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THE SUPREME COURT AND THE MARGINAL SEA

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The Supreme Court of the United States, for all its cloistered remoteness, must at times descend into the market place there to deal with highly charged controversies. One case having its just share of fissionable stuff was that of *United States v. California,* decided in June of 1947.[1] The pressure built up by the oil-tidelands states, particularly California and Texas, was released with an awesome detonation, still reverberating. Comment has been, as is usual in such cases, restrained and otherwise.[2]

Legally the argument has been that the states rightfully owned the lands in question and that there was no justification for the Federal government to assert "paramount rights" in the marginal belt. From there the transition has been easy to the argument that, under the rationale of the California case, the United States can take, without compensation, land and minerals wherever it finds them, in the interest of national defense. [3]

It is the purpose of this article to attempt to evaluate the decision historically as well as legally, not entirely forgetting those political (using that term in its broadest sense) overtones inherent in any decision of such a far-reaching nature.

Although the expression "tidelands" has been generally used to describe the area in controversy between the United States and California, the claim was actually not for the tidelands but for a strip three nautical miles in width stretching seaward from mean low tide. To put the matter in a proper frame of reference, a brief explanation is in order, covering: (1) the historical background and present status of the three-mile limit; and (2) the origins and development of the present conflict.

A prime necessity for an appreciation of the background of the present controversy is the varying degree in which political and property concepts have some bearing on it. The assertion of sover-

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*—Member, Illinois and Wyoming Bars, Assistant Professor of Law, University of Wyoming, 1945-46.

1. 332 U. S. 19, 67 Sup. Ct. Rep. 1658.
2. The Constitution and the Continental Shelf, by Hardwicke, Illig and Patterson in 26 Texas L. R. 398; The Tidelands Question, by E. J. Sullivan in 3 Wyoming L. J. 10.
3. The late Governor Beauford H. Jester of Texas declared that "This national ownership doctrine could as well be applied to the potash of New Mexico and Texas; the mercury of California . . . the copper of Utah, Arizona, Montana and Michigan (etc) . . . " Such a doctrine, the governor thought, "would be extended to such vital elements as the bread of life—the wheat of Kansas, Oklahoma, Nebraska; the corn of Iowa . . . "

eignty or dominion over a particular area may or may not connote assertion of property rights. Thus at one time Spain and Portugal claimed exclusive rights of navigation over the oceans, according to an arbitrary division.[4] Against such claims was opposed the theory of the freedom of the seas as common property and open to all ships of the family of nations. The latter theory, no doubt aided by such coincidental events as the defeat of the Spanish Armada, prevailed.

The Dutch have always been good seamen and good sea-lawyers. It was a Dutchman, Bynkershoek, who first proposed the three-mile limit in 1702.[5] Three miles, it appears, was the limit of shore-based cannon at that period. The basis of the theory, as urged by Bynkershoek, was that the sea was owned to the extent to which the littoral nation could exclude others from its use. Thus in its inception the emphasis was on dominion rather than title.[6]

It may be observed, by way of definition, that the term "marginal sea" of a state is "that part of the sea within three (nautical) miles of its shore measured outward from the mean low water mark or from the seaward limit of a bay or river mouth."[7] The inland waters of a state are defined as "the waters inside its marginal sea [i.e. landward of mean low-water mark and of the seaward limit of bays and mouths of rivers], as well as the waters within its land territory."[8] Finally the expression "tidelands" refers only to lands above low water mark, whether adjacent to the marginal sea or to inland waters, which are covered and uncovered by tidal waters. Though widely and loosely used in reference to the Supreme Court decision and legislation pending in Congress on the subject, there has never been any issue as to "tidelands" as so defined. The issue, as will be shown, pertains exclusively to rights in the lands under the marginal sea.

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4. Such extravagant claims, made in the sixteenth century, led to the "Battle of the Books" and the eventual emergence of the doctrine of "freedom of the seas." Actually this simply returned the matter to the concept of the Roman law that the seas were res communes, common highways for the use of all. Undoubtedly competition for the wealth of the newly-discovered American continent had a great deal to do with the assertions of property rights in the seas. Under such circumstances it could be expected that a scholar who happened to be a citizen of a nation with great naval power would advocate the proprietary theory. See Selden, Mare Clausum. As a Dutchman, Grotius supported the Roman view. See Grotius, Mare Liberum and De Jure Belli ac Pacis.
5. De Dominio Maris Dissertatio (1702). While not the first, Bynkershoek was perhaps the most famous publicist of this period to suggest the three-mile limit or some distance based on cannon range. See Fenn, Origins of the Theory of Territorial Waters (1926), 20 A.J.I.L. 465. For other standard works on the general subject of territorial waters and the marginal sea: Fulton, Sovereignty of the Sea (1911); Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927).
6. De Dominio Maris Dissertatio, pp. 41-45, 55-57, translated by Magoffin in Classics of International Law (1923).
7. Ireland: Marginal Seas Around the States. 2 La. L.R. 252, at 268, 270.
8. Ireland: Op. Cit. page 270.

While the three-mile limit was thus suggested as early as 1702, it had no official or even unofficial international recognition at the time of the American Revolution. Its first appearance in American law was in the form of a letter from Secretary of State Jefferson to the British Minister under date of November 8, 1793.[9] At that time and for many years later the British Navy made free use of American territorial waters. By excluding warships from such waters, Jefferson hoped to maintain American neutrality.

Much has been made of the argument that the original thirteen states became, at the time of the Declaration of Independence, separate sovereignties and as such were vested with the rights and prerogatives of the English Crown in their territory, including submerged lands in bays and harbors and also the lands below the marginal sea.[10] Under this theory, states subsequently coming into the Union on an "equal footing", as provided in the various enabling acts, likewise became vested with title to this submerged land.[11] That theory has already, as noted supra, been subjected to criticism for the reason that there was no settled three-mile or any surrounding belt. Moreover, there is grave doubt that the states, as separate entities were the inheritors of the Crown. Respectable authority suggests that the prerogatives of the Crown were transferred to the new government of the United States, however ineffective that government may have been in some respects.[12]

The derivative theory can be attacked from still another point—that of the attitude of the English courts a century after the Declaration of Independence. The question presented was the applicability of the English criminal laws to a foreigner on a ship in the three-mile zone.[13] The Court of Exchequer held that the laws did not so apply, Chief Justice Cockburn saying:

> " . . . To this hour, it (the three-mile limit) has not, even in theory, settled into certainty. For centuries before it was thought of, the great landmarks of our judicial system had been set fast —the jurisdiction of the common law over the land and inland waters contained within it, forming together the realm of England, that of the admiral over English vessels on the seas, the common property or highway of mankind."

In that same case, it was argued by way of analogy that a certain act of Parliament vesting coal mines on the Cornwall coast in Queen

9. Crocker: The Extent of the Marginal Sea (1919) p. 636.
10. E. g. 26 Tex. L.R. 413; Loret: Louisiana's 27-mile Maritime Belt, 2 Tulane L.R. 253, 257.
11. Act of September 9, 1850. 9 Stat. 452 (California).
12. United States vs. Curtiss-Wright Export Corp., 299 U. S. 304, 316, 57 Sup. Ct. Rep. 216, 219, 81 L. Ed. 255.
13. Queen v. Keyn, L.R. 2 Ex. 63 (Ex. 1876).

Victoria constituted an assertion of the crown's title to the three-mile belt. The Court took the contrary view, stating that the Act merely settled "a dispute as to the specific mines . . . in question." In an able comment in the Yale Law Journal, the situation is summed up in these words: "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 California's contention that title to the disputed lands was an incident of royal sovereignty when the original colonists acquired the crown's rights. [14]

II

Defenders of the claims of California and the other littoral states to title to the ocean bed off their coasts make much of American decisions supposedly supporting that position. The strongest decisions in this regard, however, pertain not to title of marginal sea bed, but to inland waters.[15] In the *Pollard* case, the U.S. Supreme Court first advanced the "trust theory" whereby it was held that land under navigable waters in new territory was held in trust for the states thereafter carved from such territory, and that such new states, on admission, became vested with the title theretofore in the United States. This interpretation of the "equal footing" clause of the Constitution has not been modified, but this holding cannot be applied to the marginal sea, however loosely the courts and writers have bandied the words "tidelands" and "navigable waters" about.[16]

Also heavily relied upon by the proponents of the state claims is the line of cases dealing with the exercise of police power by states within their inland and marginal waters. Perhaps the most compelling is that of *Manchester v. Massachusetts,* but that involved the regulation of fishing in Massachusetts, i.e. inland waters.[16a] In upholding the state statute, the Supreme Court expressly disclaimed any intent to delimit the respective spheres of state and Federal power. The Court has similarly upheld Florida's control of the sponge fishery in territorial (marginal) waters.[17] Florida's sponge-fishing statute again came before the Court in *Skiriotes v. Florida,* Chief Justice Hughes holding for the Court that the statute "so far as applied to conduct within the territorial waters of Florida, *in the absence of conflicting Federal legislation,* is within the police power of the State.[18] (Emphasis supplied)" The Chief Justice's saving phrase speaks for itself.

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14. 31 Yale L. J. 356, 362.
15. Pollard's Lessee v. Hagan, 3 How, 212 (U. S. 1845); Martin v. Waddell, 16 Pet. 367, 41 U. S. 367, 10 L. Ed. 997.
16. 31 Yale L.J. 362.
16a. 139 U. S. 240, 11 Sup. Ct. Rep. 559, 35 L. Ed. 159.
17. The Abby Dodge, 223 U. S. 166, 32 Sup. Ct. Rep. 310, 56 L. Ed. 390.
18. 313 U. S. 69, 75, 61Sup. Ct. Rep. 924, 928, 85 L. Ed. 1193.

BACKGROUND OF THE PRESENT CONTROVERSY

With the developing oil industry in California, operators, always searching for new fields, began to drill along the seashore, later on tidal lands, and finally in the ocean bed below low tide. This development took place in the 1920's. Oil companies devised means of reaching these underwater pools by various methods, such as slant wells, "whipstocking" from established upland wells and drilling vertical wells in the open sea.[19] At first this development precipitated a contest between state and local authorities, principally in the Long Beach area. These strictly intramural battles were interrupted in 1937 by the Nye bill, introduced by Senator Nye of North Dakota, in which the United States asserted title in all submerged lands between low water and the three-mile limit as part of the public domain. This bill was later changed to a Joint Resolution and, with strong Navy support, was passed by the Senate on August 19, 1937.[20]

When the resolution came to the House of Representatives, it ran into concerted opposition. Apprehension had spread to other littoral states, particularly those that might have valuable oil deposits within their marginal seas. The attorneys general of Florida, Louisiana, Mississippi and Texas and representatives of various port authorities now appeared before the House Judiciary Committee. The upshot was in effect an entirely new resolution, limited to California waters, and asserting the right of the United States to extract oil in that area as a naval petroleum reserve. But no action was taken and the whole matter went over to the next Congress. The pendulum had begun to swing. The littoral states began making converts, and in 1946, House Joint Resolution 225 was passed, quitclaiming to the several states the tidewaters and the lands oceanward "three geographical miles distant from the coast line." The resolution was vetoed by the President.

Meantime President Truman had, in 1945, by proclamation asserted title in the United States to the entire continental shelf, lying generally westward of our Pacific coast and extending varying distances up to several hundred miles.[21] This shelf is relatively shallow and under it, presumably, oil structures may be found similar to those existing in the present confines of the North American continent. Obviously, however, the action of the President could not be conclusive without implementation by the Congress. It was under such circumstances that the matter was submitted to the Supreme Court in the form of an original suit, asking that the court declare the rights of the United States in the marginal sea and to enjoin the State of California from trespassing on the area in violation of such rights.

19. See Ireland, Op. Cit. p. 253.
20. Id. p. 257.
21. Pres. Procl. No. 2667, 10 Fed. Reg. 12303, Sept. 18, 1945.

THE DECISION IN UNITED STATES VS. CALIFORNIA[22]

Mr. Justice Black, in delivering the opinion for the Court, held that California was not the owner of the three-mile marginal belt, and that the Federal government, rather than the State, has "paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil."[23] There were two dissenting opinions. That of Justice Frankfurter took the view that in claiming "dominion" over marginal sea bottom for the United States, the Court was necessarily asserting a proprietary right. Such a right or claim being a matter of policy should not be a subject of judicial inquiry. Justice Reed took the view that title to the marginal belt was definitely established in California.

Justice Black rejected the assertion of original sovereignty in the marginal sea at the time of the Revolution, pointing out with sound logic that: "At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt." After thus disposing of the derivative theory so strongly pressed by California, the court observes that: "The three-mile rule is but a recognition of the necessity that a government next to the sea must protect itself from dangers inherent in its location."[24] In disposing of the "trust theory" and "police power" line of decisions, the court correctly pointed out that the former were not applicable to the marginal sea and that the latter did not purport to read into the state's jurisdiction or regulatory power a "dominion" over the sea bottom.[25]

At this point the court had without doubt demonstrated a complete lack of title in the ocean bed so far as the littoral states are concerned. But here the real difficulty emerges: how to slide over from lack of title in the state to title in the Federal government? The able, unnamed commentator in the Yale Law Journal had boldly suggested that as the acquisition of new land is "only within the power of the national sovereign and not of the states . . . the Court could therefore consider the Presidential Proclamation as for the first time vesting title to the whole continental shelf, including that portion within the three-mile limit, in the Federal Government."[26] But the Court chose to base its decision not on title but on the "paramount rights" of the United States in and to the coastal belt, including the right to extract oil therefrom.

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22. See Note 1.
23. 332 U. S. 38, 39, 67 Sup. Ct. Rep. 1668.
24. 332 U. S. 35, 67 Sup. Ct. Rep. 1666.
25. 332 U. S. 36, 38, 39, 67 Sup. Ct. Rep. 1667, 1668.
26. 31 Yale L.J. 369.

Considerable alarm has been expressed in some quarters over what is called "something novel in our law"[27] and "a startlingly new and alarming concept of property rights."[28] These critics and other foresaw eventual assertion of Federal "paramount" powers whenever and wherever resources within state boundaries were needed for national security. By this rather hurried leaping at a conclusion the littoral states were able to persuade the attorneys general of all the public lands states except Montana that they should oppose the Federal claim of marginal sea lands.[29]

In holding that the United States had paramount rights in the marginal sea lands and that a necessary incident of such paramount rights was the right to extract mineral resources, including oil, therefrom, Mr. Justice Black was dealing with two rather volatile legal substances: (1) the nature of the "sovereignty" of the United States as that applied to its dealing with foreign nations, or, as sometimes called, "external sovereignty"; and (2) the separability or perhaps "stratification" of property rights. That both these elements were necessary in the opinion is the proposition that remains to be demonstrated.

1. The first proposition depends to a large extent, if not altogether, on a remarkable opinion by the Supreme Court in *United States v. Curtiss-Wright Export Corp.*[30] The case dealt with the powers of the president to prohibit arms traffic to the belligerents in the Grand Chaco conflict in South America. Acting under very broad powers contained in a resolution of Congress, the President had made a proclamation making it unlawful to sell arms to the countries involved. In a prosecution for violation of the presidential order, the contention was made on appeal from a conviction for selling machine guns to Bolivia that the resolution constituted an unlawful delegation of power. While rejecting that contention, the Court took occasion to discuss extensively the general subject of the powers of the president in international affairs. Noting that the grant to the Federal Government in the Constitution was of such powers as the several states possessed at the time of its adoption, Justice Sutherland observed:

> "During the colonial period those (sovereign) powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, 'the Representatives of the United States of America' declared the United [not the several] Colonies to be free and independent states, and as such to have 'full Power to levy War, conclude Peace, contract Alli-

27. 26 Tex. L.R. 405.
28. 3 Wyo. L.J. 10.
29. This was accomplished, perhaps, by conjuring up fears of Federal encroachment on western oil lands. See note 3, supra.
30. See Note 12, supra.

> ances, establish Commerce and to do all other Acts and Things which Independent States may of right do."[31]

The Court then states upon the separation from Great Britain the "powers of external sovereignty passed from the Crown not to the colonies severally but the colonies in their collective and corporate capacity as the United States of America." The Court reasons that, as stated, the powers of external sovereignty, including the power to wage war, conclude peace and make treaties, "if they had never been mentioned in the Constitution, would have vested in the Federal government as necessary concomitants of nationality."[32] If this were not so, the United States would not be completely sovereign. One of those powers expressly mentioned by the court is the power to acquire territory by discovery and occupation, citing *Jones v. United States.*[33]

Justice Black notes that "as a member of the family of nations" the rights of this country in the international field are equal to those possessed by other nations. But how does this apply to the submerged lands off the coasts? With the Pollard line of cases disposed of on the ground that they were limited to inland waters, there remains the delicate point of the assumption of title or dominion over the submerged marginal lands. This brings us to the heart of the matter.

Grant the assertion of "jurisdiction" by the states as to sponge and other fisheries in those waters. Grant the existence of a three-mile limit around the coasts. The question still remains: What is the status of the ocean-bed? Certainly there is no title in the states. Does it then follow that it must be in the United States? It has not been so contended except by the plaintiff in this action. Historically, the three-mile limit had nothing whatsoever to do with claims of rights in the ocean-bed. The purpose, since Bynkershoek, had been to protect the coasts of the state, to protect the nation's sovereignty. The claims of the states of the union, no more than those of the original colonies, cannot rise above the source. The whole dictrine of freedom of the seas is based on the concept that the seas belong to none, but are the common highway of all.

At this point the Court reasons from the vast inherent powers of the sovereign in foreign affairs directly to the assertion of the paramount right to extract minerals from the submerged coastal lands. As such, the only conclusion that can be drawn is that the United States has the power to acquire these minerals as a part of the general sovereignty which gives a legal basis for acquisition of new land, whether by purchase, war, cession or conquest.

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31. 290 U. S. 316.
32. 290 U. S. 318.
33. 137 U. S. 202, 212, 34 L. Ed. 691, 694.

2. The second proposition facing the court was what was called the "stratification" of property rights. In the course of argument before the court, Justice Black remarked:

> "Well, I don't know that it has been held that the oil goes with the soil. Suppose they discovered something about four miles under the surface of the earth. Do you mean that the old property concept would have to apply to that, even though it were something the Government desperately needed?"

Mr. Justice Frankfurter asked: "Why can't you recognize title as to oyster beds but not title as to oil wells?

> Mr. Daniel: Because the title goes with the ownership of the soil. Justice Frankfurter: You could have different layers of title, this layer belongs to the state, this to the Government, because it is oil."[34]

While this "layer" theory appeared startling to Mr. Daniel of Texas, it is no novelty in the law. On the contrary it has been repeatedly recognized. A fairly recent case is that of *Ohio Oil Co. v. Wyoming Agency*.[35] There, the owner of the mineral fee asserted title by reason of a sheriff's deed issued on a sale after judgment and execution on an irrigation assessment. The court held that as the mineral fee had been conveyed, i.e. "severed" prior to the assessment in question, the sheriff's deed did not convey any interest in the minerals. In this instance the severance was effected by a reservation in a deed and was valid though no extraction of minerals had been made and no assessment had ever been made against the mineral fee. As the court said:

> "After severance, the two estates, owned separately, are held by separate and distinct titles. This has been emphasized in the cases. It has been said that the two estates are 'as distinct as if they had constituted two parcels of land.' It is not material that the plane by which the properties are separated is horizontal instead of vertical.[36]

There is obviously no question of severance as far as the oil-bearing lands offshore are concerned. The point is, however, that the common source for any and all claims to any part of the marginal sea is the assertion of the soverign's right to this area as a matter of national defense. "The three mile rule is," as Justice Black states, "but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers inherent to its location." To build upon this concept born of necessity a framework of title and "sovereignty" in the several states would be legally anomalous. The structure would

34. 3 Wyo. L.J. 16.
35. — Wyo. —, 179 P. (2d) 773.
36. 179 P. (2d) 778.

be without foundation. Neither precedent nor common sense will permit us to slide from "jurisdiction" for national defense to "title." The states' right contenders, however, are not content to stop there. They boldly claim title in the ocean-bed to whatever distance from the shore line eager legislators may deem reasonable (and potentially profitable).[37] Even more disturbing is the assumption that the states' claim to the three-mile belt is sound basis for state ownership of the entire continental shelf, to whatever extent it may reach.[38] Professor Borchard, representing the oil industry before a special Senate Committee investigating petroleum resources in 1945, stated as follows:

> The Chairman (Mr. O'Mahoney). So your argument is that, regardless of modern improvements, the greater distance to which we extend the ability of men to prospect and recover valuable minerals or substances from the subsoil under the sea, the greater we extend the jurisdiction of the riparian states, to the disadvantage of the states of the interior?
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> Mr. Borchard. Yes, sir, that would necessarily follow from geographical considerations. The only question is who, as between the Federal Government and the States, has the prior claim."[39]

In his testimony, Professor Borchard expressed the thought that it would be almost insuperably difficult to separate state and Federal claims, if the state's claims were deemed to reach no farther than the three-mile limit. He therefore would, as a "practical" solution, sustain the claim of the states to the continental shelf, however distant from the coast, while finding manifold difficulties in demarcating the lines of ownership. In advancing his somewhat startling theory that the littoral states could stake out claims far in excess of those then asserted by the United States, he remarked that if oil were discovered beyond the three-mile limit, "the states would undoubtedly claim them (the lands), and then the states could use prescription and occupation as sufficient theoretical justification for continuing the claim."[40] While convenient for his clients, the professor's theory of prescription cheerfully ignores the fact that there is no power in the states to acquire territory not previously a part of the United States.

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37. 26 Tex. L.R. 438, 439; Loret: 13 Tulane L. R. 257. *Contra*: Ireland: 2 La. L.R. 275.
38. 26 Tex. L.R. 438, 439.
39. Hearings before Special Committee Investigating Petroleum Resources (79th Congress). Page 133.
40. Id. page 129.

CONCLUSION

Though the three-mile limit historically originated in 1702, it was not recognized generally at the time of the American Revolution. There is then no basis for the derivative theory, weakened as it is by the plausible and more modern theory that at the Declaration of Independence the sovereign powers formerly exercised by the British Crown passed to the United States as an entity. Under such circumstances the source of any "title" to the ocean bed below low tide could only derive from the successful assertion of a three-mile limit by the sovereign, i.e. the United States.

The California decision is debatable only to the extent that it asserts the Federal right to paramount jurisdiction rather than title in the United States. Perhaps the Court was reluctant to go that far in the absence of Congressional action, or perhaps it felt that the question of title could be passed over, inasmuch as the matter actually at stake was the right to extract minerals. Here again the Court may be on solid historical ground, for as the assertion of jurisdiction over the three-mile limit had arisen solely from considerations of national defense, and so was not primarily concerned with the bed of the sea, the right to extract oil, stemming from exactly the same considerations, should be similarly limited.

ADDENDUM

Since the foregoing article was prepared, the Supreme Court has handed down decisions involving the claims of the United States to paramount rights in the offshore minerals in the Gulf of Mexico claimed by Louisiana and Texas.[1] In both, the Court followed the reasoning and holding of the California decision. Analysis of these decisions is beyond the scope of this article, but two points of interest may be mentioned: (a) The United States made claim against Louisiana to the ownership of, or paramount rights over, the lands extending seaward twenty-seven marine miles from the ordinary low-water mark; (b) the state of Texas raised the contention that its unquestioned sovereignty prior to admission and its reservation, at the time of admission, of "all the vacant and unappropriated lands lying within its limits" required a different decision in its case.

1. Louisiana. The rationale of the California case is that the three-mile limit had its origin as a manifestation of sovereignty, and that being so, the state's claim of ownership would fall. How, then, can the United States lay claim to a 27-mile strip, without in effect conceding that Louisiana has extended the seaward pretensions of the national authority that far?[2] The Court answered this difficulty by stating that the boundaries of states were not involved. If the three-mile belt is within the national domain, " . . . it follows, *a fortiori*, that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea . . . "[3] This reasoning leaves something to be desired. It would seem a sounder approach to meet the boundary question head-on, pointing out that states have no carte blanche to extend their boundaries seaward.

2. Texas. From March 2, 1836 to March 1, 1845, Texas was an independent nation, fully recognized as such by the United States. Aside from the exact meaning of the reservation of "vacant and unappropriated lands," would its prior independence have any bearing on the matter of the rights in the three-mile limit? The Court decided against Texas on the ground that it entered the Union on "an equal footing" with the other states. Obviously, no modicum of sovereignty in the sense of control over foreign relations, national defense and foreign commerce remained in the state.[4]

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1. United States vs. State of Louisiana, 340 U. S.—, 70 Sup. Ct. Rep. 914; United States vs. State of Texas, 340 U. S.—, 70 Sup. Ct. Rep. 918.
2. By act of the Legislature, Louisiana extended its boundary seaward to 27 marine miles. La. Act 55 of 1938 (Dart's Stats. 1939, Secs. 9311.1-9311.4).
3. 70 Sup. Ct. Rep. 917.
4. 70 Sup. Ct. Rep. 923.