THE APPLICATION OF STATE LAW IN A MARITIME CASE: A PRIMER ON "THE DEVIL'S OWN MESS"[1]

The Honorable John W. deGravelles[*]

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1. This is the colorful description given by Brainard Currie to the confused and contradictory jurisprudence in this area of maritime law. Brainard Currie, *Federalism and the Admiralty: "The Devil's Own Mess,"* 1960 SUP. CT. REV. 158.

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I. INTRODUCTION

Despite the well known and commonsensical rule that maritime law should be uniform regardless of which court applies it,[2] there are circumstances in which state law may apply in a maritime case. What those circumstances are, however, is far from clear. Furthermore, the theoretical basis for the application of

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2. The landmark case announcing this principle is *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). Despite the controversy stirred by *Jensen* and its progeny, this central principle remains true.

> A first pervasive theme in the Supreme Court's federalism jurisprudence is the idea that the constitutional grant of authority over maritime matters requires the development of a uniform maritime law . . . . This uniformity is mandated whether the suit is brought in the admiralty forum, on the "law side" of the federal court, or in state court.

1 THOMAS J. SCHOENBAUM, ADMIRALTY & MAR. LAW § 4-2 (5th ed. 2014) (footnotes omitted).

state substantive law in a maritime case is the subject of much debate with no clear winner.

Thomas J. Schoenbaum states, "[t]he issue of federalism in admiralty and the scope of application of state law in maritime cases is one of the most perplexing issues in the law."[3] David W. Robertson writes that the Supreme Court's decisions on this issue "fall into no clear pattern" and, "taken in the aggregate[,] simply do not make complete sense."[4] Indeed, he describes the issue as "diabolically difficult."[5]

Lower courts have been frustrated by the lack of a clear test. "Discerning the law in this area is far from easy; one might tack a sailboat into a fog bank with more confidence."[6] In a more modulated tone, the Louisiana Supreme Court has stated that:

> Despite [the] multitude of cases involving the applicability of state law in maritime situations, the [United States Supreme] Court has developed no clear test for determining when such application is appropriate and when it violates the [C]onstitution. Instead, the Court has generally stated only its conclusion as to whether the application of state law was permissible, and these conclusions have not always been theoretically consistent.[7]

Even the United States Supreme Court has acknowledged the lack of clarity in its opinions addressing this question: "It would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible in our admiralty jurisprudence, or indeed is even entirely consistent within our admiralty jurisprudence."[8] Despite the confusion, the Supreme Court has consistently resisted all opportunities to "attempt [a] grand synthesis or reconciliation of [its] precedents."[9]

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3. SCHOENBAUM, *supra* note 2.

4. David W. Robertson, *Admiralty & Maritime Litigation in State Court*, 55 LA. L. REV. 685, 700 (1995) [hereinafter Robertson, *State*].

5. David W. Robertson, *The Applicability of State Law in Maritime Cases After* Yamaha Motor Corp. v. Calhoun, 21 TUL. MAR. L.J. 81, 83-84 (1996) [hereinafter Robertson, *Yamaha*].

6. Ballard Shipping Co. v. Beach Shellfish, 32 F.3d 623, 624 (1st Cir. 1994).

7. Rodrigue v. Legros, 563 So. 2d 248, 253 (La. 1990) (citation omitted).

8. Am. Dredging Co. v. Miller, 510 U.S. 443, 452 (1994).

9. Yamaha Motor Corp. v. Calhoun, 516 U.S. 199, 210 n.8 (1996).

Thousands of pages of scholarly articles,[10] and indeed, an entire book,[11] have been devoted to this single subject. There are numerous models and theories which attempt to explain and predict when state substantive law should be applied in a maritime case. Professor Schoenbaum counts no fewer than four.[12] Professor Robertson finds five.[13] It is far beyond the scope of this paper to explore these in detail or offer up my own solution to this riddle. Rather, the modest goal of this paper is provide a broad and brief overview of this issue and to review some general principles that might serve as a useful starting point for one's journey through these treacherous waters.

II. BACKGROUND

Article III, Section 2 of the United States Constitution extends the judicial power of the United States "to all cases of admiralty and maritime jurisdiction." The enabling statute for this provision, 28 U.S.C. § 1333, gives federal district courts original jurisdiction, "exclusive of the courts of the States" over "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." These two provisions combined with the Constitution's Supremacy and Commerce Clauses have been interpreted to answer two questions: first, in what courts can a maritime case be brought? Second, what procedural and substantive law will govern the case?

A. What Court?

Some cases can only be brought on the "admiralty side" of federal court. These include in rem actions against vessels and other maritime property pursuant to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions,[14]

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10. Some of those articles are quoted and cited herein. I found these particularly helpful: David W. Robertson, *Displacement of State Law by Federal Maritime Law*, 26 J. MAR. L. & COM. 325, 338-46 (1995) [hereinafter Robertson, *Displacement*]; Robertson, *State*, *supra* note 4; Robertson, *Yamaha*, *supra* note 5; Robert Force, *Choice of Law in Admiralty Cases, "National Interests" and the Admiralty Clause*, 75 TUL. L. REV. 1421 (2001) [hereinafter Force, *National*].

11. DAVID W. ROBERTSON, ADMIRALTY AND FEDERALISM: HISTORY AND ANALYSIS OF PROBLEMS OF FEDERAL-STATE RELATIONS IN THE MARITIME LAW OF THE UNITED STATES (1970).

12. SCHOENBAUM, *supra* note 2.

13. Robertson, *Displacement*, *supra* note 10, at 338-46.

14. FED. R. CIV. P. SUPP. RULE F (2014).

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