The 1851 Shipowners’ Limitation of Liability Act: Should the Courts Deliver the Final Blow?

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I. INTRODUCTION

A small cargo ship wholly owned by a corporate giant sinks at sea. The ship, its cargo, and her crew are lost. Mothers and fathers, sons and daughters, friends and loved ones are gone forever. Estimated claims against the owners of the cargo ship well exceed seven figures. The corporate shipowners, although heavily insured and fully capable of financially absorbing the cost of settling all claims, seek to limit their
liability to the value of their small cargo ship and its freight under the 1851 Shipowners’ Limitation of Liability Act [hereinafter the Act]. If the U.S. District Court allows the limitation, which is very probable, the claimants will be forced to divide a final settlement that is but a token scrap of what is equitable and just. The corporate owner is essentially absolved of liability while lost lives go uncompensated.

Sadly, shocking tales of gross inequities such as these are all too common in the realm of admiralty law and have been so for over a century and a half. The Act has magnificently weathered the sands of time and has remained hidden in the depths of American admiralty law to the detriment of many a victim. Commentators, judges, and legislators alike have cast aspersions on the Act since its inception and finding proponents of the Act, aside from insurers and the shipowners themselves, is very difficult. Congress, however, has consistently ignored the harsh criticisms and the multitude of suggestions by the courts to repeal the law and have sat idly by while the legitimate reasons for maintaining the Act have long ceased to exist. Suffice it to say, this legislative inertia calls for a different approach to the problem of unfair settlement practices due to the Act at the expense of innocent claimants. Therefore, the duty of striking down the Act now rests squarely on the shoulders of our courts. However, it is important to first become acquainted with the Act and delve into its antiquated history to identify the clear need for its repeal.

Enacted by Congress in 1851 to protect the fledgling American shipping industry and promote competition on an international level, the Act has become known in modern times as an “anachronism, a principle 

2. See, e.g., In re Marine Sulphur Queen, 460 F.2d 89, 1972 A.M.C. 1122 (2d Cir. 1972); Spencer Kellog & Sons v. Hicks (The Linseed King), 285 U.S. 502, 1932 A.M.C. 503 (1932).
3. G. GILMORE & C. BLACK, JR., THE LAW OF ADMIRALTY 820, 822 (2d ed. 1975). Professors Gilmore and Black write: “During the [past] twenty years the limitation principle has been attacked by many and defended by almost none . . . the argument that the Limitation of Liability Act has served its time and should be repealed has become a commonplace.” Id. See also Maryland Casualty Co. v. Cushing, 347 U.S. 409, 437 (1954) (stating that there are no longer any justifiable reasons for the Act); In re Petition of The Dodge, Inc., 282 F.2d 86, 89 (2d Cir. 1960) (asserting that the Act should be resolved in favor of claimants).
4. Maryland Casualty Co. v. Cushing, 347 U.S. 409, 437 (1954) (Black, J., dissenting); Olympic Towing Co. v. Nebel Towing Co., 419 F.2d 230, 235 (5th Cir. 1969). The case was an attempt to decipher the enigma of the 4-1-4 decision in Maryland Casualty.
5. Delta Country Ventures, Inc. v. Magana, 986 F.2d 1260, 1267 (1993) (stating that the court would like to see Congress “decommission” the Act).
which should be relegated to the era of wooden hulls.\textsuperscript{6} For over 150 years the Act has, in essence, given shipowners the right to limit their maximum liability for collisions and other losses which take place without the owner’s privity or knowledge to the value of their vessel and its freight then pending.\textsuperscript{7} The Act also provides for exclusive federal admiralty jurisdiction to determine whether an owner is entitled to limitation of liability.\textsuperscript{8} Consequently, damages in excess of these values are withheld from those who have been the most severely harmed as a result of these maritime accidents.\textsuperscript{9} These egregious inequities lead one to wonder why, in modern America, with insurance and corporate ownership so pervasive in marine transportation, shipowners should still be subsidized at the expense of these innocent claimants. Although the Act was necessary and appropriate legislation in nineteenth century America, it has served its purpose and should now be scuttled as modern America no longer needs the protections afforded by the Act.\textsuperscript{10}

This comment begins with an in-depth discussion of the origins and history of shipowner liability, developments in American law prior to passage of the Act, the policy considerations underlying the passage of the Act in 1851, and early uses of the Act. Next, the only two legislative amendments to the Act (enacted in 1884 and 1934) are discussed to provide insight into the development of the law. This will culminate into an analysis of the current state of the Act and its applicability to modern maritime cases, as well as delve into modern trends in the law. Next, reasons why the courts may intervene and strike down the law will be examined. This discussion focuses on the changing policy considerations from 1851 to the present, the courts’ inherent duty to strike down laws no longer resting on valid considerations, and asserts that the Act is in violation of the Fifth and Fourteenth Amendments to the United States Constitution. In particular, the Equal Protection and Due Process Clause

\textsuperscript{8} Id.
\textsuperscript{9} GILMORE & BLACK, supra note 3, at 820. Their work states that the liability of a vessel owner could theoretically be zero even after a catastrophic accident. However, after the 1934 amendment to the Act, a vessel owners’ liability will likely be the value of the craft prior to the voyage, thus retaining some measure of compensation.
\textsuperscript{10} Univ. of Tex. Med. Branch v. United States, 557 F.2d 438, 454 (5th Cir. 1977) (questioning whether the Act retains any vitality within the sphere in which it has traditionally been applied as times have drastically changed since Congress initially passed the Act).
arguments embody scholarly and case law support. Additionally there are comparisons to analogous liability limitation doctrines that have fallen to Fifth and Fourteenth Amendment violations. Finally, this Comment concludes that due to congressional inertia and the severe erosion of the Act's original policy considerations and underpinnings, the courts should assume the burden of striking down this antiquated law on the grounds of Equal Protection and Due Process.

II. HISTORICAL DEVELOPMENT

A. ORIGINS OF SHIPOWNER LIMITS ON LIABILITY

The objective of limiting shipowner liability has always been to encourage investment in maritime ventures by limiting the possibility of a single-ship disaster destroying the personal fortune of a shipowner.11 In the days of fledgling merchant marines, financiers required assurances that their personal liability would be limited to no more than their initial investment in the venture.12 This liability limitation became a common feature embedded in the maritime law of many nations, and while having a very long history, its origins are not quite clear.13

Some commentators have speculated that limitations of shipowner liability formed a part of Roman law while others have reported that the doctrine was codified as a part of the Amalphitan Tables during the eleventh century.14 Regardless of its origins, as increased commerce made its way throughout Europe, so did the concept of limited liability.15 By the time of the Middle Ages, most shipping nations of the Mediterranean had developed some form of the limitation.16 It has also been noted that the beginning of the Commercial Revolution in the sixteenth century helped spread the doctrine throughout the nations of Europe.17

15. Donovan, supra note 14, at 1000-03.
16. Id.
17. Id.
Among the nations using the shipowner liability limitation were the Hansa, German, and Baltic port states who became allied in safeguarding their ship-borne commerce. 18 "The Hanseatic Ordinances of 1614 and 1644 limited the liability of a shipowner to the value of his vessel, . . . [while] the proceeds of the sale of the vessel were to be the extent of the satisfaction of all claims." 19 In France, Louis XIV codified the French Marine Ordinance of 1681, upon which many other maritime codes were founded, and which also provided for limitation of shipowners' liability. 20 This ordinance provided that "the owners of the ship shall be answerable for the deeds of the master; but shall be discharged, abandoning their ship and freight." 21

These early codes were quickly absorbed into the maritime law of nations whose jurisprudence rested on civil law, but were much more slowly incorporated into the common law nations such as England. 22 The English common law principles of liability and respondeat superior held the shipowner responsible for the acts of the ship's master, which proved to be very burdensome to the English shipping industry while trying to compete in an increasingly competitive international shipping market. 23 It was not until 1734, after the economic disparity between Continental Europe and English shipowners widened, that the English Parliament enacted a statute pertaining to limitation of shipowners' liability. 24 The catalyst prompting this English legislation was the case of Boucher v. Lawson. 25 Here the unlimited liability of British shipowners became exposed when the English court held the shipowners liable for an entire cargo of bullion that was stolen by the ship's master. 26

The English limitation act, passed in response to Boucher, provided that shipowners were not liable in excess of the value of the ship and its

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18. Id. at 1003.
19. Id. (limiting shipowners' liability can be seen as codified in the Statutes of Hamburg (1603)). "The owners shall not be answerable for any act of the master done without their order, any further than their part of the ship amounts to." Id.
20. 2 Peters, Admiralty Decisions in the District Court of the United States for the Pennsylvania District (1807), reprinted in 30 F. Cas. 1203, 1203-16 (1880).
21. 2 Id.
22. 3 Benedict on Admiralty § 4, at 1-32 (7th ed. 1982).
23. See The Rebecca, 20 F. Cas. 373, 380 (D. Me. 1831) (No. 11,619).
24. Donovan, supra note 14, at 1007. See also An Act to Settle How Far Owners of Ships Shall be Answerable for the Acts of the Masters or Mariners, 7 Geo. L.J. 2, ch. 15 (1734) [hereinafter An Act to Settle].
26. Id.
freight due or coming due for the voyage, or for any damage the ship’s master or mariners caused without the privity or knowledge of the shipowner.27 This version, unlike its European predecessors, calculated the shipowner’s liability on the value of the vessel immediately before the accident, not after.28 Additionally, this act differed from the German and French models by expressly conditioning limitation on the owner’s lack of privity and knowledge.29 The 1734 act went quite far in updating English maritime jurisprudence and energized the British shipping economy, but it was still quite restrictive in its scope.30 To remedy this, the English Parliament amended the act in 1786 and again in 1813 to extend the limitation of liability to those who may be liable other than master and crew, as well as to losses caused by fire.31 This extension was known as the passage of “An Act to Limit the Responsibility of Ship Owners, in Certain Cases” and was the predecessor of the American Limitation of Liability Act.32

B. DEVELOPMENTS IN AMERICA PRIOR TO PASSAGE OF THE 1851 ACT

American shipowners and maritime capitalists were quick to appreciate the absence of a limitation of liability doctrine in American jurisprudence.33 It was at this point in American history that Senator Hannibal Hamlin of Maine led the way for change in what appeared to be a gap in American law.34 As Chairman of the Commerce Committee, Hamlin fought to level the playing field between the American shipowners, shipping investors, and the British by pushing for limitation doctrines in America.35 As a consequence of Hamlin’s efforts, the first limitation doctrine was adopted by the Commonwealth of Massachusetts in 1819.36 This statute would have also benefited Maine shipowners until 1820, when Maine separated from Massachusetts.37 After statehood, however, Maine

27. The Main v. Williams, 152 U.S. 122, 128 (1894).
31. Id. at 321-22.
32. Id.
33. Donovan, supra note 14, at 1000-05.
34. Eyer, supra note 29, at 372.
35. Id.
36. Id.
37. 1821 Me. Laws 78 §§ 8-10, revised in 1840, 1857 and 1930 (respecting the willful destruction and casting away of ships and cargoes; the custody of shipwrecked
shipowners quickly persuaded the new Maine legislature to follow the lead of Massachusetts and adopt a similar limitation doctrine.38 These two states, known for their powerful shipping constituencies and tremendous involvement in ship-building, ship-owning and ship-operating ventures, modeled their statutes after the 1734 English Statute.39 The reason for this was identical to the reason that had persuaded three British parliaments to do the same—to encourage investment in the ocean-going maritime industry in which these states now specialized.40

A call for a national limitation law in the United States arose soon thereafter during an era in which lake and river traffic were dramatically increasing due in part to the advent of the steamboat and the opening of the Erie Canal in 1825.41 Further attention was drawn toward the need for a national limitation law in the wake of the landmark case, New Jersey Steam Navigation Co. v. Merchants' Bank of Boston (The Lexington).42

When the steamboat Lexington departed from New York a number of cotton bales stowed next to the ship’s steam chimney caught fire, which eventually consumed the boat.43 The ship sank in Long Island Sound, taking the lives of all but four of the one hundred fifty passengers, and also caused the loss of the plaintiff’s chest of gold and silver coins worth over $18,000.44 The shipowner denied any negligence, asserting that his servants exercised ordinary care, and that, in any event, he was not liable because of the notices of non-liability contained in the bill of lading exculpatory clause and the posted signs on the wharf.45 Furthermore, the shipowner argued that his common law in personam liability was limited by special agreement between the parties.46 The bill of lading excepted "danger of fire, water ... and all other accidents" and limited carrier

38. Id.
39. Id.
41. See generally RONALD E. SHAW, CANALS FOR A NATION: THE CANAL ERA IN THE UNITED STATES 1790-1860 (1991); JOHN H. MORRISON, HISTORY OF AMERICAN STEAM NAVIGATION (1903). Both advents greatly shortened the route for movement of midwestern produce to eastern markets.
42. 47 U.S. (6 How.) 344 (1848) [hereinafter The Lexington].
43. Id. at 384.
44. Id. at 345.
45. Id. at 346, 350. The bill of lading provided, after spaces for the names of the shipper, consignee, and vessel, the exculpatory language contained above, and at the wharf, a sign with the following warning was posted: “Notice to shippers and Consignees: All goods, freight, baggage, bank-bills, specie, or any other kind of property, taken, shipped, or put on board the steamers ... must be at the risk of the owners of such goods.” Id.
46. Id. at 345.
liability to $200 per package. The Supreme Court disagreed and held: "[W]e think there was great want of care, . . . which amounted to gross negligence, on the part of the [shipowner]. We are of opinion, therefore, that the [shipowner is] liable for the loss of the specie (coins), notwithstanding the special agreement under which it was shipped."\textsuperscript{48} The \textit{Lexington} decision prompted shipowner outcries as it was now possible that carriers could be held liable for their negligent damage to cargo, despite exculpatory language in the contracts of carriage.\textsuperscript{49}

Another shipping accident, not long after the decision in \textit{The Lexington}, added to the anxiety in the shipping industry in a case called \textit{The Henry Clay}.\textsuperscript{50} \textit{The Henry Clay} burned at a wharf in New York on September 4, 1849, after loading, but before getting underway.\textsuperscript{51} Cargo owners sued the shipowner for their losses and although there was no proof of actual fault or negligence, the shipowner was held liable.\textsuperscript{52} These cases, along with the recognition by shipowners of their unlimited liability, soon prompted Congress to legislate for the protection of the American maritime industry.\textsuperscript{53}

C. INITIAL PASSAGE OF THE ACT IN 1851 AND THE UNDERLYING POLICY CONSIDERATIONS

The Act was passed in 1851 for the express purpose of aiding a fledgling American merchant marine by attempting to put it on par with its British competition, whose shipping had been protected by limitation laws for over a century.\textsuperscript{54} This protection was in great demand in America at the time, as shipping was an extremely high-risk profession.\textsuperscript{55} An investor supporting a shipping venture had no control over the conduct of the ship once underway, and given the primitive vessels of the time, the hazards of the sea, and the common law liabilities of the shipowner as principal, the

\begin{itemize}
\item 47. \textit{Id.} at 346-47.
\item 49. \textit{Eyer, supra} note 29, at 372.
\item 50. The decision is not officially reported but is recounted in \textit{Wright v. Norwich & N.Y. Transp. Co.}, 30 F. Cas. 685, 687 (C.C.D. Conn. 1870) (No. 18,087), \textit{aff'd}, 80 U.S. (13 Wall.) 104 (1872) [hereinafter \textit{The City of Norwich}].
\item 51. \textit{Id.}
\item 52. \textit{Id.}
\item 53. \textit{Eyer, supra} note 29, at 372.
\item 55. \textit{Id.}
\end{itemize}
shipping industry became a very unattractive investment. Greater liability resulted in much greater cost and left the American shipowner without protection, putting him at a substantial competitive disadvantage in the world shipping market.

The Act passed without debate in the House of Representatives and less than a full day’s debate in the Senate on Tuesday, January 28, 1851 by a vote of twenty-eight to twenty-one. Again the major proponent of the liability bill, Senator Hannibal Hamlin, thwarted attempts by Senator George Badger to delay passage of the Act because of the major changes it would introduce into the American shipping industry. Hamlin stressed the importance of the Act and eased skepticism by analogizing the proposed statute to the existing English statutes:

This bill is predicated on what is now the English law, and it is deemed advisable by the Committee on Commerce that the American marine should stand at home and abroad as well as the English marine. Senators who may be disposed to look into the provisions of the English law will find . . . the very principle contained in this bill. When the bill shall come up for discussion, I shall be ready to offer such suggestions as a force themselves upon my mind, to show the necessity and propriety of this measure.

Hamlin further noted that the Committee on Commerce had consulted intelligent merchants and commercial men who were more aware of the needs of commerce than the judiciary, and again noted the similarity to the successful English law. Senator Butler concurred; at which point all other opposition motions were withdrawn. It should be noted, however, that the next day a number of opponents went on record stating that the Act was of poor draftsmanship and was hastily drawn. One Senator was noted as saying, “it is a little unreasonable to expect that the bill shall be taken up, considered, and passed at this period. [The bill] needs very considerable
modification[s] . . . and there are great doubts about it.\textsuperscript{64} Another went on to say, "it is an alteration that ought not to be made without full and grave consideration and the most ample opportunity for discussion."\textsuperscript{65} In light of these statements, it is clear then that the "poor draftsmanship" of this law, complained of in our modern courts, was a concern over which impatience won out. Consequently, in the noble interest of saving the fledgling American shipping industry from financial ruin and helping it compete on an international level, Congress chose to adopt a poorly drafted statute that would plague maritime law for the next century and a half.

This new law was derived from a number of sources.\textsuperscript{66} The framework was adopted from the English statute, while other parts were borrowed from the Maine and Massachusetts statutes.\textsuperscript{67} The remainder was a product of imaginative American draftsmanship.\textsuperscript{68} The new Act provided in its most pertinent provisions:

(1) A shipowner is not to be liable for fire not caused by the owner's design or neglect.\textsuperscript{69}

(2) A shipowner is exonerated from liability for certain valuable cargoes, such as specie, which are shipped without declaration of what they are.\textsuperscript{70}

(3) In any case, except for crew wages, a shipowner's liability is not to exceed the value of his interest in the vessel, plus pending freight, unless a loss is occasioned with his privity or knowledge.\textsuperscript{71}

\textsuperscript{64} Cong. Globe, 31st Cong., 2d Sess. 334-35 (1851).
\textsuperscript{65} Id.
\textsuperscript{66} 3 BENEDICT ON ADMIRALTY § 4, 1-32 (7th ed. 1982).
\textsuperscript{67} 3 Id.
\textsuperscript{68} 3 Id.
\textsuperscript{69} 46 U.S.C. app. § 182 (2002) [hereinafter Fire Statute].
\textsuperscript{70} 46 U.S.C. app. § 181 (2002) The relation to The Lexington disaster is quite clear, but this section is rarely used today.
\textsuperscript{71} 46 U.S.C. app. § 183 (2002). After 150 years, this provision continues to be the heart of the U.S. law. Section 183(a) provides:
The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Id.
(4) Cargo and property claimants are required to share pro rata if the limitation fund is insufficient to pay all claims.\(^7\)

(5) The right of a shipowner to limit liability is to include an owner pro hac vice or bareboat charterer, namely one who "shall man, victual and navigate" the vessel.\(^7\)

(6) Masters, officers, and seamen are still personally liable for their own faults, even if they are also owners of the ship.\(^7\)

The key provision of the Act is Section 183, which restricts the in personam liability of the shipowner to the value of the owner's interest in the vessel and the freight then pending.\(^7\) Although the Act imputed vicarious liability to the shipowner, employee malfeasance was limited absent "privity or knowledge" of the vessel owner.\(^7\) The Act, however, mysteriously provides that both shipowners and claimants "may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the ship or vessel may be liable amongst the parties entitled thereto."\(^7\) There is no indication in which precise court (federal or state) this is to occur, nor is there any indication of the type of jurisdiction (law, equity, or admiralty) from which procedures are to be drawn.\(^7\) Again, these problems have only served to impede the goals of the Act and have furthered frustration toward this poorly drafted statute.

D. EARLY USE OF THE LAW

Ironically, two decades passed before the Supreme Court heard its first case under the Act.\(^7\) Today, it is unclear why it took so long for the normally litigious shipping industry to bring such a dispute to the High Court.\(^8\) However, some scholars point out that the interlude included the Civil War and Reconstruction, while others blame the lack of readily

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77. Id.
78. Id.
ascertainable procedures for taking advantage of this substantial privilege conferred by Congress to the shipowners.\textsuperscript{81} In any event, the first case calling for the interpretation of the Act by the Supreme Court came in 1871 in \textit{Norwich & New York Transportation Co. v. Wright (The City of Norwich)}.\textsuperscript{82}

The case began April 16, 1866, when the steamboat City of Norwich and the schooner General S. Van Vliet collided off the coast of Long Island Sound.\textsuperscript{83} Both vessels sank with a total loss of all cargo.\textsuperscript{84} The ensuing litigation over the next five years prompted the Supreme Court to issue two separate rulings that justify referring to the Act as a form of \textit{fortune de mer}, or floating game of chance.\textsuperscript{85} In their first decision, the Court held that the limitation fund was to be derived from the value of the vessel after, not before, the collision.\textsuperscript{86} In their second decision, if the first decision were already not bad enough for claimants, the Court held that the value of the City of Norwich was to be taken at the end of her voyage.\textsuperscript{87} In other words, the value of the ship was determined at the time she sank, which was naught.\textsuperscript{88}

These arguably unfair decisions came from a sharply divided Court and were strangely in opposition to the English law and Massachusetts law upon which the Act was originally founded,\textsuperscript{89} yet they remain good law today. Consequently, a shipowner would now be relieved of any liability by surrendering the ship, whatever its value.\textsuperscript{90} As the Court recognized in \textit{Norwich}, that value would be nothing if the ship were a total loss.\textsuperscript{91} Therefore, the inescapable consequence of these decisions is that the greatest disaster produces the smallest fund for those who may have been harmed.\textsuperscript{92}

Perhaps one of the most notorious examples of the possible egregious inequities due to these decisions arose in the \textit{Barracuda Tanker Corp.} case

\begin{itemize}
  \item \textsuperscript{81} \textit{Id.}
  \item \textsuperscript{82} \textit{Id.}
  \item \textsuperscript{83} \textit{Norwich}, 80 U.S. (13 Wall.) at 106-07.
  \item \textsuperscript{84} \textit{Id.}
  \item \textsuperscript{86} \textit{Norwich}, 80 U.S. (13 Wall.) at 104. A sunken vessel was, therefore, worthless and resulted in a valueless limitation fund.
  \item \textsuperscript{87} \textit{Id.}
  \item \textsuperscript{88} \textit{Id.}
  \item \textsuperscript{89} \textit{City of Norwich}, 80 U.S. (13 Wall.) at 127, n.18 (citing Walker v. Boston Ins. Co., 80 Mass. (14 Gray) 288 (1859)).
  \item \textsuperscript{90} \textit{Norwich}, 80 U.S. (13 Wall.) at 126-27.
  \item \textsuperscript{91} \textit{Id.}
  \item \textsuperscript{92} Greenman, \textit{supra} note 85, at 283.
\end{itemize}
in 1968.\textsuperscript{93} Here, the Torrey Canyon was stranded off the southwest coast of England while carrying 119,328 tons of crude oil.\textsuperscript{94} The oil then leaked from the tanker and heavily polluted both sides of the English Channel. Finally, the Royal Air Force was called in to bomb and sink the ship.\textsuperscript{95} Barracuda Tanker, the corporate owner of the Torrey Canyon, immediately filed for limitation of liability in federal district court.\textsuperscript{96} The court deemed the ship a total loss and approved a stipulated value in the ship of fifty dollars, the value of a single lifeboat salvaged from the wreck.\textsuperscript{97}

It is quite clear that, from its inception, the consequences of the Act can be extremely unfair and detrimental to those who have been injured in a maritime accident. The victims of these accidents are often left with great financial as well as physical loss and are stranded in a frustrating position without any redress for their suffered harms.

III. AMENDMENTS TO THE ACT

A. LEGISLATIVE AMENDMENT OF 1884

The first amendment to the Act came as a result of the increased importance of commerce on inland waterways to the development of the American shipping industry.\textsuperscript{98} It was the height of the Industrial Revolution and attitudes of the time strongly favored private investments and commercial development.\textsuperscript{99} A stalwart shipping industry was therefore a necessary component for a successful national economy in such competitive times.\textsuperscript{100}

In 1884, Congress added a provision to the Act apportioning limitation among multiple owners of a ship and excluding seamen's claims for wages from limitation.\textsuperscript{101} This amendment became the vehicle whereby the Supreme Court determined that the Act applied to both maritime and non-maritime torts. In \textit{Richardson v. Harmon}, the Supreme Court held in

\begin{itemize}
  \item \textsuperscript{93} \textit{In re} Barracuda Tanker Corp. (The Torrey Canyon), 281 F. Supp. 228 (S.D.N.Y. 1968).
  \item \textsuperscript{94} \textit{Id.} at 229.
  \item \textsuperscript{95} \textit{Id.}
  \item \textsuperscript{96} \textit{Id.} at 229-30.
  \item \textsuperscript{97} \textit{Id.}
  \item \textsuperscript{98} GILMORE & BLACK, supra note 3, at 820.
  \item \textsuperscript{99} \textit{Id.}
  \item \textsuperscript{100} \textit{Id.}
  \item \textsuperscript{101} Act of June 26, 1884, ch. 121, 23 Stat. 53, (codified at 46 U.S.C. app. § 189 (2002)).
\end{itemize}
dictum that the Act left a shipowner liable for his own "fault, neglect, and contracts." This paved the way for the development of the "personal contract doctrine," by which shipowners remain liable for the contracts they enter into. Later, in *The Soerstad*, Judge Learned Hand held that a shipowner may still secure limitation under the Act as long as the breach of a personal contract is not personal to the owner. The distinction drawn here demonstrates that private charters are personal in nature, while a simple bill of lading is not. The practical implication of this amendment suggests that limitation opportunities by shipowners can be limited now that restraints on carriers contracting with one another have been relaxed.

**B. LEGISLATIVE AMENDMENT OF 1935**

Belated action to rectify the injustices, which could occur under the Act, and the only substantive amendments to the Act in its 150-year history, were triggered by a marine disaster. The burning of the passenger cruise-liner Morrow Castle on September 8, 1934 sparked Congressional as well as public concern over the meager limitation fund that became available to the claimants after the tragedy. In this horrifying disaster, 134 lives were lost within sight of the coast of New Jersey. Afterward, when facing claims for the loss or injury to passengers as well as to cargo, the shipowners of the Morrow Castle successfully invoked the Act. Consequently, since so little was left of the vessel, the salvage value and the corresponding limitation fund was fixed to satisfy all claims at approximately $20,000.

The response to amend these gross inequities of the Act came from Congress in 1935. This amendment provided for extra protection in personal injury and death claims on seagoing vessels. In order to more comprehensively satisfy legitimate claims, a shipowner was mandated by

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104. Greenman, supra note 85, at 284.
105. Id.
106. Id.
108. Id.
110. Id. See also Morro Castle (Settlement), 1939 A.M.C. 895 (S.D.N.Y. 1939).
111. Id.
112. Id.
this amendment to provide a fund amounting to $60 per gross ton of the
vessel (now raised to $420 per ton) to be used to satisfy these claims,
regardless of the vessel’s actual value. This supplemental fund was to be
drawn upon only when the value of the ship, after the mishap, was
insufficient to cover the total amount of damages awarded. The
disbursement of the fund was now also determined on a case-by-case basis,
rather than at the end of the voyage. Under this change, a sunk or
otherwise valueless vessel would no longer totally eliminate a shipowner’s
liability.

The new amendment also set a statute of limitations by which vessel
owners must now act in order to invoke the protections of the Act. The
owner must petition the court within six months of receiving written notice
of a claim or be effectively barred from using the Act as a defense. With
this amendment in place, the fortune de mer funds for those who have been
maimed or died have rightly been increased. However, those who suffer
property loss or damage have been left in the same disadvantaged position
they have occupied since the inception of the Act in 1851.

IV. MODERN TRENDS/CURRENT STATE OF THE ACT

A. MODERNIZATION OF THE ACT

The 1935 amendment took an adverse position toward the interests of
the vessel owner, reflecting a sharp decline in legislative enthusiasm
toward the Act. Furthermore, the amendment reflected the abrupt
changes taking place in the political climate during the Great Depression
and underscored the emphasis being placed on the “small man” at this point
in American history. Subsidies had now become a more common
method of aiding favored industries, and seamen, not shipowners, were the

114. Id. at 285.
115. Id.
117. Comment, Limitation of Liability in Admiralty: An Anachronism from the Days
118. Id. See also 46 U.S.C. app. § 185 (2002) (Federal Rule of Civil Procedure
allowing an owner to seek exoneration as well as limitation).
119. Comment, supra note 117, at 729.
120. Id.
121. GILMORE & BLACK, supra note 3, at 821.
122. Comment, supra note 117, at 729.
"favored darlings of the day." Since the 1930s, both legislative and judicial enthusiasm for the limitation principle has dramatically declined.

The Act stands today virtually unchanged from its form in 1935. However, the Act was recently amended in 1984 to increase the minimum limitation fund available in cases of claims for loss of life and bodily injury from $60 to $420 per ton. Although a de minimus change, this increase is a clear reflection of congressional concern over ensuring that compensation is awarded to those who have suffered a loss. This change to the limitation fund, however, does little to mitigate the potential harshness of the law.

B. UNDERSTANDING THE ACT AS A PROCEDURAL MECHANISM

Gaining a procedural understanding of the Act is necessary to fully realize how the law operates under the vague explanations of the proceedings by which the right is to be enforced. Before employing the protections of the Act, a shipowner is faced with meeting several requirements. First, when a shipowner is faced with a claim, he must file a petition for exoneration from, or limitation of, liability in a federal district court sitting in admiralty jurisdiction. The owner then has six months from the time of receiving notice of a claim to file the petition, or, alternatively, may plead limitation as a defense without regard to the six-month time limit. Proper venue must then be realized in a district in which the vessel has been attached or arrested, or in any district in which the owner has been sued regarding the claim. When the vessel has not been attached or arrested, and suit has not been initiated, venue is proper in the district where the vessel is located or if the vessel cannot be located, then venue is proper in any district. Additionally, the shipowner must
either surrender the ship to the court or deposit with the court an amount equal to the owner's interest in the vessel and pending freight (or security for that amount), in addition to paying any sums the court may deem necessary.\footnote{132}

When these requirements are met, the Act states that the shipowner must then initiate a limitation action by petitioning the federal court to stay proceedings elsewhere.\footnote{133} "Thus, the limitation of liability proceeding may itself be an action and not just a defense."\footnote{134} The court will then establish a concourse of claims or "concursus," which prevents potential litigants from filing related claims in collateral jurisdictions, as well as consolidate all current claimants into one federal forum.\footnote{135} This is necessary when the limitation fund is not adequate to satisfy all claims against the shipowner and the court must divide the fund amongst all claimants pro rata.\footnote{136} In addition to a judicial economy benefit, the "concursus" also minimizes forum shopping by statutorily directing a claimant's choice of venue, as well as averts jury trials in state courts.\footnote{137} More importantly, however, the Act reserves jurisdiction exclusively for the federal courts, which have been the traditional and favored forums of admiralty law.\footnote{138} Finally, for purposes of determining whether the owner is actually entitled to a limitation of liability under the Act, the initial burden of proving negligence or conditions of unseaworthiness lies on the claimant.\footnote{139} However, once that burden is satisfied, the burden of proof shifts to the shipowner to show there was an absence of privity or knowledge.\footnote{140}

\footnote{132}{Id.}
\footnote{133}{See 46 U.S.C. app. § 185 (2002).}
\footnote{134}{Stone, supra note 14, at 325.}
\footnote{135}{Hartford Accident & Indem. Co. v. S. Pac. Co., 273 U.S. 207, 219 (1927) (stating that because the limitation proceeding is equitable by its very nature, the court may modify the pro rata distribution as necessary).}
\footnote{136}{Id.}
\footnote{137}{Id. See also Fed. R. Civ. P. Supp. F(9).}
\footnote{139}{In re Complaint of Cirigliano, 708 F. Supp. 101, 103 (D.N.J. 1989).}
\footnote{140}{Id.}
V. Reasons Courts May Strike Down the Act

A. Original Policy Considerations No Longer Exist

The argument that the Act has served its time and should be repealed has become commonplace in modern America. Proponents of the Act, however, state that deference should be given to the legislature and the decision to repeal the Act should be left to them and not the courts. Additionally, proponents suggest that the Act is still an important ingredient of American admiralty law by enabling shipowners to compete more effectively on a global level. Finally, some proponents argue that the amendments to the Act have corrected the problems inherent in its original form and do not infringe upon the rights of the individual. See generally, Donald C. Greenman, Maritime Casualties and the Limitation of Liability Act, 32 J. MAR. L. & COM. 279 (2001).

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Furthermore, an overwhelming majority of courts have repeatedly voiced their frustrations with the Act, calling it “antiquated,” “hopelessly anachronistic,” and “a relic of an earlier era.” In fact, one commentator was noted as saying, “[i]n seven ill-worded sections designed to conform to English law, the Thirty-first Congress laid the foundations of the American system of limitation that exists today.” Consequently, the holdings in limitation cases that have been decided since the mid-1950s have, with a few exceptions, been adverse to the petitioning shipowner.

Several major changes have taken place in the maritime world since Congress initially passed the Act in 1851 that have furthered these negative attitudes toward the law and have contributed to the Act becoming virtually non-essential to the continued well-being of the American shipping industry. First, the Act was passed in an era before the corporation had become the standard form of business organization and before the present forms of insurance protection that are now available to shipowners had developed. To put it another way, as commercial relationships have changed over time, enthusiasm for the statute has waned with the widespread use of protection and indemnity insurance and the use of the corporate form, which offers shipowners layers of liability protection unknown in 1851. Furthermore, in environmental actions, federal


141. Gilmore & Black, supra note 3, at 821. Proponents of the Act, however, state that deference should be given to the legislature and the decision to repeal the Act should be left to them and not the courts. Additionally, proponents suggest that the Act is still an important ingredient of American admiralty law by enabling shipowners to compete more effectively on a global level. Finally, some proponents argue that the amendments to the Act have corrected the problems inherent in its original form and do not infringe upon the rights of the individual. See generally, Donald C. Greenman, Maritime Casualties and the Limitation of Liability Act, 32 J. MAR. L. & COM. 279 (2001).

142. Id.

143. Esta Later Charters, Inc. v. Ignacio, 875 F.2d 234, 239 (9th Cir. 1989). See also Univ. of Tex. Med. Branch v. United States, 557 F.2d 438, 441 (5th Cir. 1977).


146. Id.

environmental statutes now offer damage limits for shipowners in environmental disasters, which are often the most costly claims, and thereby eliminate any need to invoke the protections of the Act.\textsuperscript{148} Finally, in addition to these changes, an enormous improvement in communications technology has provided the modern shipowner with a degree of control that was unimaginable in 1851.\textsuperscript{149} The "knowledge or privity" requirement was, prior to this modern technology, a strong argument in favor of allowing limitation of liability because shipowners lacked control of the vessel once it left port.\textsuperscript{150} However, today this is no longer an issue. Therefore, although "knowledge or privity" was once thought to enable courts to tailor the Act to achieve equitable results, this phrase has now become an "empty container into which the courts are free to pour whatever content they will."\textsuperscript{151}

It is also well known that by the mid-twentieth century, courts and scholars alike were expressing serious reservations toward the Act.\textsuperscript{152} A quote in 1954 from Justice Black, speaking on behalf of four members of the Court in \textit{Maryland Casualty Co. v. Cushing}, has often been quoted in support of these reservations:

\begin{quote}
 Judicial expansion of the Limited Liability Act at this date seems especially inappropriate. Many of the conditions of the shipping industry that induced the 1851 Congress to pass the act no longer prevail. And later Congresses, when they wished to aid shipping, provided subsidies paid out of the public treasury, rather than subsidies paid by injured persons.\textsuperscript{153}
\end{quote}

Virtually all of the subsequent criticisms of the Act since \textit{Maryland Casualty Co.} have been some form of Justice Black's basic assertion that

\begin{itemize}
\item \textsuperscript{149} King, \textit{supra} note 148, at 422.
\item \textsuperscript{150} \textit{Id.}
\item \textsuperscript{151} GILMORE & BLACK, \textit{supra} note 3, at 877.
\item \textsuperscript{152} Greenman, \textit{supra} note 85, at 285.
\item \textsuperscript{153} Maryland Casualty Co. v. Cushing, 347 U.S. 409, 437 (1954).
\end{itemize}
the Act has not kept up with the changing conditions in maritime law. Subsequent judicial actions have, therefore, shown staunch opposition to liability limitation in the vast majority of cases and have expressly showcased the court’s disfavor toward the Act. Furthermore, a number of courts hearing limitation cases have clearly stated that legislative action is necessary to right the wrongs created by the Act of 1851.

The case of Norwich Co. v. Wright, in 1871, was the first major decision to criticize the Act as being “imperfect,” “fragmentary,” and “so ambiguous as to be unworkable.” Later cases have conveyed very similar messages. For instance, the case of In re United States Dredging Corp. stated that the Act provides shipowners a “generous measure of protection not available to any other enterprise in our society,” and that the Act is a relic of an earlier era providing protections that are “neither warranted nor consistent with current reality.” The justices in In re Petition of The Dodge, Inc. stated that ambiguous language in statutory provisions relating to limitation of liability should be resolved in favor of interpretations increasing the instances where full recoveries from the limiting vessel are possible. Again in In re Hercules Carriers, Inc. v. Florida, the court expressed some serious reservations about the Act when it stated, “the Limitation of Liability Act is an antiquated statute. It is time for Congress to take the wheel and re-examine the policies which led to the legislation.” Finally, in University of Texas Medical Branch v. United States, the court stated that the Act is “an ancient vessel plying the seas” and went on to describe the Act as “hopelessly anachronistic.”

The culmination of this trend has sparked a series of district court cases holding that the protections of the Act are decidedly more than

155. Id.
156. Id. See also Maryland Casualty Co., 347 U.S. at 409.
157. Esta Later Charters, Inc. v. Ignacio, 875 F.2d 234, 236 (1989) (construing Norwich Co. v. Wright, 80 U.S. (13 Wall.) 104 (1871)). Gilmore & Black were also quoted in Esta Later Charters as saying, “[T]he Liability Act seems oddly out of place in the modern economy; its application could well lead to wholly unexpected and harsh results. We see no plausible reason for adopting an interpretation of the Act that will exacerbate these consequences.” Id.
158. In re United States Dredging Corp., 264 F.2d 339, 341 (2d Cir. 1959), cert. denied, 360 U.S. 932 (1959). Judge Hand is quoted as saying, “It is at least doubtful whether the motives that originally lay behind the limitation are not now obsolete.” Id. at 341.
159. 282 F.2d 86, 89 (2d Cir. 1960).
160. 728 F.2d 1359 (11th Cir. 1984) (en banc).
161. 557 F.2d 438, 441 (5th Cir. 1977).
"hopelessly anachronistic." These cases have gone beyond merely stating their disfavor for the law by explicitly castigating the current use of the Act. One court stated that "[t]o allow [the plaintiff] to take advantage of this Act would result in a gross miscarriage of justice . . . and this court cannot ignore the fundamental unfairness of the law as it exists." This court was also noted as saying that to limit liability in a case such as this would be "as outrageous as allowing an automobile owner to limit his liability to the value of his car should he crash while out on a Sunday drive." Finally, all of these courts, in some form or another, have stated that the societal changes that have taken place since the inception of the law now dictate congressional re-evaluation of the statute. Therefore, as Gilmore and Black have stated in their works, "it is quite fair to say that the Limitation of Liability Act is not the most acclaimed statute ever put into the books."

Esta Later Charters is a common example of a limitation case illustrating the harshness of the Act and justifies the concerns judges have had toward applying its principles over the last 150 years. In this case, the Kadena de Amor was badly damaged in an explosion causing severe injuries to the victims. One claimant lost a son, while another suffered burns over ninety percent of his body, a broken arm and a fractured skull. At the time the demand was made, the burn victim had incurred over $250,000 in expenses for intensive care, surgery and skin grafts. Additionally, this victim would be forced to contemplate the future costs of ongoing treatment, surgery, and rehabilitation. Esta Later, however,


163. See Palmer Johnson, 1 F. Supp. 2d at 1385; Luhr Bros., Inc., 765 F. Supp. at 1268; Complaint of Tracey, 608 F. Supp. at 268; Lowing, 635 F. Supp. at 528; Baldassano, 580 F. Supp. at 418.

164. Baldassano, 580 F. Supp. at 416. A corporate owner of a pontoon boat was involved in a collision with a speedboat. The owner then sought to limit liability under the Act, but the court held that the Act did not apply to collision between two pleasure boats. Petition for limitation was therefore denied. Id.

165. Id.


167. GILMORE & BLACK, supra note 3, §§ 10-2, 10-4(a).

168. 875 F.2d 234 (9th Cir. 1989).

169. Id. at 238.

170. Id.

171. Id.

172. Id.
claimed that it was entitled to limit its liability to the value of the vessel, which was set at $3,000. The court stated that this was an "absurdly small amount compared to the damages suffered by the claimants." However, the court also stated that although they are bound to follow the statute if it is clearly within the purport of the law, when there is any room for interpretation, it is appropriate to consider the effects on the parties and choose an interpretation that "avoids a patently unjust result." The court then went on to deny the request for limitation, implying that the Act should be very narrowly construed in its application, thereby rendering the Act almost useless to shipowners in all but the most narrow of circumstances.

The Act, however, even in its present form, instills some measure of security in the corporate shipowner, and thereby dissipates the incentive to provide a safer marine environment. This harmful economic side effect is especially notable when extremely high clean-up costs occur in environmental disasters. Normally, from an economic standpoint, the potentially ruinous costs to a corporation that could occur from the clean up of an environmental disaster would be expected to promote high avoidance costs. However, when liability is limited, as it could be in an environmental disaster, the corporation is less likely to engage in the optimal efforts to prevent such disasters. Thus, the Act is working to the detriment of efficient economics by shifting the cost of damages away from the shipowner and re-directing the burden of absorbing these costs onto the injured parties. Therefore, "[i]n light of modern environmental concerns, the Liability Act does more harm than good."

There can be no doubt that the Act once had legitimate purposes and effectuated a noble end. Saving the American shipping industry from financial ruin, and helping it to compete globally during the height of the Industrial Revolution, was crucial to the development of the United States'

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173. 875 F.2d 234, 238 (9th Cir. 1989). The dollar amount was determined by the highest bid for the vessel at the United States Marshal's sale. Id.
174. Id.
175. Id. at 239.
176. Id.
177. See generally King, supra note 148, at 423.
178. Id. A number of disastrous vessel oil spills have occurred to demonstrate the destruction that these accidents wreak on the environment and the expense in limiting and repairing the damage.
179. Id.
180. Id.
181. Id.
182. Id.
183. Harolds, supra note 54, at 426.
However, the many changes that have taken place over the last 150 years, including the widespread use of the corporate form and the many types of insurance that are now available to shipowners, have completely eroded the legitimate purposes once supporting the Act. The courts are in almost universal agreement with this fact and should now consider bearing the burden of striking down a law that is not simply tenuous, but one that is completely void of foundation.

B. THE COURT’S DUTY TO STRIKE DOWN LAWS WITHOUT FOUNDATION

Legislation that no longer possesses a legitimate end is often repugnant to the Constitution and requires legislative action to either legitimate or repeal the law. However, when the legislature is stagnant in its duties, as it has been toward the Act, the courts must intervene to determine the constitutionality of the law in question. Moore v. Mobile stated that, “if it clearly appears that [an] act of [the] legislature unreasonably invades rights guaranteed by the Constitution, [the Supreme Court] not only ha[s] [the] power but [the] duty to strike it down.”

This unique power, known as “judicial review,” is not mentioned in the U.S. or state constitutions, but over time has become accepted as a legitimate judicial power. The concept was first explained in Marbury v. Madison where it was determined that judges may declare invalid and set aside laws passed by the legislatures or executive acts that the courts interpret as violating the Constitution. It was specifically stated that, “a law repugnant to the [c]onstitution is void; and that courts, as well as other departments, are bound by that instrument.”

So if a law be in opposition to the [C]onstitution; if both the law and the [C]onstitution apply to a particular case, so

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184. See generally Gilmore & Black, supra note 3. The American shipping industry was facing financial ruin as a result of an increasingly litigious environment, thus making it very difficult to compete with the stronger European nations on a global level. Id.
189. 592 So. 2d 156, 159 (Ala. 1991) (emphasis added).
190. Learned Hand, The Bill Of Rights, 1-30 (1958) (setting forth the nature and sources of the Supreme Court’s authority).
192. Id. at 180.
that the court must either decide that case conformably to the law, disregarding the [C]onstitution; or conformably to the [C]onstitution, disregarding the law; . . . the [C]onstitution, and not such ordinary [law], must govern the case to which they both apply. 193

A statute, such as the Act, that alters the rules of liability and supplants the common-law compensatory mechanism may face a Fourteenth Amendment challenge. 194 Although deference is usually given to the legislature when an equal protection or a due process violation is asserted, when a law no longer achieves a legitimate end and is devoid of foundation, the courts must exercise their duty to determine the constitutionality of the law. 195 Therefore, as the Act now rests on a foundation that is no longer legitimate in our modern American shipping industry, the courts must address the constitutionality of the Act. 196

VI. CONSTITUTIONAL CHALLENGES TO THE 1851 LIMITATION ACT

A. EQUAL PROTECTION/DUE PROCESS VIOLATIONS

Given its radical departure from the common law rules of liability, the Act of 1851 is subject to question under the Equal Protection Clause of the Fourteenth Amendment on a number of grounds. 197 First, however, courts must determine which standard of review is applicable to the statute. To do this and determine whether a statute violates the constitutional guarantee of equal protection, the court will first see if the legislation creates an inherently suspect classification, such as race, ethnicity, or national origin, or affects a fundamental right guaranteed and protected by our Constitution. 198 If a suspect classification is then determined to exist, the

193. Id. at 178.
195. See generally McCulloch v. Maryland, 17 U.S. 316 (1819). The modern trend in constitutional law has been to follow the McCulloch means-end test in determining the constitutionality of a law. Necessitating legitimate means as well as a legitimate end has given the courts more power to strike down laws no longer resting on a solid foundation. Therefore the deference once given to the legislature and the laws they created is no longer uncontested as the review power of the courts has been given more "bite." Heller v. Doe 509 U.S. 312, 319 (1993).
196. Id.
197. Stone, supra note 14, at 334.
court will impose the strict scrutiny test. Under this test the burden of proof shifts to the government to prove that the law is narrowly tailored and furthers a compelling governmental interest. Other classifications that are suspect, but not requiring strict scrutiny, such as gender or mental capacity, are subject to the intermediate level of scrutiny, and require a substantial relationship between the statute and an important governmental interest in the law. However, social or economic legislation is generally examined under the rational basis test.

Under the rational basis test, legislation is constitutional if it is merely rationally related to a legitimate governmental purpose. The statute is presumed to be constitutional and the party challenging it bears a heavy burden of rebutting that presumption. The party challenging the legislation must show that the legislation is arbitrary and wholly unrelated in a rational way to the objective of the statute. Therefore, a classification is valid if the legislative judgment is supported by any set of facts either known or which could reasonably be assumed. The wisdom, need, or appropriateness of the legislation is not pertinent, nor does the classification need to have been made with pinpoint accuracy.

An equal protection analysis of the Act will begin by noting that because the legislation involved neither a suspect classification nor a fundamental right, the rational basis standard of review should be applied. Under this standard, a court must determine whether the legislative purpose for implementing the limitation on recovery outweighs the tort litigant's right to redress. In regard to the Act, however, the rational basis test cannot even be applied. There is no longer an existing legislative purpose on which to base an analysis. The foundation or purposes of the Act have long ceased to exist, as noted previously. Therefore, the statute cannot

200. Id.
203. Id. The rational basis test is becoming increasingly more serviceable as a tool in striking down arbitrary legislation. The test once meant that deference was automatically given to the legislature and thus any economic or social law was therefore constitutional. This is no longer the trend as more "bite" is given to rational basis review by modern courts. Id.
204. Id. at 320.
205. Id.
206. Id.
207. Id.
209. GILMORE & BLACK, supra note 3, at 821.
have a legitimate purpose and is therefore unconstitutional. However, even if a court were to find some fragment of a legitimate governmental interest, the Act would still likely fail under a full rational basis review. 210

Under a full rational basis review, the Act would still likely violate the Equal Protection Clause of the Fourteenth Amendment. 211 Under this equal protection analysis, "an injured party's right to recover is an important substantive right, such that any legislative classification impinging on that right must be reasonable, not arbitrary, and must rest upon some ground of difference having fair and substantial relation to [the] object of legislation." 212 Aside from the fact that the object of the legislation no longer exists, the damages cap from the Act discriminates between the class of people whose injuries deserve more compensation than the cap allows (and therefore who cannot fully recover) and the class whose relatively minor injuries do not warrant damages at a level constrained by the cap. 213 The cap on damage recovery also distinguishes between maritime victims and victims of other torts and does nothing to provide adequate compensation to claimants with meritorious claims. 214 On the contrary, it does just the opposite for the most seriously injured claimants and does nothing to eliminate non-meritorious claims. 215

Regardless of whether or not a court acknowledges there is no longer a valid justification for the continuance of the Act (as its foundation has disintegrated), the conclusion of the court ought to determine that the Act unreasonably discriminates in favor of shipowners and unduly burdens seriously injured maritime claimants. 216 The loss in excess of the limited value is violative of equal protection, creating an arbitrary damage limitation and thereby precluding only the most seriously injured victims of shipowner negligence from receiving full compensation for their injuries. 217 Finally, not only is there the possibility of a windfall benefit to the defendant's insurer, but a statute which singles out seriously injured maritime victims whose damages exceed the value of the limited shipowner liability will force one class of victim to shoulder the entire financial

211. Id.
212. City of Dover, 575 A.2d at 109.
213. Heimert, supra note 194, at 440.
215. See id.
216. See id. at 838.
217. See id. at 827.
burden inherent to such a scheme and will offend the basic notions of fairness and justice.\(^{218}\)

In addition to claiming an equal protection violation, claimants may assert a due process violation, which contends that the elimination of a common law right, such as the right to recover full damages on a tort action, deprives a person of property.\(^{219}\) Under the Due Process Clause of the Fourteenth Amendment, no person may be deprived of life, liberty, or property without due process of law.\(^{220}\) Therefore, the Act violates due process because it allows the destruction of property or loss of life without reasonable certainty that the victims will be justly compensated or receive a *quid pro quo*.\(^{221}\) Claimants may contend that the legislature, by allowing the Act to remain, has reduced, or in some cases eliminated, the claimants' ability to recover full damages. In such cases the government has putatively taken an asset from the claimant.\(^{222}\) Thus the claimant may be successful in asserting that the government has arbitrarily taken property from them and has thereby violated due process.\(^{223}\) It must also be remembered that in cases involving damages incapable of precise measurement, like many maritime claims, an injured party has a constitutionally protected right to receive an amount of damages fixed by a jury unless the verdict is "so flawed by bias, passion, prejudice, corruption, or improper motive as to lose its constitutional protection."\(^{224}\)

B. ALTERNATIVES TO THE ACT

As the Act would not likely survive judicial scrutiny due to its arbitrary and unreasonable application, many concerns arise amongst scholars as to how maritime cases would thus be handled in its absence.\(^{225}\) Today it is clear that better, more sophisticated alternatives for shipowners exist.\(^{226}\) In lieu of utilizing the protections of the Act, a shipowner may employ contract protections, charter options, mortgage uses, the separate incorporation of vessels, or bankruptcy.\(^{227}\) Additionally, to compensate for

\[^{218}\text{See id. at 838.}\]
\[^{219}\text{Heimert, supra note 194, at 440.}\]
\[^{220}\text{U.S. Const. amend. XIV.}\]
\[^{221}\text{Heimert, supra note 194, at 440.}\]
\[^{222}\text{Id.}\]
\[^{223}\text{Id.}\]
\[^{224}\text{Moore v. Mobile, 592 So. 2d 156, 162 (Ala. 1991).}\]
\[^{225}\text{Stone, supra note 14, at 334.}\]
\[^{226}\text{Id.}\]
\[^{227}\text{Id.}\]
the loss of the "concourse of creditors" benefit within the Act, the courts may implement the use of interpleader to otherwise effectively provide for a concourse of claims. Interpleader allows a party to bring together in one proceeding, all parties, known or unknown, who may have a claim to a particular fund, and requires those parties to litigate their claims for this fund amongst themselves. Furthermore, modern federal environmental protection statutes already effectively preempt the Act in environmental disaster cases, thus eliminating the need for the Act in all such circumstances.

C. ANALOGOUS SITUATIONS IN VIOLATION OF THE FOURTEENTH AMENDMENT

The idea of limiting liability is by no means unique to admiralty law. In fact, the Warsaw Convention has limited the liability of international air carriers, while the Price-Anderson Act has prescribed limits on liability for nuclear power plant operators in the United States, in addition to the many medical malpractice limitations that have been implemented in the vast majority of the states. The courts, however, have seen fit to strike down a number of these limits on liability, claiming they violate the Fourteenth Amendment. The courts interpreting the Act should, therefore, take note of these decisions and find that the arbitrarily imposed limits set by the Act should not be upheld.

Many of the judges reviewing medical malpractice limitation statutes, like those who oppose the Act, have noted that low limitations are not constitutional. The case of Arneson v. Olson reviewed a medical malpractice limitation, setting the maximum figure at $300,000 per

228.  Id. at 335.
229.  C. Wright, LAW OF FEDERAL COURTS 531 (5th ed. 1994).
230.  Stone, supra note 14, at 335.
231.  Craig H. Allen, The Future of Maritime Law in the Federal Courts: A Faculty Colloquium, 31 J. MAR. L. & COM. 263, 263 (2000). Allen states that the Limitation Act now plays an insignificant role in maritime law and is less deserving of judicial study. Statistics are then cited from the Maritime Law Association (MLA) which lends support to the position that courts do harbor hostility toward the Act. The MLA reported that between 1953 and 1996 only 166 limitation cases were pursued to final judgment in the United States with a denial of limitation in 103 of the cases. Id.
232.  Id.
occurrence, and noted that "no state court of last resort has upheld a low limitation" such as this.\textsuperscript{235} Illinois courts, for example, have held that a $500,000 limitation was unconstitutional as arbitrary,\textsuperscript{236} as did Idaho for $150,000 per claim and $300,000 per occurrence.\textsuperscript{237} Unfortunately, the limitation figures of the Act are much more arbitrary than these examples and are likely to yield an even lower limitation fund as well as be even more detrimental to the claimants when a concursus of claims arises.

The arguments made in the medical malpractice cases that have struck down statutes limiting liability are the same as those made by those who call for the repeal of the Act.\textsuperscript{238} These malpractice cases state that limitation violates equal protection because it provides for what Congress has deemed to be a benefit to society but places the entire cost of that benefit on an arbitrarily chosen segment of society (the injured victims).\textsuperscript{239} The statutes, therefore, create a favored class of tortfeasors, based solely on their connection with the health care industry (or the shipping industry), by shielding those health care providers (or shipowners) whose actions are the most egregious.\textsuperscript{240} In other words, the burden imposed falls most heavily on those who are the most severely maltreated and thus most deserving of relief, while the statutes operate to the advantage of those health care providers (or shipowners) who were the most irresponsible.\textsuperscript{241} Thus it is unfair to impose the burden of supporting the medical care industry (or shipping industry) solely upon those persons most severely injured and most in need of compensation.\textsuperscript{242}

In reality, many of the limitation statutes that are upheld are simply not challenged or reviewed constitutionally.\textsuperscript{243} This is often due to enormous pressure from the insurance industry, the American Medical

\textsuperscript{235} Id.
\textsuperscript{237} Jones v. State Board of Medicine, 555 P.2d 399 (Idaho 1976).
\textsuperscript{238} See Moore v. Mobile Infirmary Ass’n, 592 So.2d 156 (Ala. 1991); Carson v. Maurer, 424 A.2d 825 (N.H. 1980); Detar Hospital, Inc. v. Estrada, 694 S.W.2d 359 (Tex. App. 1985).
\textsuperscript{239} See id. These cases state that the severely injured individuals make up the "arbitrarily chosen segment of society" and although there are benefits to the general population (the benefits being cheaper malpractice insurance rates for doctors, cheaper health insurance rates for patients, and fewer doctors leaving the profession due to lawsuits), these benefits do not outweigh the injured individuals rights to equal protection of the laws and full redress for their injuries.
\textsuperscript{240} See id.
\textsuperscript{241} See id.
\textsuperscript{242} See generally Carson v. Maurer, 424 A.2d 825 (N.H. 1980).
\textsuperscript{243} See Allen, supra note 231.
Association, or large corporate shipowners. Sad then, claimants are often forced to accept compensation that is but a fraction of that deserved, and the courts are unable to conclude that a limitation on the amount of damages plaintiffs may recover unreasonably infringes on their constitutionally guaranteed right to obtain full redress for injuries caused by another's wrongful conduct.

VII. CONCLUSION

While mere economics may have provided the justification for the original enactment of the 1851 Shipowner Limitation of Liability Act, the Act today is well past its prime. It is a sad remnant of another era, and a very different American economy. The Act blossomed at a time when insurance was unknown, corporate ownership was non-existent, and vessel owners knew nothing about their investments for months at a time. As these concerns are no longer valid justifications to support the ancient doctrine, the Act now does little more than offend the Fourteenth Amendment as well as the basic notions of fairness and justice. And as one court noted, "[w]e must not lose our contemporary compass. The shifting sands of time demand innovative interpretative analysis lest we come to rest on a shoal that did not threaten our grandfathers, but is only newly formed." The Limitation Act served its purpose once, but protections available to the modern shipping industry are far greater today, thus eliminating any reason for allowing the Act to remain part of American admiralty law at the expense of innocent victims. It is time for the courts to strike it down.

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244. Id.
245. Id.