

Courts of Admiralty and the Common Law

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Origins of the American Experiment in Concurrent Jurisdiction

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To Betty M. Snell

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THE SOURCES: A NOTE ON TRANSLATION, SPELLING, AND PUNCTUATION

The history of English admiralty jurisdiction is interwoven inextricably with the history of the common law—and with eighteenth-century America’s efforts to create a viable judicial system in the early years following independence. While their letters, journals, speeches, and published writings often resonated with the political philosophy of the Enlightenment and the rhetoric of the Revolution, the founders of the new republic were at heart practical men, who revered experience as much as abstract theory in shaping the structure of the new nation. Maritime commerce and adjudication of maritime disputes touched the daily lives of the Framers of the Constitution and the members of the first Congress, and these experiences influenced their thought at least as profoundly as did Montesquieu’s theories on the separation of powers. One cannot fully grasp the intricacies of the debate over the judicial branch without some understanding of the history of American admiralty jurisdiction. From the colonial period through the 1780s, America’s maritime courts served as the crucible in which solutions for the practical problems of jurisdiction were tested. Thus the surviving records of the admiralty courts, the writings of the merchants and legal-practitioners who litigated in them, and the published works of the jurists who sought to define the scope of their jurisdiction together provide an invaluable resource for those seeking a better understanding of the choices that America’s founding generation made in formulating the structure of the federal judiciary. Methodologically, “*Courts of Admiralty and the Common Law*” seeks to shed light on the origins of modern admiralty jurisdiction—as well as on the origins of the federal courts—principally through examining primary sources compiled over a period spanning from antiquity through the eighteenth century.

In addition to the ancient writings—from Cicero to the *Corpus Juris Civilis*—some scholarly legal works of the early modern period originally were written in Latin. In order to facilitate ease in reading and to make the infor-

mation in this book available to a wide audience, I have translated the Latin sources that I have quoted in the main text. Regrettably, translation at best provides a crude reflection of a text in its original language. Nuances and ambiguities of words and phrases in one language lack perfect analogues in another, forcing the translator to exercise judgment as to which nuances and ambiguities should be stressed in the translation and which may be deemphasized safely (or omitted entirely). A casual glance at how several different (and equally competent) translators render the same Latin passage into English reveals how inevitably subjective the process of translating is. Readers proficient in Latin naturally would prefer to make these judgments for themselves. Out of respect for their preference for reading and interpreting the quoted passages in the original language, I have opted also to reproduce the Latin *verbatim* in the footnotes.

No effort has been made to render the various sources quoted in “*Courts of Admiralty and the Common Law*” into modern English. Archaic spelling, syntax, and punctuation have been preserved throughout. Moreover, as standardized spelling and rules of punctuation are comparatively recent developments in the English language, it is not always possible to distinguish between archaic forms and printers’ errors. Some of the quoted material is derived from unpublished sources, such as journals, letters, and lecture-notes, in which the authors employed their own forms of abbreviation and often exercised little care in spelling—with the result that one word may have more than one spelling within the same text. The use of “[sic]” to designate departures from standard usage is more of an art than an exact science. I generally have omitted it entirely in medieval and early modern texts, where the reader should not expect modern spelling, reserving its use for inconsistencies in spelling within the same text or for those rare instances in which an archaic form of a word departs so far from its modern equivalent that it requires some clarification. In documents of the eighteenth century and later, in which grammar, spelling, and punctuation have assumed more modern form, I have used “[sic]” more liberally to highlight printers’ errors and individual authors’ personal eccentricities in spelling.

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Baltimore, Maryland
June, 2006