

14. *United States v. California*, 332 U.S. 804, 805 (1947) (order and decree handed down for *United States v. California*, 332 U.S. 19 (1947)).

15. *See United States v. Texas*, 339 U.S. 707, 723-24 (1950) (Frankfurter, J., dissenting). The Court refused to place language in its decree expressly indicating that ownership was in the United States Government.

16. *United States v. California*, 332 U.S. 19, 35-36 (1947). The Court stated that "national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt." *Id.* at 36.

17. *Id.* at 40: "The Government . . . is not to be deprived of . . . interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property. . . ."

18. *Id.* at 23-24.

19. *United States v. Louisiana*, 339 U.S. 699 (1950).

20. *United States v. Texas*, 339 U.S. 707 (1950).

21. *United States v. Louisiana*, 339 U.S. 699, 704 (1950); *United States v. Texas*, 339 U.S. 707, 719 (1950).

If the property . . . lies seaward of the low-water mark, its use, disposition, management, and control involve national interests and national responsibilities. That is the source of national rights in it.

22. H.R. REP. NO. 215, 83d Cong., 1st Sess. 2 (1953).

ground from the . . . Court to Capital Hill.”<sup>23</sup> Three bills were passed by Congress giving the coastal states partial ownership of the seabed. Two of these were vetoed by President Truman<sup>24</sup> but the third was signed into law by President Eisenhower.<sup>25</sup>

The successful bill, intended to reverse the court decisions, is known as the Submerged Lands Act.<sup>26</sup> It granted all coastal states ownership of the seabed for a distance of at least three miles from their coast line.<sup>27</sup> Each gulf coast state was allowed to claim up to three marine leagues if its boundary had extended to that distance when admitted as a state.<sup>28</sup> While the Act is still law, it has been challenged in both Congress and the Court. At least one attempt has been made to repeal parts of the Act.<sup>29</sup> Alabama and Rhode Island have judicially attacked it, challenging its constitutionality. The Supreme Court rejected this attack, holding that “[t]he power over the public land . . . entrusted to Congress is without limitations.”<sup>30</sup>

The Submerged Lands Act was intended to settle the dispute over submerged areas between federal and state authorities. Unfortunately it was unsuccessful in this purpose; the battle merely shifted to another issue. The United States sued the gulf coast states of Louisiana, Texas, Mississippi, Alabama, and Florida to limit their seabed claims, under the Submerged Lands Act, to three miles, instead of three marine leagues.<sup>31</sup>

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23. Wright, *Jurisdiction in the Tidelands*, 32 TUL. L. REV. 175, 179 (1958).

24. The vetoed bills were H.R.J. Res. 225, 79th Cong., 1st Sess. (1946) (veto message 92 CONG. REC. 10660 (1946)); S.J. Res. 20, 82d Cong., 2d Sess. (1952) (veto message 98 CONG. REC. 6251 (1952)).

25. Wright, *supra* note 23, at 179.

26. 43 U.S.C. §§ 1301-15 (1964).

27. *Id.* at § 1301(b).

28. *Id.* at § 1301(b):

The term “boundaries” includes 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 . . . but in no event shall the term “boundaries” . . . be interpreted as extending from the coast line more than three geographical miles into the . . . Ocean . . . or more than three marine leagues into the Gulf of Mexico . . .

29. 100 CONG. REC. 4348 (1954). Senator Douglas initiated an attempt to repeal parts of the Act.

30. *Alabama v. Texas*, 347 U.S. 272, 273 (1954) (*per curiam*). U.S. CONST. art. IV, § 3: “The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States . . .”

31. *United States v. Louisiana*, 363 U.S. 1 (1960) (opinion for all states except Florida); *United States v. Florida*, 363 U.S. 121 (1960) (opinion on Florida’s motion for judgment on the pleadings).

The Court considered historical documents and events and decided that Louisiana, Alabama, and Mississippi were entitled to three miles,<sup>32</sup> and Florida and Texas to three marine leagues.<sup>33</sup>

### *Dividing the Seabed*

Allowing the states ownership of part of the seabed made it necessary for a line to be drawn separating state and federal property. The property line was to be drawn, under the Submerged Lands Act, not more than three miles or marine leagues from the coast line.<sup>34</sup> Coast line was defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters . . . ." <sup>35</sup> Several major difficulties arise with any practical application of this definition.

The first major problem involves location of the coast line where rivers, bays, and islands are found in the coastal area. It can only be solved by the adoption of subjective rules. This problem was recognized in the first offshore lands case<sup>36</sup> and was dealt with by a court-appointed master.<sup>37</sup> He recommended use of the Boggs principles.<sup>38</sup> His report was not completely applied, however, for almost twenty years,<sup>39</sup> and then the Supreme Court substituted the rules in the Geneva Convention on the Territorial Sea and the Contiguous Zone<sup>40</sup> in place of the Boggs rules.<sup>41</sup> By application of the revised master's report, the Court held the waters between the mainland of California and her offshore islands to be open sea.<sup>42</sup>

A second problem involved in applying the Act's definition of coast line is whether or not the coast line should be drawn to include man-made structures. In litigation with the United States, Texas claimed that the line should be drawn to include coastal structures, a position

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32. *United States v. Louisiana*, 363 U.S. 1, 79, 82 (1960).

33. *Id.* at 64; *United States v. Florida*, 363 U.S. 121, 129 (1960).

34. 43 U.S.C. § 1301(b) (1964).

35. *Id.* at § 1301(c).

36. *United States v. California*, 332 U.S. 19, 26 (1947).

37. *United States v. California*, 381 U.S. 139, 142-43 (1965).

38. Boggs, *Delimitation of the Territorial Sea*, 24 AM. J. INT'L L. 541 (1930).

39. The master was appointed in *United States v. California*, 334 U.S. 855 (1948) and his report approved in *United States v. California*, 381 U.S. 139, 177 (1965).

40. Oct. 31, 1958, [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639.

41. *United States v. California*, 381 U.S. 139, 165, 177 (1965). The Court entered the decree in 382 U.S. 448 (1966).

42. *United States v. California*, 381 U.S. 139, 167-69 (1965).

supported by the Geneva Convention. The Supreme Court, however, refused to adopt the present Texas coastline with man-made structures, as it had for California earlier, because Texas was claiming three leagues under the Submerged Lands Act on the basis of its boundary when admitted as a state.<sup>43</sup> Texas was forced to measure its three leagues from its coastline of 1845, the year of her admission to the Union even though "both sides were at a loss to suggest any means by which the 1845 location of the boundary could be ascertained . . . ." <sup>44</sup>

Finally, another problem arises in drawing a coastline under the Submerged Lands Act because the low-water line varies with the passage of time in some coastal areas.<sup>45</sup> For example, the Louisiana "shoreline is constantly shifting as the Mississippi River and violent gulf storms remold the soft, silt-like delta soil."<sup>46</sup> This problem was a major premise in Louisiana's argument for adoption of a navigation line laid out by the Coast Guard<sup>47</sup> as the most practical coast line in the most recent submerged lands decision.<sup>48</sup> In spite of practical considerations, the Supreme Court refused to adopt the navigation line as the coast line because Congress never intended that it be the national boundary.<sup>49</sup>

### THE UNSETTLED DISPUTE

After twenty-two years of litigation, the basic issue of the ownership of coastal lands is still unsettled. On April 1, 1969, the federal government initiated suits against thirteen eastern states<sup>50</sup> to enjoin acts of proprietorship over the seabed further than three miles from their coasts.<sup>51</sup> Nine states have filed answers with the Supreme Court, countering the federal contention. These states will divide the legal costs on the basis of population and length of coastline.<sup>52</sup> Federal action

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43. *United States v. Louisiana*, 389 U.S. 155, 157-61 (1967).

44. *Id.* at 177 n.34 (Harlan, J., dissenting).

45. *United States v. Louisiana*, 394 U.S. 11, 32-34 (1969).

46. *Id.* at 33.

47. Act of February 19, 1895, 28 Stat. 672, 33 U.S.C. § 151 (1964).

48. *United States v. Louisiana*, 394 U.S. 11 (1969).

49. *Id.* at 17-21.

50. "Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North and South Carolina, Georgia and Florida." *The Evening Star* (Washington, D.C.), April 2, 1969, at 18, col. 7.

51. Scharfenberg, *Md. Bases Case on 1632 Grant*, *The Washington Post*, Sept. 15, 1969, § C, at 1, col. 7.

52. *Id.*

against these eastern states was evidently aroused by Maine's issuing a seabed oil lease eighty-eight miles from the coast.<sup>53</sup>

As litigation in this area continues, so does legislative activity. It is possible that the Submerged Lands Act may not be the finale of the legislative portion of this dispute. Work has already commenced on further legislation. Twenty-six states have joined to work on this project, designed to gain state control over the seabed mineral wealth "lying outside the three-mile limit . . . worth 'trillions of dollars' . . ."<sup>54</sup> The attorneys general of the thirteen eastern states involved in the above suit are also working on proposed legislation which they expect to present to Congress in the near future.<sup>55</sup>

#### CONSIDERATIONS RELEVANT TO ANY SOLUTION

As noted above, after decades of litigation and legislation, the issue of ownership of the seabed is still unsettled. Settlement attempts have been made by the courts and Congress, but none has succeeded. Prior to consideration here of possible permanent solutions to the problem, there are four factors which should be discussed.

#### *International Problems and Considerations*

Historically the ocean and seabed have been considered as belonging to no one.<sup>56</sup> The United States has, in theory at least, adhered to this international concept of "freedom of the seas."<sup>57</sup> Traditionally, however, most nations, including the United States, have exercised national jurisdiction over the sea for a distance of three miles from the coast line.<sup>58</sup> As discussed above, a number of coastal states have asserted, and some continue to assert, territorial claims beyond three miles. These claims, if recognized, might lead to problems in international relations.<sup>59</sup> One writer has suggested that the three leagues given to Texas may make settlement of the offshore boundary between this country and Mexico

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53. *Id.* § C, at 5, col. 5.

54. The Washington Post, May 19, 1969, § C, at 2, col. 5.

55. Scharfenberg, *supra* note 51, § C, at 5, col. 3.

56. H.R. REP. NO. 695, 82d Cong., 1st Sess. 74, 76 (1951).

57. H.R. REP. NO. 215, *supra* note 22, at 116.

58. Lore, *Louisiana's Twenty-Seven Mile Maritime Belt*, 13 TUL. L. REV. 253, 255 (1939).

59. H.R. REP. NO. 215, *supra* note 22, at 116; Letter from William Bishop, Professor of International Law, University of Michigan, to George Meader, Member of Congress, 99 CONG. REC. 2491 (1953).

more difficult.<sup>60</sup> The offshore oil itself may be involved in an international controversy.<sup>61</sup> Federal control, therefore, seems necessary due to these considerations of international relations.<sup>62</sup> Another result of allowing any state to claim more than three miles of seabed is that this might stimulate excessive claims by other countries.<sup>63</sup>

It has been argued that it is immaterial in international affairs whether the central or component units of government own the adjacent seabed.<sup>64</sup> "Ownership is one thing and territorial sovereignty is another, and loss of one does not mean loss of the other."<sup>65</sup> Even though three miles was the historic claim, it is today clearly the minority view since most nations claim considerably more.<sup>66</sup> Traditionally and technically, the United States has claimed three miles, but it has exercised various types of jurisdiction over a greater area where circumstances dictated. Legislative extensions of jurisdiction include: the Outer Continental Shelf Lands Act of 1953,<sup>67</sup> which extended to the end of the Continental Shelf the national claim to the seabed; moreover, smugglers' vessels may be seized outside of the three-mile limit;<sup>68</sup> and United States citizens have special, exclusive fishing rights in coastal areas more than three miles from shore.<sup>69</sup>

### *Legal Considerations*

When *United States v. California* came before the Supreme Court, no legislation existed to serve as a basis for settlement of the seabed dispute;<sup>70</sup> nor was there any applicable case law.<sup>71</sup> Therefore, the Court

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60. Warbrick, *Off-Shore Petroleum Exploitation in Federal Systems; Canadian and Australian Action*, 17 INT'L & COMP. L.Q. 501, 506 (1968).

61. *United States v. California*, 332 U.S. 19, 35 (1947).

62. *Id.* at 35, 36.

63. S. REP. NO. 133, 83d Cong., 1st Sess., pt. 2, at 26 (1953).

64. Gross, *The Maritime Boundaries of the States*, 64 MICH. L. REV. 639, 645 (1966).

65. Letter from William Bishop, *supra* note 59.

66. One recent survey disclosed that thirty-six nations claimed 3 miles, four 4 miles, one 5 miles, fifteen 6 miles, one 9 miles, two 10 miles, thirty-nine 12 miles, one 18 miles, one 50 kilometers, one 130 miles, four 200 miles, and one more than 200 miles. Harlow, *Legal Aspects of Claims to Jurisdiction in Coastal Waters*, 23 JAG. J. 81, 85 (Dec. 1968-Jan. 1969).

67. 43 U.S.C. §§ 1331-43 (1964).

68. Anti-Smuggling Act, 19 U.S.C. §§ 1701-11 (1964).

69. Fisheries Zone Contiguous to Territorial Sea of the United States, 16 U.S.C.A. §§ 1091-94 (Supp. 1969).

70. Comment, *Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf*, 56 YALE L.J. 356, 367 (1947).

71. H.R. REP. NO. 695, *supra* note 56, at 78; *United States v. California*, 332 U.S. 19, 22-38 (1947). In the latter authority the Court reviewed past cases suggesting



determined the issue of ownership on the ground "that the constitutional responsibilities of the national government in its relations with other sovereignties, involving among other things commerce, the freedom of the seas, and especially national defense, give it a paramount power equivalent to ownership over the resources of the lands."<sup>72</sup> State claims to ownership are not aided by the various laws admitting them to statehood. "[N]ot a single act of admission specifies, with any degree of clarity, the extent of inland waters within the various states' boundaries."<sup>73</sup> Some support may be found in historical documents, including colonial charters, but such arguments have been ineffective in past cases.<sup>74</sup> Even if some basis for state ownership were to be found, this alone would be insufficient to convey ownership of the seabed mineral wealth.<sup>75</sup>

Several constitutional problems arise in connection with state ownership. Obviously, if a state had control further out into the sea than the central government, which is constitutionally responsible for international affairs, conflicts might arise as a result of the state "dictating to the Federal Government matters which are clearly outside . . . [a state's] constitutional jurisdiction. . . ." <sup>76</sup> As discussed above, the Submerged Lands Act of 1953, which granted the coastal states ownership to a distance of three miles, has been upheld as constitutional. There are arguments and case precedent, however, that the grant was, in fact, unconstitutional because "the United States can no more relinquish its sovereignty to the submerged lands than it can yield the sovereignty it possesses over the Federal Union as a whole."<sup>77</sup> In its decision upholding the constitutionality of the Submerged Lands Act in *Alabama v.*

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state ownership and determined that none were convincing. There was, however, one relevant case supporting the position of the United States. This English decision involved a dispute between the central government and the Duchy of Cornwall and was arbitrated in favor of the central authorities as to the mineral rights in the seabed beyond the low-water line. Evidently this was arbitration and not really a judicial decision. Clark, *National Sovereignty and Dominion over Lands Underlying the Ocean*, 27 TEXAS L. REV. 140, 147-48 (1948).

72. Hanna, *supra* note 2, at 195.

73. Gross, *supra* note 64, at 666.

74. See Scharfenberg, *supra* note 51, § C, at 1, col. 8.

75. H.R. REP. NO. 695, *supra* note 56, at 86. "State boundaries have no necessary connections or relations with the title to lands . . . A national park is a good example of land owned by the United States that is within a state boundary."

76. S. REP. NO. 133, *supra* note 63, at 30.

77. H.R. REP. NO. 215, *supra* note 22, at 11.

*Texas*,<sup>78</sup> the Supreme Court did not consider the 1892 case of *Illinois Central R.R. Co. v. Illinois*,<sup>79</sup> which decided that a state government held land beneath a harbor in trust for the public and could not sell it.<sup>80</sup>

There is some legal support for state ownership of the seabed by estoppel. Since the states exercised undisputed control over the seabed for more than one hundred years, they possibly would have won the early suits by claiming estoppel if the rules normally applied to land suits between individuals had been followed. The Court refused to apply estoppel against the United States<sup>81</sup> by, in effect, denying the states "status as a sovereign."<sup>82</sup> In the 1947 *California* decision the Court ignored cases decided over the years "whose necessary implications were that the states and not the United States owned the submerged areas within their limits, or where no seaward boundaries were claimed, to three miles from low-water mark."<sup>83</sup> This refusal to follow precedent is in keeping with the modern tendency of the Court,<sup>84</sup> and it has been suggested that most lawyers would have decided the issue in favor of the states.<sup>85</sup> In *Toomer v. Witsell*,<sup>86</sup> South Carolina was allowed to control fishing in its coastal waters. If a state retains this power, it is arguable that it also should have ownership of the seabed. Constitutionally, the federal government is to raise revenue by taxation, not by ownership of profit-producing land,<sup>87</sup> and to permit federal ownership may be a threat to the federalism that is basic to our form of government.<sup>88</sup>

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78. 347 U.S. 272 (1954).

79. 146 U.S. 387 (1892).

80. *Id.* at 453: "The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of property."

81. *United States v. California*, 332 U.S. 19, 39-40 (1947).

82. H.R. REP. NO. 1778, *supra* note 6, at 16.

83. Hardwick, *supra* note 9, at 402.

84. Illig, *supra* note 9, at 51-60.

85. Hanna, *supra* note 2.

86. 334 U.S. 385 (1948).

87. Hardwicke, *supra* note 9, at 419.

88. *Id.* at 431-32:

The nature of our federal system under the Constitution contemplates both states and Federal Government performing their respective functions . . . . Even though the United States may have been legally justified in retaining vast areas within the states not necessary for governmental purposes, it is violating the fundamental principles of the Union and its development in accordance with the principle of federalism when it refuses to divest itself of such areas. By such refusal, it becomes an imperial government holding territory within the states for non-govern-

Decisions in the various off-shore land cases are based upon three principles. Those made before passage of the Submerged Lands Act were based on responsibility for international affairs. After passage of the Act, the cases followed historical documents in order to determine whether individual Gulf states were entitled to either three miles or three leagues of seabed. Finally, in drawing the line separating state and federal ownership, the Court has looked to international law. Perhaps instead of such principles the issue would have been better decided on an equitable basis.<sup>89</sup>

### *Equitable Considerations*

Equitable arguments may be made in support of both sides of the seabed-ownership dispute. The states' strongest argument is one of estoppel, since they exercised undisputed control over the seabed for a substantial period.<sup>90</sup> Also, lease revenues have become an important part of some states' income. In short, the states have traditionally "been the landowning units."<sup>91</sup> The federal government, on the other hand, is not interested in complete control of offshore areas, desiring only the valuable oil, and having no interest in the less valuable resources such as "fish, shrimp, oysters, kelp, and other products of the marginal sea."<sup>92</sup> It has been argued that state control results in faster, more efficient development of oil resources because regulations imposed are less stringent.<sup>93</sup> Certainly, state administration is at least as efficient as federal supervision.<sup>94</sup> Considering the views of the inland states, few have

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mental purposes, a practice which threatens the Constitutional foundations of an indestructible union of indestructible states and which, if extended to its logical implications, would end in a union composed of states without land or resources (except for grants-in-aid) a constitutional monstrosity.

89. *United States v. Louisiana*, 363 U.S. 1, 89-90, 98 (1960) (Black, J., dissenting). "It is . . . my view that since we cannot look to legalistic tests of title, we must look to the claims, understandings, expectations and uses of the states throughout their history." *Id.* at 90.

90. H.R. REP. No. 1778, *supra* note 6, at 17. "Too many people have acted over too long a period of time under a justifiable and reasonable belief for the Congress to refuse to vest in the States the submerged lands within their boundaries, merely because of the lack of a technical legal consideration moving from the states."

91. Hardwicke, *supra* note 9, at 408.

92. H.R. REP. No. 1778, *supra* note 6, at 22.

93. See Hardwicke, *supra* note 9, at 436.

94. H.R. REP. No. 1778, *supra* note 6, at 19.

objected to coastal states' ownership of the seabed.<sup>95</sup> Alabama and Rhode Island, both coastal states, were the only two which attacked the constitutionality of the Submerged Lands Act.<sup>96</sup>

Similar arguments may be made, however, for the federal position. The claim is that federal ownership is more beneficial to the nation and all its citizens, that since all citizens of the United States own the offshore oil, it should not be given to the residents of a few coastal states.<sup>97</sup> It is contended that federal control is desirable so that some oil will be conserved for future use,<sup>98</sup> and held as "a vital reserve for the national defense."<sup>99</sup> Federal leasing, to be sure, allows the leasee much less freedom to do as he wishes but it is argued that such practice benefits the public.<sup>100</sup> Historically, the federal government has held large amounts of land within the states themselves, and continues to hold such land,<sup>101</sup> and "gifts" of offshore lands to the states might result in a demand by states for other federally owned lands.<sup>102</sup>

### *Feasibility*

Any proposed solution should be evaluated in terms of practical considerations, including the political and the engineering feasibility of any solution. Would the proposed solution be politically acceptable to all, or at least most, of the interested parties; would it be possible to implement in terms of present engineering capabilities?

The Submerged Lands Act requires that a line be drawn separating federal and state ownership. Congress apparently assumed that such a line could be drawn when the law was passed. The Supreme Court was in agreement with Congress, and has tried to construct such a boundary. A temporary line has already been drawn off the Louisiana coast, the so-called Chapman Line which was established "by unilateral administrative determination on the part of the United States . . ." <sup>103</sup> It was

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95. *Id.* at 17. No inland state sent a representative to protest before the committee considering a bill granting coastal states ownership.

96. *Supra*, note 30.

97. Truman, *Tidelands Bill Veto*, 98 CONG. REC. 6251 (1952).

98. H.R. REP. NO. 695, *supra* note 56, at 86. The states evidently made no moves toward conservation.

99. 99 CONG. REC. 3362 (1953) (reprint from N.Y. Times, Apr. 20, 1953, at 24, col. 3).

100. Clark, *supra* note 71, at 153-56.

101. Hardwicke, *supra* note 9, at 426.

102. H.R. REP. NO. 695, *supra* note 56, at 86.

103. Lewis, *The State-Federal Interim Agreement Concerning Offshore Leasing and Operations*, 33 TUL. L. REV. 331, 335 (1959).

used pending the outcome of litigation between Louisiana and the United States.<sup>104</sup>

Assuming the feasibility of drawing the line, the problem of dual regulation still persists. This might arise where the same body of oil is partially situated on both federal and state land.<sup>105</sup> Mr. Justice Clark believes that this problem could be resolved in the same manner as it has been resolved between inland property owners.<sup>106</sup>

At one time the federal government established two lines three miles off the Louisiana coast. One was the Chapman Line; the other was created by "the Department of Labor in connection with the administration of the Longshoremen's and Harbor Workers' Act . . . ." <sup>107</sup> Although both were three-mile lines, they varied greatly.<sup>108</sup> This illustrates the difficulties in drawing a boundary a fixed distance from the coastline. In many places it is impossible for any line three miles from the existing coastline to be permanent because the coastline is continuously changing due to accretion.<sup>109</sup> Off the coasts of Louisiana and Mississippi the water increases in depth very gradually, and islands continually appear and disappear.<sup>110</sup> There is also a problem with land recession which is evidenced by the fact that approximately one and one-fourth miles of the western Louisiana coast has disappeared into the sea.<sup>111</sup> There are also special difficulties in drawing the coastline separating "the open sea from bays, harbors, ports, sounds, and other inland waters." <sup>112</sup> The Supreme Court attempted to resolve this by application of the Geneva Convention on the Territorial Sea and the Contiguous Zone.<sup>113</sup> These geological problems demonstrate the difficulty and perhaps the impossibility of measuring ownership from a historic boundary. The Supreme Court, in *United States v. Louisiana*, however, decided that the Texas claim should be measured from its boundary when admitted as a state.<sup>114</sup>

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104. *Id.* at 332-33.

105. Hardwicke, *supra* note 9, at 439.

106. Clark, *supra* note 71, at 156.

107. Wright, *supra* note 23, at 181.

108. *Id.*

109. Lewis, *supra* note 103, at 335; H.R. REP. NO. 1778, *supra* note 6, at 10.

110. *United States v. Louisiana*, 363 U.S. 1, 82 (1960); *Joint Hearings on S. 1988 and Similar House Bills Before the Committees on the Judiciary*, 80th Cong., 2d Sess. at 384-85 (1948).

111. *Joint Hearings on S. 1988*, *supra* note 110, at 385.

112. H.R. REP. NO. 1778, *supra* note 6, at 10.

113. See text accompanying note 40, *supra*.

114. See text accompanying note 44, *supra*.

If drawing a line is too impractical, and it is necessary to divide the offshore wealth between state and federal governments, perhaps revenue division according to some fixed ratio or formula is the answer. Under such a plan complete ownership might be vested in one level of government. This is the current practice with respect to federally-owned land within states provided for under the Mineral Leasing Act.<sup>115</sup>

Whatever the ultimate disposition of the seabed, it must be politically feasible. Many states were dissatisfied with the original Supreme Court decisions holding that the federal government owned all submerged coastal lands. This discontent resulted in Congress' enacting the Submerged Lands Act of 1953. Likewise, many states have been disappointed with the Court decisions and activities of the Justice Department subsequent to 1953. The twenty-three states which border on the sea have a total of forty-six senators and two hundred and thirty-four congressmen;<sup>116</sup> obviously this is a potent political force.

#### POSSIBLE SOLUTIONS

In order to select the most acceptable solution, the various alternatives, in light of the more important aspects of the international, legal, equitable, and practical considerations must be reviewed. For this purpose it is expedient to group the possibilities into absolute and compromise solutions.<sup>117</sup>

##### *Absolute Solutions*

Under this type of solution complete ownership would be given to one of the two levels of government. Such a disposition of the problem would be a complete and permanent remedy; it would be impossible, however, to justify any such solution in light of the various relevant considerations.

In the international realm the United States is responsible for interna-

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115. 30 U.S.C. § 191 (1964).

All money received from sales, bonuses, royalties, and rentals of public lands . . . shall be paid into the Treasury of the United States, 37½ per centum thereof shall be paid by the Secretary of the Treasury . . . each year to the State within the boundaries of which the leased lands or deposits are or were located . . . and of those from Alaska, 52½ per centum thereof shall be paid to the State of Alaska . . . .

116. STATISTICAL ABSTRACT OF THE UNITED STATES 1969, at 360.

117. Illig, *supra* note 9, at 57. Illig suggests three alternatives: "(1) permit the areas to be attached to the abutting coastal states, (2) treat the lands as subject to exclusive federal control, and (3) some middle ground between these two points of view." *Id.*

tional affairs but has historically tolerated state claims of ownership and continues to acquiesce in the exercise of many powers by the states. Equitably, it was inconsistent to allow the states to have the benefits of ownership for an extended period and then take these away, yet it is equally inequitable for the coastal states to gain all the benefits from the immense offshore wealth.

Feasibility would present a problem in implementing any absolute solution. The first attempts by the Supreme Court to solve the dispute were absolute, giving complete ownership to the United States. This solution, however, proved unacceptable to Congress. Due to the close balance of power in Congress between coastal and noncoastal states any such absolute decision is politically infeasible. There appears to be, therefore, no justifiable or realistic grounds supporting an absolute settlement in favor of either the coastal states or federal government.

### *Compromise Solutions*

Compromise would involve a division of the seabed wealth between state and federal governments. This is the more realistic and justifiable solution to the ownership dispute. The arguments in the areas of international, legal, and equitable considerations are best met by compromise, and compromise is more practical in view of the delicate balance of political interests in Congress.

The Congressional answer to the offshore oil problem, the Submerged Lands Act, was a compromise solution. It took years of intense effort for the coastal states to obtain passage of the Act. While this effort has failed to settle the dispute, it did not fail because it was a compromise but rather because indefinite, and therefore impractical, standards of dividing the revenues were used.

In the Act, Congress attempted to establish a fixed line three miles from the coast, but geological conditions make it extremely difficult, if not impossible, to draw such a line. The Act allowed some states to claim more area than others on the basis of complicated and impractical standards. The definition of "coastline" was inadequate because it provided that the low-water mark along landed areas was to be the line from which the three miles of state ownership was to be measured and failed to make any provision at all in water areas. In many areas the coastline is constantly changing so that the line would have to continually be redrawn. Another more practical line, such as the Coast Guard

Navigation Line suggested by Louisiana,<sup>118</sup> should have been used. Gulf Coast states were allowed to claim substantially more than other states if they could prove ownership of this extra amount at the time of admission to the Union. The Submerged Lands Act should have avoided discrimination on the basis of such a complicated standard.

After passage of the Act the Supreme Court had an opportunity to partially remedy these weaknesses. Instead, the Court confused matters even more by refusing to adopt the Coast Guard Navigation Line, a practical and easily determined line, as the coastline in both land and water areas. Gulf states were forced to use their historic boundaries even though determination of this line is impossible.

#### A RECOMMENDED SOLUTION

As noted above, a compromise would appear to be the best solution to the land-ownership disputes, and, considering the opposing political and economic interests, the most likely to be enacted by Congress. The difficult problem is to find a practical method of effecting the compromise, of dividing the wealth of the seabed between state and federal governments.

Any attempt to divide the wealth by dividing the seabed, as in the Submerged Lands Act, is likely to fail. Clearly the Act has been unsuccessful at resolving the dispute.

The best method of wealth division would be to give ownership of the seabed to one level of government and have that government divide the lease revenues with the other. The only significant area of dispute would be the amount of the revenue given to each. Once this was settled, judicially or legislatively, that should settle the dispute. There is legislative precedent for such a solution. Today the revenues from leased federal land are divided with the state in which the land is located under the Mineral Leasing Act. Under this statute the state receives 37.5 percent of the revenue and the federal government collects the remaining amount.<sup>119</sup>

A bill dividing revenues was proposed as a temporary solution to the seabed dispute in 1952.<sup>120</sup> The resolution passed both houses of Congress after being amended so as to delete the revenue-dividing feature

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118. See text accompanying notes 45-48, *supra*.

119. 30 U.S.C. § 191 (1964).

120. S.J. Res. 20, 82d Cong., 1st Sess. (1952).



but was vetoed by President Truman.<sup>121</sup> In 1952 little drilling beyond three miles was technologically possible, but today drilling takes place far beyond the three-mile line. Under the present Submerged Lands Act the states get nothing from drilling beyond three miles or leagues. The limits of the present Act and the improved technology allowing drilling far out into the sea are primarily responsible for the current preparations by coastal states to introduce new offshore legislation in Congress. Division of revenues on a percentage basis as under the Mineral Leasing Act for all leases, no matter how far out, would be more appealing to the states today.

If all income from leases of offshore lands was split, the federal government could lose revenue. It is likely, however, that unless the income-splitting plan is adopted, pressure from the coastal states will result in the adoption of another solution by which the federal government could lose even more income.

Finally, a study of solutions to the offshore land problem which other federal governments have adopted lends further support to the arguments favoring an income-splitting plan. In Canada the issue of ownership was submitted to the Canadian Supreme Court and it, like its American counterpart, decided the issue in favor of the central government. The response of the Canadian provinces, needless to say, was unfavorable. When faced with the same problem, Australia adopted a compromise plan calling for a division of the revenues with forty percent going to the commonwealth and sixty percent to the states. The Australian plan has adequately solved the dispute. The Australian plan has met with favorable results in a situation similar to that presently faced by our federal government.<sup>122</sup>

The Americans can also solve their offshore land dispute by following the example of the Australians and the example set by the Mineral Leasing Act. The seabed should be given by statute to the federal government because of its responsibilities for international affairs and defense, but the revenue from leases and the exploitation of the area should be divided according to some percentage basis such as that in the present Mineral Leasing Act. This would be an equitable and practical solution to the offshore dispute.

JAMES W. CORBITT, JR.

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121. 98 CONG. REC. 6251 (1952).

122. Warbick, *Off-Shore Petroleum Exploitation in Federal Systems: Canadian and Australian Action*, 17 INT'L & COMP. L.Q. 501-13 (1968).