The American Admiralty: Division and Devolution

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I. INTRODUCTION

If we consult history only, we may refer to admiralty as the jurisdiction of an admiral,1 his dominion in and about the waters of the sea,

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1. 1 SHORTER OXFORD ENGLISH DICTIONARY 29 (William Trumble & Lesley Brown eds., Clarendon Press 5th ed. 2002) (1933) (defining “admiralty” as “[t]he jurisdiction or office of
jurisdiction in the plenary sense. In that view its name is acquired from the title of its governors, rather than extracted from characteristics of the governed regime. That may be an adequate identification for tracing its political history, but I prefer here to concentrate on the content of the regime rather than the title of its former governor, while retaining the convenient name of Admiralty. in that style, to distinguish the customary domain as a whole from the usages in particular places or eras or stages of development. I shall attempt to define it further below. Suffice it to say that centuries ago it became a feature of maritime states by customary international law and relations.

Both in Britain and in the United States, the powers and functions of Admiralty have been carved up and redistributed to more specialized agencies than the original. Although this article is mainly about the American Admiralty, the definition of its content owes much to inheritance from English institutions and so it is appropriate to look at history earlier than 1776 to identify and illustrate the recognized powers and functions involved; that is to say, the Admiralty to be ultimately recognized and divided here. It is the habit of the bench and bar to use the term only in relation to the jurisdiction of the court, which is a part of the whole. By pointing out how much more of Admiralty (notably its law-making, regulatory and police powers) are lodged in other branches of government, I would like to encourage the recognition of the whole in relation to its judicial part.

an admiralty.

2. See, e.g., WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1227 (Merriam-Webster Inc. 1993) ("2: authority of a sovereign power to govern or legislate: power or right to exercise authority: CONTROL . . . 3: the limits or territory within which any particular power may be exercised: sphere of authority ..."); 1 SHORTEST OXFORD ENGLISH DICTIONARY 1472 (William Trumble & Lesley Brown eds., Clarendon Press 5th ed. 2002) (defining "jurisdiction" as "2 The extent or range of judicial or administrative power; the territory over which such power extends."); BLACK'S LAW DICTIONARY 867 (8th ed. 2004) ("1. A government's general power to exercise authority over all persons and things within its territory; . . . 3. A geographic area within which political or judicial authority may be exercised."). See also U.S. Const. art. IV, § 2, cl. 2 ("A Person charged in any State with Treason . . . shall . . . be delivered up . . . to the State having Jurisdiction of the Crime."); U.S. Const. art. IV, § 3, cl. 1 ("[N]o new State shall be formed or erected within the Jurisdiction of any other State.").
II. DEVELOPMENT AND DEFINITION AS
A CUSTOMARY REGIME

A. Early Development

Beginning in ancient times and for centuries, there were "admirals" (as we may now think of them) but no "admiralty." Readers of history may recall numerous instances of the creation of fighting fleets, the commanders of which were commonly "generals" on land and not members of institutional navies, which did not exist. Prominent examples are Mark Antony on land at Philippi and at sea at Actium, and Themistocles commanding the army at Thermopylae and the fleet at Salamis. Such commanders had no authority beyond the command of their vessels and crews and pursuit of their immediate military objectives, except when they were rulers in civil life. They often had no special nautical experience or knowledge and presumably relied heavily on subordinates for technical judgments (Odysseus as depicted by Homer to the contrary notwithstanding). None of them had or claimed, by virtue of their commands, any continual government of the seas. Indeed, there appear to have been few, if any, lasting claims to sea waters apart from the Romans' mare nostrum, which they could maintain because of their dominance of the lands around it; they do not appear to have installed a governor of mare nostrum, as such, although Theodor Mommsen reports that as early as 487 B.C. four quaestors of the fleet were appointed in the ports to establish and maintain a war marine, and among the vast powers given Pompeius in 67 B.C. was command of the entire Mediterranean and its coasts with powers fifty miles inland and a large staff including men of praetorian (judicial) power. Maritime aggression and defense were well known but Admiralty not yet quite conceived of.

5. Xerxes, for example. See id. at bk. VII, 355–431; bk. VIII, 432–78.
6. See OLGA TELLIGEN-COUPERUS, A SHORT HISTORY OF ROMAN LAW 32 (Routledge 1993) (Various Roman conquests and annexations "are reflected in the new name given to the Mediterranean: it began to be referred to as mare nostrum (our sea), an expression which had originally been reserved for the Tyrrenian Sea following the Roman conquest of Sicily, Sardinia and Corsica.").
8. Id. at vol. 4, 108–09.
This pattern was continued in Europe and Britain into the Middle Ages. England had admirals (under that name or another) to exercise power at sea when needed long before the 14th century, when we begin to trace a continuing admiralty jurisdiction beyond sporadic campaigns. The Black Book of the Admiralty ("Black Book")\(^9\) is a collection of official documents in Latin and French concerning the Admiralty beginning in that century and the source of much information about its history. The admirals referred to were not the modern professional career officers trained up in active institutional navies. The early admirals, such as the Duke of Lancaster under Edward III,\(^11\) were nobles with military experience, sometimes at sea, and courtiers who served the kings in various state offices. Appointments were highly various.\(^12\) "As the Admiral of England was often employed on other duties, it was necessary to appoint Admirals or Commanders of squadrons or fleets for particular services..."\(^13\)

English admiralty is considered to date from the reign of Edward III. There is official evidence of it in about 1337; an ordinance of 20 articles from the King in Council governing not only naval operations but responsibilities of the admiral’s civil government can be found in the Black Book.\(^14\) This is not to say that there were not earlier maritime laws; the Black Book refers to numerous prohibitions by acts of earlier kings not discretely relevant here. However, before 1340 there was no concept of a navy; English ships were used only to carry soldiers to battles on land. Only in the Battle of Sluys in 1340 did the English ships themselves engage in fighting.\(^15\) The Royal Navy, as an institution, dates only from the early 16th century, when Henry VIII added ships to the few he had inherited\(^16\) and created a naval administration.\(^17\) Before his time, the kings’ own fleets


\(^11\) Id. at 7 n.2 (in translation from the French).

\(^12\) I Sir Nicholas Harris Nicolas, A History of the Royal Navy from the Earliest Times to the Wars of the French Revolution 392–99 (1847) [hereinafter Nicolas].

\(^13\) 2 Nicolas, supra note 12, at 449.

\(^14\) 1 Black Book, supra note 10, at 1–23.


\(^16\) J.J. Scarisbrick, Henry VIII 441-42 (The Folio Society ed. 2004) ("Henry inherited seven ships from his father, had added twenty-four more by 1514 and, by the early forties ... had built up a nucleus of a powerful naval force"); Michael Oppenheim, A History of the Administration of the Royal Navy and of Merchant Shipping in Relation to the Navy from MDXX to MDCLXII 2, 48–51 (1899).

\(^17\) 10 Encyclopædia Britannica 219 (15th ed. 1990) ("Henry VIII built a fleet of
were small, and commonly laid up or lent to merchants. When a threat, or perhaps an opportunity, arose, the king called on the Cinque Ports for vessels they maintained and requisitioned other private ships by the right of angaria to make up his fleet, aided no doubt by a prudential ordinance I will discuss below.

History will therefore not support the notion that Admiralty was an outgrowth or spinoff of the navy, but rather the contrary. The admiral of the time and the vessels at his disposal were subsumed in the creation of an institutional Admiralty he was to govern, with his vessels as its enforcement arm.

I have described the origin and development of the English admiralty more amply elsewhere and will state the occasion summarily here. The English admiralty is considered to have been established by Edward III when he wished to extend his power over territorial waters, as he then viewed them (rather too expansively), and the French king, with whom he competed, was doing likewise. The admiral’s authority was defined by his royal commission and certain regulations, rather than by statute, and was a plenary authority to govern and defend the king’s waters beyond the limits of the counties, which were governed by their high sheriffs. Having seagoing vessels, the admiral was the only officer with practical power to do so.

B. The Jurisdiction Developed as of 1789

The nature and extent of the admiral’s authority is described in the late 17th century, the time of greatest relevance to the American colonies, by a distinguished statesman and judge:

The Admiral of England (as Mr. [John] Selden observes) hath another manner of Right, and Jurisdiction, than the Admiral of France, or other ordinary Admirals; for that the Jurisdiction over

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18. 1 NICHOLAS, supra note 12, at 362.
19. Id. at 221.
20. See BLACK’S LAW DICTIONARY 235 (8th ed. 2004) ("The five English ports—Hastings, Romney, Hythe, Dover, and Sandwich—that were important defenses against French invasion. They received special privileges and were obliged to furnish a certain number of ships for use in war.")
22. 1 NICHOLAS, supra note 12, at 231; OPPENHEIM, supra note 16, at 2.
24. Id. at 439–45 and others cited therein.
the Seas of England and Ireland, and the Dominions and Isles of the same, as a Province, are committed to his Custody and Tuition, as to a President, to defend the same, as in the Dominion of the King, by whom he is authorized; the Bounds of which Jurisdiction are limited and determined in those Seas.  

It bears on the development of custom to mention here that, notwithstanding the comparison quoted, the French admiralty had developed along the same lines from the appointments of Amiraux de France beginning in 1327, and ultimately embracing substantially the same legal powers. The admiralities of Spain, Denmark and Scotland are reported to have developed similarly. Such jurisdictions, with varying details, undoubtedly became and remain customary features of sovereignty.

One more line of development needs to be mentioned to bring us to the stage existing at American independence. Vice admiralties were established by the Crown in all the American colonies and the governors were commissioned vice admirals. Their responsibilities and powers as such were defined by their commissions, and in somewhat broader terms than those of the admirals. The States succeeded to these powers and exercised them and they were generally recognized as characteristic of Admiralty in 1789.

The broad terms of vice admiralty power were filled out with occasional details; the commission as vice admiral of Lord Cornbury,

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26. See 1 RENÉ-JOSUÉ VALIN, NOUVEAU COMMENTAIRE SUR L’ORDONNANCE DE LA MARINE, Tit. 1, p. 32 (La Rochelle 1760).

27. See id., Tit. 2, arts. 1-3, pp. 105, 112, 119 (various torts and contract matters), arts. 5 and 6, pp. 121, 128 (fish and fisheries); art. 10, p. 134 (crimes and offenses); see also United States v. Wirtberger, 18 U.S. (5 Wheat.) 76, 106 n. 23 (1820) (Marshall, C.J.: "The person who filled this high station had jurisdiction by himself or his deputies, of all crimes and offenses committed on the sea, its ports, harbours, and shores." (citing 1 Valin, Tit. 2. De la Compétence, art. 10.)); compare Lord Cornbury’s commission infra text accompanying notes 30, 31.


Governor of New York, Connecticut and New Jersey, which appears to cede him the king’s maritime powers, is illustrative:

And we do hereby remit and grant unto you, the aforesaid Edward, Lord Cornbury, our power and authority in and throughout our provinces and colonies, aforesaid, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, and also through all and every the sea shore, public streams, ports, fresh water rivers, creeks, and arms, as well of the sea, as of the rivers and coasts whatsoever of our said provinces and colonies, and the territories depending thereto, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises, as without.  

The particulars of authority that follow describe all manner of maritime contracts, torts and property as well as crimes, and

all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflown whatsoever, within the ebbing and flowing of the sea or high water, upon the shores and banks of any of the same within our maritime jurisdiction...  

These and similar features tended to define and limit our understanding of admiralty in 1776 and still in 1789. In 1847, however, the Court made clear with the decision of *Waring v. Clark* that the United States did not adopt or inherit the restrictions that the Crown or any other sovereign had placed upon it. The Court was considering the limits of jurisdiction of the admiralty courts, but what it held necessarily applied to the maritime regime of which they were part. A further apparent gap in the American admiralty arose from the fact that the constitutional drafters picked up fragments of it, only mentioning it explicitly in connection with jurisdiction of the court, and did not advert to its substance, the stuff of its controlling authority at sea, except for the power of Congress to “define and punish Piracies and Felonies committed on the high Seas.” This was an invitation to the States to adopt divergent maritime laws, which would ultimately render pointless the attempt at consistency represented by federal admiralty courts. Tension on this point followed until the Supreme Court, in an exercise of reverse engineering, closed the gap, declaring in

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31. *Id.* at 5-7 to -8.
The *LOTTAWANNA*\(^{34}\) that, when judicial jurisdiction was declared federal, “[t]he general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was most certainly intended and referred to . . . a system of law coextensive with, and operating uniformly in, the whole country.”\(^{35}\)

Thus the structure of the federal Admiralty was completed with the recognition of a body of customary law (general maritime law) subject to later amendment by Congress. Such amendments become parts of the body of admiralty and maritime law and not apart from it, as illustrated in seamen’s injury claims and marine mortgages.\(^{36}\) While the maritime character of statutory or regulatory subject matter may be recognized by its treatment in the admiralty courts, that is not an exclusive test. Constitutional and interpretative questions arise and are decided collaterally in cases of maritime torts or contracts, as in the cases just cited, but direct challenges to the validity or interpretation of statutes and regulations, which may be made in other jurisdictions, are not always the grist of the admiralty courts.\(^{37}\) If we care to look at customary precedent, no one would suppose that the Lord Admiral would entertain constitutional challenges to regulations or decrees of the King in Counsel, and history does not suggest the contrary.

With only questions about their extent, the sovereignty of territorial waters and certain jurisdictions on the high seas had been recognized as customary to European nations for centuries, in the opinions of learned writers.\(^{38}\) I would define the customary Admiralty we received as the powers and responsibilities of a sovereign nation in, on and about the world’s public navigable waters. This definition excludes only waters

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34. 88 U.S. (21 Wall.) 558, 574-75, 1996 AMC 2372 (1875).
35.  Id. at 574-75.
inaccessible to foreign navigation, which are not reached by international custom.

C. The Substance of Admiralty Undivided

I turn from the concept to particulars of our own Admiralty heritage, not as inherited structural limits, but as instructive examples of its functions historically received and carried on by us. From the broad, almost unlimited, powers granted the admiral within his province, we see that the Admiralty bore a resemblance to a component state or province in a federation. It exercised all the characteristic powers of one. Besides having a naval force and obvious executive, regulatory, police and judicial powers, it was the peculiar device of a lawmaking power independent of Parliament.

To recognize its lawmaking function, we recall its creation and early jurisdiction and powers, not from any action of Parliament but solely from the King in Council, whose directions by ordinances and commissions rise to the level we would at least now regard as of legislative authority. Parliament asserts itself on the matter of geographical jurisdiction with the late 14th century Ricardian statutes\(^\text{39}\) but otherwise the Admiralty continued until the American Revolution as a branch of royal prerogative defined by the admirals’ commissions and by ordinances of the King in Council.\(^\text{40}\) The earliest of the ordinances we have, from about 1337, mainly concerned the disposition and government of the fleet, but scattered among them are others of much interest.

One of the ordinances, a discrete historical precedent, establishes the compulsory enrollment of private vessels, requiring the Admiral to make a roster of all the “vessels of war the king may have in his realm, when he pleaseth, or need shall require, and of what burthen they are, and also the names of the owners and possessors thereof.”\(^\text{41}\) This was the first registration and cataloguing of the nation’s private vessels we know of. Another ordinance concerns the quality of the bureaucracy that the admiral must have to carry out his commission:

When one is made admiral, hee must first ordaine and substitute for his lieutenant, deputies, and other officers under him, some of the most loyall, wise, and discreete persons in the maritime law and auncient customes of the seas which hee can

\(^{39}\) 13 Rich. II, ch. 5 (restraining the admiral from meddling with anything done on land) and 15 Rich. II, ch. 3 (defining the landward boundaries to exclude inland waters).


\(^{41}\) 1 BLACK BOOK, supra note 10, at 3–5 (footnote omitted).
any where find, to the end that by the helpe of God and their
good and just government the office may be executed to the
honour and good of the realme.  

Another ordinance may be viewed as an oblique conferment of the
admiral’s judicial function, although it is better viewed again as an
admonition of the quality expected in executing that function of his

commission:

Item, tis a thing necessary and needfull for the admirall that
hee causes, procures, and orders his whole office to be well,
justly, and so discreetly executed and managed upon divers
difficult causes and casuall matters, which doo often happen and
arise in the said office, to the end that every plaintiffe and every
defendant may have cah in his degree and particular what of
right and justice belongs to him according to the law and
auncient custome of the sea.

It would be straining to read this direction as implying less than
jurisdiction of all legal causes, criminal or civil, arising in or out of the
Admiral’s jurisdiction. The commissions of admirals and vice admirals
thereafter confirm that view with the following description:

to hold conusance of pleas, debts, bills of exchange, policies of
assurance, accounts, charter parties, contractions, bills of lading,
and all other contracts which may any ways concern moneys due
for freight of ships hired and let to hire, moneys lent to be paid
beyond the seas at the hazard of the lender, and also of any cause,
business or injury whatsoever had or done in or upon or through
the seas, or public rivers or fresh waters, streams, havens, [etc.,
within the limits of Admiralty waters].

The admiral’s regulatory and police functions are best told by
supplementing a few particulars in the commissions with the records of
actual regulatory and enforcement proceedings, omitting the maintenance
and governance of the fleet, its defensive (and aggressive) operations and
perquisites. A very early inventory of such concerns appears in the charge
given in 1376 to an inquisition, somewhat in the nature of a grand jury, of
“eighteen expert seamen” before the Admiral of the North, the Admiral of
the West and the Warden of the Cinque Ports, known as the Inquisition at
Quinborough. A lengthier charge by Sir Leoline Jenkins, the learned

42. id. at 2, (editor’s footnotes omitted).
43. id. at 7, art. V (editor’s footnote omitted).
44. 1 BENEDICT, supra note 30, ch. II § 23, at 2-3; see also De Lovie v. Boit, 7 F. Cas.
45. 1 BENEDICT, supra note 30, ch. II § 21 (quoting Zouch, supra note 25, at 90, 96, Ass. 1
& 3).
Admiralty judge, to a similar inquisition in London two centuries later embraced the earlier topics with additions and amplifications in impressive detail.\textsuperscript{46} The vice admirals of the American colonies received explicitly certain powers and responsibilities beyond at least the stated authority of the High Admiral. To avoid much repetition, those topics are not stated here and some will be found below in connection with their devolution.

III. DIVISION AND DEVOLUTION

A. The Transfer of Essential Functions

1. The Navy Itself

These functions are the best known and their disposition easily stated. The maintenance and operation of the Royal Navy was and remains the chief function of the British Admiralty, while other functions have been hived off to other agencies. The United States Navy Department corresponds to the Royal Navy as the result of constitutional and early statutory dispensations. One distinction of interest beyond the Navy itself concerns surveying and the production of nautical charts and hydrographic data, in which the British Admiralty retains a role, although the United Kingdom Hydrographic Office is no longer an organic part of it. The United States counterpart remains in the Navy as the Naval Oceanographic Office, and has for a long time shared hydrographic functions with a civilian agency, the National Oceanic and Atmospheric Administration ("NOAA"). Of course, the activities of naval vessels continue to raise questions for the Admiralty courts,\textsuperscript{47} as do the Navy's contracts for vessel and other nautical services.\textsuperscript{48} Nautical hydrographic services, whether of naval or civilian providence, are likewise recognized judicially to be within Admiralty's purview.\textsuperscript{49} Beyond this, I need mention the Navy only

\textsuperscript{46} Sir Leoline Jenkins, A Charge Given at an Admiralty Sessions held at the Old-Bailey, in 1 WILLIAM WYNNE, THE LIFE OF SIR LEOLINE JENKINS (London 1724), reprinted in GEORGE TICKNOR CURTIS, DIGEST OF CASES ADJUDGED IN THE COURTS OF ADMIRALTY OF THE UNITED STATES AND IN THE HIGH COURT OF ADMIRALTY IN ENGLAND, App. 529-545 (Boston 1839) [hereinafter Sir Leoline Jenkins].


\textsuperscript{49} E.g., Linmar Shipping Ltd. v. United States, 324 F.3d 1, 2003 AMC 775 (1st Cir. 2003) (claim of grounding from error in government nautical chart barred by discretionary function in SAA).
incidentally in discussing the Admiralty functions that are not administratively part of it.

2. Lawmaking, Regulatory and Police Powers

As of 1776, Parliament had had little to do with the law at sea. The Admiral was directed by ordinance of the King in Counsel from the first only to execute "the maritime law and auncient customs of the seas." This was understood to mean (at least) the Laws of Oleron, enacted on that island, brought to England by Queen Eleanor, understood to have been adopted by her son, Richard I, and in force since without an act of Parliament. Admiralty remained a branch of the royal prerogative at the time of the American Revolution. The scant directions given the admiral as to substantive law and the number and variety of commands and prohibitions referred to in the inquisitions at Quinborough and London (and not to be found in the Laws of Oleron and other medieval codes) indicate that someone, presumably the admiral, was making laws by regulation or practice, whatever they were called.

By the Constitution, statutory lawmaking in the U.S. admiralty devolved exclusively to the Congress, although extensive regulatory powers have come to lie elsewhere, as we shall see, and the judicial powers described above devolved to the federal courts (afterward partially shared by Congress with state courts by virtue of the saving clause). The regulatory powers, far greater in practical impact, have been distributed by Congress among a number of agencies.

In the following discussion of powers and functions of Admiralty devolved to newer agencies, notes in some instances mark their continued recognition as parts of Admiralty. Evidences of historic analogies are cited in italics, marked [Q] for the Inquisition at Quinborough, [L] for that at London, and [VA] for the vice admirals' commissions; some are paraphrased and combined for brevity. Multiple sources are not listed; and in all cases they refer to what were considered "admiralty waters" without

50. 1 BLACK BOOK, supra note 10, at 2 (editor's footnotes omitted).
51. 11 AMERICAN LAW, supra note 40, at f. 65–66 and n.12 (Latin text).
52. id. at 167.
53. Laws of Oleron, reprinted in 30 F. Cas. 1171 (1897); Laws of Wisby, reprinted in 30 F. Cas. 1189; Laws of the Hanse Towns, reprinted in 30 F. Cas. 1197.
55. 1 BENEDICT, supra note 30, ch. II § 31 (quoting Zouch, supra note 25, at 90, 96, Ass. I & 3).
56. Sir Leoline Jenkins, supra note 46.
57. 1 BENEDICT, supra note 30, ch. V § 65.
repeating their descriptions. There is no attempt to identify all modern functions in detail. Because the Coast Guard, next to the Navy itself, is so much the largest repository of Admiralty powers and functions, it will be convenient to discuss it first and then take up the other functional areas.

B. Devolutions to Departments, Agencies and Courts

1. To the Department of Homeland Security

   a. U.S. Coast Guard

   The following much-abbreviated recital of some of the analogical evidences mentioned above may be sufficient to predicate the ultimate geographical and conceptual breadth of the Coast Guard’s share of Admiralty; among Admiralty’s ancient responsibilities were these offenses and supervisory concerns:

   In relation to vessels, customs and navigation laws, aids, pollutions and security: “[s]hips transporting gold and silver” or “carrying corn over sea without license” [Q]; “turn[ing] away merchandises . . . from the King’s ports” [Q]; security of strangers and their vessels in ports [L]; “pirates, their receivers, maintainers and consorters” [Q]; falsely claiming or despoiling wrecks [Q]; “removing anchors, and cutting of buoy ropes” [Q], and ballast, rubbish or filth cast into the waters [L].

   In relation to mariners: conduct of “masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever exercising any kind of maritime affairs” [VA]; humane treatment of seamen and payment of their wages [L]; “mariners rebellious and disobedient to masters” or “forsaking their ships,” and “pilots by whose ignorance ships have miscarried” [Q].

   In relation to injury, death and all other casualties, an immense and indeterminate scope: “cognizance and decision . . . of the death, drowning, and view of dead bodies of all persons . . . which shall happen to be killed, drowned, or murdered, or by any other means come to their death, in the sea, or public streams, ports, fresh waters, or creeks whatsoever,” and “the cognizance of mayhem in the aforesaid places” and “all other casualties, as well in, upon, or by [Admiralty waters]” [VA]. In his charge mentioned above, Sir Leoline Jenkins, discussing dead bodies, refers to “inquisition super visum corporis” by the coroner of the admiralty.58

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58. Sir Leoline Jenkins, supra note 46, at 535.
The history and statutory jurisdiction of the Coast Guard establish it as repository of the admiral’s police powers limned above. It is the police department of the American Admiralty, with exceedingly broad responsibilities committed to it. Its origins and development and the scope of those police concerns are very well traced by Justice Brandeis, in a 1927 concurring opinion,59 to which the reader can be confidently referred for details and authority as of that year, with the assurance that they have not decreased since. The Coast Guard descends, as of 1915, from the Revenue Cutter Service established in 1790 and the Life-Saving Service about the same time and its officers have always been deemed customs officers to enforce the customs laws and, since 1793, the navigation laws at sea.60 Revenue cutters became thus America’s civil ocean patrol.”61 These were duties foreshadowed by such concerns of the Admiralty as “Of ships transporting gold and silver” [Q], and “Of carrying corn over sea without license” [Q]. In time, these operations were extended far to sea, to prohibit the slave trade, preserve neutrality, and suppress piracy.62 Later regulations extended the Coast Guard’s duties to include medical aid to vessels, assisting vessels in distress, removing derelicts, suppressing mutinies, protection of sea-creatures, and ice patrol.63 Its historic search and rescue functions are statutory64 and well known. More recently, drug smuggling is of great concern to the Coast Guard, entailing interceptions far at sea,65 and security from terrorism even greater,66 a pretty obvious concern of customary Admiralty. In these matters it exercises (as appropriate) the power of arresting violators and seizing their vessels, and even forcible removal from vessels in distress.67

Meanwhile, the Coast Guard acquired vast regulatory responsibility and corresponding disciplinary powers over mariners, vessels and navigation. It examines and certifies or licenses officers and other seamen

60. Id. at 514–16.
61. Id. at 515.
62. Id. at 516.
63. Id. at 516–17.
64. 14 U.S.C. § 2 (2006) (Coast Guard “shall develop, establish and maintain and operate ... rescue facilities”); see also Thames Shipyard and Repair Co. v. United States, 350 F.3d 247, 2004 AMC 112 (1st Cir. 2003) (crew removed from distressed vessel and use of force proper to remove reluctant master).
66. 33 C.F.R. ch. I, Coast Guard, Department of Homeland Security, subch. H and K.
67. Thames Shipyard, 350 F.3d at 260.
and disciplines them for misconduct, and investigates reported casualties. It documents private vessels and lists them with their particulars, one of the oldest of Admiralty functions, ordained in about 1337, as well as regulating their design and construction for safety and performing inspections on them. The Coast Guard additionally maintains the principal buoyage and other aids to navigation of the United States, designates obstructions to navigation for removal, and may control ship movements in ports for security and safety purposes. It further investigates, penalizes, and supervises the cleanup of pollution of navigable waters and is required to regulate and enforce preventive measures. All these and many other detailed functions it has. In time of war, the Coast Guard "rejoins" the Navy, and at all times collaborates with it and sometimes has the Navy's assistance in police functions.

As the authorities cited indicate, all these are recognized to be functions of Admiralty. The Coast Guard is further mentioned below, where its police function, the power to make arrests and seizures, is called to the aid of other agencies.

b. Bureau of Customs and Border Security

Admiralty has long been associated with the enforcement of customs so far as it concerns ships and shipping. The Bureau now has added functions in relation to security, with respect to ships and cargoes entering the country. It retains its usual functions in the entry, clearance and reporting of vessels and concerns itself with all the vessels that touch U.S. ports and with the foreign ports they also touch, the prohibition of imports and exports and the legitimacy of cargoes and documentation, and many

68. 46 C.F.R. ch. I Coast Guard, Department of Homeland Security, subch. B.
70. 46 C.F.R. ch. I subch. G (2007); MERCHANT VESSELS OF THE UNITED STATES (annually, now CD-ROM); see supra text accompanying note 41.
71. 1 BLACK BOOK, supra note 10, at 5.
73. 33 C.F.R. subch. C (2007); e.g., Whitney Steamship Co. v. United States, 747 F.2d 69, 1985 AMC 493 (2nd Cir. 1984).
78. E.g., United States v. Medjuck, 48 F.3d 1107, 1995 AMC 1090 (9th Cir. 1995) (pursuit and interception of drug vessel by Navy destroyers).
related functions affecting the operation of vessels, including the permission of vessels to engage in coastwise trade.\textsuperscript{79}

2. To the Army Corps of Engineers

So far as interests us here, the Corps of Engineers is concerned generally with the preservation and hydrologic control of navigable waters, concerns anciently expressed as "Preservation of public streams, ports, fresh waters and creeks" [VA] and "Obstructions of waters endangering ships or men" [Q].

The Army Corps of Engineers has the authority to define the navigable waters of the United States\textsuperscript{80} with which it has responsibilities, mainly expressed in its control of permits for dams and other obstructions (notably bridges) in or over navigable waters and other works affecting them\textsuperscript{81} and for the disposal of fill and dredge tailings.\textsuperscript{82} It has the authority, frequently exerted, to order removal of wrecks and other obstructions, or remove them at the expense of those responsible.\textsuperscript{83} The Corps makes special navigation regulations in numerous waters and establishes danger zones in certain waters on account of military or other dangerous activities or restricted areas for the protection of government property or activities.\textsuperscript{84} In addition to the navigation rules, these functions make the Corps a familiar figure in the Admiralty court, under maritime law, but sometimes not invoking admiralty jurisdiction because the United States as plaintiff enforcing a statutory claim need not do so.\textsuperscript{85}

3. To NOAA, National Marine Fisheries Service

As early as the 14th century the Admiralty had responsibility for protecting fisheries, regulating catches and enforcing its rules: "catch[ing]
fish... contrary to the ancient ordinances of the admiralty, likewise such as destroy fish out of proper seasons or while they are of unsizable growth...dredging for oysters... out of the seasons prefixed by... the admiralty" [L]; "fishing with unlawful nets" [Q]; "taking salmon at unreasonable times" [O]. The vice admirals' commissions show that these responsibilities and powers were maintained in the colonies until they became States, e.g.: "reforming nets too close and other unlawful engines or instruments... for the catching of fishes" [VA].

The National Marine Fisheries Service is a division of NOAA in the Department of Commerce. According to its mission statement it "is responsible for the management, conservation and protection of living marine resources within the United States Exclusive Economic Zone." Its regulations cover many details of the protection and taking of marine fish and mammals, granting of licenses and permits for fishing on the high seas and foreign fishing in U.S. waters, regulating seasons, areas and catches, and observing and inspecting vessels for compliance. Since its practical functions have effect mainly at sea, and often remotely so, the enforcement of its regulations requires Admiralty's police work there, in which the Coast Guard is involved.

It was once the concern of the admiral, in a unitary nation, to prevent "spoiling the breed of oysters, or dragging for oysters and mussels at unreasonable times" [Q]. In this federal nation those regulatory matters have generally been left to the States, although the private interests in them are still under Admiralty's aegis. The colonial vice admiralties were apparently granted a geographical jurisdiction beyond that of the Lord Admiral, viz.: preservation of "public streams, ports, fresh waters and creeks" and "fishes increasing in the rivers and places aforesaid" [VA]. The regulation of fishing in these waters is now devolved to the States, while Admiralty retains jurisdiction to the extent that the waters are navigable, and they are considerably regulated by the Coast Guard and Corps of Engineers, as described above.

89. E.g., State of Maryland Dep't of Natural Res. v. Kellum, 51 F.3d 1220, 1995 AMC 2378 (4th Cir. 1995) (damage to oyster bar from grounded barge); Dolan Brothers Shellfish Co. v. Boissonenault, 2007 AMC 968 (D. Conn. 2007) (debris cast on oyster bed by blasting ashore).
4. To the Maritime Administration

It is remarkable to find that the cargo preference laws of today have a predecessor in the 14th century, when one of the Admiralty’s concerns was to prevent “freight[ing] strangers’ bottoms, where ships of the land may be had at reasonable rates” [Q], as it is of the Maritime Administration (“MARAD”) in the Department of Transportation today. MARAD has a variety of responsibilities for government building, financing, ownership, operation and regulation of merchant vessels. Its activities in the domain of Admiralty include the operation (through general agents) of civilian government cargo vessels and the necessary employment of seamen and maritime contracts for services and supplies;\(^90\) financing guarantees for construction of merchant vessels with mortgages on them;\(^91\) administration and enforcement of cargo preference and coastwise trade laws;\(^92\) transfers to foreign registry,\(^93\) authorization of deep-water ports,\(^94\) emergency port controls (in collaboration with the Coast Guard),\(^95\) and emergency provision of war risk insurance for merchant vessels,\(^96\) and the maintenance of Reserve Fleets of vessels out of service.\(^97\) Some of these activities, notably the operation and fleeting of vessels, port controls, and insuring war risks when they occur, are continuously present in Admiralty. Others, to the extent they are bureaucratic, may not be so but may have consequences at sea.

5. To the Department of Labor, Occupational Safety and Health Administration (“OSHA”)

Admiralty’s historic concern with what we now term industrial workers, represented in the prevention of enslavement or abuse of workers [L] and in conduct of “shipwrights, other workmen and artificers” [VA], is today represented in the maritime jurisdiction of OSHA in furthering the

\(^90\) 46 C.F.R. ch. 2, subch. IA (2007); e.g., United States v. Holmberg, 19 F.3d 1062, 1994 AMC 2543 (5th Cir. 1994).


\(^92\) 46 C.F.R. subch. J (2007); e.g., Aquarius Marine Co. v. Pena, 64 F.3d 82, 1995 AMC 2829 (2d Cir. 1995) (cargo preference); Kirby Corp. v. Pena, 109 F.3d 258 (coastwise trade).

\(^93\) E.g., District No. 1, Pacific Coast District, Marine Engineers’ Beneficial Association v. Maritime Administration, 215 F.3d 37, 2000 AMC 2362 (D.C. Cir. 2000).

\(^94\) E.g., Gulf Restoration Network v. United States Dep’t of Transp., 452 F.3d 362, 2006 AMC 1533 (5th Cir. 2006).

\(^95\) 46 C.F.R. subch. IB (2007).

\(^96\) Id. subch. G.

safety of workers. It extends to longshoremen, repair workers and other harbor workers on navigable waters and also, as in the last class, crewmen on certain vessels not inspected under Coast Guard regulations.

The penal or injunctive enforcement of OSHA regulations does not ordinarily involve maritime law as such, but they are often asserted as standards of duty in private maritime injury and death claims, sometimes rightly and sometimes wrongly. To the extent of their maritime applications, they are part of the admiralty and maritime law.

6. To the courts

We come now to the institution that, from the beginning, has tended to warp our vision of Admiralty. I have mentioned above the well-known history that the drafters thought the Constitution should take the admiralty courts away from the states; only years later we concluded that we must have meant to nationalize the admiralty law when we nationalized the courts that could make decisions under and about it. A corollary is that, while the saving to suitors clause allows state courts to entertain maritime actions in personam, federal decisions are definitive of the maritime law, and when a case of admiralty jurisdiction is permissibly brought in a state court, or a federal court in its diversity or federal question jurisdiction, the maritime law must be applied as in an admiralty court. The saving to suitors clause does not grant State courts concurrent jurisdiction of actions peculiar to admiralty, that is, proceedings in prize, or in rem, which lie exclusively in the federal admiralty courts.

It is not to the purpose to discuss the jurisdiction of the courts in any detail here. In summary, it must embrace all the jurisdiction of maritime crimes under federal law and torts and contracts subject to the jurisdiction of the admirals and vice admirals before independence, as interpreted in the light of geographical distinctions and technical advances and clarified or advanced by acts of Congress. The fundamental ordinance of about 1337 indicates that the judicial duty and power was

99. Id. parts 1910, 1915.
extended to all the claims and offenses arising in the government of the admirals and the historic concerns cited above confirm in practice that it extends to crimes and offences of every sort on Admiralty waters, as defined by federal law (and therefore not reserved to the States) and to civil actions by government or private parties arising out of the subjects described above on, in, or concerning Admiralty waters.\footnote{105 See Staring, supra note 23, at 433.}

\textbf{IV. CONCLUSION}

The Admiralty, for which no more convenient or authentic word exists, is unquestionably a customary branch of the sovereignty of maritime nations. The sources I have referred to, and quoted in part, display a remarkably multifarious array of Admiralty's historic national interests and powers. Some were explicitly acknowledged in the Constitution; the rest at first overlooked and then back-constructed from the Admiralty Clause, are in the main distributed, no less multifariously among our government organs as described above. The modern admiralty courts should be clearly recognized as one branch among them, dealing with the jurisprudence relative to them all. And the content of Admiralty should not be reckoned conceptually backward from the courtroom but forward pragmatically from its governmental regime.