usages of that country." [861] "The 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 when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' But by what criterion are we to ascertain the precise limits of the law thus adopted? The Constitution does not define it . . . ."

"One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." [862]

"It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed." [863] That Congress's power to enact substantive maritime law was conferred by the Commerce Clause was assumed in numerous opinions,[864] but later opinions by Justice Bradley firmly established that the source of power was the admiralty grant itself, as supplemented by the second prong of the Necessary and Proper Clause.[865] Thus, "[a]s the Constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature and not in the state legislatures." [866] Rejecting an attack on a maritime statute as an infringement of intrastate commerce, Justice Bradley wrote: "It is unnecessary to invoke the power given the Congress to regulate commerce in order to find authority to pass the law in question. The act was passed in amendment of the maritime law of the

---

[861] 88 U.S. at 572.

[862] 88 U.S. at 574–75.

[863] 88 U.S. at 577.

[864] *E.g.*, *The Daniel Ball*, 77 U.S. (10 Wall.) 557, 564 (1871); Moore v. American Transp. Co., 65 U.S. (24 How.) 1, 39 (1861); Providence & N.Y. S.S. Co. v. Hill Mfg. Co., 109 U.S. 578 (1883); *The Robert W. Parsons*, 191 U.S. 17 (1903).

[865] Butler v. Boston & S. S.S. Co., 130 U.S. 527 (1889); *In re* Garnett, 141 U.S. 1 (1891). The second prong of the Necessary and Proper Clause is the authorization to Congress to enact laws to carry into execution the powers vested in other departments of the Federal Government. *See* Detroit Trust Co. v. The Thomas Barlum, 293 U.S. 21, 42 (1934).

[866] Butler v. Boston & S. S.S. Co., 130 U.S. 527, 557 (1889).