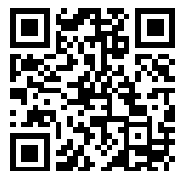

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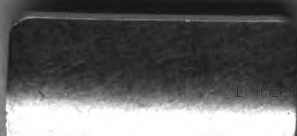




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JURISDICTION OVER FEDERAL
AREAS WITHIN THE STATES

U.S. REPORT OF THE
INTERDEPARTMENTAL COMMITTEE
FOR THE STUDY OF
JURISDICTION OVER FEDERAL AREAS
WITHIN THE STATES

PART I

The Facts and Committee Recommendations

Submitted to the Attorney General and transmitted to the President

April 1956

THE UNIVERSITY OF CHICAGO
PRESS

JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

REPORT OF THE INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

PART I

The Facts and Committee Recommendations

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April 1956

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Department of Health, Education, and Welfare: HELEN BOWMAN

(II)

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THE WHITE HOUSE,
Washington, April 27, 1956.

DEAR MR. ATTORNEY GENERAL: I am herewith returning to you, so that it may be published and receive the widest possible distribution among those interested in Federal real property matters, part I of the Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States. I am impressed by the well-planned effort which went into the study underlying this report and by the soundness of the recommendations which the report makes.

It would seem particularly desirable that the report be brought to the attention of the Federal administrators of real properties, who should be guided by it in matters related to legislative jurisdiction, and to the President of the Senate, the Speaker of the House of Representatives, and appropriate State officials, for their consideration of necessary legislation. I hope that you will see to this. I hope, also, that the General Services Administration will establish as soon as may be possible a central source of information concerning the legislative jurisdictional status of Federal properties and that that agency, with the Bureau of the Budget and the Department of Justice, will maintain a continuing and concerted interest in the progress made by all Federal agencies in adjusting the status of their properties in conformity with the recommendations made in the report.

The members of the Committee and the other officials, Federal and State, who participated in the study, have my appreciation and congratulations on this report. I hope they will continue their good efforts so that the text of the law on the subject of legislative jurisdiction which is planned as a supplement will issue as soon as possible.

Sincerely,

DWIGHT D. EISENHOWER.

The Honorable HERBERT BROWNELL, Jr.,
The Attorney General, Washington, D. C.

(III)

LETTER OF TRANSMITTAL

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., April 27, 1956.

DEAR MR. PRESIDENT: On my recommendation, and with your approval, there was organized on December 15, 1954, an interdepartmental committee to study problems of jurisdiction related to federally owned property within the States.

This Committee has labored diligently during the ensuing period and now has produced a factual report (part I), together with recommendations for changes in Federal agency practices, and in Federal and State laws, designed to eliminate existing problems arising out of Federal-State jurisdictional situations.

Subject to your approval, I shall bring the report and recommendations to the attention of the President of the Senate and the Speaker of the House of Representatives for the purpose of bringing about consideration of the Federal legislative proposals involved to the attention of State officials through established channels for consideration of the State legislative proposals involved, and to the attention of heads of Federal departments and agencies, for their guidance in matters relating to this subject.

Part II of the Committee's report is now in course of preparation and will be completed in the next several months. It will be a text which will discuss the law applicable to Federal jurisdiction over land owned in the States. Immediately upon completion of the legal text it will be sent to you. The Committee is of the view, in which I concur, that the two parts of the report are sufficiently different in content and purpose that they may issue separately.

Respectfully,

HERBERT BROWNELL, Jr.,
Attorney General.

THE PRESIDENT,
THE WHITE HOUSE.

(IV)

LETTER OF SUBMISSION

INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF
JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES,

April 25, 1956.

DEAR MR. ATTORNEY GENERAL: The Committee has completed its studies of the factual aspects of legislative jurisdiction over Federal areas within the several States, and of the Federal and State laws relating thereto, and herewith submits for your consideration and for transmission to the President its report subtitled "Part I. The Facts and Committee Recommendations."

Part II of the Committee's report will be completed within the next several months. It will be a text of the law on the subject of legislative jurisdiction, particularly covering judicial decisions and rulings of legal officers of administrative agencies concerning the subject. It is the view of the Committee that the two mentioned parts of the report are sufficiently different in their contents and purposes that they may issue separately.

Respectfully submitted,

PERRY W. MORTON,

Assistant Attorney General (Chairman).

MANSFIELD D. SPRAGUE,

General Counsel, Department of Defense (Vice Chairman).

MAXWELL H. ELLIOTT,

General Counsel, General Services Administration (Secretary).

ARTHUR B. FOCKE,

Legal Adviser, Bureau of the Budget.

J. REUEL ARMSTRONG,

Solicitor, Department of the Interior.

ROBERT L. FARRINGTON,

General Counsel, Department of Agriculture.

PARKE M. BANTA,

General Counsel, Department of Health, Education, and Welfare.

EDWARD E. ODOM,

Retired as General Counsel, Veterans' Administration.

PREFACE

The Interdepartmental Committee was formed on December 15, 1954, on the recommendation of the Attorney General, approved by the President and the Cabinet, that a study be undertaken with a view toward resolving problems arising out of the jurisdictional status of federally owned areas within the several States, and that in the first instance this study be conducted by a committee of representatives of eight certain departments and agencies of the Federal Government which have a principal interest in such problems. The Bureau of the Budget, the Departments of Defense, Justice, Interior, Agriculture, and Health, Education, and Welfare, the General Services Administration, and the Veterans' Administration are directly represented on the Committee, the Department of Justice through the Assistant Attorney General in charge of the Lands Division of that Department, and each of the other agencies through its General Counsel, Solicitor, or Legal Adviser. The Committee staff was assembled by detail, for varying periods, of personnel from the member agencies.

Twenty-five other agencies of the Federal Government furnished to the Committee information concerning their properties and concerning problems relating to legislative jurisdiction, without which information the study would not have been possible. The agencies, other than those represented on the Committee, which participated in this manner are:

- Department of State
- Department of the Treasury
- Post Office Department
- Department of Commerce
- Department of Labor
- Arlington Memorial Amphitheatre Commission
- Atomic Energy Commission
- Central Intelligence Agency
- Civil Aeronautics Board
- Farm Credit Administration
- Federal Civil Defense Administration
- Federal Communications Commission
- Federal Power Commission
- General Accounting Office

Housing and Home Finance Agency
 International Boundary and Water Commission, United States
 and Mexico
 Library of Congress
 National Advisory Committee for Aeronautics
 Office of Defense Mobilization
 Railroad Retirement Board
 Rubber Producing Facilities Disposal Commission
 Saint Lawrence Seaway Development Corporation
 Small Business Administration
 Tennessee Valley Authority
 United States Information Agency

Acknowledgment is gratefully made by the Interdepartmental Committee of the cooperation and assistance rendered in this study by the National Association of Attorneys General and its presidents during the period of the study, C. William O'Neill of Ohio (1954-55), and John Ben Sheppard of Texas (1955-56), by Herbert L. Wiltsee of the association's secretariat, and by the association's members, the attorneys general of the several States, who have very generously contributed information and advice in connection with the study in accordance with the following resolution of the association:

Whereas the matter of legislative jurisdiction over Federal areas within the States has become the subject of extensive examination by an interdepartmental committee within the executive branch of the Federal establishment, by order of the President of the United States; and

Whereas this matter is of interest to the several States, within whose borders an aggregate of more than 20 percent of the total land area is now owned by the Federal Government, and the effects of this ownership have resulted in an extremely diverse pattern of jurisdictional status and attendant questions as to the respective Federal and State governmental responsibilities; and

Whereas this interdepartmental committee, under the chairmanship of United States Assistant Attorney General Perry W. Morton, and with the approval of the executive committee of this association, has requested the attorneys general of the several States to cooperate in the assembling of pertinent information and legal research; now therefore be it

Resolved by the 49th annual meeting of the National Association of Attorneys General that this association expresses its interest in the survey thus being undertaken, and the association urges all of its members to cooperate as completely and expeditiously as possible in providing the interdepartmental committee with needed information; and be it further

Resolved, That the interdepartmental committee is requested to discuss its findings with the several attorneys general with the view to obtaining as wide concurrence as possible in the preliminary and final conclusions which may be reported by the committee.

September 1955

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John M. Patterson, Alabama	Harvey Dickerson, Nevada
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The Interdepartmental Committee also wishes to acknowledge assistance contributed by the Council of State Governments, and by Charles F. Conlon, Executive Secretary of the National Association of Tax Administrators.

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JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

CHAPTER I

OUTLINE OF STUDY

The instant study was occasioned by the denial to a group of children of Federal employees residing on the grounds of a Veterans' Administration hospital of the opportunity of attending public schools in the town in which the hospital was located. An administrative decision against the children was affirmed by local courts, finally including the supreme court of the State. The decisions were based on the ground that residents of the area on which the hospital was located were not residents of the State since "exclusive legislative jurisdiction" over such area had been ceded by the State to the Federal Government, and therefore they were not entitled to privileges of State residency.

In an ensuing study of the State supreme court decision with a view toward applying to the Supreme Court of the United States for a writ of certiorari, the Department of Justice ascertained that State laws and practices relating to the subject of Federal legislative jurisdiction are very different in different States, that practices of Federal agencies with respect to the same subject vary extremely from agency to agency without apparent basis, and that the Federal Government, the States, residents of Federal areas, and others, are all suffering serious disabilities and disadvantages because of a general lack of knowledge or understanding of the subject of Federal legislative jurisdiction and its consequences.

Article I, section 8, clause 17, of the Constitution of the United States, the text of which is set out in appendix B to this report, provides in legal effect that the Federal Government shall have exclusive legislative jurisdiction over such area not exceeding 10 miles square as may become the seat of government of the United States, *and like authority over all places acquired by the Government, with the consent of the State involved, for Federal works.* It is the latter portion of this clause, the portion which has been emphasized, with which this report is primarily concerned.

The status of the District of Columbia, as the seat of government area referred to in the first part of the clause, is fairly well known. It is not nearly as well known that under the second part of the clause the Federal Government has acquired, to the exclusion of the States, jurisdiction such as it exercises with respect to the District of Columbia over several thousand areas scattered over the 48 States. Federal acquisition of legislative jurisdiction over such areas has made of them Federal islands within States, which the term "enclaves" is frequently used to describe.

While these enclaves, which are used for all the many Federal governmental purposes, such as post offices, arsenals, dams, roads, etc., usually are owned by the Government, the United States in many cases has received similar jurisdictional authority over privately owned properties which it leases, or privately owned and occupied properties which are located within the exterior boundaries of a large area (such as the District of Columbia and various national parks) as to which a State has ceded jurisdiction to the United States. On the other hand, the Federal Government has only a proprietorial interest, without the right to exercise legislative jurisdiction in the clause 17 sense, in vast areas of lands which it owns, for Federal proprietorship over land and Federal exercise of legislative jurisdiction with respect to land are not interdependent. And, as the Committee will endeavor to make clear, the extent of jurisdictional control which the Government may have over land can and does vary to an almost infinite number of degrees between exclusive legislative jurisdiction and a proprietorial interest only.

The Federal Government is being required to furnish to areas within the States over which it has jurisdiction in various forms governmental services and facilities which its structure is not designed to supply efficiently or economically. The relationship between States and persons residing in Federal areas in those States is disarranged and disrupted, with tax losses, lack of police control, and other disadvantages to the States. Many residents of federally owned areas are deprived of numerous privileges and services, such as voting, and certain access to courts, which are the usual incidents of residence within a State. In short, it was found by the Department of Justice that this whole important field of Federal-State relations was in a confused and chaotic state, and that more was needed than a solution of the school problem at hand—there was needed a thorough study of the entire subject of legislative jurisdiction with a view toward resolving as many as possible of the problems which lack of full knowledge and understanding of the subject had bred.

The Attorney General so recommended to the President and the Cabinet, and with their approval and support the instant study resulted. The preface to this report identifies the agencies, State and Federal, which most actively participated in the study; subsequent portions of the report set out in some detail the results of the study. The Committee desires to outline at this point, so as to furnish assistance for evaluation of its report, the manner in which the study was conducted, the manner in which the Committee's report is being presented, and some of the problems involved.

The land area of the United States is 1,903,824,640 acres. It was ascertained from available sources that of this area the Federal Government, as of a recent date, owned 405,088,566 acres, or more than 21 percent of the continental United States. It owns more than 87 percent of the land in the State of Nevada, over 50 percent of the land in several other States, and considerable land in every State of the Union. The Department of the Interior controls lands having a total area greater than that of all the six New England States and Texas combined. The Department of Agriculture controls more than three-fourths as much land as the Department of the Interior. Altogether 23 agencies of the Federal Government control property owned by the United States outside of the District of Columbia. Any survey relating to these lands is therefore bound to constitute a considerable project.

The Committee formulated a plan of study, of which portions requiring such approval were approved by the Bureau of the Budget under the Federal Reports Act of 1942 (B. B. No. 43-5501). This plan involved the assignment to a number of Federal agencies of various tasks which they were especially fitted to perform or as to which they had accumulated information; the circularization to all agencies of the Government which acquire, occupy, or operate real property of a questionnaire (questionnaire A) designed to elicit general information, concerning the numbers, areas, uses and jurisdictional statuses of their properties and the practices, problems, policies, and recommendations related to jurisdictional status which the agencies might have; and the forwarding of an additional questionnaire (questionnaire B) for each individual Federal installation in three States (Virginia, Kansas, and California, selected as containing properties which would illustrate jurisdictional problems arising throughout the United States) which called for detailed information of the same character as that requested by the general questionnaire addressed to agencies. Federal agencies also were asked to submit a synopsis of all opinions of their chief law officers concerning matters affected by legislative jurisdiction.

Pursuant to further provisions of the plan of study the attorney general of each State was requested, through the National Association of Attorneys General, to furnish to the Committee a synopsis and citation of each State constitutional provision, statute, judicial decision, and attorney general opinion, concerning the acquisition of legislative jurisdiction by the United States over lands within the State; a statement of major problems experienced by State or local authorities arising out of legislative jurisdiction; an indication of privileges or services barred by State constitution or statutes to areas under United States legislative jurisdiction or residents of such areas, and any further comment concerning the subject which any attorney general might have.

A tremendous mass of information has been accumulated by the Committee in the carrying out of the mentioned portions of the plan of study. Material submitted by the 23 Federal agencies which control federally owned land was refined by the Committee staff into memoranda which, in the case of the 18 larger agencies, were made available to each agency concerned for comment. The basic material involved, as well as the staff memoranda and agency comment thereon, was utilized by the Committee as was necessary in its study.

The results of the Committee's study are reflected in the succeeding pages of this report, in the two appendixes to the report, and in a second report (Pt. II) which is under preparation.

The instant report (Pt. I) sets out the facts adduced by the Committee and recommendations of the Committee with respect thereto. In this portion of its work the Committee has labored to avoid to the utmost extent possible any legalistic discussions. Citations to constitutional provisions, statutes, or court decisions are made only when it seems inescapably necessary to make them, and rarely is any law quoted in the body of the report. It is the hope of the Committee that this approach will make this report more useful than it otherwise might be to nonlawyer officials, Federal and State, who have occasion to deal with problems arising from ownership, possession, or control of land in the States by the Federal Government.

Appendix A to this report summarizes the basic factual information received from individual Federal agencies in connection with this study and sets out briefly the views of the agencies as to the legislative jurisdictional requirements of properties under their control. It is on this information, received in reply to questionnaires A and B, already referred to, that the Committee has largely based its determinations as to the jurisdictional requirements of Federal agencies.

Appendix B contains the texts of all constitutional provisions and major statutes of general effect, Federal and State, directly affecting

legislative jurisdiction, as such provisions and statutes were in effect on December 31, 1955, with explanatory material relating thereto. The contents of this appendix were necessarily developed for analytical purposes during the course of the study and are included with the report as a logical supplement and as of particular value to lawyers and legislators for independent analysis.

The second report of the Committee (Pt. II) will be a legal text on the subject of legislative jurisdiction. It will include consideration of salient Federal and State constitutional provisions, statutes, and court decisions, and opinions of major importance of principal Federal and State law officers, which have come to the attention of the Committee in the course of the exhaustive study it has endeavored to make of this subject.

There has been assimilated into the Committee's reports all the legal learning in the legislative jurisdiction field of the members of the Committee and of their predecessor chief law officers, as the Committee has interpreted this learning from opinions rendered by these officers. To this has been added consideration of legal opinions of other chief law officers of the Federal Government, including the Attorney General and the Comptroller General, and of attorneys general of the several States, of court decisions in some 1,000 Federal and State cases, of matter in innumerable textbooks and legal periodicals, and of all manner of factual and legal information related to legislative jurisdiction submitted by 33 agencies of the Federal Government.

The Committee notes that there has never before been conducted a study of the subject of legislative jurisdiction approaching in comprehensiveness the survey of the facts and the law which has been made. While the Committee's reports cannot reflect every detail of the study, it is hoped that they will provide a basis for resolving most of the problems arising out of legislative jurisdiction situations.

CHAPTER II

HISTORY AND DEVELOPMENT OF FEDERAL LEGISLATIVE JURISDICTION

Origin of article I, section 8, clause 17, of the Constitution.—This provision was included in the Constitution as the result of proposals made to the Constitutional Convention on May 29 and August 18, 1787, by Charles Pinckney and James Madison. The clause was born because of the vivid recollection of the members of the Convention of harrassment suffered by the Continental Congress at Philadelphia, in 1783, at the hands of a mob of soldiers and ex-soldiers whom the Pennsylvania authorities felt unable to restrain, and whose activities forced the Congress to move its meeting place to Princeton, N. J. The delegates to the Constitutional Convention, many of whom had suffered indignities at the hands of this mob as members of the Continental Congress, were impressed by this incident, and by a general requirement for protection of the affairs of the then weak Federal Government from undue influence by the stronger States, to provide for an area independent of any State, and under Federal jurisdiction, in which the Federal Government would function. Without much debate there was accepted the theory that places other than the seat of government which were held by the Federal Government for the benefit of all the States similarly should not be under the jurisdiction of any single State.

Objections made by Patrick Henry and others, based upon the dangers to personal rights and liberties which clause 17 presented, were anticipated or replied to by James Iredell of North Carolina (subsequently a United States Supreme Court Justice) and Mr. Madison. They assured that the rights of residents of federalized areas would be protected by appropriate reservations made by the States in granting their respective consents to federalization. (It may be noted that this assurance has to this time borne only little fruit.)

Early practice concerning acquisition of legislative jurisdiction.—The Federal City was established at what became Washington on land ceded to the Federal Government for this purpose by the States of Maryland and Virginia under the first portion of clause 17. However, the provision of the second portion, for transfer of like jurisdiction to the Federal Government over other areas acquired for Federal purposes, was not uniformly exercised during the first 50 years of the existence of the United States. It was exercised with respect to most, but not all, lighthouse sites, with respect to various forts and

arsenals, and with respect to a number of other individual properties. But search of appropriate records indicates that during this period it was often the practice of the Government merely to purchase the lands upon which its installations were to be placed and to enter into occupancy for the purposes intended, without also acquiring legislative jurisdiction over the lands.

Acquisition of exclusive jurisdiction made compulsory.—The Federal practice of not acquiring legislative jurisdiction in many cases was terminated in 1841, as a result of what appears to have been a legislative accident. A controversy had developed between the Federal Government and the State of New York concerning the title to (*not* the legislative jurisdiction over) a single area of land on Staten Island upon which a fortification had been maintained for many years at Federal expense. Presumably to avoid a repetition of such incidents, the Congress provided by a joint resolution of September 11, 1841 (set out in appendix B to this report as sec. 355 of the Revised Statutes of the United States), that thereafter no public money could be expended for public buildings [public works] on land purchased by the United States until the Attorney General had approved title to the land, and until the legislature of the State in which the land was situated had consented to the purchase.

In facilitating Federal construction within their boundaries most States during the ensuing years enacted statutes consenting to the acquisition of land (frequently any land) within their boundaries by the Federal Government. These general consent statutes had the effect of implementing clause 17 and thereby vesting in the United States exclusive legislative jurisdiction over all lands acquired by it in the States. The only exceptions were cases where the Federal Government plainly indicated, by legislation or by action of the executive agency concerned, that the jurisdiction proffered by the State consent statute was not accepted. Necessity for plain indication by the Federal Government of nonacceptance of jurisdiction came about because of a general theory in law that a proffered benefit is accepted unless its nonacceptance is demonstrated.

It should be noted that lands already under the proprietorship of the United States when these general consent statutes were enacted, such as the lands of the so-called public domain, were not affected by the statutes, and legislative jurisdiction with respect to them remained in the several States. Curiously, therefore, the vast areas of land which constitute the Federal public domain generally are held by the United States in a proprietorial status only. It should also be noted that the 1841 Federal statute did not apply to lands acquired by the United States upon which there was no intent to erect public build-

ings within the broad meaning of the statute. However, the Federal Government quite completely divested the States, with their consent, of legislative jurisdiction over numerous and large areas of land which it acquired during the hundred year period following 1841 without, apparently, much concern being generated in any quarter for the consequences.

State inroads upon acquisition of exclusive jurisdiction.—In the course of the tremendous expansion of Federal land acquisition programs which occurred in the 1930's the States became increasingly aware of the impact upon State and local treasuries (which will be discussed in considerable detail) of Federal acquisition of exclusive legislative jurisdiction and its further impact on normal State and local authority. With the development of this awareness there began the development of a tendency on the part of States to repeal their general consent statutes and in some cases to substitute for them what may be termed "cession statutes," specifically ceding some measure of legislative jurisdiction to the United States while frequently reserving certain authority to the State. In other instances States amended their consent statutes so that such statutes similarly reserved certain authority to the State. Included among the reservations in such consent and cession statutes are the right to levy various taxes on persons and property situated on Federal lands and on transactions occurring on such lands; criminal jurisdiction over acts and omissions occurring on such lands; certain regulatory jurisdiction over various affairs on such lands such as licensing rights, control of public utility rates, and control over fishing and hunting; and the most complete type of reservation—a retention by the State of all its jurisdiction while concurrently granting all jurisdiction, or some measure of jurisdiction, to the Federal Government.

It should be emphasized that Federal instrumentalities and their property are not in any event subject to State or local taxation or to most types of State or local controls. However, the transfer to the United States of exclusive legislative jurisdiction over an area has the effect, speaking generally, of divesting the State and any governmental entities operating under its authority of any right to tax or control private persons or property upon the area. It was the divesting of such rights that reservations in consent and cession statutes were designed to combat.

Statutory enactments of various States have also fixed conditions concerning procedural aspects of Federal acceptance of legislative jurisdiction. For example, some States require publication of intent to accept and recordation with county clerks of metes and bounds of the property, or have other similar requirements. In the case of one

State these procedural requirements have been deemed by some Federal agencies to be so onerous, and the reservations of jurisdiction made by the State to be so broad, that the agencies have not felt justified in meeting the procedural requirements in view of the small amount of jurisdiction which is thereby acquired.

Retrocessions by the Federal Government.—The States could not by unilateral action retrieve from the Federal Government authority which they had surrendered over areas as to which they had already ceded exclusive legislative jurisdiction to the Government, but during the mentioned period when States were altering their consent statutes the Federal Government relinquished to the States the authority to tax sales of motor vehicle fuels, to impose sales and use taxes, and to levy income taxes. These relinquishments, or retrocessions, were applicable to areas as to which jurisdiction previously had been acquired as well as to future acquisitions. The term “retrocede” is used generally here and throughout this report to include waivers of immunity as well as retrocessions of jurisdiction. The statutes involved are set out in appendix B in the codified form in which they appear in title 4 of the United States Code.

Exclusive jurisdiction requirement terminated.—There was also enacted, on February 1, 1940, an amendment to section 355 of the Revised Statutes of the United States which eliminated the requirement for State consent to any Federal acquisition of land as a condition precedent to expenditure of Federal funds for construction on such land. The amendment substituted for the previous requirement provided that (1) the obtaining of exclusive jurisdiction in the United States over lands which it acquired was not to be required, (2) the head of a Government agency could file with the governor or other appropriate officer of the State involved a notice of the acceptance of such extent of jurisdiction as he deemed desirable as to any land under his custody, and (3) until such a notice was filed it should be conclusively presumed that no jurisdiction had been accepted by the United States. This amendment ended the 100-year period during which nearly all the land acquired by the United States came under the exclusive legislative jurisdiction of the Federal Government.

Subsequent developments.—Federal abandonment, through the revision of Revised Statute 355, of the nearly absolute requirement for State consent to Federal land acquisition had two direct effects: (1) the State tendency to amendment of consent and cession laws so as to provide various reservations was accelerated, and (2) Federal administrators, particularly of newer agencies which did not have long-established habits of acquiring exclusive legislative jurisdiction, tended not to acquire any legislative jurisdiction for their lands. The first

tendency has developed to the point that, it may be seen from appendix B to this report, as of a recent date only 25 States, many of these having relatively little Federal property within their boundaries, still proffered exclusive legislative jurisdiction to the Federal Government by a general consent or cession statute. The other tendency has been sufficiently manifested that, it will be noted from more specific information offered later in this report, a very large proportion of Federal properties is now held with less than exclusive jurisdiction in the United States.

The tendencies described have not had any substantial effect on the bulk of properties as to which jurisdiction was acquired by the United States prior to 1940. Property acquired by the Federal Government with a vesting of legislative jurisdiction continues to this time in the same general jurisdictional status as originally attached. An exception occurs in those cases in which there is a limitation on the exercise of legislative jurisdiction by the United States specifically or by implication set out in the State statute under which the Federal Government procured such jurisdiction (such as a limitation that the proffered jurisdiction shall continue in the United States only so long as the United States continues to own a property, or so long as the property is used for a specified purpose). Once legislative jurisdiction has vested in the United States it cannot be revested in the State, other than by operation of a limitation, except by or under an act of Congress.

The Congress has acted, mainly, only to authorize imposition of the specific State taxes already mentioned, to permit States to apply and enforce their unemployment compensation and workmen's compensation laws in Federal areas, and to retrocede to the States jurisdiction over a mere handful of properties (in the last category the usual case involves only a retrocession of concurrent criminal jurisdiction with respect to a public highway traversing a Government reservation). The Congress has also authorized the Attorney General and the Administrator of Veterans' Affairs, respectively, to retrocede jurisdiction in certain limited instances, but this authority appears to have been rarely used; and the Congress has extended to the States jurisdiction over criminal offenses occurring on immigrant stations. Whether the Congress has authorized imposition of State and local taxes on private interests in all military housing constructed under the so-called Wherry Act, some of which is located on areas as to which the United States has received legislative jurisdiction, is a question now before the Supreme Court of the United States. All the statutes involved are, as has already been indicated, set out in appendix B to this report.

CHAPTER III

DEFINITIONS—CATEGORIES OF LEGISLATIVE JURISDICTION

Exclusive legislative jurisdiction.—The term “exclusive legislative jurisdiction” as used in this report refers to the power “to exercise exclusive legislation” granted to the Congress by article I, section 8, clause 17, of the Constitution, and to the like power which may be acquired by the United States through cession by a State, or by a reservation made by the United States in connection with the admission of a State into the Union. In the exercise of such power as to an area in a State the Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative. By State and Federal statutes and judicial decisions, however, it is accepted that a reservation by a State of only the right to serve criminal and civil process in an area, resulting from activities which occurred off the area, is not inconsistent with exclusive legislative jurisdiction.

The existence of Federal retrocession statutes has had the effect of eliminating any possibility of the possession by the Federal Government at this time of full exclusive legislative jurisdiction, since all States may exercise jurisdiction in consonance with such statutes notwithstanding that they cede exclusive legislative jurisdiction. However, in view of a widespread use of the term “exclusive legislative jurisdiction” in this manner, the Committee for purposes of the instant study has applied the term to the situation wherein the Federal Government possesses, by whichever method acquired, all the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any authority concurrently with the United States except the right to serve civil or criminal process in the area.

Because reservations made by the States in granting jurisdiction to the Federal Government have varied so greatly, and in order to describe situations in which the Government has received or accepted no legislative jurisdiction over property which it owns, the Committee has found it desirable to adopt three other terms which are in general use in reference to jurisdictional status, and in an effort at precision has defined these terms. While these definitions are based on judicial decisions and similar authorities, and on usage in Government agencies, it is desired to emphasize that they are made here only for the purposes

of this study, and that they are not purported as absolute criteria for interpreting legislation or judicial decisions, or for other purposes. By way of example the Assimilative Crimes Act, referred to at several points in this report, which by its terms is applicable to areas under exclusive or concurrent jurisdiction, in the usual case is applicable in areas here defined as under partial jurisdiction.

Concurrent legislative jurisdiction.—This term is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

Partial legislative jurisdiction.—This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area (e. g., the right to tax private property).

Proprietorial interest only.—This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area. In applying this definition recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

CHAPTER IV

BASIC CHARACTERISTICS OF THE SEVERAL CATEGORIES OF LEGISLATIVE JURISDICTION

Effects of varying statuses.—To each of the four categories of legislative jurisdictional situations (in which the United States has (a) exclusive, (b) concurrent, (c) or partial legislative jurisdiction, or (d) a proprietorial interest only) differing legal characteristics attach. These differences result in various advantages, various disadvantages, and many problems arising for the Federal Government, for State and local governments, and for individuals, out of each of the several types of legislative jurisdiction. Specific advantages, disadvantages, and problems will be discussed in succeeding portions of this report. Knowledge of the basic incidents of the several categories of legislative jurisdiction is essential, however, to the identification and appraisal of these matters.

Exclusive legislative jurisdiction.—When the Federal Government receives exclusive legislative jurisdiction over an area, the jurisdiction of the State and of any local governments (which of course derive their authority from the State) is ousted, subject only to the right to serve process and to the several concessions made by the Federal Government which have already been mentioned. Thereafter only Congress has authority to legislate for the area. However, while Congress has legislated for the District of Columbia, it has not legislated for other areas under its exclusive legislative jurisdiction except in a few particulars which will be indicated hereinafter.

The courts have filled the vacuum which might otherwise have occurred by adopting for such areas a rule of international law whereby as to ceded territory the laws of the displaced sovereign which are in effect at the time of cession and which are not in conflict with laws or policies of the new sovereign remain in effect as laws of such new sovereign until specifically displaced. Under the international law rule it is anticipated that the new sovereign will act to keep the laws of the ceded territory up to date, for any enactments or amendments by the old sovereign have no effect in territory which has been ceded. In view of the fact that Congress has not acted except as will be stated to amend or otherwise maintain the laws in areas other than the District of Columbia which are under its exclusive legislative jurisdiction, the laws generally in effect in each such area

are the former State laws which were in effect there as of the time, be it 20 or 120 years ago, when jurisdiction over the area passed to the United States. It can be seen that since the laws of every State have been developing and changing throughout the years, the laws applicable in Federal exclusive jurisdiction areas in the same State vary according to the time at which jurisdiction thereover passed to the United States. It can also be seen that since the laws applicable in these areas have not developed or changed during the period of Federal exercise of jurisdiction in the areas, such laws are in most cases, obsolete, and in many cases archaic. This condition adversely affects nearly all who may be involved, with the effects most likely to be felt by persons residing or doing business on the area and those who deal with such persons.

In certain instances, even within a single area under exclusive Federal jurisdiction, an engineering survey may be necessary to determine exactly where an act giving rise to a legal effect occurred, in order to ascertain which of several successive State laws, all archaic, is applicable. This necessity develops from the fact that ordinarily consent and cession statutes have not transferred jurisdiction to the United States until it has acquired title, a process that, at least with respect to larger reservations, has lasted several years and often has resulted in the applicability under the international law rule of different State laws to different tracts of land within the same reservation. This was particularly the case before the enactment of legislation permitting the United States to acquire title upon the filing of a condemnation suit, rather than at the termination of such often protracted litigation.

In other cases, amendments to State consent and cession statutes during the process of land acquisition have resulted in the United States' exercising different quanta of legislative jurisdiction in the same Federal reservation. These areas of different legislative jurisdiction are often so random and haphazard that only litigation, again dependent upon an engineering survey, can determine even what court has jurisdiction, without regard to questions of substantive law.

In addition, although a body of substantive law is carried over for areas over which the Federal Government assumes exclusive legislative jurisdiction, the agencies and administrative procedures which often are necessary to the functioning of the substantive law are not made available by the Federal Government. For example, while a marriage law is carried over, there is no licensing and recordkeeping office; and while there are public health and safety laws, there rarely are available the necessary Federal facilities for administering and enforcing these laws.

In order to avoid the probably insurmountable task of enacting and maintaining a code of criminal laws appropriate for all the areas under its legislative jurisdiction, the Congress has passed the so-called Assimilative Crimes Act (18 U. S. C. 13), set out in appendix B. In this statute the Congress has provided, in legal effect, that all acts or omissions occurring on an area under its legislative jurisdiction which would constitute a crime if the area continued under State jurisdiction are to constitute a similar crime, similarly punishable, under Federal law. The Assimilative Crimes Act does not apply to make Federal crimes based on State statutes which are contrary to Federal policy. Unlike the court-adopted rule of international law, the Assimilative Crimes Act provides that the State laws applicable shall be those in force "at the time of such act or omission." The criminal laws in areas over which the Congress has legislative jurisdiction as to crimes are thus as up to date as those of the surrounding State.

Law enforcement must, of course, be supplied by the Federal Government since, the State law being inapplicable within the enclave, local policemen and other law-enforcement agencies do not have authority nor do the State courts have criminal jurisdiction over offenses committed within the reservation. However, Federal law enforcement facilities are distant from many Federal areas, and the machinery of the Federal court system is not designed to handle efficiently or with reasonable convenience to the public or to the Federal Government the administration of what are essentially local ordinances.

Federal areas of exclusive jurisdiction are considered in many respects to comprise legal entities separate from the surrounding State, and, indeed, until a recent decision of the United States Supreme Court dispelled the notion, were viewed as completely sovereign areas (under the sovereignty of the United States), geographically surrounded by another sovereign. As a result there is no obligation on the State or on any local political subdivision to provide for such areas normal governmental services such as disposal of sewage, removal of trash and garbage, snow clearance, road maintenance, fire protection and the like.

Persons and property on exclusive jurisdiction areas are not subject to State or local taxation except as Congress has permitted (income, sales, use, motor vehicle fuel, and unemployment and workmen's compensation taxes only have been permitted). It should be noted that the Federal Government and its instrumentalities are not subject to direct taxation by States or local taxing authorities regardless of the legislative jurisdiction status of the area on which they may be operating. However, the immunity from State authority of exclusive jurisdiction areas has the additional effect of barring State

or local taxation of the property on such areas, such as personal property of residents of such areas, and property of lessees of standby Government industrial facilities on such areas, thereby resulting in considerable diminution of State and local tax revenues.

Likewise, the States cannot exercise regulatory powers over areas under Federal exclusive legislative jurisdiction. While this power of the States is often curtailed under the supremacy clause of the United States Constitution regardless of the jurisdictional status of any lands which might be involved, two recent cases have brought into focus the effect which differing jurisdictional positions will have upon otherwise substantial similar factual circumstances.

The companion cases of *Penn Dairies v. Milk Control Comm'n* (318 U. S. 261), and *Pacific Coast Dairy v. Dept.* (318 U. S. 285 (1943)), both concerned the legality of minimum pricing under State milk control acts of milk sold to the Federal Government. In one instance the milk was delivered by a dealer to the United States on land over which the United States had no legislative jurisdiction; in the other the land was under its exclusive jurisdiction. In the first case (no Federal jurisdiction) it was held that the denial of a license renewal to the dealer for selling milk to the Government at less than the prescribed minimum price was valid, the court stating, " * * the mere fact that nondiscriminatory taxation or regulation of the contractor imposes an increased economic burden on the Government is no longer regarded as bringing the contractor within any implied immunity of the Government from State taxation or regulation." The second case (exclusive Federal jurisdiction) denied the right of the State to revoke a license to distribute milk, holding that " * * the true purpose was to punish California's own citizens for doing in exclusively Federal territory what by the law of the United States was there lawful, under the guise of penalizing preparatory conduct occurring in the State, to punish the appellant for a transaction carried on under sovereignty conferred by article I, section 8, clause 17 of the Constitution, and under authority superior to that of California by virtue of the supremacy clause."

The dairy cases point out the effect which jurisdictional status may have where there is an attempted indirect regulation of the Federal Government by a State. It remains clear, however, that direct State regulation of the Federal Government or its instrumentalities is not permissible under the supremacy clause regardless of the nature of Federal jurisdiction. It is also clear, and was pointed out by the Court in the dairy cases, that the Congress may waive any immunities accruing to the United States under an exclusive jurisdiction status and, on the other hand, may effectively prohibit any interference, however

indirect, with any activities of the United States or its instrumentalities. Immunity from State regulation of activities in exclusive legislative jurisdiction areas extends, of course, beyond minimum pricing of milk. Control of the sale and consumption of alcoholic beverages, and licensing of persons engaged in occupations affecting public health and safety, are two matters frequently involved, for example.

Probably the incident of exclusive legislative jurisdiction which has most numerous, and most serious, effects is that residents of exclusive jurisdiction areas have been held not to be residents of the State or local subdivision thereof in which such area is physically situated. As a result such persons may be denied many of the important rights and privileges which are contingent upon State residence. They are not entitled to vote, to hold public office, or to serve on juries, and their children are not entitled to receive an education in the free public school systems of the State. The right of access to State courts in matters where jurisdiction is based upon residence within the State may be denied them, and problems consequently arise in the fields of divorce, adoption, administration of estates, and juvenile offenses. There is no obligation on the State to admit residents to State-sponsored or administered hospitals or sanatoriums, nor to provide such residents with other governmental services such as visiting nurses, public libraries, welfare services and the like. And generally there are no equivalent services provided from Federal sources for persons residing on areas of exclusive Federal jurisdiction. It has been suggested that where States are exercising the right to tax residents of exclusive Federal jurisdiction areas such residents are entitled to rights and privileges as residents of the State, on the theory that the State cannot acknowledge them on the one hand as State residents for taxation purposes and on the other deny them qualification as residents for other purposes. The Committee recognizes considerable logic in this reasoning, but since the legal theory which is involved appears not to have been sufficiently tested in the courts the Committee is not relying on it for the purposes of this study.

Other than as has been indicated, the United States has not enacted laws of any major import for exclusive jurisdiction areas except to define and provide punishment for a number of major crimes, to provide for liability for the causing of death or injury by wrongful act, and to provide for workmen's compensation.

Concurrent legislative jurisdiction.—Under concurrent jurisdiction the two sovereigns, the Federal Government and a State, occupy an area, each having all the rights accorded a sovereign with the broad qualification that such rights run concurrently with those of the other sovereign. Exact equivalence of rights is not present, however, for at

all times, under this jurisdictional status as under all others, the Federal Government has the superior right under the supremacy clause of the Constitution to carry out Federal functions unimpeded by State interference.

State law, including any amendments which may be made by the State from time to time, is applicable in a concurrent jurisdiction area. Thus there is absent the tendency which exists in exclusive jurisdiction areas for general laws to become obsolete. Federal law appertaining generally to areas under the legislative jurisdiction of the United States also applies. State or local agencies and administrative processes needed to carry out various State laws, such as laws relating to notaries, various licensing boards, etc., can be made available by the State or local government in accordance with normal procedures. State criminal laws are, of course, applicable in the area for enforcement by the State. The same laws apply for enforcement by the Federal Government under the Assimilative Crimes Act, which by its terms is applicable to areas under the concurrent as well as the exclusive legislative jurisdiction of the United States, and other Federal criminal laws also apply. Most crimes fall under both Federal and State sanction, and either the Federal or State Government, or both, may take jurisdiction over a given offense.

Unlike the situation in exclusive jurisdiction areas, the State and the local governmental subdivisions have the same obligation to furnish their normal governmental services, such as sewage disposal, to and in the area, as they have elsewhere in the State. They also have the compensating right of imposing taxes on persons, property, and activities in the area (but not, of course, directly on the Federal Government or its instrumentalities). The regulatory powers of the States may be exercised in the area but, again, not directly on the Federal Government or its instrumentalities, and not so as to interfere with Government activities. Most significant in many cases, residency in a concurrent jurisdiction area, as distinguished from residency in an exclusive jurisdiction area, in every sense and to the same extent qualifies a person as a resident of a State as residency in any other part of the State, so that none of the problems relating to personal rights and privileges that may arise in an exclusive jurisdiction area are raised in a concurrent jurisdiction area.

Partial legislative jurisdiction.—This jurisdictional status occurs where the State grants to the Federal Government the authority to exercise certain State powers within an area but reserves for exercise only by itself, or by itself as well as the Federal Government, other powers constituting more than merely the right to serve civil or criminal process.

As to those State powers granted by the State to the Federal Government without reservation, administration of the Federal area is the same as if it were under exclusively Federal legislative jurisdiction, and the powers which were relinquished by the State may be exercised only by the Federal Government. As to the powers reserved by the State for exercise only by itself, administration of the area is as though the United States had no jurisdiction whatever (i. e., proprietorial interest only); the reserved powers may not be exercised by the Federal Government, but continue to be exercised by the State. As to those powers granted by the State to the Federal Government with a reservation by the State of authority to exercise the same powers concurrently, administration of the area is as though it were under the concurrent legislative jurisdiction status described above; only the powers specified for concurrent exercise can, of course, be exercised by both the Federal and State Governments.

The reservations made by States which result in a partial legislative jurisdiction status relate usually to such matters as taxation of individuals on the area and their property and activities, but can and do relate to numerous combinations of the matters affected by legislative jurisdiction. Depending on which powers have been granted to the United States for exercise exclusively by it, various State laws may or may not be applicable. In any event (assuming no complete reservation to itself by the State of the right to make or enforce criminal laws) the Assimilative Crimes Act applies, allowing law enforcement by Federal officials. Depending also on which powers have been granted by the State, the relations of the residents of the area with the State are disturbed to a greater or lesser degree in the usual case. The exact incidents of this type of jurisdiction need to be determined in each case by a careful study of the applicable State cession or consent statute.

Proprietorial interest only.—Where the Federal Government has no legislative jurisdiction over its land, it holds such land in a proprietorial interest only and has the same rights in the land as does any other landowner. In addition, however, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution without interference from any source. It may resist, by exercise of its legislative or executive authority or through proceedings in the courts, according to the circumstances, any attempted interference by a State instrumentality as well as by individuals. Also, the Congress has special authority, vested in it by article IV, section 3, clause 2, of the Constitution, to enact laws for the protection of property belonging to the United States.

Subject to these conditions, in the case where the United States acquires only a proprietorial interest the State retains all the jurisdiction over the area which it would have if a private individual rather than the United States owned the land. However, for the reasons indicated the State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land. Neither may the State regulate the actions of the residents of the land in any way which might directly interfere with the performance of a Federal function. State action may in some instances impose an indirect burden upon the Federal Government when it concerns areas held in a proprietorial interest only, as in the *Penn Dairies* case, *supra*. Any persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residence.

CHAPTER V

LAWS AND PROBLEMS OF STATES RELATED TO LEGISLATIVE JURISDICTION

Use of material from State sources.—The great bulk of the material received by the Committee from State attorneys general and other State sources consists of excerpts appertaining to legislative jurisdiction from the constitutions and statutes of the States. This particular material, conformed to reflect the status of the law as of December 31, 1955, will be found in appendix B to this report arranged alphabetically by States. The judicial decisions and legal opinions which the attorneys general directed to the attention of the Committee, which were invaluable in forming a part of the basis for the views of the Committee set out in this report, in the main will be specifically referred to only in part II of the report, which constitutes a text of the law on the subject of legislative jurisdiction. Certain aspects of the material relating to States appear appropriate for discussion at this point, however.

Provisions of State constitutions and statutes relating to jurisdiction.—It is noted by the Committee that the constitutions on Montana, North Dakota, and South Dakota have ceded to the United States exclusive legislative jurisdiction over certain specified areas, so that amendments to the constitutions might be required in effecting changes of the jurisdictional status of the areas involved. The constitution of the State of Washington gives the consent of the State to the exercise of exclusive legislation by the United States over tracts of land held or reserved for the purposes of article I, section 8, clause 17, of the United States Constitution, so that no limitation apparently may be placed by the State legislature on the exercise by the United States of exclusive jurisdiction over such areas within the State. While three other States (California, Georgia, and Texas) also have constitutional provisions which bear some relation to legislative jurisdiction, such relation is indirect and relatively insignificant.

The Committee's study indicates that as recently as 25 years ago all States had in effect consent or cession statutes of more or less general application which permitted the vesting in the United States of exclusive legislative jurisdiction, or substantially exclusive legislative jurisdiction, over properties acquired by it within the State. As of

December 31, 1955, only 25 States (identified in the table presented at the end of this chapter) continued to have such statutes. In addition, exclusive (or lesser) jurisdiction may be ceded in Virginia by action of the Governor and attorney general, and in Florida and Alabama by their respective Governors. Three States, Illinois, Kentucky, and Tennessee, have wholly repealed their consent and cession statutes. Pennsylvania consents to the Federal acquisition of property (and therefore exclusive legislative jurisdiction over such property) necessary for the erection of aids to navigation, but not for other purposes of the Government. The other States have consent and cession statutes containing various limitations and reservations. All States which have such statutes reserve authority for the service of process upon areas the jurisdiction over which is transferred based on events which occurred off the areas. The table which appears at the end of this chapter, together with its notes, gives certain information concerning the provisions made in State constitutions and statutes with respect to legislative jurisdiction. For more detailed information it is suggested that reference be had to appendix B to this report.

Expressions by State attorneys general respecting Federal exercise of jurisdiction.—The attitude of the attorney general of Kentucky with respect to the exercise by the Federal Government of exclusive legislative jurisdiction over areas within his State, which was particularly well expressed, perhaps reflects views of other State officials and reasons why the States have tended in recent years to limit the availability to the United States of legislative jurisdiction:

In commenting generally, we feel that the existence of any Federal enclaves in this State has probably been conducive to embarrassment to both the Federal and the State authorities. We have noted in our dealings with the Atomic Energy Commission at Paducah, whose installation there is partially within a Federal enclave and partially without, that this most secret of all Federal activities can be carried on most successfully within the State jurisdiction, and the Atomic Energy Commission officials with whom we have dealt have so expressed themselves. The transfer of jurisdiction to the Federal Government is an anachronism which has survived from the early period of our history when Federal powers were so strictly limited that care had to be taken to protect the Federal Government from encroachment by officials of the all-powerful States. Needless to say, this condition is now exactly reversed. If there is any activity which the Federal Government cannot undertake on its own property without the cession of jurisdiction, we are unaware of it.

It is our hope that your Committee will be able to recommend a retrocession to Kentucky of all of the Federal enclaves in this State, so that our local governments, our law courts, our administrative agencies and our Federal officials themselves may cease to be vexed with this annoying and useless anachronism.

Another view, which is, nevertheless, critical of practices of Federal agencies with respect to the acquisition of legislative jurisdiction, is also well stated by the attorney general of New York:

It would seem that it would result in a change for the better if acquisition by the United States of jurisdiction over areas in this State were limited to those cases in which such acquisition is absolutely necessary to the accomplishment of the Federal purposes for which the lands have been or are acquired and to which they are devoted, and that the jurisdiction heretofore acquired by the United States should be returned to the State in all cases where its retention by the United States is not absolutely required.

It is difficult to see, for instance, how the advantages, if any, outweigh the disadvantages of acquisition by the United States of exclusive jurisdiction over sites within the State acquired for the purposes of post offices, office buildings, courthouses, lighthouses, veterans' hospitals, and the like. In the absence of exclusive Federal jurisdiction, such places and the inhabitants thereof would be subject to and would receive the protection and benefits of State and local laws except insofar as the operation of such laws might adversely affect the United States in the use of the property for the purposes for which it is maintained (*Surplus Trading Co. v. Cook*, 281 U. S. 647, 650).

A good beginning was made by the act of Congress of February 1, 1940 (54 Stat. 19; 40 U. S. C. A. 255), sometimes erroneously referred to as the act of October 9, 1940 (54 Stat. 1083). Adoption of that act followed the decisions of the Supreme Court in *James v. Dravo Contracting Co.*, 302 U. S. 134; *Mason Co. v. Tax Commission*, 302 U. S. 186; and *Collins v. Yosemite Park Co.*, 304 U. S. 518 (See *Adams v. U. S.*, 319 U. S. 312).

One of the underlying reasons for that act was a realization by Congress of the fact, adverted to by the Supreme Court at page 148 of its opinion in *James v. Dravo Contracting Co.*, that "a transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interests of both the National Government and of the State, that the latter should not be entirely ousted of its jurisdiction." But the benefits of that act will not be achieved in the measure hoped for unless administrative departments of the Federal Government exercise a discriminating, self-imposed restraint in applying for and accepting cessions to the United States of exclusive jurisdiction over lands within the State.

Not all attorneys general were critical of the exercise of legislative jurisdiction, however. The attorneys general of Maine and Florida, for example, indicated that their problems arising out of legislative jurisdiction were minor. Nevertheless, in each instance the existence of such problems was acknowledged.

Difficulty of determining jurisdictional status of Federal areas.—Perhaps the problems most often referred to by State attorneys general arose out of the difficulty of determining the jurisdictional status of federally owned areas, where the task was to ascertain whether State laws, or which State laws, applied in an area. In Kansas and in Maryland, for example, there presently exist serious situations with respect to the indefinite jurisdictional status of important highways. The basic question involved in the Kansas situa-

tion appears to be whether the Federal Government in 1875 received legislative jurisdiction over a federally owned highway adjoining Fort Leavenworth on which many problems of law enforcement now occur. The Maryland situation arises out of the fact that a large portion of the Baltimore-Washington Expressway, contained almost wholly within the territorial boundaries of the State of Maryland, passes through areas acquired at separate times, for separate purposes, and with differing legislative jurisdictional statuses, by the Federal Government. Since the United States has exclusive legislative jurisdiction over various of these areas the boundaries of which cannot easily be established there exists a Balkanized situation on the highway as a result of which Maryland law-enforcement authorities are finding it virtually impossible, particularly with respect to traffic violations, to establish jurisdiction over crimes committed on segments of the highway which actually are within their jurisdictional authority.

On the subject of what gives rise to the principal difficulties had by States with respect to areas under Federal jurisdiction the attorney general of Maryland states:

I would generally say that the most important item to be considered at the outset, insofar as the State of Maryland is concerned, is an exact inventory of each and every item of federally owned real estate, together with an ascertainment of the existing jurisdictional picture as to each such area. Once we have determined this, we will be in a far better position to assess what is necessary in the way of agreements between the Federal Government and the State and in clarifying legislation.

Taxing problems.—These are another apparently serious concern arising for State attorneys general and other State officials out of legislative jurisdictional situations. In the usual case the problem does not directly involve the United States or an instrumentality thereof, the immunities of which from State and local taxation are well known to responsible State officials. Rather, the problems arise from legal discriminations still existing with respect to areas under Federal exclusive legislative jurisdiction whereby residents of such areas, persons doing business in the areas, and privately owned property contained in the areas, must receive from State and local taxing authorities treatment different from that accorded to very similarly situated persons and property on areas as to which the United States does not have exclusive legislative jurisdiction. The situation is obviously complicated by the fact that the imposition of certain taxes on private persons, activities, and properties in Federal exclusive legislative jurisdiction areas have been authorized by the Congress, while others have not.

A frequently mentioned problem in the tax field was that arising with respect to so-called Wherry housing, which is housing constructed and operated by private persons for military personnel. This housing is usually located on land leased from the Federal Government which is part of the site of a military installation, and which often is under the exclusive legislative jurisdiction of the United States. While the Congress has in certain specific terms authorized State and local taxation of private leasehold interests in such housing projects, many States and local taxing districts do not have tax laws applicable to leasehold interests, as distinguished from fee interests, and hence are having difficulty in collecting revenue from that interest which the Congress has made taxable. However, this particular problem does not arise out of legislative jurisdictional status. A related problem, as to whether the Congress authorized the imposition of taxes on such leasehold interests where the housing is located on land under the exclusive jurisdiction of the United States is presently before the Supreme Court of the United States.

Other problems.—Numerous problems of criminal jurisdiction, licensing and control of alcoholic beverages, and licensing and control of persons engaged in occupations affecting public health and safety were mentioned by attorneys general as arising in areas under the legislative jurisdiction of the United States.

The attorneys general also made frequent references to problems existing for residents of exclusive jurisdiction areas and their children, particularly with respect to voting, divorce, old age assistance, admission to State institutions, and loss of rights to attendance at public schools.

Summary.—The information received by the Committee from State sources indicates that numerous problems for States and local governmental entities, and for persons residing in Federal areas within the States result from Federal legislative jurisdiction, and particularly exclusive legislative jurisdiction, over such areas, with a considerable disruption of the normal relations of State and other governmental entities with persons within their geographical boundaries.

Analysis of State constitutional provisions and statutes of general effect concerning the acquisition of legislative jurisdiction by the United States

States	Constitutional provision	Consent to purchase	Cession of jurisdiction		Written instrument required by State	State reservations, restrictions, conditions, and other requirements							Others	Duration of jurisdiction as specifically provided for by statute	
			Exclusive	Concurrent		Jurisdiction retained over persons		Description and plat filing	Full power of taxation	Limited general power of taxation	Personal property tax	Income tax			Miscellaneous tax provisions
						Civil	Criminal								
Alabama	No	Yes	Governor may cede such jurisdiction he deems necessary. ¹		Yes	No	No	No	No	Yes	Yes		So long as owned and used for the purposes of cession.		
Arizona	No	Yes	Yes ²		No	No	No	No	No	No	No		Public domain—so long as reserved for military: Acquired—so long as owned.		
Arkansas	No	Yes	Yes ³		No	No	No	No	No	No	No		No provision.		
California	Yes ⁴	Yes ⁵		Yes	No ⁶	Yes ⁷	No	No	Yes	Yes	Yes		So long as owned and compliance with Sec. 126 of Government Code (California).		
Colorado	No	Yes	Yes		No	No	No	No	No	No	No		So long as owned.		
Connecticut	No	Yes	Yes		No	No	No	No	No	No	No		So long as owned. For aid of navigation lands. ⁸		
Delaware	No	Yes ⁹	Yes		No	No	No	No	No	No	No		No provision. ¹⁰		
Florida	No	Yes	Governor may cede exclusive jurisdiction on application.		Yes ¹¹	Yes ¹¹	No	No	No	No	No		So long as owned and used for the purposes set forth in statute.		
Georgia	Yes ¹²	Yes	Yes	Yes ¹³	No	Yes ¹⁴	No	No	No	No	No	Yes ¹⁵	So long as owned.		
Idaho	No	Yes	General cession and consent statutes repealed by 2 acts of July 10, 1933 (Jones Illinois Statutes Ann., Vol. 28, 1933, cumulative supplement, p. 20.) ¹⁶		No	No	No	No	No	No	No		No provision.		
Illinois	No	Yes			No	No	No	Yes	No	No	No		Do.		
Indiana	No	No ¹⁷	Yes ¹⁷	Yes ¹⁷	No	No	No	Yes	No	No	Yes ¹⁸		Do.		
Iowa	No	Yes	Yes	Yes ¹⁹	No	Yes ¹⁹	No	No	No	No	No		So long as owned, or lands conveyed to private owners.		
Kansas	No	Yes	General assembly may cede jurisdiction if deems proper. ²¹	Yes	No	Yes ²⁰	No	No	No	No	No	Yes ²¹	So long as owned or leased.		
Kentucky	No	Yes			No	No	No	No	No	No	No		So long as owned.		
Louisiana	No	Yes	Yes ²³		No	No	No	No	No	No	No		So long as owned.		
Maine	No	Yes	Yes		No	No	No	No	No	No	No		So long as owned.		

Analysis of State constitutional provisions and statutes of general effect concerning the acquisition of legislative jurisdiction by the United States—Continued

States	Constitutional provision	Cession of jurisdiction—			Written instrument required by State	Jurisdiction retained over persons		Description and plat filing	Full power of taxation	Limited general power of taxation	Personal property tax	Income tax	Miscellaneous tax provisions	Others	Duration of jurisdiction as specifically provided for by statute
		Exclusive	Concurrent	Partial		Civil	Criminal								
Virginia	No....	Governor and Attorney General may cede additional jurisdiction.	Yes ¹ ..	Yes ² ..	Yes ³ ..	Yes ⁴ ..	Yes ⁵ ..	No ⁶ ..	No....	No....	Yes	No....	Yes ⁷ ..	Yes ⁸ ..	So long as owned and used for purposes of cession. (Reverts if not used for 5 years.)
Washington	Yes ¹ ..	Yes	Yes	Yes	No....	Yes ² ..	Yes ³ ..	Yes	Yes	Yes	Yes	Yes	Yes	Do.	Do.
West Virginia	No....	Yes	Yes	Yes	No....	Yes	Yes	No....	Yes	Yes	Yes	Yes	No....	Do.	So long as owned.
Wisconsin	No....	Yes	Yes	Yes	Yes	No....	No....	Yes	No....	No....	No....	No....	No....	Do.	So long as owned.
Wyoming	No....	Yes	Yes	Yes	No....	No....	No....	No....	No....	No....	No....	No....	No....	Do.	Do.

¹ Alabama: Whether the State retains civil or criminal jurisdiction over persons in the territory acquired by United States depends on the type of jurisdiction ceded to United States by Governor. The State reserves the right to exercise over Government lands all jurisdiction which may be released or received by the United States to the State.

² Arizona: Includes public domain land reserved or used for military purposes.

³ Arkansas: Concurrent jurisdiction over wildlife in national forests ceded to the United States.

⁴ California: State constitution requires the United States to conform to State laws with respect to water on lands acquired by the United States.

⁵ California: County board of supervisors may acquire and convey lands to United States for any military purposes. Legislative body of a local agency may acquire and convey land which it owns to United States for Federal purposes. Governor, on application by a duly authorized agent, may convey to the United States any tract of land, not exceeding 10 acres, belonging to the State and covered by navigable waters for aids to navigation.

⁶ California: Certified copies of the State Lands Commission's orders or resolutions to be filed in office of the California secretary of state and recorded in the county where the land is situated.

⁷ California: Reserves all civil and political rights, including the right of suffrage, to all persons residing in ceded territory.

⁸ Connecticut: Lands in aid of navigation conveyed by the State to the United States revert to the State if not built on within 5 years or United States abandons use of land for such purposes.

⁹ Delaware: Consent given to acquisition of not exceeding 100 acres for forts, magazines, arsenals, and dock yards, 10 acres for lighthouses, 1 acre for any lifesaving station in any one place or locality.

¹⁰ Delaware: Title to land acquired for aids to navigation escheat to State if construction thereon not commenced within 2 years and completed 10 years thereafter. Florida: Any person in the service of the United States Government living within the borders of the State is deemed a resident for the purpose of maintaining any suit in chancery or action at law.

¹¹ Georgia: State constitution permits any resident of a United States Army post or military reservation within the State for 1 year to bring an action for divorce in any county.

¹² Georgia: State cedes exclusive jurisdiction over wildlife in national forests to United States.

¹³ Georgia: State retains civil and criminal jurisdiction over persons in ceded territory, except territory used by the Department of Defense. But see footnote 12 supra.

¹⁴ Georgia: State retains jurisdiction over the regulation of public utility services in any ceded territory.

- the right to tax sales of motor fuels and persons and corporations on roads and parkways.¹⁵
- ¹⁶ Missouri: State consents to United States' acquisition of exclusive jurisdiction over land for internal revenue purposes. Government offices (other than those required for military hospitals, hospitals, sanitariums, fish hatcheries, and land for reclamation, reclamation, and agricultural uses.
- ¹⁷ Montana: State constitution grants exclusive jurisdiction to United States over Fort Simsburn, Fort Custer, Fort Knoch, Fort Macinnis, Fort Missoula, and Fort Shaw so long as they remain military reservations. General session laws provide that the jurisdiction of the United States over other places is qualified by the terms of cession, or the laws under which such land was purchased or condemned.
- ¹⁸ Montana: By general cession laws, State reserves right to serve and execute civil or criminal process in any suits or transactions or on account of any rights obtained, obligations incurred, or crimes committed in this State, within or without such territory.
- ¹⁹ Montana: By general cession laws, State reserves right to tax persons and corporations, their franchises and property within said territory.
- ²⁰ Montana: State reserves to its inhabitants and citizens the right to fish and hunt; and State reserves the right of access, ingress, and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same. State also reserves jurisdiction to enforce laws relating to the duties of the Livestock Sanitary Board and the State Board of Health, and their regulations.
- ²¹ Nevada: State consents to Federal acquisition of land required by Department of Defense or Atomic Energy Commission; as to other lands, except lands or water rights located within existing national forests, State consent given by concurrence of a majority of the members of the State Tax Commission, which majority shall include the Governor.
- ²² Nevada: State reserves right to serve any criminal or civil process upon land acquired for the Department of Defense or Atomic Energy Commission for any cause there or elsewhere in the State arising. Except for lands acquired for the purposes expressly provided for in art. 1, sec. 8, clause 17, of the United States Constitution, State reserves jurisdiction over all civil and criminal cases, and to all persons residing on such land all civil and political rights, including the right of suffrage.
- ²³ Nevada: Map required only for lands acquired by Department of Defense or Atomic Energy Commission.
- ²⁴ Nevada: On lands acquired by Department of Defense or Atomic Energy Commission, State reserves only the right to tax private property.
- ²⁵ Nevada: On lands acquired by United States, other than for the Department of Defense or Atomic Energy Commission, United States must make tax payments or in lieu of tax payments, unless the State waives same.
- ²⁶ Nevada: Except land acquired by Department of Defense or Atomic Energy Commission, State reserves the right to control, maintain, and operate all State highways constructed upon land acquired by the United States.
- ²⁷ New Mexico: Persons residing on lands ceded to the United States may establish residence for voting purposes. Military personnel who have been continuously stationed on any military base or installation in the State for 1 year shall be deemed residents of the State and county where such base or military installation is located for maintaining an action for divorce.
- ²⁸ New York: Aside from certain exceptions, cession laws (art. 4) do not apply to Orange County.
- ²⁹ North Carolina: State retained concurrent criminal jurisdiction over lands acquired by United States between 1905 and 1907 for purposes specified in sec. 104-1. State cedes exclusive jurisdiction over wildlife in national forests.

- ³⁰ Illinois: Act granting to the United States right to enter upon and take possession of small parcels or tracts of land lying within Illinois on waters of Ohio and Wabash Rivers not repealed.
- ³¹ Indiana: Exclusive jurisdiction granted United States over sites for river improvements. State consents to the United States purchasing lands lying on the banks of Ohio or Wabash Rivers for river improvements, and cedes exclusive jurisdiction and rights of assessment and taxation over such lands.
- ³² Indiana: State reserves right to tax gross receipts or income of any person, firm, partnership, association, or corporation which is received on account of performance of contracts or other activities upon lands acquired for post offices, customhouses, or other structures used for Government purposes, but not including lands acquired for light-house sites or river improvement.
- ³³ Iowa: United States may exercise jurisdiction over acquired lands, but not to the extent of limiting the provisions of the laws of the State. State reserves concurrent criminal jurisdiction over lands held by United States, except when used for naval or military purposes.
- ³⁴ Kansas: A resident of any United States Army post or military reservation within the State for 1 year may bring an action for divorce in any adjacent county.
- ³⁵ Kansas: State reserves right to tax the property and franchises of any railroad, bridge, or other corporations within the boundaries of such lands.
- ³⁶ Kentucky: Commonwealth consents to any retrocession by the United States of lands within its boundaries whenever the United States shall cease to exercise jurisdiction over such lands. The conveyance of lands to private owners is deemed to constitute a retrocession.
- ³⁷ Louisiana: State cedes exclusive jurisdiction over wildlife in national forests to United States.
- ³⁸ Maryland: Prior to 1947, State ceded exclusive jurisdiction over lands acquired for customhouses, courthouses, postoffices, aids to navigation, and military purposes; and partial jurisdiction for other public purposes. It might be argued that since the United States Constitution does not require the acquisition by the United States of any jurisdiction it was the intent of the Maryland Legislature to retain to the State full jurisdiction and that the United States can acquire only a proprietorial interest over lands in that State. On the other hand, it might be contended that since the State had previous to the 1947 statute ceded exclusive jurisdiction, the legislature only intended to reserve concurrent jurisdiction by that statute and now offers to cede that measure of jurisdiction to the United States.
- ³⁹ Minnesota: Consent to purchase given by land exchange commission, upon application of the United States.
- ⁴⁰ Minnesota: State cedes exclusive jurisdiction in or over any place owned or acquired by the United States for any purpose specified in sec. 1.042 required by or under the Constitution or laws of the United States.
- ⁴¹ Minnesota: Consent to acquisition of land or exercise of jurisdiction by United States evidenced by certificate of Governor.
- ⁴² Minnesota: State retains right to protect, regulate, control, and dispose of any property of the State therein.
- ⁴³ Mississippi: State cedes exclusive jurisdiction to the United States over lands acquired for customhouses, post offices, or other public buildings, and over wildlife in national forests. For any other public works or purposes, the Governor, upon application of the United States, is authorized to cede jurisdiction for the purpose of the cession; however, such cession of jurisdiction does not prevent the laws of Mississippi from operating over such land. United States may also acquire lands for roadways or parkways over which State cedes partial jurisdiction, reserving, however,

⁴⁴ Ohio: Officers, employees, or inmates of any national asylum for disabled volunteer soldiers and infirm or disabled soldiers who are inmates of a national home may exercise the right of suffrage, if otherwise qualified.

⁴⁵ Pennsylvania: No general cession laws as to lands dedicated to military purposes. State cedes partial jurisdiction to United States over lands not to exceed 10 acres to be used for purposes of erecting post offices, customhouses, or other structures exclusively owned and used by United States. State consents to acquisition by United States, by purchase or otherwise, of lands for dams, locks, etc., over which United States is given concurrent jurisdiction.

⁴⁶ Pennsylvania: Not required for lands acquired for dams, locks, etc.

⁴⁷ Pennsylvania: No provision for lands acquired for dams, locks, etc.

⁴⁸ South Carolina: Certain statutes enacted prior 1908 ceding lesser jurisdiction to United States carried in code.

⁴⁹ South Dakota: Tracts acquired for public buildings shall not exceed 10 acres.

⁵⁰ Tennessee: By acts of 1867, State ceded exclusive jurisdiction to the United States over lands thereafter acquired for national cemeteries. Notarial acts performed by any commissioned officer in active service of the Armed Forces may be filed or used in any court in the State. Persons residing on Federal territory within the boundaries of State for 1 year meet residence requirements for adoption purposes.

⁵¹ Texas: Governor cedes jurisdiction after application for such by United States. Texas State reserves right to tax personal property as well as any portion of the Government lands and improvements which are used by any person, association, firm, or corporation in a private capacity or to conduct a private business.

⁵² Utah: Includes lands held by United States under lease, use permit, or reserved from the public domain.

⁵³ Vermont: Consent not given to land acquisition for flood control purposes or for other needful buildings unless and until acquired by the State and conveyed to United States with written approval of Governor.

⁵⁴ Virginia: Unconditional consent given for acquisition of post offices.

⁵⁵ Virginia: State retains concurrent jurisdiction so far as it lawfully can over lands acquired by the United States prior to 1919 over which the United States obtained jurisdiction.

⁵⁶ Virginia: Deed required when jurisdiction in addition to what is granted in secs. 7-18, 7-19, and 7-21 is requested by the head or other authorized officer of any department or agency of the United States (sec. 7-24, Code of Virginia, 1930). Under the last-mentioned section, exclusive jurisdiction may be ceded by deed executed by the governor and the attorney general.

⁵⁷ Virginia: For all purposes of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands are deemed to be a part of the county or city in which they are situated.

⁵⁸ Virginia: Over all lands acquired by or leased or conveyed to the United States pursuant to the conditional consent conferred, the State cedes to the United States concurrent jurisdiction, legislative, executive, and judicial, with respect to the commission of crimes and the arrest, trial, and punishment therefor.

⁵⁹ Virginia: Filing of description required for acquisition of waste and unappropriated lands.

⁶⁰ Virginia: State reserves the power to levy a tax on oil, gasoline, and all other motor fuels and lubricants owned by others than the United States and a tax on the sale thereof on such lands, except sales to the United States for use in the exercise of essentially governmental functions.

⁶¹ Virginia: The State further reserves the right to license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands and to tax all property, including buildings erected thereon, not belonging to the United States and to require licenses and impose license taxes upon any business or businesses conducted thereon.

⁶² Washington: Constitutional consent given to the United States exercising exclusive legislation over land then held or reserved by the United States. General cession laws cede concurrent jurisdiction to the United States, saving cessions of jurisdiction before act, but expressly reserving such jurisdiction and authority over land acquired or to be acquired by the United States as is not inconsistent with jurisdiction ceded to the United States. Statutory consent given to the United States to exercise exclusive legislation over lands acquired by donations from any county.

CHAPTER VI

JURISDICTIONAL PREFERENCES OF FEDERAL AGENCIES

Basic grouping of jurisdictional preferences.—Federal agencies can be divided into three groups as to their views of their legislative jurisdictional needs. Those in the first group feel that their functions are carried on most effectively when the United States acquires exclusive legislative jurisdiction—or some shade of partial jurisdiction approaching exclusive—over the sites of some of the installations under their management; the second group consists of agencies which consider concurrent legislative jurisdiction most suited to their requirements; and the third and largest group is made up of agencies which consider that only a proprietorial interest in the Federal Government, with legislative jurisdiction left in the States, best suits the requirement of their operations.

Agencies preferring exclusive or partial jurisdiction.—The group preferring exclusive or partial legislative jurisdiction includes the Veterans' Administration (which states that it desires exclusive jurisdiction, or at least concurrent jurisdiction, over all its installations except office buildings in urban areas, as to which a proprietorial interest only is deemed satisfactory), the National Park Service of the Department of the Interior (which desires to have partial jurisdiction over national parks and over national monuments of large land area), and the three military departments, the Department of the Army (which desires to procure or retain exclusive as well as other forms of legislative jurisdiction over various individual installations on an individually determined basis, except as to land dedicated to civil projects of the Corps of Engineers, for which only a proprietorial interest in the United States as may be necessary is deemed best suited), the Department of the Navy (which desires an exclusive or certain partial legislative jurisdiction for its major installations, on an individually determined basis), and the Department of the Air Force (which desires a partial legislative jurisdiction but which would find concurrent legislative jurisdiction acceptable under certain conditions). Also, the Bureau of the Census and the Civil Aeronautics Administration of the Department of Commerce each consider that no less than an existing exclusive or partial legislative jurisdiction is best suited to one certain Federal property which each occupies.

Agencies preferring concurrent jurisdiction.—The group preferring, in special situations, concurrent jurisdiction for certain of its properties consists of the General Services Administration (which finds a proprietorial interest sufficient for general purposes but, in the event of a failure to secure certain statutory changes hereinafter recommended, would desire concurrent jurisdiction for limited areas requiring special police services), the Department of Health, Education, and Welfare (which desires such jurisdiction for a small number of properties in special situations, but which considers a proprietorial interest generally satisfactory), the Department of the Navy (which desires such jurisdiction, but alternatively would not find only a proprietorial interest grossly objectionable, as to all properties other than the major properties for which it determined exclusive or partial legislative jurisdiction most desirable), the Bureau of Prisons of the Department of Justice (which desires concurrent legislative jurisdiction for its installations in which prisoners are maintained), the Bureau of Public Roads of the Department of Commerce (which desires concurrent jurisdiction for five installations), and the Department of the Interior (which considers that this status may be desirable for certain wildlife areas).

Agencies preferring a proprietorial interest only.—The last and largest group, which desires for its properties only a proprietorial interest in the United States, with legislative jurisdiction left in the States, includes all Federal agencies not mentioned in the two paragraphs above which occupy or supervise real property of the United States and, as to certain of their properties, several of the mentioned agencies. Among the major landholding agencies in this third group are the Department of the Interior as to the great bulk of its lands, the Department of Agriculture, the General Services Administration for all of its properties (except those as to which concurrent jurisdiction is required unless certain amendments to its authority to furnish special police services are enacted), the Tennessee Valley Authority (which reserved judgment as to whether one certain installation should be under an exclusive jurisdiction status for security reasons), the Atomic Energy Commission, the Department of the Treasury, the Housing and Home Finance Agency, the Department of Health, Education, and Welfare as to most of its properties, and the International Boundary and Water Commission. The Central Intelligence Agency and the Immigration and Naturalization Service of the Department of Justice hold relatively minor amounts of real property but it is interesting to note, in view of the security aspects of their operations, that they are also included in the group which desires only a proprietorial interest for their properties.

Lands held in other than the preferred status.—One of the facts which early came to the attention of the Committee is that while many Federal agencies have more or less definite views as to what legislative jurisdictional status is best suited for their lands in the light of the purposes to which the lands are put, they often hold large proportions of such lands in different status. The Central Intelligence Agency and the United States Information Agency are the only Federal agencies which hold all their properties solely in the status (proprietary interest only) which they consider best for their purposes.

Where, as is usually the case, the lands are held with more jurisdiction in the United States than is considered best by the Federal agency concerned, the explanation often, and with most agencies, lies in the fact that jurisdiction was acquired prior to February 1, 1940, during the 100-year period when it was generally mandatory under Federal law (Rev. Stat. 355, see appendix B) that agencies procure the consent of the State to purchase of land (whereby the United States acquired exclusive legislative jurisdiction over such land by operation of art. I, sec. 8, clause 17, of the Constitution). In other instances the land was acquired by transfer from other agencies which preferred a status involving more jurisdiction in the United States than is desired by the agency presently utilizing the property. The latter is particularly true of the Atomic Energy Commission, the Department of Agriculture, and other agencies desiring little or no legislative jurisdiction, which now hold certain lands originally acquired by one of the military departments. In still other instances an agency has been required by old Federal statutes, or by newer legislation patterned on old statutes, to acquire a particular type of jurisdiction over land to be utilized for certain purposes. The last reason applies to lighthouse sites and certain other Coast Guard properties, as to which section 4661 of the Revised Statutes of the United States (33 U. S. C. 777 (see appendix B)), requires acquisition of jurisdiction, and to national park areas under the supervision of the Department of the Interior, the jurisdictional status of which is fixed with few exceptions by statutes pertaining to individual such areas, which statutes for many years apparently have been patterned on similar preexisting laws.

Another basic cause of an excess of jurisdiction in the United States, and of some lack of desired jurisdiction, is that with only three exceptions (Alabama, Florida, and Virginia) the States in their general consent or cession statutes rigidly fix the quantum of jurisdiction available to the Federal Government, which measure of jurisdiction is accepted by Federal agencies actually desiring a lesser measure in

order to avoid requirement for requesting special State legislation. In this connection it may be noted that while Federal law (Rev. Stat. 355, as amended) currently grants authority to Federal administrators to acquire only such jurisdiction as they deem necessary, State laws with the three exceptions noted are not designed to permit any accommodation to differing Federal needs. A further basic cause of an excess of jurisdiction in the United States is the fact, already mentioned, that while Federal law gives authority (with minor exceptions) to Federal administrators to acquire jurisdiction, it does not (with similarly minor exceptions) give them like authority to dispose of jurisdiction once it is acquired.

Where, on the other hand, the lands of an agency are held with less jurisdiction in the United States than is considered best by the Federal agency concerned, the most frequent explanation would appear to be that the State law does not permit the acquisition of the type of legislative jurisdiction desired. The Veterans' Administration, while desiring exclusive jurisdiction (or at least concurrent jurisdiction) in nearly all cases, has accepted no jurisdiction over its more recent acquisitions in California because of what it considers the onerous procedural provisions of the California cession statute and the indefinite nature of the jurisdiction acquired once the procedures have been completed.

Lack of firm agency policy with respect to the quantum of jurisdiction which should be acquired for various types of agency installations is also responsible for many instances in which less jurisdiction than deemed desirable is had by an agency over various of its properties. The Navy, for example, has indicated that its practice has been to acquire legislative jurisdiction over its installations only after the local commander has submitted a justified request for such acquisition. The Committee has received information from several agencies, and the replies of several other agencies suggest the same fact, that until the present study had focused their attention to matters relating to jurisdiction, many Federal agencies had developed no policy in this field. This has been responsible for the acquisition of an excess of jurisdiction more often than of too little jurisdiction, but has been an apparently significant factor in each case. The Committee feels that if its work served no other purpose than has already been accomplished in simulating the agencies to a study of their own policies, practices and procedures with respect to acquisition of legislative jurisdiction it will have been worthwhile.

Difficulty of obtaining information concerning jurisdictional status.—Another factor of considerable significance which has been brought to light by the work of the Committee has been the incompleteness and inaccuracy of agency land records as to the jurisdictional

status of the lands held. In many cases the opinion expressed by an agency as to the type of jurisdiction that existed over a particular installation differed from that expressed by the local commander or manager of the installation. In still other cases no information or opinion whatever appeared to be readily available on the subject. Unfortunately, these situations are confined to no few agencies, but exist rather generally.

Six States (Alabama, California, Florida, New York, Texas, and Virginia) have requirements set out in their general consent or cession laws for the filing of information concerning jurisdictional status with the governor or secretary of state, or the city or county or court clerk or registrar with whom title records are required to be filed. To the extent that such State laws apply, information on the jurisdictional status of an area is available to all interested parties. Otherwise such information apparently may be unavailable except perhaps after considerable research by a person skilled in the law relating to this intricate subject, since jurisdictional status may in a given case depend on a special rather than a general State consent or cession statute, upon acceptance by a Federal administrator, and upon other factors.

CHAPTER VII

ANALYSIS OF FEDERAL AGENCY PREFERENCES

A. GENERAL

Determinations concerning jurisdictional needs.—One of the basic aims of the Committee is to assist Federal agencies, in the light of all the information gathered by the Committee, in determining the actual needs of their installations and activities with respect to legislative jurisdiction. The Committee desires to stress that while it has indicated, in some instances with considerable definiteness, the jurisdictional status which the properties of the several agencies should have, it is of course the individual agencies which have responsibility for their operations, and it is the agencies, not the Committee, which must make the final decision.

Every Federal agency having an interest in matters affected by legislative jurisdiction, and each Federal installation located on federally owned ground in the three sample States (Virginia, Kansas, and California) was specifically requested to indicate the jurisdictional status of its land, any jurisdictional status which the agency or installation supervisor might prefer, the advantages and disadvantages to Federal operations of the several types of jurisdictional status, and the problems which had been experienced out of any matter related to legislative jurisdiction. In addition, the Committee gained a considerable insight into the manifold problems arising out of varying jurisdictional statuses through the many hundreds of Federal and State judicial decisions, and legal opinions, memoranda, and letters on this subject prepared by Federal agency officials, State attorneys general, and others, which were brought to the attention of the Committee by the various cooperating agencies and officials.

B. VIEWS OF AGENCIES DESIRING EXCLUSIVE OR PARTIAL JURISDICTION

State interference with Federal functions.—The views of the Veterans' Administration, the National Park Service of the Department of the Interior, the Bureau of the Census and the Civil Aeronautics Administration of the Department of Commerce, and the three military departments, most nearly follow the traditional Federal policy, almost uniform prior to 1940, that the United States needs to acquire

exclusive legislative jurisdiction over the sites of its installations if it is to perform its constitutional functions effectively. The Army report, which is very similar in this respect to a Marine Corps report, has perhaps expressed the basic reasoning underlying this traditional Federal view most effectively in its discussion of the reason numerous local commanders have urged the acquisition of exclusive legislative jurisdiction. The Army report states:

This is understandable when it is considered that a post commander is charged with the administration, protection, security, safety, and care of the properties under his control, including, in a limited sense, the conduct and activities of the personnel within such areas. Such a commander should, of course, be free in the above respects with the least possible interference by State or local authorities.

Whether the carrying out of these responsibilities is substantially related to the jurisdictional status of the site of the installation will bear further examination.

Direct interference.—Freedom from interference in their operations by State and local authorities is, indeed, mentioned as a desirable factor by the Navy, Air Force and Veterans' Administration as well as the Army, and in the answers of numerous local managers or commanders of installations of these and various other agencies. While each of the agency answers to questionnaire A indicates that the reporting agency is fully aware of the constitutional immunity of Federal functions from any direct State interference, it would appear that there is an understandable lack of such knowledge on the part of some local commanders and managers. However, notwithstanding knowledge of immunities apart from those flowing from jurisdictional status, these agencies believe that exclusive jurisdiction aids them in securing freedom from State and local interference. As stated in the Navy report:

The principle that the Federal Government enjoys a constitutional immunity from interference by the States is clearly established. But the boundaries of that immunity are by no means well-established * * * If a State has concurrent jurisdiction over an installation and a conflict occurs as to the applicability of State law, an assertion of Federal immunity having been made, it is true that the issue may ultimately be resolved in favor of immunity, but the delay, expense and effort involved in establishing such immunity, are, in fact, almost as much an interference as would be actual control by the State.

Almost the identical thought has been expressed by the Veterans' Administration. That agency states:

Circumstances and exigencies do not always accommodate themselves to extended litigation to determine the fine line of demarcation between Federal and State jurisdictions.

Four basic reasons have been advanced by the Veterans' Administration for preferring exclusive legislative jurisdiction. These are that such a jurisdictional status obviates: (1) conformance to local building codes, (2) State or local interference in hospital operations as regards boiler plant operation, or sanitation, water, or sewage disposal arrangements, (3) confusion as to police authority, and (4) requirements for compliance with numerous and varied State and local licensing and inspection practices, such as any requirement with respect to State licensing of Administration physicians.

The question of compliance by the agency with various types of State and local statutes enacted under the police powers of the States, statutes designed for the protection of the health and safety of the public, apparently is the principal basis of the concern on the part of the Veterans' Administration, and indeed is a matter on which concern was expressed by several other agencies. Among the types of statutes and regulations involved aside from those regulating matters mentioned by the Veterans' Administration, are health regulations, fire prevention regulations, elevator inspection codes, vehicle inspection laws, and others of a like nature. The immunity of Federal operations such as those conducted by the Veterans' Administration and each of the other agencies raising this question from State interference stems not from Federal jurisdiction over the land upon which the operations are conducted but is incident to the status of the operations as functions vested in the Federal Government by the Constitution. The Federal Government's constitutional immunity from direct State interference with the carrying out of Federal functions would appear to be clearly established. The Committee therefore views the acquisition of any measure of Federal jurisdiction unnecessary in order to secure freedom from any direct interference in this field.

The Veterans' Administration's concern (reason No. 3), that a jurisdictional status other than exclusive jurisdiction in the United States might lead to confusion as to police authority over the area, would not appear to find support in the cases of its reporting installations as to which the United States has other than exclusive jurisdiction, none of which has reported any such confusion. It appears to be a fact, on the other hand, that in some instances local police presently are rendering service on Veterans' Administration installations under the exclusive jurisdiction of the United States, in cooperation with the managements of such installations, which services very likely involve extra-legal arrests and other actions.

Various bureaus of the Department of the Interior have expressed concern as to whether, in the absence of exclusive jurisdiction, con-

troversies with the States over compliance with State hunting license, bag limit, open season and similar fish and game regulations in carrying out programs of reduction of game over-population on certain properties and extermination of carp and similar harmful species in the waters thereof will not increase. The Committee agrees with the Department in its view that just as the Department may not be prevented from carrying out such programs on its lands, even though it has acquired no Federal legislative jurisdiction over them, a State cannot control the manner in which it carries them out. (*See Hunt v. United States*, 278 U. S. 96 (1928)).

The implication of the mentioned remarks by the Department of the Navy, the Veterans' Administration, and the Department of the Interior might appear to be that Federal and State authorities are in a constant state of conflict over the application of State authority to Federal reservations. But specific information received from the many hundreds of local installations in Virginia, Kansas, and California would indicate that just the opposite is actually the case. Replies of these individual installation managers to questionnaire B give an almost uniform picture of harmony and good relations between themselves and State and local officials. The State and local authorities would appear without significant exception to cooperate fully with Federal officials where such cooperation on their part is desired, and to adopt a hands-off attitude as to those aspects of the installations' activities where it is the desire of the Federal officials that they do so. And this would appear to be the case irrespective of the jurisdictional status of the site of the Federal installation.

While it is true that the hundreds of court decisions, legal opinions, memoranda of law, and similar material dealing with conflicts that have arisen in this field would indicate that such harmonious relations have not always existed, it would appear that as of the present time the relations between State and local officials are generally on a live-and-let-live basis. In addition, an examination of the synopses of this material by the Committee has led it to the belief that a very large proportion of the conflicts dealt with problems that no longer exist (e. g., taxation questions now no longer in existence by virtue of the Buck Act, Federal Aid Highway Act (Hayden-Cartwright Act), and similar enactments) or with matters where the Federal Government could have secured immunity on either of two grounds—exclusive legislative jurisdiction in the United States or Federal constitutional immunity from State interference, and on whichever ground the Federal Government has stood it has similarly prevailed. The history of the existence of conflicts with respect to activities carried out on exclusive legislative jurisdiction lands establishes, more-

over, that all conflicts cannot be avoided by recourse to acquisition of exclusive legislative jurisdiction.

To summarize, in the field of the application of the police powers of the State to the activities of the Federal Government, there can be no application of State authority based on the exercise of such power directly to the Federal Government or its instrumentalities. Thus, whatever immunity from direct State interference is required by an installation manager or commander in the performance of his Federal functions would appear to be sufficiently guaranteed to him by constitutional provisions other than that dealing with exclusive legislative jurisdiction and those problems envisaged in determining the boundaries of this Federal immunity do not appear to have arisen in actual practice to any significant degree. The fact that they have arisen, and in exclusive jurisdiction areas, demonstrates that exclusive jurisdiction is not a panacea for avoiding such problems.

After careful consideration of the foregoing the Committee is constrained to the view that the necessity for avoidance of direct State or local interference with Federal activities is entitled to little weight as a factor in determining the need for exclusive legislative jurisdiction on the part of the Federal Government.

Indirect interference.—A matter of considerable significance to the agencies which have favored exclusive jurisdiction for their installations within the States is the lack of immunity of the Federal Government and its instrumentalities, in the absence of such jurisdiction, from certain indirect State interference with, or certain regulation and control of, various activities at the installations. By "indirect" is meant a control or interference accomplished by controlling or regulating private persons, corporations, or agencies that are in the position of employees of the Federal Government or are acting as its suppliers, contractors, or concessionaires rather than by a direct impingement of State authority upon an arm of the Government. The Army, for instance, expresses concern over the adverse effect State miscegenation statutes might have on its troop deployment and assignment procedures if less than exclusive legislative jurisdiction is had over bases within States having such laws in effect. It is noted by the Committee, however, that the Army presently has less than exclusive jurisdiction over numerous bases without apparent adverse effect in this respect. The Department of the Navy envisages increased procurement costs as to items subject to State minimum price regulations if deliveries are made in areas not within the exclusive jurisdiction of the United States, although the General Counsel of that Department is inclined to believe that this factor alone would not justify the acquisition of exclusive legislative jurisdiction. Each of

the military departments expresses the opinion that lack of exclusive legislative jurisdiction would subject the sale, possession, and consumption of alcoholic beverages on military reservations to a very large measure of indirect State control. However, it is not suggested that such control is a seriously adverse factor with respect to the many reservations now under less than exclusive jurisdiction. While these problems are not the sole examples of indirect State control and regulation, they serve to illustrate the varied types of problems with which the land-managing agencies may be required to cope in areas where they do not have exclusive legislative jurisdiction.

Most of the problems which can be ascribed to indirect State interference which Federal agencies and their instrumentalities encounter with respect to installations over which the United States does not exercise exclusive jurisdiction arise from attempts by the States to apply, indirectly, either their taxing or their police powers to Federal activities. As to the taxing power, it is clear that the Federal Government enjoys no general immunity from the economic burden of State taxes imposed on its contractors (*Alabama v. King & Boozer*, 314 U. S. 1 (1941)). Any immunity in this regard must flow from the exclusive jurisdictional status of the site upon which the taxable transaction occurs or the taxable object is located. At the present time the financial savings which accrue to the United States by virtue of this immunity would appear not to be significant in view of Congress' consent to the applicability of State taxes on gasoline sales, other sales and uses, and income earned on Federal reservations regardless of the jurisdictional statuses of the reservations. However, the losses to the States because of their inability to tax privately owned property located on exclusive jurisdiction areas is obviously considerable, although only in relatively rare cases does the United States receive direct benefit from immunity of private property from taxation.

Where license or similar charges, or minimum price laws, imposed under the police power of the State are involved, there would appear to be some advantage to exclusive legislative jurisdiction being vested in the United States. If suppliers of agencies of the United States or their instrumentalities are to enjoy freedom from the applicability of State minimum resale price laws, for example, it must be considered that in the absence of congressional restrictions on the States the suppliers can derive such freedom only from the fact that the sale took place on lands under the exclusive legislative jurisdiction of the United States. The cases of *Penn Dairies, Inc. v. Milk Control Commission* (318 U. S. 261 (1943)), and *Pacific Coast Dairies v. Department of Agriculture of California* (318 U. S. 285 (1943)), would appear to have made at least that much clear.

The alcoholic beverage control laws and regulations of the States would appear to be a source of potential conflict should the United States relinquish its exclusive jurisdiction over lands on which the Federal occupant thereof deals in such beverages. The Federal Government enjoys a considerable amount of freedom from indirect State control in its dealings, through such instrumentalities as officers and noncommissioned officers messes, in alcoholic beverages where such dealings are confined to areas under the exclusive jurisdiction of the United States. Concessionaires of the Government also participate in this freedom. Though the freedom has not gone unchallenged, judging by the large number of legal opinions in which the chief law officers of the various departments have had to defend it, it has been firmly established since the case of *Collins v. Yosemite Park Co.* (304 U. S. 518 (1937)). That case laid down the principle that shipments from an out-of-state supplier to a consignee within a reservation under the exclusive jurisdiction of the United States are not importations into the State within the meaning of the 21st amendment and therefore not subject to control by the State under authority of that amendment. Where the United States does not have exclusive jurisdiction, however, the police power of the State as expressed in its alcoholic beverage control laws and regulations would appear to have a considerable impact on Federal installations. Although there can be no direct interference by the State with Federal instrumentalities, the indirect effects would be considerable, since to a large extent State regulation in this field is exercised through the control, regulation, and licensing of distributors, wholesalers, warehousemen, and like persons. In addition, where sales of alcoholic beverages are handled by concessionaires, as is the case in certain national parks under the administration of the Department of the Interior, such sales and all incidents connected therewith would appear to come under the complete control of the States.

The Committee finds that while the United States and its instrumentalities are not directly subject to State and local laws and regulations which have the effect of impeding Federal use of property, regardless of the legislative jurisdictional status of the property involved, such laws and regulations in some instances indirectly may affect Federal activities to some degree on property which is not immunized from them by its jurisdictional status.

On the other hand, assuming all immunization possible, as by the procurement for an area of exclusive Federal legislative jurisdiction, laws and regulations enacted under the authority of the State may have an even more objectionable effect. Many State-enacted police power regulations would be carried over as Federal laws under the

rule of international law discussed earlier. Because such laws eventually become obsolete, compliance with them would have an even more objectionable effect than compliance with similar, but more up-to-date, State regulatory measures. Under an exclusive legislative jurisdiction status, builders, contractors, and similar persons operating for the Federal Government on a Federal area may be required to comply with the obsolete laws to avoid liability in the event of misadventure, for otherwise they could be held liable in a personal action by an injured party under some circumstances.

It is noted by the Committee that each of the Federal agencies which indicates a preference for a jurisdictional status for its properties which would insulate such properties from application of State laws and regulations presently conducts its activities to a considerable extent and without apparent serious handicap on properties not so insulated.

The Committee feels that weight must be given to all these and other factors in determining whether exclusive legislative jurisdiction, or appropriate partial jurisdiction, is desirable for installations on which various Federal activities are conducted, and it further feels that in the usual case the balance will be on the side of not vesting exclusive or partial jurisdiction in the Federal Government.

Security.—Several agencies have suggested that exclusive (or, in some cases, at least concurrent) jurisdiction is necessary to provide adequately for the physical security of their installations. Although there was no precise definition of the word “security” by the Committee or any of the reporting agencies, it is assumed that all agencies using the term had roughly equivalent understandings of what the term embraced. As used in the present section of this report it should be taken to mean the protection afforded an installation by internal and external measures to control the entrance and departure of all persons into or from the installation and to prevent the unauthorized entry or departure by force or covert means of any persons, to prevent the unauthorized removal of Government property by persons leaving the installation, and all other measures taken by the manager or commander to prevent depredation of Government property, or subversion, sabotage, or similar activities within the installation.

Although security of the installation has been given by several agencies as a reason for desiring legislative jurisdiction (e. g., Army, Air Force, Veterans’ Administration, Bureau of Public Roads), the two agencies with perhaps the greatest need for the security of their installations, the Atomic Energy Commission and the Central Intelligence Agency, indicate that they have experienced no difficulties in enforcing strict security requirements in any of their installations

despite the fact that most of the sites are held under only a proprietary interest. Furthermore, the Department of the Navy, relying on an opinion of the Judge Advocate General of the Navy, reports that it is its view that there is no connection between security of a base and the jurisdictional status of its site. The Navy feels that if the adequate performance of a Federal function requires such measures as erecting fences, arming of guards, or using force in evicting trespassers or protecting Federal property, then the measures may be taken regardless of the jurisdictional status of the land.

On the other hand, certain other agencies have suggested that the arresting of trespassers is on a firmer legal footing if the United States has an appropriate measure of legislative jurisdiction. This is true presently with respect to areas under the supervision of the General Services Administration, because that agency possesses authority under the provisions of the act of June 1, 1948 (62 Stat. 281, as amended (40 U. S. C. 318)), to appoint its uniformed guards as special policemen with powers of arrest somewhat greater than those of a private person only where the United States has acquired exclusive or concurrent jurisdiction over the property. By another provision of the mentioned statute (40 U. S. C. 318b), the General Services Administration may, upon request, detail its special policemen to property administered by other agencies and may extend to such property the application of its regulations. It has been indicated to the Committee, however, that as a matter of policy the General Services Administration will not detail its special policemen to any Federal establishment unless there is already some General Services Administration organization in the vicinity and unless the General Services Administration is allowed to maintain supervision of the guard force. Since many Federal installations are remote from existing General Services Administration organizations and since as a matter of policy certain Federal agencies are unwilling to accede to the latter of these conditions, the acceptance of concurrent or a greater measure of jurisdiction provides no cure-all if police authority is necessary to the security of Government installations. However, the Committee proposes to recommend a helpful amendment to the act of June 1, 1948, as amended, by eliminating therefrom the requirement for exclusive or concurrent jurisdiction, as not constituting a necessary or desirable requirement. With this amendment GSA guards will be able to exercise police powers over federally owned property without regard to its jurisdictional status.

With regard to the question of the security of Federal installations the Committee is inclined to the view that the opinion advanced by the Department of the Navy that adequate security of Federal installa-

tions can be obtained irrespective of the jurisdictional status of their sites is legally correct. On the other hand, it recognizes that Federal civilian guards, security patrols and like employees may more zealously safeguard the property and interests of the United States if they are invested with the usual police powers and the protection which such powers give against civil liability for false arrest or imprisonment. The Committee feels, however, that the proper means of accomplishing this is by the enactment of legislation along the lines discussed in the immediately preceding paragraph rather than by the acquisition of exclusive or concurrent jurisdiction so that title 40, United States Code, sections 318 and 318b may be applied. For that reason the Committee does not accord a great deal of weight to the argument that the acquisition of exclusive (or concurrent) jurisdiction would aid in obtaining increased security for Federal installations.

Uniformity of administration.—One of the advantages mentioned by agencies favoring exclusive legislative jurisdiction was that uniformity of administration would be secured. It is assumed that this presupposes that exclusive jurisdiction is essential for some installations of the agency. To be sure, absolutely uniform administration of all its installations located in the United States could be accomplished by any agency in such circumstances only if all its installations were in an identical jurisdictional status. However, no agency has expressed a desire that all its lands be held in an exclusive jurisdictional status, and any such desire would be futile as a practical matter, since no agency now has all its property in that status and approximately half the States currently do not grant exclusive jurisdiction to the United States in the ordinary case. For similar reasons uniformity of administration is therefore not believed by the Committee to be a valid argument for any particular quantum of legislative jurisdiction other than a proprietorial interest.

Miscellaneous.—In addition to these major arguments which the several agencies favoring exclusive legislative jurisdiction have advanced, there are several others which certain of the agencies have mentioned. Although one such argument is that the surrender of exclusive jurisdiction would result in increased taxes to Federal residents of the areas affected, no agency has put any particular emphasis on this factor in its discussion of the relative merits or demerits of various jurisdictional statuses. This is understandable in view of the large inroads that recent congressional enactments have made into the broad tax immunities which these residents at one time enjoyed. Today, as has already been indicated, property taxes are the only taxes of any significance which are inapplicable to residents of Federal enclaves.

Apart from the strictly legal incidents of exclusive legislative jurisdiction, installations of the Department of the Navy, with concurrence

indicated by the Navy, suggest that an exclusive jurisdiction status makes for better relations with the surrounding community in that it is generally recognized by State and local officials as vesting in the installation commander authority which such officials might otherwise claim. Although the Navy report is the only one in which this factor is specifically mentioned, the Veterans' Administration, Army and Air Force reports would seem to imply similarly. However, no agency has furnished the Committee any specific examples illustrating this premise, and the Committee has been unable to evaluate its validity. The Committee has noted, however, that with great uniformity individual Federal installations, whatever their jurisdictional status, have reported the existence of excellent relations with neighboring communities.

The military departments express concern that as to crimes committed within Federal areas of less than exclusive legislative jurisdiction conflicts will arise with State authorities as to which sovereign will exercise its respective jurisdiction. The Army apparently envisages a possibly considerable increase in the State prosecution of soldiers who have already once been tried either by court-martial or in Federal district court. From the answers that have been submitted by individual installations to questionnaire B, however, it would appear that the basis of this argument is more theoretical than actual. As has been several times pointed out, the answers to questionnaire B paint an almost uniform picture of good Federal-State relations wherever Federal installations are located. Although conflicts of this nature appeared to be an ever-present fear on the part of many installation commanders, not a single actual incident was reported to the Committee to illustrate that the problem was actual and not just theoretical. The Committee therefore is inclined to the view that this factor is of little significance in determining the type of legislative jurisdiction which the United States should accept over its properties.

C. PROBLEMS CONNECTED WITH EXCLUSIVE (AND CERTAIN PARTIAL) JURISDICTION

State service generally.—Probably the one fact that impressed the Committee most in the reports of the agencies favoring exclusive legislative jurisdiction, or partial legislative jurisdiction approaching exclusive, was that the installations in these jurisdictional statuses controlled by these agencies were very generally operated as though the United States had only concurrent legislative jurisdiction or only a proprietorial interest. Furthermore, the manner of their operation was incompatible with the exercise by the United States of exclusive

or partial legislative jurisdiction. Almost uniformly, notarizations were performed by notaries public under the commission of the State in which the installation was located; State coroners frequently investigated deaths occurring under unknown circumstances within such areas; and vital statistics (marriages, births, deaths) were recorded in State or county recording offices. In numerous instances local police and fire protection was furnished to and on the Federal installation. In very many instances residents of the enclave were to all intents and purposes regarded as citizens of the State so far as their civil and political rights were concerned. Thus, their children were accepted on an equal basis in local schools, they were given the right of suffrage, they were accorded access to State courts in such matters as probate, divorce and adoption of children, and they were treated as citizens of the State in obtaining hunting licenses and reduced tuition to State colleges and universities.

The extra—legal nature of many of the mentioned services and functions rendered by or under the authority of a State in an area under Federal jurisdiction is obvious. Such services and functions are requisite to the maintenance of a modern community. Although by article I, section 8, clause 17, of the Constitution, Congress is empowered to exercise “like” authority over such areas as it exercises over the District of Columbia, it has not done so. As to these areas Congress has not made (and as a practical matter probably could not attempt to make), provision for their municipal administration. The very general requirement within Federal installations for various services which ordinarily are furnished only by or under the authority of State or local governments appears to have made exceedingly rare the installation which actually operates within the legal confines of Federal exclusive jurisdiction. Such being the case, the Committee questions whether it is possible to maintain many installations in that status.

The Committee considers it important that various necessary services and functions rendered in Federal areas by or under the authority of States be put on a firm legal footing.

Fire protection.—Among the foremost of the functions and services provided under State authority to Federal installations is fire protection. Except for large, self-supporting installations and for installations located in remote areas, it would appear from the answers to questionnaire B submitted to the Committee that, in general, Federal installations within the States rely to some extent upon local, non-Federal fire-fighting services. This would appear to be true irrespective of the jurisdictional status of the Federal site. These services are secured through a variety of arrangements. For areas under the

exclusive jurisdiction of the United States arrangements have varied all the way from formal contracts with local agencies to mere assumptions on the part of the Federal manager that the local fire department will respond if called in an emergency. In cases where the Federal agency has its own fire-fighting equipment, the arrangement is generally reciprocal in that each party will respond to the call of the other in emergencies beyond the capabilities of either's individual capacity. Where the United States has exclusive or one of various forms of partial legislative jurisdiction the furnishing of these services by the State would appear to be strictly a matter of grace although the Comptroller General of the United States has ruled to the contrary. In the absence of express agreement by State or local authorities, there is no legal obligation whatever on the part of a non-Federal fire company to respond to a fire alarm originating within the Federal enclave, and questions of the applicability of compensation benefits to firemen in case of their injury when fighting a fire in a Federal enclave apparently may arise in some instances. In the cases of small, weakly staffed Federal installations the consequences of this incident of exclusive or partial legislative jurisdiction may be serious, indeed. Generally, however, with respect to areas over which the State exercises jurisdiction, while the furnishing of fire protection for federally owned buildings would still be a matter for the consideration of officials of State or local governments, the obligation would appear to be a concomitant of the powers exercised by those authorities within such areas (Comp. Gen. Dec. B-126228, of January 6, 1956).

Refuse and garbage collection and similar services.—Analogous to the problem of fire protection are problems connected with other types of services which in ordinary communities are generally furnished by local or State governments. Among these services are refuse and garbage collection, snow removal, sewage, public road maintenance and the like. Where the United States has exclusive jurisdiction and the installation is not self-sustaining in these respects, it would appear from the information furnished by individual installations that in most cases these items are handled on a contractual basis with some local governmental agency. As in the case of fire-fighting services, there is no obligation on the part of the contractor, apart from that under the contract, to continue furnishing such services where the United States has exclusive or certain partial jurisdiction. Should the local agency decline to continue them, there might result considerable inconvenience and expense to the Federal Government. On the other hand, should the local agency furnish them there would not arise, at least from the Federal point of view, the questions of legality,

with serious implications, which present themselves in connection with the furnishing of certain other services.

Law enforcement.—In the matter of law enforcement more difficult legal and practical questions are raised. From the reports received by the Committee it would appear that many agencies have encountered serious problems, which often have not been recognized, in this field in areas of exclusive or partial legislative jurisdiction. The problem is most acute in the enforcement of traffic regulations and “municipal ordinance type” regulations governing the conduct of civilians. Although specific authority exists for certain agencies (e. g., General Services Administration and the National Park Service of the Department of the Interior) to establish rules and regulations to govern the land areas under their management and to attach penalties for the breach of such rules and regulations, and authority also exists for these agencies to confer on certain of their personnel arrest powers in excess of those enjoyed by private citizens (General Services Administration only if the United States exercises exclusive or concurrent jurisdiction over the area involved), this authority has provided no panacea. Despite the fact that General Services Administration may extend its regulations to land under the management of other agencies and provide guard forces for such areas at the request of these agencies, for reasons which have already been discussed it has been impossible for all agencies of the Federal Government to avail themselves of the statutory provisions mentioned. As to civilians, therefore, Federal enforcement measures for traffic and similar regulations are limited often to such nonpenal actions as ejection of the offender from the Federal area, revocation of Federal driving or entrance permit, or discharge (if an employee).

Where serious crimes are committed in areas of exclusive Federal jurisdiction, generally the full services of the Federal Bureau of Investigation, the United States attorney, and the United States district court are available for the detection and prosecution of the offenders. On the other hand, in the case of misdemeanors or other less serious crimes, there is generally no adequate Federal machinery for bringing the offenders to justice. If there is a United States commissioner reasonably available, there is generally no official corresponding to a town constable or municipal policeman. Some Federal installations, judging by their replies to questionnaire B, have attempted to solve this problem by authorizing local or State police to enforce State or local traffic and parking regulations and municipal ordinances within Federal areas of exclusive or partial legislative jurisdiction. The possible consequences of such obviously extra-legal measures are a matter of serious concern to the Committee.

Another difficulty arising with respect to exclusive jurisdiction areas is determining which activities defined as crimes by State law are punishable under the Assimilative Crimes Act. The act, as has been said, does not apply to make Federal crimes based on State statutes which are contrary to Federal policy. However, difficulty often arises in determining whether a Federal policy operates to negate the adoption of a State statute under the Assimilative Crimes Act. Indeed, it is possible that individuals may risk punishment for conduct which they cannot be certain is in violation of law.

Notaries public and coroners.—From the reports submitted to the Committee in reply to questionnaire B it would appear that in many areas of exclusive or partial legislative jurisdiction the services of State licensed notaries public are utilized. In many cases it would appear that a Federal employee holds a commission as a State notary public and his services are utilized for all officially required notarizations. Although none of such notarizations appears to have been challenged, the possibility of challenge is ever present in view of the probable lack of jurisdiction of the State notary in an area of exclusive Federal jurisdiction and many areas of partial jurisdiction.

The question of the authority of a local coroner to make an official inquiry in cases of deaths arising under unknown circumstances has arisen on many occasions. The chief law officers of the various agencies have a number of times been called upon to rule on such questions. In those opinions the law officers have uniformly advised their agencies that coroners had no jurisdiction in areas over which the United States exercised exclusive jurisdiction. Nevertheless, the replies to questionnaire B indicate that it is a common practice at Federal installations when an unexplained death occurs to call in the local coroner. The practical need for the services of this official is obvious when it is considered that the Federal Government has no general substitute, that it would be impracticable for the Federal Government to furnish such services to its many small scattered or remote establishments, and that death certificates issued by a recognized authority are necessary for many purposes.

Personal rights and privileges generally.—One of the most unfortunate incidents of the exercise by the Federal Government of exclusive legislation over areas within the States is the denial to the residents thereof of many of the rights and privileges to which they would otherwise be entitled except for such residence. Since these disadvantages are unattended by certain tax advantages which flowed from such residence prior to the enactment of the Buck Act and similar statutes, exclusive jurisdiction is relatively bare of compensations to such residents.

Probably foremost in the minds of the persons concerned is the denial of the right of suffrage. However, other equally important rights and privileges are denied these residents. Among those mentioned by the various agencies are the right of children to attend local public schools; qualification for such State supported services as welfare aid, social service counseling, State sanatorium or mental institutional care, public library, etc.; qualification by domicile for access to civil courts in probate, divorce and adoption proceedings; and the right to be treated as "residents of the State" in such matters as hunting and fishing licenses, reduced tuition to State colleges and universities, and many other purposes.

It was surprising to the Committee, in reviewing the hundreds of replies to questionnaire B, that there was no uniform practice on the part of the three States (California, Kansas, and Virginia) from which the information required by these questionnaires was derived as to the denial of such rights and privileges. For example, in two Federal areas of exclusive jurisdiction within the same city, the residents of one were accorded the status of full citizens by State officials while the residents of the other were denied all rights thereof. Surprisingly, even in some cases when the Federal Government exercised no legislative jurisdiction whatever, the residents were denied certain privileges they should normally have been accorded as residents of the State. The Committee can only conjecture as to the reasons for such diversity of practice on the part of State officials. Among the factors which the Committee surmises might have an influence upon the State or local officials are (1) the size of the Federal installation and the number of residents thereof (this would determine, for instance, what the impact of participation by Federal residents in local elections would be); (2) the predominantly military or nonmilitary character of the residents and their identification with the community by long residence, unity of interest and concert of purpose; (3) the good or ill feeling existing between the Federal installation and the community at large; (4) whether the State has legislation specifically conferring political and civil rights on residents of Federal enclaves, although curiously, in California where such a statute is in effect and has been interpreted as retroactive insofar as the granting of civil and political rights is concerned, the practice is not uniform; and (5) the very general unawareness of local, State and Federal officials of the jurisdictional status of the lands and the incidents of such status.

Voting.—It is clearly settled that should the State choose to do so, it could deny the right to vote to residents of areas of exclusive Federal jurisdiction. A few States (among them California) have granted the right of suffrage to residents of such enclaves but such States

are the exception rather than the rule. According to reports received by the Committee there are more than 90,000 residents other than Armed Forces personnel on Federal areas within the States of Virginia, Kansas, and California alone, plus persons residing in 27,000 units of Federal housing. In view of the close connection that the right of suffrage bears to the traditions and heritage of the United States, the disenfranchisement or even the possibility of the disenfranchisement of such a large number of United States citizens is a cause for serious reflection.

Education.—The problem of education of children residing in areas of exclusive and partial Federal jurisdiction is a serious one and has been the cause of a multitude of controversies. That it can be reported that so far as is known to this Committee not a single child is being denied the right to a public school education because of his residence on a Federal enclave is in itself a commendation of the work of the Department of Health, Education, and Welfare and the Commissioner of Education.

It is obvious that the presence of large numbers of school-age children in Federal enclaves has a considerable impact on local school districts. This is particularly true in the remote, sparsely settled areas in which so many of our Army, Navy, and Air Force bases are located. In recognition of the Federal Government's responsibility to reduce the effects of this impact Congress has enacted certain statutes to provide financial aid to affected school districts, and in the last fiscal year nearly \$200 million were expended under these statutes. The act of September 30, 1950 (64 Stat. 1107), as amended (20 U. S. C. and Supp. 241), authorizes the Department of Health, Education, and Welfare to grant financial aid to localities for the operation and maintenance of their schools based on the impact which Federal activities have on the local educational agencies. Such aid usually takes the form of monetary grants to local school agencies in proportion to the increased burdens assumed by such agencies in accordance with certain formulas given in the act. If, however, State law prohibits expenditure of tax revenues for free public education of children who reside on Federal property or if it is the judgment of the Commissioner of Education that no local educational agency is able to provide free public education, he may make such other arrangements as are necessary to provide for the education of such children. The act of September 23, 1950 (54 Stat. 906), as amended (20 U. S. C. Supp. 300), provides for similar aid in school construction.

It may readily be perceived (and it has been so reported to the Committee) that the impact which Federal activities have on local educational agencies bears no direct relation to the jurisdictional

status of Federal property upon which the school children reside or upon which their parents may work or be stationed. The Department of Health, Education, and Welfare has pointed out, however, that the holding of many areas of land under exclusive Federal jurisdiction has served to intensify the problem of the Federal officials administering the program. This results from the various court holdings to the effect that there is no obligation on the part of a State to accept resident children from an area of exclusive Federal jurisdiction. While it appears that most school districts do accept such children, at least when accompanied by a grant of Federal aid, on occasion some have chosen not to accept them even under such terms. In these and other instances the school districts involved sometimes have insisted on financial arrangements more advantageous to themselves than those generally enjoyed by other districts similarly affected. This obviously results either in the Federal Government's being required to assume the entire responsibility for providing for the schooling of these children, or deprives more cooperative school districts of their fair share of the Federal funds available for education.

Assuming that the States accept as their obligation the education of resident children, children residing on federally owned or leased land not within the exclusive or certain partial legislative jurisdiction of the United States would appear to be entitled to the same educational opportunities as other children. Of course, so long as the act of September 30, 1950, as amended, *supra*, and the act of September 23, 1950, as amended, *supra*, remain in effect the State would be entitled to financial aid for the impact the presence of these children has on the local school agencies, but the fact that the Federal Government has recognized its obligation in this respect would appear not to diminish the obligation of the State. Assuming, then, that the State recognizes its obligation, the Federal Government could at least have the assurance that the education of the children was provided for without taking on the burdensome task of setting up a school system entirely apart from that of the State.

Miscellaneous rights and privileges.—With regard to other rights and privileges which are accorded private persons based on their residence within a State the Committee received a wealth of information. Because of the inconsistencies in the treatment of the residents by State and local officials in these matters, however, it was nearly impossible to draw any definite conclusions. In some localities residents of an area of exclusive Federal jurisdiction were accorded all the privileges they would have enjoyed had the Federal Government not divested the State of its jurisdiction. They were granted resident hunting and fishing license privileges, resident tuition rates at State-

supported educational institutions, admission to State-supported hospitals and sanatoriums, State or county visiting nurse service and the like. On the other hand, in other localities only a short distance away, persons in identical legal circumstances were denied some or all of these services.

One fact did impress itself on the Committee—that there was no uniform desire on the part of State officials to deny to residents of areas of exclusive or partial Federal jurisdiction the rights and privileges to which they would otherwise have been entitled if the State's jurisdiction over the area of their residence had not been ousted. Whether the granting of these rights and privileges is a conscious policy on the part of the States is not known to the Committee. Obviously, in the cases of States which have conferred civil and political rights on residents of Federal areas by statute (e. g., California), the policy has been consciously and deliberately evolved. In nearly all cases where this policy is followed, however, it would appear that it is done as a matter of grace, despite the fact that the retrocessions of certain tax benefits to the States by the Buck Act and similar Federal statutes may give rise to obligations in return for benefits conferred. To the extent that they are a matter of grace, they could be discontinued by the States at any time. The consequences of such discontinuance might be very serious to residents of these areas.

Benefits dependent on domicile.—It would appear doubtful to the Committee, however, whether a State could, despite its best intentions, bestow certain types of benefits upon the residents of areas of exclusive Federal jurisdiction. The Committee refers particularly to those benefits which depend upon domicile within a State. An example is the right to maintain an action for divorce. Since Congress has provided no law of divorce for areas of exclusive Federal jurisdiction the residents of such areas must resort to a State court for relief. Several States have enacted statutes conferring jurisdiction on their courts to entertain actions for divorce brought by persons who have resided in Federal enclaves within such States for designated fixed periods. The courts of a few other States have assumed jurisdiction in such cases without benefit of a similar statute. In neither case have such decrees been put to the test of collateral attack on the basis that they were rendered without jurisdiction. It therefore remains to be seen whether a resident of an area of exclusive Federal jurisdiction, by virtue of residence in such area alone, can become legally domiciled in the State in which the Federal installation is located. The problems involved in these cases are, of course, of equal significance in other situations in which domicile is the basis of a right or obligation.

D. SUMMARY AS TO EXCLUSIVE AND PARTIAL JURISDICTION

The foregoing discussion and analysis of the positions of those agencies adhering to the view that exclusive legislative jurisdiction or a quantum of Federal legislative jurisdiction closely approaching exclusive is desirable for their properties has run to a considerable length. Because the views are held by several major landholding agencies the Committee felt it particularly desirable to analyze these views with the utmost care and deference. In summary :

(1) The Army, Navy and Air Force, the Veterans' Administration, the National Park Service, the Bureau of the Census, and the Civil Aeronautics Administration desire exclusive or nearly exclusive legislative jurisdiction over all or part of their landholdings (the Air Force indicating that a concurrent legislative jurisdiction would be an acceptable substitute under certain circumstances).

(2) These views are based on a number of reasons. The most frequently mentioned of these are as follows (not all of the reasons being advanced by each agency) :

(a) Freedom of Federal manager from State interference in the performance of Federal functions. All agencies understand (though the answers to questionnaire B indicate that their subordinate installations do not in many cases) that the Federal Government enjoys a constitutional immunity from such interference by virtue of the supremacy clause. What they wish to avoid is unnecessary litigation to prove this constitutional immunity.

(b) Enhancement of security of installation.

(c) Freedom of Federal Government from burdens of application of State's police power to contractors, licensees, etc., operating within Federal enclave.

(d) Uniformity of administration.

(e) Psychological advantage to Federal manager in his dealings with State and local officials.

(f) Clarity of the authority of the Federal Government in the enforcement of criminal law and avoidance of conflicts with State authorities.

(g) Accrual of certain tax advantages to resident personnel.

(3) These views generally take into account that exclusive legislative jurisdiction and many forms of partial jurisdiction are attended by the following disadvantages :

(a) Occurrence of difficulties in the enforcement of traffic regulations and minor criminal laws or regulations against civilians.

(b) Unavailability of certain services ordinarily furnished by State or local governmental agencies.

(c) Loss by residents of the area of civil and political rights normally flowing from residence in a State.

(4) The Committee, in general, looks askance on Federal exclusive legislative jurisdiction and most forms of partial legislative jurisdiction for the reasons that:

(a) Certain of the reasons advanced by the agencies advocating this measure of jurisdiction are legally unsupported. Specifically, Federal operations may be carried on without any direct interference by States, and the security of Federal installations may be adequately safeguarded, without regard to the type of legislative jurisdiction; uniformity of administration may be had under a lesser form of jurisdiction.

(b) Other arguments advanced by the agencies appear not to be borne out in individual installation reports. Specifically, the reports uniformly reflect excellent State-Federal relations; fear of excessive litigation to establish immunity of Federal functions from State interference if exclusive jurisdiction is surrendered does not appear to be borne out; where concurrent jurisdiction exists, conflicts as to which sovereign will exercise criminal jurisdiction appear not to have developed to any significant degree; the psychological advantage claimed for this type of jurisdiction has not been illustrated.

The only apparent advantages to Federal exclusive legislative jurisdiction or partial jurisdiction approaching exclusive, on the facts made available to the Committee, are certain minor tax advantages to residents of the areas and freedom of the Federal Government from the indirect effects of the exercise by the State governments of their police powers against Federal contractors, concessionaires, licensees, etc. The latter of these would appear to be entitled to considerable weight in certain areas and under certain circumstances. However, even when it is combined with the former and the two are balanced against the disadvantages accruing to this type of jurisdiction, the scales seem to be tipped toward a lesser form of Federal legislative jurisdiction.

E VIEWS OF AGENCIES PREFERRING CONCURRENT JURISDICTION

Agencies preferring such jurisdiction.—The views of the General Services Administration, the Department of Health, Education, and Welfare, the Department of the Navy, the Bureau of Prisons of the Department of Justice, and the Bureau of Public Roads of the Department of Commerce, which each desire a concurrent legislative jurisdiction status for certain of their installations, are based on various grounds. The Department of the Interior also, at an early point in the study, indicated concurrent jurisdiction desirable for certain areas for

which it subsequently recommended partial jurisdiction. The Veterans' Administration has suggested that it needs at least concurrent jurisdiction should a higher form of Federal jurisdiction be deemed by the Committee as unnecessary for properties under the supervision of that agency; the Committee's views in this respect have already been discussed in a previous section of this report.

Advantages and disadvantages.—Concurrent jurisdiction has to a considerable extent the advantages of both exclusive legislative jurisdiction and a proprietorial interest only, with few disadvantages.

To the advantage of the Federal Government is the fact that Federal power to legislate generally for the area exists. The chief interest of the Federal Government, in this connection, is that by virtue of the Assimilative Crimes Act (18 U. S. C. 13) a Federal criminal code, capable of Federal enforcement, exists for the area and insures that crimes committed within the Federal installation will not go unpunished in spite of disinterest on the part of State authorities which can occur in instances where only Federal personnel, and no State community or individual, are directly affected by a crime. For the residents of these areas of concurrent jurisdiction it is an advantage that the obligations of the State toward them are undisturbed by the superimposition of Federal on State jurisdiction, so that they receive under a concurrent jurisdiction all the benefits of residence in the State, notwithstanding that they reside on a federally owned area. For the State there exists the advantage that its jurisdiction over the area remains undisturbed except insofar as its operations may directly interfere with a Federal function conducted therein. The State's authority vis-a-vis the United States and persons on the area is in all practical respects the same as if the United States had no legislative jurisdiction whatever with respect to the area. It is because of the advantages inherent in these characteristics that concurrent legislative jurisdiction has been stated by several Federal agencies to be best suited for their needs in certain types of installations.

Such disadvantages as are peculiar to areas under concurrent legislative jurisdiction arise out of the fact that under this status two sovereigns, the Federal Government and a State, have the authority to exercise in the same area many of the same functions. This can result in situations where each of the sovereigns desires to perform the function; information received by the Committee would seem to indicate that more often it results in situations where each sovereign desires the other to act, with the occasional result that the function is not performed. So far as the Committee has been able to determine, however, no serious problems have developed out of this dual sovereignty.

General Services Administration.—This agency, which administers

an extremely large number of Government buildings, principally post offices and Federal office buildings, most of which now are in an exclusive jurisdiction status, in many cases finds requirement for furnishing special police protection to such buildings and to other areas also under its control. At the present time it is able to vest its guards with police powers only for exercise on areas under the exclusive or concurrent legislative jurisdiction of the United States. With the amendment of the pertinent statute (40 U. S. C. 318, et seq.), to permit the exercise of police powers without reference to the legislative jurisdiction of property under its control, the General Services Administration indicates, it would feel that all or substantially all of such property could be held under a proprietorial interest only. Properties not requiring special police services in any event, in the view of the Administration, would be best served under a proprietorial interest status. The Committee agrees with these views.

Department of Health, Education, and Welfare.—Most of the holdings of this Department, consisting largely of hospitals and similar installations, are now in an exclusive, or partial approaching exclusive, legislative jurisdictional status. On analyzing its requirements in the course of the present study the Department has come to the conclusion that, while a proprietorial interest only would be best suited for most of its properties, a concurrent jurisdiction status would be desirable for a small number of properties on which special problems of police control are involved. The Committee concurs.

Department of the Navy.—This Department feels that for its so-called minor installations concurrent legislative jurisdiction would best serve its needs. By minor installations the Navy apparently means those which are small and non-self-sustaining, and those which are primarily residential. The Navy, as to these installations, is apparently of the view that the attributes of a simple proprietorial status in many respects are best suited. However, because of the Department's desire to retain the availability of Federal law enforcement within even these areas, concurrent jurisdiction is desired in order to provide a Federal criminal code by virtue of the Assimilative Crimes Act (18 U. S. C. 13). Consequently, the Department feels that concurrent jurisdiction would be the minimum measure of Federal jurisdiction that would satisfy its needs.

The Committee fails to see any requirement for the retention by the Federal Government of general law enforcement authority in naval installations where the provision of such service is within the ability of State and local law-enforcement agencies. This will be particularly true if there are adopted recommendations proposed by the Committee that heads of Federal agencies be given authority to

promulgate and enforce rules and regulations for the Government of the Federal property under their control, without reference to the jurisdictional status of such property. It is to be noted that, in any event, existing Federal statutes designed for the protection of Government property and of defense installations are applicable to naval installations without reference to their jurisdictional status. Further, the Uniform Code of Military Justice similarly is applicable to offenses which may be committed by uniformed personnel.

From its study of the Navy's report the Committee reasons that for most properties administered by the Department a proprietorial interest would be most advantageous. Only as to the occasional naval installations removed from civilian centers of population which can furnish these installations adequate law-enforcement services does the Committee believe that concurrent jurisdiction would be required. In this regard, it is noted that to a large extent the Navy's properties are presently in a proprietorial interest status (approximately 40 percent of its acreage), as a result of the Navy's policy of acquiring Federal legislative jurisdiction only when the local commander makes a substantial request that the Department do so, and the Navy's report does not indicate that any serious or troublesome problems arise out of this status.

Bureau of Prisons.—This Bureau of the Department of Justice indicates that for its installations in which prisoners are maintained, a concurrent legislative jurisdictional status would be desirable. These installations presently have various jurisdictional statuses. It is pointed out as incongruous that a Federal prisoner who commits a crime beyond that which can be handled by administrative measures in a Federal prison institution should have to be tried in State courts, under State law, and be sentenced to a State penal institution, in the absence of at least concurrent criminal jurisdiction in the Federal Government over the institution where the crime was committed. On the other hand, the Bureau has no wish to deprive its guard force and other personnel and their families of the privilege of voting and other integration into the normal life of the communities in which its installations are located, as often occurs under a jurisdictional status greater than concurrent. The Committee is in agreement with the views of the Bureau of Prisons.

Bureau of Public Roads.—This Bureau of the Department of Commerce, while it considers only a proprietorial interest in the United States best suited to the great majority of the properties under its supervision, desires that the status of its equipment depot areas and of a certain laboratory and testing area be changed to concurrent legislative jurisdiction. At present certain of these properties are

under the exclusive jurisdiction of the United States while others are in a proprietary interest only status. In the view of the Bureau, by giving to all these properties a concurrent jurisdictional status law enforcement as to trespasses and minor offenses would be made easier. Local police could be called in and, it is suggested, additionally the concurrent jurisdiction would empower the United States Park Police to act.

Since, except in the District of Columbia, the arrest powers of Park Police (and by implication their enforcement authority) are limited to violations "of the laws relating to the national forests and national parks" (16 U. S. C. 10), there would appear to be no authority for the Park Police to act in areas under the management of the Bureau of Public Roads, irrespective of their jurisdictional status. As this is the only basis given by the Bureau for acquisition of any form of legislative jurisdiction, it would appear that none is necessary.

The Committee feels that a proprietary interest would be entirely sufficient for the needs of all the several properties of the Bureau of Public Roads.

Department of the Interior.—This Department recommends a proprietary interest only as most desirable for the great bulk of the vast areas of Federal lands under its supervision. However, in its initial submission of information to the Committee, the Department indicated that concurrent legislative jurisdiction would most nearly suit the needs of its national parks, as to which the United States now holds exclusive or certain partial legislative jurisdiction, and of certain national monuments and perhaps wildlife areas which cover vast areas and are in comparatively isolated sections of their respective States, as to which the United States now generally holds a proprietary interest only. This status, it was indicated, would allow effective enforcement of law and order and would insure the best protection of a number of interests, including control as may be necessary of the private inholdings which are within the boundaries of certain parks so that the inholdings do not change park characteristics. This type of jurisdiction would not adversely affect the rights of park, monument, or wildlife refuge residents so far as their relations with the States and State political subdivisions are concerned. More recently, however, the Department has modified its position, stating:

* * * the National Park Service is of the opinion that concurrent jurisdiction would not be practicable in the National Park Service areas for which it was suggested. While there is no disagreement that the States should have substantial authority in federally owned areas over matters outside the spheres of interest of the Federal Government, the Service believes that concurrent jurisdiction would result in continuous disagreements and litigation over what

State laws would interfere with Federal functions. It therefore believes that partial jurisdiction is, as a practical matter, required for the areas in question.

The Department is not prepared to disagree with the National Park Service at this juncture. Accordingly, the views expressed * * * [earlier] are modified to the extent stated.

It is not clear to the Committee in which spheres of the National Park Service's operations the widespread disagreements with State authorities are expected. If it is in the field of conservation or control of hunting or fishing, there would appear to be no doubt as to the ability of the United States to prevail in disputes where proper administration of the area requires Federal control. (See *Hunt v. United States*, 278 U. S. 96 (1928).) If it is with respect to the enforcement of criminal laws, the Committee notes that information from individual installations which are in concurrent jurisdiction status almost uniformly is to the effect that difficulties in this respect, to the limited extent they have occurred, have occurred not out of an eagerness on the part of both sovereigns to exercise jurisdiction, but from the lack of interest of both. The Committee is of the view that concurrent jurisdiction most nearly fits the needs of the United States for national parks and for national monuments located in remote areas. In some instances, the Committee recognizes, this jurisdictional status may be desirable for some wildlife refuges.

F. VIEWS OF AGENCIES DESIRING A PROPRIETORIAL INTEREST ONLY

Federal lands largely in proprietorial interest status.—The Committee notes that as to the great bulk of land owned by the United States, including substantially all lands of the so-called public domain, the Federal Government holds only a proprietorial interest, possessing with respect to such land no measure of legislative jurisdiction within the meaning of article I, section 8, clause 17, of the Constitution. The Committee further notes that the 23 landholding agencies of the Government except the General Services Administration, whatever their views concerning the jurisdictional status which their properties should have, presently hold a substantial proportion of such properties in a proprietorial interest status only.

Agencies preferring proprietorial interest.—A proprietorial interest status, without legislative jurisdiction in the United States, is deemed best suited for their properties by the Treasury Department, the Department of Justice other than for properties in which Federal prisoners are maintained, the Department of the Interior other than for national parks and certain national monuments, the Department of Agriculture, the General Services Administration for certain properties, the Department of Commerce for most of its properties, the

Department of Health, Education, and Welfare for most of its properties, the Atomic Energy Commission, the Central Intelligence Agency, the Federal Communications Commission, the Housing and Home Finance Agency, the International Boundary and Water Commission (United States and Mexico), the Tennessee Valley Authority other than for one property as to which judgment was reserved, and the United States Information Agency. It may be noted that the mentioned agencies control more than 90 percent of the land owned by the United States.

Characteristics of proprietorial interest status.—When the United States acquires lands without acquiring over such lands legislative jurisdiction from the State in which they are located, in many respects the United States holds the lands as any other landholder in the State. However, the State cannot tax the Federal Government's interest in the lands or in any way interfere with the Federal Government in the carrying out of proper Federal functions upon the lands. The relation of the State with persons resident upon such Federal lands, with all its rights and corresponding obligations, is undisturbed. Both the civil and criminal laws of the State are fully applicable. Primarily because of these attributes the proprietorial interest status has been named by most landholding Federal agencies as the most nearly ideal jurisdictional status.

Experience of Atomic Energy Commission.—Of the utmost significance to the Committee is that among the agencies preferring a proprietorial interest only for their properties is the Atomic Energy Commission. The Committee has attached special significance to the views of the Atomic Energy Commission for a number of reasons. Among the more important is the fact that the birth of the Commission and its requirements for the occupation of land occurred after the amendment in 1940 of section 355 of the Revised Statutes of the United States had removed the statutory requirement that exclusive jurisdiction be obtained over Federal lands prior to the construction of improvements on such lands. Accordingly, the Commission had not built up any of the traditions concerning exclusive jurisdiction which seem to influence many of the other Federal landholding agencies. Additionally, like those of many naval and military reservations, the Commission's security requirements are exceedingly strict. And also similar to many military and naval reservations, some Atomic Energy Commission installations, because of their size and remote locations, have substantial populations residing within their confines.

The Atomic Energy Commission's practice and policy are to obtain no legislative jurisdiction over lands acquired by it. The only lands it holds in other than a proprietorial status are those which it has

received by transfer from other Federal agencies. Indeed, as to two exclusive jurisdiction areas upon which communities are located, the difficulties encountered were sufficient to induce the Commission to sponsor legislation which allowed it to retrocede jurisdiction to the State. While the Atomic Energy Commission recognizes that concurrent jurisdiction has to some extent the advantages of both a proprietary interest and exclusive jurisdiction, that measure of jurisdiction has not been obtained for the reason that it provides no clear-cut line of responsibility between the fields of Federal and State authority thus, in the view of the Commission, opening the way for disputes and misunderstandings.

The Atomic Energy Commission established its policy of obtaining no legislative jurisdiction principally to (1) obtain the privileges of State citizenship for the residents of its areas; (2) allow organization of the communities into self-governing units under applicable State statutes; and (3) make State civil and criminal law applicable, making possible the utilization of established State courts for the enforcement of public and private rights and the deputization under State authority of Atomic Energy Commission employees for law enforcement.

The Atomic Energy Commission reports that its experience has indicated that these expected advantages have in fact resulted. A possible disadvantage, interference by the State with Atomic Energy Commission security requirements, has not materialized. The constitutional immunity of Federal functions from State interference has been recognized uniformly.

Experience of other agencies.—The Central Intelligence Agency has a proprietary interest only over its properties, and has found this satisfactory. Indeed, except for the Army, Navy, and Air Force, the National Park Service of the Department of the Interior, and the Veterans' Administration, the views of all Federal agencies which have had any substantial experience in the management of areas held in a proprietary interest only status parallel those of the Atomic Energy Commission. The preference of the agencies for a proprietary interest only is based, in general, on various disadvantages flowing from possession of legislative jurisdiction by the United States. Repetition of the views of these agencies would appear to serve little purpose. The advantages and disadvantages which they ascribe to this status have already been covered in detail in the analysis of exclusive, concurrent, and partial legislative jurisdiction which has preceded.

Summary as to proprietary interest status.—The Committee concludes, in concurrence with the agencies preferring a proprietary

interest only in the Federal Government over their properties, that for the vast bulk of Federal properties it is unnecessary for the Federal Government to have any measure of legislative jurisdiction in order to carry out its functions thereon. The Government is insulated from any attempted direct interference by State authority with the carrying out of such functions by the Federal immunities flowing from constitutional provisions other than article I, section 8, clause 17, particularly from article VI, clause 2, which provides in pertinent part:

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Many Federal lands for which a proprietorial interest status only is acknowledged to be ideal are, however, held under some form of legislative jurisdiction. Since there exists no general authority for Federal agencies to retrocede unneeded jurisdiction to the States, appropriate legislation has been drafted by the Committee to make such retrocessions possible. The Committee also deems it desirable that uniform State legislation be enacted providing for the acceptance of such retroceded jurisdiction, so that no doubt will exist as to the precise status of the lands involved.

CHAPTER VIII

CONCLUSIONS AND RECOMMENDATIONS

General observations.—The thorough study which has been given to the exercise by the Federal Government of legislative jurisdiction under article I, section 8, clause 17, of the Constitution has, in the opinion of the Committee, been long overdue. In the early days of the Republic there may have been a requirement for the exercise of such power in areas within the States which were acquired to carry out the functions vested in the Federal Government by the Constitution. However, even this is in doubt, for, as has been pointed out, there was not a uniform practice with respect to the transfer of legislative authority from the States to the United States during the first 50 years after the adoption of the Constitution. In any event, the tremendous expansion of Federal functions and activities which has occurred in the recent history of the United States with a resultant increase in Federal land holdings, changed patterns in the use of Federal lands, development of new concepts of the rights and privileges of citizens, and many other factors, have drastically altered conditions affecting the desirability of Federal exercise of exclusive legislative jurisdiction over federally owned areas.

There is no question of the current requirement for a measure of legislative jurisdiction in the Federal Government over certain federally occupied areas in the States. Indeed, in various instances the Federal Government has insufficient jurisdiction over its installations, to the detriment of law and good order. On the other hand, no doubt can exist that in the present period the Federal Government has been acquiring and retaining too much legislative jurisdiction over too many areas as the result of the existence of laws and the persistence of practices which were founded on conditions of a century and more ago.

Careful analysis has been made by the Committee of the advantages and disadvantages to the Federal Government, to the States and local governmental entities, and to individuals, which arise out of the possession by the United States of varying degrees of legislative jurisdiction over its properties in the several States. It is clear that exclusive legislative jurisdiction on the one hand, and a proprietorial interest only on the other, each has certain but different advantages and

disadvantages for all parties involved. As the jurisdictional status of a property varies from one to the other of these two extremes of the legislative jurisdiction spectrum the advantages and disadvantages of each tend to fade out, and to be replaced by the advantages and disadvantages of the other.

Principal Committee conclusions.—The Committee's study has been persuasive to the conclusions that—

1. In the usual case there is an increasing preponderance of disadvantages over advantages as there increases the degree of legislative jurisdiction vested in the United States;

2. With respect to the large bulk of federally owned or operated real property in the several States and outside of the District of Columbia it is desirable that the Federal Government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest status only, with legislature jurisdiction remaining in the several States;

3. It is desirable that in the usual case the Federal Government receive or retain concurrent legislative jurisdiction with respect to Federal installations and areas on which it is necessary that the Federal Government render law enforcement services of a character ordinarily rendered by a State or local government. These installations and areas consist of those which, because of their great size, large population, or remote location, or because of peculiar requirement based on their use, are beyond the capacity of the State or local government to service. The Committee suggests that even in some such instances the receipt or retention by the Federal Government of concurrent legislative jurisdiction can, and in such instances should, be avoided; and

4. In any instance where an agency may determine the existence of a requirement with respect to a particular installation or area of a legislative jurisdictional status with a measure of exclusivity of jurisdiction in the Federal Government, it would be desirable that the Federal Government in any event not receive or retain with respect to the installation or area any part of the State's jurisdiction with respect to taxation, marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property, that the State have concurrent power on such installation or area to enforce the criminal law, that the State also have the power to execute on the installation or area any civil or criminal process, and that residents of such installation or area not be deprived of any civil or political rights.

Requirement for adjustments in jurisdictional status.—It is clear that the legislative jurisdictional status of many Federal installations

and areas is in need of major and immediate adjustment to bring about the more efficient management of the Federal operations carried out thereon, the furthering of sound Federal-State relations, the clarification of the rights of the persons residing in such areas and the legalization of many acts occurring on these installations and areas which are currently of an extra-legal nature. Many adjustments can be accomplished unilaterally by Federal officials within the framework of existing statutory and administrative authority by changing certain of their existing practices and policies. Others may be capable of accomplishment by cooperative action on the part of the appropriate Federal and State officials. In perhaps the majority of instances, however, there is neither Federal nor State statutory authority which would permit the adjustment of the jurisdictional status of Federal lands to the mutual satisfaction of the Federal and State authorities involved. For this reason the Committee recommends the enactment of certain statutes, both Federal and State, which would authorize the appropriate officials of these Governments to proceed apace in the adjustments clearly indicated.

The Committee also strongly feels that agencies of the Federal Government should do all that is possible immediately and in the future, under existing and developing law, to establish and maintain the jurisdictional status of their properties in conformity with the recommendations made in this report. The General Services Administration, in its regular inventorying of Federal real properties, should bring together information concerning the jurisdictional status of such properties in order to provide a general index of the progress made in adjusting their status. This will also provide a central source of information on the jurisdictional status of individual properties, such a central source being sorely needed, in the view of the Committee. The progress made by agencies in adjusting the jurisdictional status of their properties should be taken into account by the Bureau of the Budget in considering budget estimates and legislative proposals which are related to such status. It is the further view of the Committee that these two agencies, together with the Department of Justice, should maintain a continuing and concerted interest in the progress made by agencies in adjusting the status of their properties and should review such progress at appropriate intervals.

Retrocession of unnecessary Federal jurisdiction.—The most immediate need, in the view of the Committee, is to make provision for the retrocession of unnecessary jurisdiction to the States. A number of Federal agencies, as well as a significant proportion of the responding State attorneys general, have made recommendations

along this line. The Committee heartily concurs in these recommendations.

The Committee feels that this end could best be accomplished by amending section 355 of the Revised Statutes of the United States, as amended (40 U. S. C. 255; 33 U. S. C. 733; 34 U. S. C. 520; 50 U. S. C. 175) so as to give to the heads of Federal agencies and their designees the necessary authority to retrocede legislative jurisdiction to the States. An appropriate amendment would permit each Federal agency to adjust the amount of jurisdiction it retains to the actual needs of the installation concerned. It is hoped, in this regard, that the present report and the forthcoming textual study will give to Federal land management agencies a full appreciation of the many factors which they should consider in making their determinations of what measure of jurisdiction best suits a particular installation. The Committee therefore recommends that section 355 of the Revised Statutes, as amended, be further amended by adding a paragraph in the following language:

Notwithstanding any other provision of law, the head or other authorized officer of any department or agency of the United States may, in such cases and at such times as he may deem desirable, relinquish to the State in which any lands or interests therein under his jurisdiction, custody, or control are situated all, or such portion as he may deem desirable for relinquishment, of the jurisdiction theretofore acquired by the United States over such lands, reserving to the United States such concurrent or partial jurisdiction as he may deem necessary. Relinquishment of jurisdiction under the authority of this act may be made by the filing with the Governor of the State in which the land may be situated a notice of such relinquishment or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by the State, or, if there is in effect in the State a general statute of acceptance not specifying the means thereof, upon the day immediately following the date upon which such notice of relinquishment is filed.

Acceptance by States of relinquished jurisdiction.—It can be seen that for a relinquishment made under this proposed amendment to section 355, Revised Statutes, to be effective, there must be an acceptance by the State. The Committee feels such a provision is necessary as a matter of sound policy. It would inject some preciseness into an area which, as has been seen throughout the report, is replete with confusion and vagueness. By the use of the present provisions of section 355 of the Revised Statutes, together with the proposed addition, the proper Federal and State officials could, by the necessary exchange of instruments, fix precisely for any Federal installation or area the amount of legislative jurisdiction which would reside in each sovereign. No parcels of Federal property affected by any change of legislative jurisdictional status under the amended section 355 would be left dangling in an uncertain status.

At present, however, only a few States have statutory provisions which would authorize them to accept such tendered jurisdiction. The Committee therefore suggests the advisability of enactment by the States of uniform legislation in this respect. This proposed legislation might well take the form of the final section of a uniform State cession and acceptance statute which the Committee is prepared to recommend. The text of this proposed uniform statute will be set out in full text at a later point in this section of the report.

Rulemaking and enforcement authority.—An additional change in the Federal statutes which is, in the view of the Committee, of major importance is further to amend the act of June 1, 1948 (62 Stat. 281), as amended (40 U. S. C. 318, 318a, b, c). Under the present provisions of that statute the General Services Administration is authorized to make needful rules and regulations for the government of Federal property and to annex to these rules and regulations reasonable penalties. The General Services Administration is also given authority by the act to appoint its uniformed guards as special policemen for the preservation of law and order on Federal property under that agency's control, but the jurisdiction and policing powers of such special policemen are restricted to areas over which the United States has acquired exclusive or concurrent jurisdiction. Upon the application of the head of any other Federal agency the General Services Administration is authorized to extend to lands of such an agency, over which the United States has acquired exclusive or concurrent jurisdiction, the application of General Services Administration's rules and regulations and to detail special policemen for the protection of such property.

Because of the requirement of Federal legislative jurisdiction and other practical difficulties mentioned earlier in this report, many Federal agencies have found it impossible to make use of the authority granted in the act. In other instances the requirement that the lands concerned be under the exclusive or concurrent jurisdiction of the United States before General Service Administration rules and regulations can be extended to them has resulted in the undesirable practice on the part of some agencies of acquiring otherwise unneeded legislative jurisdiction over Federal lands. For these reasons the Committee recommends that the rulemaking authority presently granted to the General Services Administration by the mentioned act of June 1, 1948, as amended, be broadened to allow the head or other duly authorized officer of each Federal land-management agency to make needful rules and regulations for the management of the Federal property under the control of such agency.

The power to make and enforce the necessary rules and regulations for the management of Federal property does not depend, constitutionally, on the acquisition by the Federal Government of legislative jurisdiction. Indeed, several Federal agencies already enjoy authority in this respect without reference to the jurisdictional status of the lands concerned. The General Services Administration by section 2 of the act just discussed (40 U. S. C. 318a) and the Department of the Interior with respect to the national parks (16 U. S. C. 3) provide examples of this. Additionally, it may be noted that the authority which employees of the National Park Service and the Forest Service enjoy in the enforcement of rules and regulations for the protection of the national parks and national forests is similarly free from any dependence upon the jurisdictional status of the lands concerned. For this reason the Committee recommends the elimination of the requirement of section 1 of the act of June 1, 1948, as amended (40 U. S. C. 318), that the police jurisdiction of the General Services Administration special policemen be limited to areas under the concurrent or exclusive jurisdiction of the United States. It further recommends that the regulatory authority which it proposes be granted to all Federal land management agencies should not be made to depend on the acquisition of Federal jurisdiction over the lands concerned. Because of the confusion and other adverse effects which multiplication of Federal police forces well might have on law enforcement, however, the Committee does not propose the extension to any other Federal agencies of the authority presently granted to the General Services Administration by the act of June 1, 1948, as amended, to appoint uniformed guards as special policemen. The authority of such agencies to utilize the facilities and services of existing Federal law-enforcement agencies and, where appropriate, State or local agencies is, in the view of the Committee, ample to meet the needs of these agencies in that respect.

In summary, therefore, the Committee recommends that the act of June 1, 1948 (62 Stat. 281), as amended (40 U. S. C. 318-318c), be further amended as follows:

Section 1 (40 U. S. C. 318), amend all after "unlawful assemblies," to read as follows:

and to enforce any rules and regulations made and promulgated pursuant to this Act.

Section 2 (40 U. S. C. 318a), amend to read as follows:

The head of any department or agency of the United States or such other officers duly authorized by him are authorized to issue all needful rules and regulations for the government of the Federal property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the

limits prescribed in section 4 of this Act, as will insure their enforcement: *Provided*, That such rules and regulations shall be posted and kept posted in a conspicuous place on such Federal property. This authority shall not impair or affect any other authority existing in the head of any department or agency.

Section 3 (40 U. S. C. 318b), amend to read as follows:

(1) The head of any department or agency of the United States and such officers duly authorized by him, whenever it is deemed economical and in the public interest, are authorized to utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law enforcement agencies, to enforce any regulations promulgated under the authority of section 2 of this Act.

(2) Upon the application of the head of any department or agency of the United States the Administrator of General Services and officials of the General Services Administration duly authorized by him are authorized to detail such special policemen as are necessary for the protection of the Federal property under the charge or control of such department or agency.

Section 4 (40 U. S. C. 318c), amend to insert "than" between "more" and "\$50."

Jurisdiction of United States commissioners.—The above-recommended broadening of the regulatory and enforcement authorities of Federal agencies with regard to the management of their properties would make necessary a corresponding enlargement of the jurisdiction of United States commissioners. The present jurisdiction of United States commissioners is delineated by section 3401 of title 18 of the United States Code, which provides that United States commissioners specially designated for that purpose by the court by which they were appointed have jurisdiction to try and sentence—

persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction.

In view of the Committee's recommendation that the regulatory authority of land management agencies of the United States be freed from the limitations of a legislative jurisdictional requirement, and in view, further, of the obvious fact that regulations issued under such authority must be capable of enforcement, a forum must be provided in which persons accused of violations of such regulations can be tried and, if convicted, sentenced. The Committee therefore recommends that subsection (a) of section 3401, title 18, United States Code, be amended to read as follows:

(a) Any United States commissioner specially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent or partial jurisdiction, or which is under the charge and control of the United States, and within the judicial district for which such commissioner was appointed.

Miscellaneous Federal legislation.—The only further amendments to Federal statutes which the Committee feels are necessary at this time are the repeal of section 103 of title 4, United States Code, and of sections 4661 and 4662 of the Revised Statutes of the United States (33 U. S. C. 727, 728), with the substitution for the last-mentioned section of a new section in title 40 of the United States Code substantially as follows:

Any civil or criminal process, lawfully issued by competent authority of any State or political subdivision thereof, may be served and executed within any area under the exclusive, partial, or concurrent jurisdiction of the United States to the same extent and with the same effect as though such area were not subject to the jurisdiction of the United States.

The Committee recommends repeal of section 4661 for the reason that its provisions requiring a cession of jurisdiction over the sites of light-houses, beacons, public piers and landmarks as a condition precedent to the erection of such structures are inconsistent with section 355 of the Revised Statutes of the United States, as amended. The first sentence of section 4662 defines what type of jurisdiction is sufficient to meet the requirements of section 4661, and requires exclusive jurisdiction in the United States. Its repeal is recommended for this reason. The second sentence of section 4662 should be preserved, however, to insure the power of the several States to serve civil and criminal process within such sites already acquired under this act. The Committee recommends, however, that its application be broadened to all Federal lands and has therefore recommended that, as a codification matter, the new section be inserted in title 40.

The repeal of section 103 of title 4, United States Code, is recommended because the section is obsolete. The section gives to the President authority to procure the assent of the legislature of a State to the Federal purchase of land, so that the Federal Government shall acquire legislative jurisdiction over the property, where a purchase of land has been made without the prior consent of the State. Authority to acquire legislative jurisdiction over previously acquired property now is adequately provided by section 355 of the Revised Statutes of the United States, as amended.

State legislation.—As has already been pointed out, the Committee is of the opinion that additional legislation on the part of many States, and amendments of State constitutions in several instances, will be required to allow relinquishment of unneeded Federal legislative jurisdiction to them by the United States. Additionally, it is the Committee's view that further State legislative action is indicated with respect to uniformity in State cession and consent statutes.

The States of Montana, North Dakota, South Dakota, and Washington, as has been indicated earlier, have in their constitutions pro-

visions for the exercise of exclusive jurisdiction by the United States to which these States may wish to give attention.

Uniform State cession and acceptance statute.—The Committee's study also has revealed that considerable disparities exist among the various States in their legislation pertaining to the cession of legislative jurisdiction to the United States. Some of these differences have been pointed out in an earlier part of this report. In view of the fact that the Federal Government's power to legislate for ceded areas is dependent initially upon a grant of consent in this respect by the State concerned, it is obvious under these circumstances that unilateral action on the part of the Federal Government directed toward sounder policies and practices in this field could be only partially successful. It is for this reason that the Committee invites to the attention of the States the desirability of their enactment of a uniform State cession and acceptance statute along the following lines; optional matter, to provide conformity with existing State practices, is included in brackets:

SECTION 1. (a) Whenever the United States shall desire to acquire legislative jurisdiction over any lands within this State and shall make application for that purpose, the Governor is authorized to cede to the United States such measure of jurisdiction, not exceeding that requested by the United States, as he may deem proper over all or any part of the lands as to which a cession of legislative jurisdiction is requested, reserving to the State such concurrent or partial jurisdiction as he may deem proper.

(b) Said application on behalf of the United States shall state in particular the measure of jurisdiction desired and shall be accompanied by an accurate description of the lands over which such jurisdiction is desired and information as to which of such lands are then owned [or leased] by the United States.

(c) Said cession of jurisdiction shall become effective when it is accepted on behalf of the United States, which acceptance shall be indicated, in writing upon the instrument of cession, by an authorized official of the United States and [admitting it to record in the appropriate land records of the county in which such lands are situated] [filing with the Secretary of State].

SEC. 2. Notwithstanding any other provision of law, there are reserved over any lands as to which any legislative jurisdiction may be ceded to the United States pursuant to this act, the State's entire legislative jurisdiction with respect to taxation and that of each State agency, county, city, political subdivision, and public district of the State; the State's entire legislative jurisdiction with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property; concurrent power to enforce the criminal law; and the power to execute any process, civil or criminal, issued under the authority of the State; nor shall any persons residing on such lands be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of such jurisdiction to the United States.

SEC. 3. (a) Whenever the United States tenders to the State a relinquishment of all or part of the legislative jurisdiction theretofore acquired by it over lands within this State, the Governor is authorized to accept on behalf of the State the legislative jurisdiction so relinquished.

(b) The Governor shall indicate his acceptance of such relinquished legislative jurisdiction by a writing addressed to the head of the appropriate department or agency of the United States and such acceptance shall be effective when said writing is deposited in the United States mails.

The foregoing proposal, if enacted into law by the several States, when used in conjunction with the applicable Federal authority as it would exist after the enactment of the amendments recommended just previously, would permit cooperative action on the part of appropriate Federal and State officials for the resolution of most of the manifold problems of both the Federal and State Governments, and of the residents of Federal areas, by the existence of Federal legislative jurisdiction over so many lands within the States.

The proposed statute has been drawn in the form in which it appears above in order to meet a number of needs which came to the attention of the Committee in the course of its study. The following comments in respect to certain of its specific provisions are considered appropriate: (a) The authority to make the actual cession of jurisdiction and to determine the measure thereof which should be ceded are confided to the Governor in order to permit an adjustment of the amount of jurisdiction which is ceded to the needs of the particular lands involved; the need for such discretion in some State official has been apparent throughout the Committee's study; (b) the amount of jurisdiction which the Governor may cede is limited to not more than what has been asked for on behalf of the Federal Government for the reason that it is obviously to the advantage of the State, the United States, and the residents of the area, for the United States to acquire only the amount of jurisdiction sufficient to meet its needs; (c) provision is made for the cession of jurisdiction over lands not yet acquired by the United States to allow the continuance of the desirable practices followed by certain United States agencies of (1) determining in advance what jurisdiction is necessary for the purpose to which the lands are to be put and acquiring such lands only when such jurisdiction is obtainable, and (2) acquiring by a single cession from a State one type of jurisdiction over a large area eventually to become part of one Federal installation but for which the lands are to be acquired at different times or over a period of time; (d) provision is made for admission to record of all cessions of jurisdiction in order that the respective limits of State and Federal jurisdiction will be readily ascertainable; (e) by section 2 of the act certain irreducible minimums of authority are left in the States; as an examination of the provisions of this section will reveal, the taxing power of the State and that of its political subdivisions is in no wise reduced, nor is the power to enforce the criminal law; and care has been exercised to preserve the rights and privileges of the residents

of ceded areas; and (f) the necessary provisions for acceptance of relinquished jurisdiction, mentioned earlier, have been made.

Summary.—It is the belief of the Committee that the need for the Federal and State legislation which has recommended is demonstrated by its study and in this report. With the enactment of such legislation, and with the revision by Federal agencies of their policies and practices relating to the acquisition or retention of legislative jurisdiction so that they are in conformity with the recommendations made in the report, the Committee is confident that most of the problems presently arising out of this subject could be resolved, to the great benefit of the Federal Government, the States and local governmental entities, residents of Federal areas, and the many others who are affected.

APPENDIX A

SUMMARY OF FEDERAL LANDHOLDING AGENCIES' DATA RELATED TO JURISDICTION

The questionnaires addressed to each of the 23 landholding agencies of the Federal Government produced a tremendous mass of information; reports from the larger agencies exceeded a thousand pages each. The numbers and areas of properties reported by the agencies were verified by the Committee against data set out in the Inventory Report on Federal Real Property in the United States as of December 31, 1953 (S. Doc. No. 32, 84th Cong., 1st sess.), and any discrepancies which might affect the accuracy of this study were reconciled by the agencies involved. While a later inventory report is now available (S. Doc. No. 100, 84th Cong., 2d sess.), it was published after the questionnaires related to this study had been completed.

The information which each of the landholding agencies transmitted to the Committee concerning its properties, and the views indicated by each agency concerning the jurisdictional status its properties should have, are summarized below. References will be noted to questionnaire A, and questionnaire B; these relate, respectively, to the questionnaire addressed to each agency concerning its property in general, and to the similarly addressed questionnaire concerning individual properties of each agency in the States of Virginia, Kansas, and California, which were the States selected for sampling purposes. Questionnaire B elicited statistical facts concerning such matters as the number of nonmilitary residents and the number of children on each installation, and sought information on a number of other possible recurrent, day-to-day problems. These included such matters as access to local schools and other local governmental facilities, equality of privileges as compared with local residents, the maintenance of vital statistics, the availability of notarial services, the furnishing of police and fire protection, and garbage disposal.

The accuracy of some of the opinions expressed as to the relative advantages or disadvantages of the existing jurisdictional status should be measured against expressions on the matters by the Committee, since it must be recognized that the extent of knowledge as to what that status is, and the legal incidents relative thereto, varied with the correspondents.

DEPARTMENT OF THE TREASURY

Data from questionnaire A.—The three bureaus of the Treasury Department which supervise property outside of the District of Columbia have a total of approximately 1,219 installations, aggregating approximately 26, 941.45 acres in area plus 674,266 square feet of office and storage space (Coast Guard: 1,049 installations aggregating 25,473 acres plus 144 installations (lifeboat stations) aggregating 977 acres; Customs: 20 installations aggregating 366.6 acres, and buildings totaling 43,444 square feet, of which 8,112 square feet are located on land either leased or occupied by permit; and Mint: 6 installations aggregating 124.85 acres plus 630,822 square feet of office and storage space).

The property throughout the United States occupied by the Bureau of Customs and the Bureau of the Mint is all held under a proprietorial interest only, while property of the United States Coast Guard is variously held under each of the several types of legislative jurisdictional status and under a proprietorial interest. The jurisdictional status of Coast Guard lands, to the extent that it is known, is indicated to be as follows:

Property	Total number	Area (acres)	Number of properties			Proprietorial
			Exclusive	Partial	Concurrent	
Academy.....	1	61	1			
Air detachment.....	4					
Air station.....	9	864	2			
Base.....	22	228	9			7 ¹
Depot.....	19	22	9			
Electronic engineering station.....	11					
Fog signal station.....	1	25	1			
Group office.....	4					
Lifeboat station.....	144	977	12	1		131
Light attendant station.....	53					
Light station.....	321	4, 912	144		13	10
Loran transmitting station.....	10	283	3			
Moorings.....	12					
Radio beacon station.....	1					
Radio station.....	14	645	4			
Receiving center.....	1	430	1			
Supply center.....	1	67	1			
Supply depot.....	3					
Training station.....	1	429	1			
Yard.....	1	39	1			
Total.....	633	8, 982	189	1	13	148

¹ Held in mixed status: Concurrent and proprietorial.

Since the jurisdictional status of many properties is unknown to the Coast Guard, it is impossible to determine the acreage held under each of the different types of jurisdiction.

Data from questionnaire B.—In the State of California the Treasury Department has a total of 21 installations comprising 1,113.95 acres and 95,164 square feet of building space. Of these properties 19 belonging to the Coast Guard, constituting a total of 1,111.19 acres,

are reported to be under the exclusive legislative jurisdiction of the United States (although it appears that some of these may be within the definition of "partial" jurisdiction adopted for the instant study, in view of the practice of this State of reserving certain powers in making cessions). One property belonging to the mint, consisting of 2.76 acres and 95,164 feet of building space, is held in a proprietorial interest only status. The status of the additional property consisting of 7 acres held by the Coast Guard (Point Loma Light Station) is unreported. Despite the exclusive (or partial) nature of most of the California installations, vital statistics are maintained by State or local authorities and local coroners investigate deaths occurring on the premises under unknown circumstances. Residing on Coast Guard properties are 172 persons other than military personnel. Twenty-one of the thirty-eight installations in the 12th Coast Guard District report that their residents are denied equal access with State residents to State colleges. All persons are indicated as otherwise having equal access to State governmental facilities and equal privileges under the State. Sixty-nine children residing on these installations attend State schools; of these, forty are children of military personnel and twenty-nine are children of civilians. Resident children are in all cases granted access to State schools; however, in the majority of cases it was reported that Federal funds in the form of grants-in-aid were paid to the State.

The Treasury Department manages no property owned by the United States in the State of Kansas.

In the State of Virginia the Coast Guard is the only agency of the Department reporting management of realty, a total of 50 properties aggregating 1,388.398 acres, 1.03 rods, and 18 perches. Twenty-six properties and a portion of an additional property, aggregating 189.31 acres, are reported in an exclusive legislative jurisdictional status. Two properties and portions of two additional, aggregating 18.729 acres, are reported as having a partial legislative jurisdiction status. One property, consisting of 0.42 acre, is held in a concurrent legislative jurisdiction status. Fourteen properties and portions of four are held in a proprietorial interest status. As to 3 properties and a portion of an additional property, records on jurisdictional status are unavailable; the area of only one such property (0.22 acre) is known. Vital statistics are not maintained on Coast Guard reservations. There is no known general rule which the coroners in the State of Virginia follow apropos investigation of deaths occurring under unknown circumstances. There are nine civilian personnel residing on Federal properties within the State. These persons are granted equal voting rights, equal access to existing governmental facilities, and

equal privileges. Three children of civilian personnel attend State schools on an equal basis with State residents.

Agency views.—The Bureau of Customs and the Bureau of the Mint have experienced no difficulties in operating under a mere proprietorial interest and see no need for Federal legislative jurisdiction over their properties. While the Coast Guard likewise indicated no significant problems with any type of jurisdiction it initially stated an opinion that exclusive or concurrent legislative jurisdiction was best suited to its properties. This opinion was subsequently revised, and the Coast Guard has informally indicated to the Committee that a proprietorial interest only would suit its properties. Consequently, all Treasury agencies owning property consider a proprietorial-interest-only status satisfactory for their properties.

DEPARTMENT OF DEFENSE

- a. Department of the Army.
- b. Department of the Navy.
- c. Department of the Air Force.

a. Department of the Army

Data from questionnaire A.—The number of properties owned by the United States and occupied, operated, or supervised by the Department of the Army is indicated to approximate 1,330. Of this number approximately 574 pertain to military installations and 756 to river and harbor improvements and flood-control projects. The Army reports that it does not have readily available information as to specific categories, acreage and type of jurisdiction in regard to river and harbor improvements and flood control. However, it has been the policy of the Army not to request jurisdiction over such properties, and generally, they are held in a simple proprietorial interest. In regard to military properties, the categories, jurisdictional status, number and acreage are listed as set forth in the following table. It may be noted therefrom that while many of Army's properties are held in an exclusive legislative jurisdiction status (41 percent by number and 20 percent by acreage), similarly large quantities of its properties, of all categories, are held in a proprietorial interest only (30 percent by number and 46 percent by acreage), and considerable quantities in a partial or concurrent legislative jurisdictional status:

General category of property	Exclusive		Concurrent		Partial		Proprietorial		Undetermined		Mixed, num- ber	Total		
	Num- ber	Acreage	Num- ber	Acreage	Num- ber	Acreage	Num- ber	Acreage	Num- ber	Acreage		Num- ber	Acreage	
Military training facilities (posts, camps, forts).....	21	1,077,908	2	143,977	10	764,800	14	1,232,811	3	805,100	21	71	4,014,803	
Headquarters and administrative facilities.....	10	14,688	1	1,141	1	8,771	7	8,299	1	29	5	25	24,226	
Schools (exclusive of schools at training installations).....	2	4,386	---	---	2	9,646	---	11,896	---	---	2	6	26,408	
Hospitals (exclusive of local hospitals on installations).....	6	1,265	---	---	1	181	3	92	1	120	2	12	1,568	
Depots, maintenance, and repair facilities.....	32	805,399	3	4,796	13	82,725	19	72,005	3	2,853	16	85	467,778	
Fort and harbors.....	6	906	---	28	1	2,313	2	2,180	---	---	3	12	5,407	
Defense facilities (tactical, Nike, antiaircraft artillery, etc.).....	8	4,478	---	---	---	---	6	741	1	1,541	4	19	6,760	
Testing and proving grounds (research and development).....	7	60,441	---	12	1	56,264	7	1,879,513	---	---	5	20	1,905,280	
Communication, motion-picture, and TV facilities.....	2	1,280	1	69	13	108,589	5	2,318	2	1,142	2	12	4,769	
Industrial facilities (arsenal, plants, etc.).....	26	176,104	3	925	13	3,960	20	27,836	1	26,406	8	71	338,569	
USAR and National Guard facilities.....	40	42,076	1	340	---	---	66	56,383	8	21,215	3	118	123,969	
Recreation and rest camp facilities.....	1	2	---	---	---	---	10	23	---	---	---	11	25	---
Cemeteries, monuments, parks, and historical sites.....	76	2,324	1	33	4	326	13	609	3	1	12	109	3,298	
Prisons and disciplinary barracks.....	---	370	---	---	1	12,005	1	3,181	---	---	1	3	16,166	
Total.....	236	1,691,551	13	151,307	46	1,030,489	173	3,297,367	23	857,406	84	574	7,028,120	

*Data from questionnaire B.*¹—The acreage and jurisdictional status of properties held by the Department of the Army in Virginia, Kansas, and California are reported as follows:

	Total	Kansas	Virginia	California
Exclusive.....	67,695	9,563	34,888	23,244
Partial.....	92,875	74,327	-----	18,548
Concurrent.....	122,614	-----	122,614	-----
Proprietorial.....	1,010,026	-----	1,909	1,008,117
Total.....	1,293,210	83,890	159,411	1,049,909
Less arithmetical errors.....	—893	-----	—893	-----
Total.....	1,292,317	83,890	158,518	1,049,909

The designation of jurisdictional status supplied by the various reporting installations was used in every instance except that of Fort Leavenworth, which was changed by the Committee from a reported exclusive jurisdiction to a partial legislative jurisdiction on the basis of precise information on this installation.

A general satisfaction of installation commanders with the jurisdictional status of installations held under exclusive (or partial approaching exclusive) Federal jurisdiction was reported. This general satisfaction extended, but in a markedly lesser degree, to all installations whatever their jurisdictional status. For industrial type installations there was indicated a decided preference for a proprietorial interest status. With respect to other types of installations, in a number of instances where there was only a proprietorial interest it was suggested that a greater degree of jurisdiction be obtained by the United States, but generally no problems were indicated as arising out of the existing status. On the contrary, several advantages were variously cited as arising from such a status. The reasons given by the Army and by local commanders for retaining or obtaining exclusive legislative jurisdiction are mainly related to military control and security, and freedom of both bases and personnel from local interference and regulation. It appears, however, that no serious problems with respect to these matters are reported in the cases of the many Army installations which are under less than exclusive jurisdiction. In many cases where an exclusive jurisdiction status was urged for a proprietorial interest area it was nevertheless acknowledged that State and local authorities in fact have a "hands off" attitude with respect to Army operation of military establishments, and that no actual conflicts exist. In only one instance in which such a change was desired, where the installation is located in part on exclusive-

¹ These questionnaires were sent only to military installations. For the reasons set forth above in relation to questionnaire A, reliable information is difficult to obtain concerning the areas in the three selected States devoted to the civil functions of the Army.

jurisdiction land and in part on proprietary-interest-only land, which are all administered uniformly, was there a definite indication of conflict, the degree of which was not stated. In other such cases, it was indicated, the Army post commander's fear of State or local interference was based on a "theoretical analysis" of possibilities, or on suppositions not based on actual experience. In still other cases the Army commander had an erroneous impression that an exclusive-jurisdiction status, as distinguished from a proprietary-interest-only status, permitted him to exercise more control over civilians, including their arrest and final disposition of charges against them.

Where premises had differing legislative jurisdictional statuses, they were nonetheless administered in the same manner in all cases except one. In no instance were any problems reported as arising out of the differing statuses.

The number of residents other than armed forces personnel on Army premises in Virginia, Kansas, and California is approximately 20,991. On six installations there residents were denied an equal right with State residents to vote. On two of the installations at which residents are denied equal voting rights, Camp Cooke, Calif., and Branch United States Disciplinary Barracks, Lompoc, Calif., they are also reported to be denied access to State colleges without payment of a nonresident tuition fee, although these installations are reported as held under a proprietary interest only. A denial of equal facilities was cited on four installations. Equal privileges were reported as denied in seven instances.

Resident children attending school were reported as follows: Children of Armed Forces personnel, 7,323; others, 1,416; total school children, 8,739. Seven installations reported that these children were not accepted in State schools on an equal basis with State residents. In six of these cases, State schools were the recipients of Federal grants-in-aid; in the other instance, a separate school maintained on the base was supported jointly by State and Federal sources.

Vital statistics are maintained in most instances by local authorities, regardless of the jurisdictional status of the property. However, 2 installations reported such statistics were not maintained; 9 installations reported that these statistics were maintained by the Federal Government.

Eighteen installations reported that a local coroner did not investigate deaths occurring on the premises; investigations were performed by the local coroner on 41 installations. For the most part factors other than jurisdictional status of an installation determine whether or not a local coroner will conduct investigations.

Services of a notary public were available on the premises in 33 of the 68 reporting installations. In those cases where notaries were not on the premises, they were located in areas ranging from immediately adjacent to the premises to 10 miles away.

Thirty installations reported a necessity for the services of a United States commissioner. Distances to the nearest commissioner ranged from one on base to 65 miles, with an average distance of about 17 miles.

Services of local police were reported as needed and rendered in 10 instances. In a number of instances local police would appear to operate on exclusive jurisdiction areas. Such services were not needed in 57 cases. The Sierra Ordnance Depot, Calif., reports a past history of inability to obtain local police protection despite the fact that the interest of the Federal Government in the property was only proprietary. Upon the activation of the depot in 1942 local police authorities declined to assume jurisdiction over law violations on the depot on the ground that the status of a military reservation precluded the assumption of jurisdiction. In order to have some law enforcement, a United States commissioner was appointed to try violations of California law under the Assimilative Crimes Act. The authority of the commissioner was challenged on several occasions. Not until 1955 was it possible for the Army to obtain partial jurisdiction over the area (which contained leased land) in order to clear the confused situation.

Fire protection was furnished by the Federal Government in 23 cases, local government in 9 cases, and reciprocally in 34 cases. The source of fire protection appeared in most instances to be more contingent upon factors such as the size and manpower of the installation, and the proximity and resources of the local community, than upon the legislative jurisdictional status of the properties involved.

The Army makes a special reference to the area occupied by the Pentagon. Since it appears that there is some uncertainty as to whether the United States is vested with exclusive or only concurrent jurisdiction over that part of the Pentagon and outside facilities as are located on land lying between the boundary line established between the District of Columbia and the Commonwealth of Virginia by the act of October 13, 1945 (59 Stat. 552), and the high-water mark as it existed on January 24, 1791, the question arises whether to seek a cession of exclusive jurisdiction over the area from the Commonwealth of Virginia or whether to retrocede concurrent jurisdiction over the area now under exclusive jurisdiction, since consistency in the status of both areas is desirable.

Agency views.—The policy of the Department of the Army with respect to the acquisition of legislative jurisdiction has been for the Chief of Engineers to make ad hoc decisions on a request for the procurement of jurisdiction made by the using service. Where such decision is in favor of jurisdiction, the Corps of Engineers procures the maximum jurisdiction which the State will grant.

The Department of the Army indicates the desirability of providing authority to the Secretary of the Army for the adjustment of the existing jurisdictional status of Army properties, but opposes any action on the basis of the instant study which would divest the United States of any jurisdiction over military properties which it now has.

b. Department of the Navy

Data from questionnaire A.—The Department of the Navy has a substantial inventory of real property (614 installations, comprising 3,417,174 acres), which property is predominantly held only in a proprietorial interest status, but a large number of installations are held under the exclusive legislative jurisdiction of the United States, and lesser numbers in a partial or concurrent jurisdictional status. The properties fall into 27 categories based on use—naval bases, depots, shipyards, industrial reserve facilities, ordnance plants, hospitals, radio stations, civilian and military housing, detention barracks, etc.; all but 1 of such categories include 1 or more exclusive jurisdiction installations, all but 3 minor categories of properties, which are used by the Marine Corps, include proprietorial interest only installations, all but 12 include concurrent jurisdiction installations, and all but 14 include partial jurisdiction installations. The numbers and total approximate areas of properties reported to be under the several types of jurisdiction are indicated in the following table:

Jurisdiction	Number	Acreage	Square Feet
Exclusive.....	266	1,085,698	87,000
Concurrent.....	35	214,821
Partial.....	34	153,085
Proprietorial.....	408	1,646,491
Total.....	1 743	* 3,100,095	87,000

¹ The discrepancy in the number of parcels occurs from the fact that several parcels enjoy varying types of legislative jurisdiction.

* The Navy advises, on the basis of data full details of which were not furnished to the Committee, that this figure should be revised to 3,417,174 acres.

Data from questionnaire B.—The approximate number and acreage of the sites reported in the three States under specific consideration (Virginia, Kansas, and California) are as follows:

[Acres unless otherwise specified]

State	Number	Total area	Uncertain	Exclusive	Concurrent	Partial	Proprietorial
Virginia.....	39	¹ 118, 108 ² 20, 000	-----	41, 322	3, 633	-----	73, 150 ³ 20, 000
Kansas.....	2	⁴ 4, 157	-----	4, 157	-----	-----	-----
California.....	67	⁴ 2, 435, 154 ⁵ 93, 418 ⁶ 159 (⁶)	⁷ 601. 31	186, 309 ² 33, 287	32	136, 405	2, 114, 028
Total.....	108	⁷ 2, 557, 419 ² 113, 418 ⁶ 159	² 601. 31	231, 788 ² 33, 287	3, 665	136, 405	2, 187, 178 ³ 20, 000

¹ 1 Installation had 3-acre error.² Square feet.³ Various recruiting stations occupy 3,057 square feet in GSA or Post Office buildings. The jurisdictional status of this area will be reported by GSA and the Post Office Department.⁴ The total acreage given was 1,620 acres less than reported in the jurisdictional breakdown.⁵ Acres held in adverse possession.⁶ Various installations occupy 269,997 square feet in Army, Navy, Post Office, and GSA buildings.⁷ The Navy advises, on the basis of data details of which were not furnished to the Committee, that this figure should be revised to 2,363,085 acres.

In a few reports it was suggested that jurisdiction over housing, particularly housing entirely for civilians, be retroceded to the States, and that the Federal Government maintain a proprietorial interest only. With only one exception all installations reported satisfaction with the housing units under their command which were held in a proprietorial interest. Local police, fire, etc., services, as well as rights of the residents such as voting, were the reasons given for the desirability of a proprietorial status for these housing units.

On the other hand, reports from local installations showed a general desire for more than proprietorial interest with respect to lands used for activities other than housing. Affirmative answers were received in almost all instances where the type of jurisdiction was the greatest obtainable under State law. Reports from 38 installations expressed the opinion that the present jurisdictional status of the installations was not the most suitable, in almost every such instance desiring the greatest amount of jurisdiction available to the Federal Government under the laws of the particular State. The reason most often assigned was that superior military security and control were possible under superior legislative jurisdictional status. It will be noted that the Navy Department itself does not concur in this theory. Despite the many recommendations for an upgrading in jurisdiction with respect to installations holding less than exclusive jurisdiction, few problems with local officials or disadvantages attributable to the existing status of the installations were reported. Most reports stressed the spirit of cooperation and harmony existing between the command and local authorities, local officials very generally have adopted a "hands-off" attitude with respect to naval properties, whatever the legislative jurisdiction status of such properties, rendering

only such service and assuming only such authority as are welcomed by the naval commanders. This is demonstrated by the fact that in almost all installations based on areas of land under two or more types of jurisdiction there is no distinction made on the basis of jurisdiction in the administration of the several areas comprising the installation.

Approximately 37,595 residents were reported living on 52 installations. The figures ranged from 1 resident to 9,349. From the reports given it is not possible accurately to determine what proportion of such residents reside on lands under each of the varying types of jurisdiction.

The reports indicate that residents of 45 of the installations are allowed to vote in the State and that the right to vote has been denied to residents of 10 installations. All of the negative responses came from installations where the civilians resided on land under exclusive Federal jurisdiction. In many other instances, however, persons on such land were allowed to vote. Discrepancies were rampant between various installations in the State and even between various installations within a single city.

There are 16,133 schoolchildren residing on naval lands in the 3 sample States. Of these, 13,684 are children of persons in the naval service and 2,449 are those of civilians. It is not possible from information made available to break down the number of schoolchildren by the legislative jurisdiction of the land on which they reside.

Resident children on 58 installations were reported as being accepted in State schools on an equal basis with State residents, whereas the children living on 14 installations were denied this privilege. In all the cases in which a negative response was received either the local school district was receiving Federal grants-in-aid, or the installation was providing transportation to the school for the Federal children. In no reported instances were the children denied schooling. If formerly there were problems in this area, it would seem that, at least for the present, the Federal aid system has alleviated them almost entirely.

Equal use of facilities and equal privileges were accorded to residents of Federal enclaves almost without fail regardless of the jurisdiction over the land upon which they resided. Access to courts of divorce, adoption courts, mental institutions, and other incidents of State residency were reported denied in a few instances, but there nowhere appeared to be an overall State policy present, the results differing from locality to locality within the individual State and, indeed, differing at the same locality with respect to different facilities and privileges. (The Naval Auxiliary Air Station at El Centro, Calif., under exclusive jurisdiction, reported that access is allowed

to juvenile courts, divorce courts, adoption courts. On the other hand, residents are denied the right to serve as executors or administrators of local estates, as well as the right of probate within the State, and are refused the services of visiting nurses and access to State hospitals for the mentally ill. Such residents are allowed to vote.) There were no reported cases of denial of equal privileges, in fact some installations reported better-than-equal privileges, such as exception from hunting-license laws.

In a substantial majority of the cases, vital statistics concerning civilians are taken and maintained by local authorities regardless of status of jurisdiction. Likewise the coroner investigates deaths of civilians. In most installations under exclusive jurisdiction and in some under other statuses, deaths of members of the naval service are investigated by Federal authorities. In several instances, however, it was reported that the local coroner was requested to investigate. Some two or three stations reported that naval authorities attached to the station had been deputized as coroners by local authorities and all investigations on the installation were conducted by such deputies.

The availability of notarial services was reported affirmatively in 41 instances, negatively in 62. Where no notary was on the post, such services were usually available within a short distance. Frequently these services were performed on land under exclusive Federal jurisdiction.

The services of a United States Commissioner were not required in 80 reporting cases, were required in 22. While many of the installations reporting no need were held under proprietorial interest only, many others in a different status relied upon local police or military regulations, and reported a need for a United States Commissioner rarely if at all.

Thirty installations reported a need for local police services, and in all except one case such services were available. Local police were usually utilized to render general police service in connection with naval housing, although other instances of their use, such as in connection with theft investigation and traffic control, were cited. Usually, but not always, the local police were not acting on land under exclusive jurisdiction. One installation reported that its housing development, on exclusive jurisdiction land, was patrolled by local police under an agreement whereby the lessee company of the housing project made a payment in lieu of taxes to the local municipality; in other instances local police took action, as a matter of accommodating naval authorities, with respect to arrest of individuals for law violations occurring on other types of exclusive jurisdiction installations.

One station, holding 507 acres exclusive and 10 acres proprietorial, reported that station police only apprehended and held civilians until they were turned over to local police at the gate for formal charge, arrest, and prosecution. Presumably no attempt was made to determine the jurisdictional status of the land upon which the purported crime was committed. Sixty-eight installations reported no need for local police services. While most of these were located on exclusive jurisdiction land, several were not, but relied upon military policing. The local police appear to have almost completely respected the desires of installation commanders concerning the rendering of their services on military land.

Whether or not local fire protection was rendered does not appear to depend entirely upon the status of the land in question, but rather upon other factors such as size and character of the installation, proximity to local fire-fighting facilities, adequacy of local facilities, etc. The breakdown was as follows: Federal only, 34; local only, 19; reciprocal, 48. While a few of the reciprocal agreements were written, the great majority of them were informal oral agreements, in consonance with the often-cited harmony and cooperation between local and Federal officials.

Agency views.—The policy of the Department of the Navy with regard to the acquisition of legislative jurisdiction has been to acquire no legislative jurisdiction unless the local commander makes a request for the acquisition of jurisdiction setting out his reasons therefor. If the Department determines on the basis of this request that Federal legislative jurisdiction is necessary or desirable, the Department procures the maximum jurisdiction permitted by general State cession statutes.

In view of the opinion of the Department of the Navy that the jurisdictional status of the site of an installation is immaterial insofar as any effect it may have upon the security and military control over the property and personnel of a command are concerned, it bases its view of the desirability of a particular type of jurisdiction in a general way upon the the size and self-sufficiency of the installation. For large, self-sufficient bases exclusive (or partial approaching exclusive) jurisdiction is felt desirable. For small, non-self-sufficient installations concurrent jurisdiction (or proprietorial interest only as a second choice) is desirable. In all cases the determination would have to be made by an analysis of the problems of the particular installation and a weighing of the advantages and disadvantages of the various jurisdictional statuses, with housing areas being considered separately in arriving at the final decision.

c. Department of the Air Force

Data from questionnaire A.—The Department of the Air Force reports that it holds within the United States 189 primary installations comprising 6,327,498 acres. Minor installations were not included in the report. Of the 6,327,498 acres reported, 371,100 acres are held under exclusive jurisdiction; 10,895 acres under concurrent jurisdiction; 201,018 acres under partial jurisdiction; and 5,744,485 acres under a proprietorial interest. It is to be noted that over 90 percent of the acreage reported is held under a proprietorial interest only. The following table illustrates the current status of Air Force properties broken down by use and jurisdictional status:

Type of Installation	Number of Installations	Total acreage	Exclusive	Concurrent	Partial	Proprietorial
Active Air Force bases.....	144	¹ 1,369,084	221,626	10,895	196,118	940,445
Depots.....	12	7,513	523	-----	2,348	4,642
Aircraft control and warning sites.....	13	1,412	513	-----	-----	899
Bombing and for gunnery ranges.....	20	4,949,489	148,438	-----	2,552	4,798,499
Total.....	189	6,327,498	371,100	10,895	201,018	5,744,485

¹ Main base acreage. Does not include off base facilities such as outer marker sites, radio transmitter and receiver sites, etc.

Data from questionnaire B.—The acreages and jurisdictional status of properties held by the Department of the Air Force in the three States of Virginia, Kansas, and California are reported as follows:

	Total	Kansas	Virginia	California
Exclusive.....	100,952	160	-----	100,792
Partial.....	205,796	40,371	-----	165,425
Concurrent.....	9,003	-----	9,003	-----
Proprietorial.....	155,304	-----	-----	155,304
Total.....	471,055	40,531	9,003	421,521
Plus arithmetical errors.....	¹ 308	-----	-----	¹ 308
Total.....	471,363	40,531	9,003	421,829

¹ March Air Force Base, Calif., showed a 308-acre error in its compilation.

The jurisdictional preference of the reporting installations is almost uniformly for exclusive Federal jurisdiction or for the highest degree of Federal jurisdiction obtainable under the applicable State statutes. With regularity, the reason assigned for the desirability of exclusive jurisdiction was based upon the security of and military control over the installation. Other reasons assigned were the nonapplicability of State liquor regulation, noninterference with the operation of post exchanges and similar Federal instrumentalities, Federal criminal enforcement, nontaxation of leasehold interests in

Wherry housing, and the impression that exclusive jurisdiction would perfect the installation's rights as a riparian landholder.

The various installations report 10,692 residents, of which 1,754 are in Virginia, 12 in Kansas and 8,926 in California. Apparently the dependents of Armed Forces personnel were not included in the total for Kansas since the answer to another question indicates a total of 758 children residing in Kansas.

Residents of these areas are generally accorded all the rights of residents of the State, with a few exceptions. Residents are not granted a right to vote at McConnell Air Force Base, Kans., and Beale Air Force Base, Calif. They are denied equal use of facilities at Topeka Air Force Base, Kans., and at Beale in California. All of these installations are held under exclusive or partial Federal legislative jurisdiction. Since California now grants complete political rights to residents of Federal areas within its borders, it appears that some error has been made by local officials in regard to the rights of residents at Beale Air Force Base.

Seven thousand one hundred and fifty-three children reside on Air Force installations within the three States. Children of military personnel in Virginia number 916, in Kansas 758, and in California 5,200. In addition, 279 children of civilians reside on Federal areas within California. All of the children are enabled to receive public education, with no reported difficulties. In many instances, however, the local school districts receive Federal grants-in-aid.

Notaries public were reported as available on base in 13 instances; on 7 bases notaries were not present. Where a notary was not situated on the installation, the distance to the nearest notary varied from one to 27 miles, the average distance being 8.5 miles.

The services of a United States commissioner are required in eight instances. The distance to the nearest commissioner varies from 1 on base to 55 miles distant. The average distance to the nearest United States commissioner is approximately 23 miles. Fifteen installations reported that they had no requirement for the services of a United States commissioner.

The services of local police were required and rendered in eight instances. In two of these cases, the main function of local police was in traffic regulation. Six of the installations which reported the receiving of local police services are held under exclusive or partial Federal jurisdiction; the remaining two bases are held under concurrent jurisdiction. Fourteen installations reported no requirement for the services of local police.

Fire protection was rendered by Federal sources in 16 cases, locally in 2, and reciprocally in 5. Factors other than the jurisdictional status of the lands involved appear to determine the source of fire protection.

Agency views.—The policy of the Department of the Air Force with respect to the acquisition of legislative jurisdiction has been to acquire exclusive jurisdiction as a matter of course over all permanent installations wherever State statutes permit, except for bombing and gunnery ranges, for which no jurisdiction is acquired. The relatively small percentage of Air Force properties having any Federal jurisdictional status is explained by the following factors: (1) Many permanent installations have only recently been so designated and time has not permitted the obtaining of Federal jurisdiction, (2) rapid enlargement of installations by land acquisition and a time lag in obtaining Federal jurisdiction, and (3) the largest Air Force acreage represents bombing and/or gunnery ranges; these are for the most part located in the Western States and are comprised in a large part of public domain land which is not generally covered by enabling legislation; also it has been deemed neither necessary nor desirable to obtain Federal jurisdiction over bombing ranges, as generally no personnel or equipment are permanently located on them.

The Department of the Air Force is of the apparent view that a form of partial legislative jurisdiction would be most desirable. The Department envisages a type of jurisdiction in which the civil and political rights of the Federal residents would not be disturbed and yet would vest in the Federal Government substantial powers. It feels that reservations by the States of authority to control fishing and hunting, regulate and license private businesses and the power of taxation would not materially affect the military function. The Department more recently has indicated a view that concurrent rather than exclusive legislative jurisdiction is that toward which it would probably lean.

DEPARTMENT OF JUSTICE

Data from questionnaire A.—The reports of the two agencies of the Department of Justice which occupy, operate, or supervise real property owned by the Federal Government in the several States indicate that they have 48 such properties, aggregating 25,534.58 acres (Immigration and Naturalization Service 17 properties, 68.48 acres; Bureau of Prisons 31 properties, 25,466.1 acres). The jurisdictional statuses of such properties are as follows:

Jurisdiction	Number	Area
(a) Exclusive.....	11 and parts of 5.....	<i>Acres</i> 16, 205. 44
(b) Concurrent.....	None.....	
(c) Partial.....	2.....	2, 016. 4
(d) Proprietary.....	23 and parts of 5.....	2, 962. 84
(e) Unknown.....	7 and parts of 2.....	4, 349. 9

¹ Plus unspecified acreage of 3 prison camps.

² Plus unspecified acreage of 2 prison camps.

Data from questionnaire B.—Information reported by the Department of Justice agencies concerning the legislative jurisdictional status of their properties in the three States to which questionnaire B appertains may be summarized as follows:

	Jurisdiction	Number	Area
Virginia.....	{Exclusive.....	1	<i>Acres</i> 1540. 4
	{Proprietary.....	1	(¹)
Kansas.....	{Partial.....	1	768. 21
California.....	{Exclusive.....	3	44. 04
	{Proprietary.....	5	107. 70
Total.....		11	2460. 35

¹ Unknown.

A total of approximately 333 persons, including approximately 120 children of school age, being Government employees or their families, reside on the Department's properties. These persons appear on the whole not to be discriminated against because of the status of the areas upon which they live. However, in instances the right to vote has been denied persons resident on lands under the exclusive (or partial) legislative jurisdiction of the United States. Indeed, it appears from information in the hands of the Committee that at least in the case of one installation of the Bureau of Prisons, at El Reno, Okla., the right to vote has been denied to residents although the installation would appear not to be within the legislative jurisdiction of the United States, the State having limited its cession of jurisdiction to the land involved for use of the land for military purposes only.

Agency views.—The Immigration and Naturalization Service has had a policy of not accepting jurisdiction over lands acquired for its purposes, and only in two instances, where lands were originally acquired by other agencies for other purposes, does the Service have lands over which the United States has legislative jurisdiction. The Service states that all its needs have been met under a proprietary interest.

The Bureau of Prisons' practice with respect to the acquisition of legislative jurisdiction over its installations has in the past not been

uniform. The Bureau now feels, however, that concurrent jurisdiction would be the most suitable for all prison sites.

DEPARTMENT OF THE INTERIOR

Data from questionnaire A.—The number of properties owned by the United States and occupied, operated, or supervised by the Department of the Interior approximates 1070 properties comprising over 215 million acres. The numbers of these properties under the various Bureaus of the Department are as follows:

Bureau:	<i>Number of properties</i>
National Park Service.....	161
Bureau of Reclamation.....	120
Fish and Wildlife Service.....	312
Bureau of Land Management.....	218
Bureau of Mines.....	25
Geological Survey.....	2
Southwestern Power Administration.....	128
Bonneville Power Administration.....	221
Bureau of Indian Affairs.....	101
Total.....	1,070

These properties are used for a number of purposes by the Department, the amounts devoted to these uses and the jurisdictional statuses of the land being indicated by the following table:

Character of Federal jurisdiction, classified by use

[In acres, with number of properties in parenthesis]

Character	Exclusive	Partial	Concurrent	Proprietorial
Parks.....	2,907,442.35 (4)	1,521,428.36 (15)		2,406,027.10 (7)
Monuments.....	5,663.93 (6)			3,997,420.81 (73)
Historical parks.....	116.50 (1)			11,444.47 (5)
Military parks.....	16,456.71 (8)		2,544.82 (1)	5,341.80 (2)
Battlefield parks.....			3,094.21 (1)	2,393.31 (2)
Memorial parks.....				64,648.50 (1)
Battlefield sites.....				188.63 (1)
Memorials.....	2.71 (1)			4,420.61 (5)
Historic sites.....		8.61 (1)		1,305.91 (9)
Cemeteries.....	200.43 (8)		15.55 (1)	
Parkways.....		26,657.55 (3)		50,993.44 (2)
National Capital parks.....		(¹)		28,054.43 (1)
Parkway projects.....		3,009.34 (2)		
Other projects.....				21,560.54 (3)
Reclamation ²				9,003,195.85 (120)
Wildlife refuges ³	44,000.00 (1)			9,200,504.00 (208)
Fish cultural station ⁴				15,511.00 (96)
Fish and wildlife research stations ⁴				54.00 (7)
Public domain.....				179,863,289.00 (1)
Mineral research.....		12.25 (1)		443.77 (11)
Helium production.....		393.03 (2)		26,306.98 (6)

¹ Includes some acreage under proprietorial jurisdiction.

² Includes Maryland portion of the Baltimore-Washington Parkway, a part of which is under the exclusive criminal jurisdiction of the United States, and a part under concurrent criminal jurisdiction.

³ Listed by project only, but including dams, flood control works, power stations, etc., often noncontiguous.

⁴ All properties of the Fish and Wildlife Service are listed as proprietorial only since the Service never exercises more than proprietorial jurisdiction, despite the fact that greater jurisdiction is possibly tendered by numerous State laws.

Character of Federal jurisdiction, classified by use—Continued

[In acres, with number of properties in parenthesis]

Character	Exclusive	Partial	Concurrent	Proprietorial
Drainage tunnel.....				169.28 (1)
Oil and gas leasing.....				22.3 (2)
Power substations, etc.....				2,857.55 (203)
Fee portions of transmission lines.....				4,967.98 (39)
Flood control sites.....				375.77 (107)
Indian administration installations.....				2,750,000.00 (101)
Total (215,703,553.38).....	2,973,882.63 (29)	5,241,509.14 (24)	5,664.58 (3)	207,482,497.03 (912)

[In square feet, with number of properties in parenthesis]

Administrative.....				241,847 (217)
Research.....				109,120 (1)
Rescue station.....				7,500 (1)
Total.....				358,467 (219)

Data from questionnaire B.—The acreages and jurisdictional statuses of properties held by the bureaus of the Department of the Interior in the States of Virginia, Kansas and California are reported as follows:

Bureau ¹	Exclusive	Concurrent	Partial	Proprietorial	Total
Geological Survey.....				20	20
Bureau of Reclamation.....			163,885	1,156,616	1,320,501
Bureau of Land Management.....				17,509,575	17,509,575
Bureau of Mines.....			103		103
National Park Service.....	1,140,361	2,129	760,949	2,313,973	4,217,412
Fish and Wildlife Service.....		6,189	150,718	9,031	214,120
Total.....	1,140,361	8,318	1,075,655	20,989,215	23,261,731

¹ Data furnished by Bureau of Indian Affairs did not permit compilation of areas in California, Kansas and Virginia. Properties under management of that Bureau are therefore not included in this table.

² Including 48,182 acres the status of which is not known.

A general satisfaction was evidenced in the status quo of jurisdiction by the individual reporting installations. The only discernible trend was the preference of some national parks toward a concurrent legislative jurisdiction, which, in the majority of cases, was less than the existing status. The main practical advantage found in concurrent jurisdiction is the right of the Federal Government to provide adequate policing of isolated regions where the State authorities are either unable or unwilling to perform such services.

Residing on these installations are found 2,132 persons, most of whom are in areas within the limits of national parks. In this respect, it should be pointed out that many of these residents are residing on

lands which they own, but which are "inholdings" in national parks, plots within the exterior boundaries of the parks.

There were no reported instances in which residents were denied equal vote, equal privileges, or equal use of facilities.

There are 524 school children residing on lands held by the Department of the Interior in California, Kansas, and Virginia. All of these children appear to be admitted to State schools on an equal basis with State residents. Only two installations reported that local schools received Federal grants-in-aid, the remainder were silent on this matter.

Regardless of jurisdictional status, in all cases except one vital statistics were maintained and related certificates issued by the State authorities. (One national military cemetery, however, reported that its record were maintained by the Federal Government.) Likewise, local coroners investigated any deaths occurring on the premises under unknown circumstances.

In almost all installations services of State notaries public were not available on the premises. Distances to the nearest notary public varied from one-fourth mile to 102 miles.

About half of the properties reported a need for the services of a United States commissioner. Distances to the nearest commissioner varied from one in residence on the installation to 150 miles.

Most of the installations reported need of the services of local police and in all instances such services were rendered.

Fire protection was provided locally in 18 cases, by the Federal Government in 25, and reciprocally in 10 instances. The type of jurisdiction does not appear too relevant in determining the source of fire protection. Rather, such factors as size of the installation, size and resources of the surrounding localities, and remoteness of the installations are of paramount importance.

Agency views.—The policy of the Department of the Interior with respect to the acquisition of legislative jurisdiction has been to acquire its lands under a proprietorial interest only wherever possible, and not to accept legislative jurisdiction.

The Department of the Interior is of the opinion that there is in general no necessity for legislative jurisdiction over its properties and that the efficiency of Federal operation is not impaired by holding lands under a simple proprietorial interest. For certain national parks and monuments which cover vast areas and which are situated in remote regions of the country, partial jurisdiction is deemed necessary, although the Department recognizes that the State should have substantial authority in these federally owned areas. For certain wildlife refuges, where the problems seem to be similar, the Depart-

ment has indicated the possible desirability of a concurrent jurisdiction status.

DEPARTMENT OF AGRICULTURE

Data from questionnaire A.—The six agencies of the Department of Agriculture which operate or supervise real property owned by the United States have a total of 532 properties aggregating 168,351,577 acres plus 39,433 square feet of office space, making the Department one of the largest landholding agencies of the Government (second only to the Department of the Interior). While most of the Department of Agriculture's land is held in a status of proprietorial interest only, the Department has lands in each of the other categories defined by the Committee. The following table summarizes the jurisdictional status of the lands:

	Exclusive		Concurrent		Partial		Proprietorial	
	Acres	Number	Acres	Number	Acres	Number	Acres	Number
Agricultural Research Service.....	36,799.2	6	8,406.6	1	39.7	1	312,455.2	67
Commodity Stabilization Service.....							354.8	12
Farmers Home Administration.....							13,414.6	108
Forest Service.....	101,000.0	3			5,644,000	10	162,179,486.8	292
Secretary's Office.....	333.4	1						
Soil Conservation Service.....							55,286.7	46
Total.....	138,132.6	10	8,406.6	1	5,644,039.7	11	162,560,998.1	520

¹ Plus unspecified number included under proprietorial.

² Less unspecified number for inclusion under partial.

³ Plus 39,433 square feet.

It may be noted, incidentally, that with respect to a certain number of other properties the United States has by statute assumed authority over wildlife but this action appears to constitute an exercise of power under some other clause of the Constitution rather than assumption of jurisdiction under article I, section 8, clause 17.

Data from questionnaire B.—Responses from Department of Agriculture installations in Virginia, Kansas, and California indicate that 4 agencies of the Department of Agriculture supervise a total of 53 properties aggregating 21,502,772 acres and an additional 27,500 square feet, in the 3 States involved. Most of this property is held in a proprietorial interest only status, without legislative jurisdiction (51 areas aggregating 21,468,437 acres), but 3 areas aggregating 4,336 acres are held under exclusive legislative jurisdiction, and a portion (30,000 acres) of 1 otherwise proprietorial interest only property is held under a partial jurisdiction status. The status of the lands in these three States is shown in the following table:

	Acreage	Number
California:		
Agricultural Research Service:		
Proprietorial.....	311.5	4
Exclusive.....	218	2
Farmers Home Administration: Proprietorial.....	39.9	1
Forest Service: Proprietorial.....	19,978,064.7	28
Soil Conservation Service: Proprietorial.....	60	1
Subtotal:		
Proprietorial.....	19,978,476.1	34
Exclusive.....	218	2
California total.....	19,978,694.1	36
Kansas:		
Forest Service: Proprietorial.....	106,474	1
Farmers Home Administration: Proprietorial.....	1,000	6
Soil Conservation Service: Proprietorial.....	1181.4	5
Subtotal: Proprietorial (Kansas total).....	1107,655.4	12
Virginia:		
Agricultural Research Service: Exclusive.....	4,118	1
Farmers Home Administration: Proprietorial.....	93.8	1
Forest Service:		
Proprietorial.....	1,382,212	3
Partial.....	30,000	(?)
Subtotal:		
Proprietorial.....	1,382,305.8	4
Exclusive.....	4,118	1
Partial.....	30,000	(?)
Virginia total.....	1,416,423.8	5
3-State total:		
Proprietorial.....	21,468,437.3	50
Exclusive.....	4,336	3
Partial.....	30,000	(?)
Total, 3 States.....	21,502,773.3	53

¹ Plus 2,450 square feet of space.

² 1 portion.

³ Plus 2,450 square feet office space.

A total of 6,431 residents (approximately) are on the properties, including 1,328 children attending schools. While the great majority of residents are on Forest Service properties as to which the Federal Government has only a proprietorial interest, it appears that discriminations are not practiced by the States and local communities against the residents who are on other properties, and all resident children attend schools on an equal basis with other children.

It is noted that local police assistance is required and rendered from time to time on various properties, including some properties under the exclusive jurisdiction of the United States. A number of affirmative recommendations are made for proprietorial interest on the grounds that it expedites arrest and punishment of petty thieves by local authorities, and that local authorities under such a status can supervise the hunting of game. In a number of instances Federal authorities are not readily available to enforce law, and in some such cases law enforcement by local authorities has been reported by some installations as essential to the carrying out of their functions.

Agency views.—The Department of Agriculture is of the view that a proprietorial interest is sufficient to its needs as to all its properties. Consequently it is the policy of the Department to acquire no legislative jurisdiction over its land holdings.

DEPARTMENT OF COMMERCE

Data from questionnaire A.—The reports of the seven agencies of the Department of Commerce (Bureau of the Census, Civil Aeronautics Administration, Coast and Geodetic Survey, Maritime Administration, Bureau of Standards, Bureau of Public Roads, and Weather Bureau), which occupy, operate, or supervise real property owned by the Federal Government in the several States, indicate that together these agencies have 263 such properties, aggregating 32,688.68 acres, plus 2 such properties containing 474,360 square feet of office and storage space. The property supervised by the Department of Commerce is spread through the United States, excepting only 10 States, and is used for general office and storage space, air navigation aids, airports, regional headquarters, housing, geophysical and meteorological observatories, laboratories and testing areas, shipyards, marine terminals, warehouses, maritime training stations, reserve fleet installations, equipment depots, flight strips, and highway rights-of-way. The legislative jurisdictional status of areas operated under the Department of Commerce may be summarized as follows:

Jurisdiction	Number	Area	
		Unit	Amount
Exclusive.....	5	Acre.....	48.3
Do.....	2	Square feet.....	(474,360)
Concurrent.....	None		None
Partial.....	1	Acre.....	616
Proprietorial.....	251	do.....	31,623.64
Unknown.....	6	do.....	400.74
Total.....	265	do.....	32,688.68

Data from questionnaire B.—Responses from Department of Commerce installations in Virginia, Kansas, and California concerning legislative jurisdictional status may be summarized as follows:

	Jurisdiction	Number	Acreage
Virginia.....	Unknown.....	1	187
	Exclusive.....	None	None
	Concurrent.....	None	None
	Partial.....	1	616
	Proprietorial.....	8	3, 045. 93
Total.....		10	3, 848. 93
Kansas.....	None.....	None	None
California.....	Unknown.....	1	2. 5
	Exclusive.....	None	None
	Concurrent.....	None	None
	Partial.....	None	None
	Proprietorial.....	29	4, 964. 8
Total.....		30	4, 967. 3

The several agencies on the whole have found the legislative jurisdictional status of their properties satisfactory. The predominating proprietorial—interest—only jurisdiction is chiefly preferred because of the local police protection which it brings. However, in one such case the Bureau of Public Roads reports difficulty in procuring police services and suggests the desirability of concurrent jurisdiction for the area; the problem apparently arises because of some misunderstanding. The mentioned Bureau also suggests the desirability of changing the legislative jurisdictional status of four of its installations from exclusive to concurrent for the purpose of strengthening its position when local police or fire protection services are required.

Eleven residents, including two schoolchildren, are located upon premises of the Department of Commerce in Virginia and California. Such residents are indicated as having accorded to them all services and privileges usually rendered by State and local governments only to residents of the State involved.

The Civil Aeronautics Authority makes special reference to the area occupied by the Washington National Airport, the jurisdiction of which is indicated as being partial, Virginia having reserved the right (1) to tax certain motor fuel and lubricants, (2) to serve civil and criminal process, and (3) to regulate the manufacture, sale, and use of alcoholic beverages. CAA finds satisfactory the current legislative jurisdictional status of Washington National Airport, excepting an existing State-imposed prohibition on the use of alcoholic beverages other than light wines and beer. In this connection it points out that travelers using the airport come from all parts of the world, that many have a vastly different outlook than is represented by Virginia laws, and that the prohibitions on use of alcohol at the airport

seem arbitrary. CAA recommends transfer to Federal jurisdiction of authority over this subject, but would have no objection to payment to Virginia of taxes on alcohol consumed on the premises.

Agency views.—The Department of Commerce apparently has no departmental policy with respect to the acquisition of legislative jurisdiction. However, all of the landholding agencies of the Department have a policy of accepting only a proprietorial interest in lands acquired for their several purposes.

The land-acquiring agencies of the Department, with the exception of the Bureau of Public Roads, and the CAA with respect to the Washington National Airport, whose views have been indicated, are of the view that it is unnecessary for the proper performance of Federal functions to acquire any measure of legislative jurisdiction over their installation sites.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Data from questionnaire A.—The properties owned by the United States and occupied, operated, or supervised by agencies of the Department of Health, Education, and Welfare aggregate 3,848.063 acres outside the District of Columbia. The major part of this land is composed of hospitals, most of which are held under exclusive Federal jurisdiction. The status of quarantine stations, which are located on land aggregating 88.8 acres, is for the most part unknown to the Department. The various agencies of the Department also occupy office space in buildings held by other Federal agencies. The jurisdictional status of these lands is indicated by the following table:

[Acres]

	Total	Exclusive	Partial	Proprietorial	Unknown
St. Elizabeths Hospital, Maryland.....	307.0	307.0	-----	-----	-----
Public Health Service:					
Quarantine stations.....	88.8	.3	-----	6.9	81.6
Hospitals.....	2,942.413	2,917.034	8.679	15.4	1.3
Communicable disease centers.....	147.0	-----	27.0	120.0	-----
National Institutes of Health.....	362.85	306.2	35.15	21.5	-----
Total.....	3,848.063	3,530.534	70.829	163.8	82.9

Data from questionnaire B.—The only bureau of the Department of Health, Education, and Welfare which supervises federally owned property in any of the 3 States covered by this questionnaire is the Bureau of Medical Services, which has 4 properties in California and Virginia, 2 being in each State. All such property is acquired and the status thereof is shown in the following table:

[All figures in acres]

	Total	California	Virginia
Exclusive.....	47.934	34.501	¹ 12.433
Partial.....	8.679		¹ 8.679
Proprietorial.....	5.6	5.6	
Total.....	62.213	40.101	22.112

¹ Portion of installation at Norfolk.² Installation at Fort Monroe and portion at Norfolk.

A general satisfaction with the jurisdictional status quo was reported. Among the advantages of exclusive jurisdiction are listed the following: Federal property is not subject to State taxation; automobiles of personnel living on the reservation not subject to local taxes; disposition of personal effects upon death of patient according to departmental regulations rather than relinquishment of such effects to the local public administrator. Advantages accruing from holding property under partial jurisdiction and proprietorial interest include local fire and police protection, lectures on fire prevention, and trash collection.

There are 125 residents and 29 schoolchildren residing on the lands in question, 63 residents (12 children) in Virginia, and 62 residents (17 children) in California. The rights of State residency appear to be granted in every case: equal vote, equal schooling, equal privileges and equal use of facilities.

Vital statistics are maintained locally in all instances; the local coroner investigates deaths on three reservations, on the fourth such functions are performed by military authorities.

Notaries are available on the premises in two instances. Where not on the premises they were available at a short distance.

Services of a United States commissioner are stated to be required, and available, only at the San Francisco hospital.

Local police services are reported required in 2 instances, and available in only 1 of these cases. It is desired that such services be made available at Norfolk (exclusive jurisdiction). The San Francisco hospital, held under exclusive jurisdiction, reports that local police investigate thefts and remove disorderly persons from the premises.

Fire protection is available locally on three premises; on the fourth, military authorities provide such services.

Agency views.—The Department of Health, Education, and Welfare indicates that prior to this study it had not formulated or expressed its views on appropriate jurisdictional status for the areas it occupies. For this and other reasons the practices of the subordinate agencies of the Department have varied with respect to the

acquisition of legislative jurisdiction. The National Institutes of Health and the Bureau of Medical Services, which manage approximately nine-tenths of the Department's land holdings have acquired exclusive (or partial) jurisdiction over essentially all of their installations. The practice of the other agencies has not been uniform. All agencies seem to be reasonably satisfied with the jurisdictional status quo. The Department recently has come to the view that a proprietorial interest is most desirable for the large bulk of its properties, and that a concurrent jurisdiction status is more desirable in a relatively few of its institutions where special problems exist with respect to law enforcement.

ATOMIC ENERGY COMMISSION

Data from questionnaire A.—The Atomic Energy Commission operates 35 properties totaling 1,605,817.36 acres. These vary in size from half-acre laboratories to 430,248-acre testing stations. The jurisdictional status of these properties is as follows:

Categories	Acreage and Jurisdiction			
	Exclusive	Concurrent	Partial	Proprietorial
30 industrial.....	8,874	0.36	682	1,105,111
4 industrial-community.....	2,185	0	0	488,939
1 administrative.....	0	0	0	28
Total (1,605,817.36).....	11,059	0.36	682	1,594,076

Data from questionnaire B.—The Atomic Energy Commission occupies two properties in the State of California, and none in Virginia or Kansas. The 2 installations cover approximately 34,905 acres, of which 24,462 acres were withdrawn from the public domain, and 10,443 acres acquired land; 34,224 acres are held in a proprietorial interest only, and 681 acres under partial jurisdictional status.

One of the installations (partial jurisdiction) has no residents, another (proprietorial) 120, with 15 children of military personnel and 18 of civilians. These persons were allowed equal vote, equal use of State and local facilities, and equal privileges, and their children were given equal schooling, with persons domiciled in the State.

Vital statistics were maintained by local authorities and investigations of deaths occurring on the premises were undertaken by the local coroner.

Notaries were available at 1 installation and were 24 miles distant at the other.

The installation held in a proprietorial interest only reported no need for a United States commissioner; the installation under partial

legislative jurisdiction replied affirmatively to such need and reported that a United States commissioner was available 40 miles from the installation.

In the areas held in a proprietorial interest only, police functions are performed by hired guards who have been deputized as sheriffs by the local authorities. In the areas under partial jurisdiction, police functions are performed by guards who are members of the California State Highway Patrol. While the Commission indicates that it does not feel it necessary that guards have such local status, such status is customary policy with the University of California, a State corporation which operates the installation. It may be noted that the status apparently would give no authority to the guards, beyond that possessed by citizens generally, with respect to making arrests in this area.

In both instances, fire protection is Federal. The installation which was situated nearer to local communities had verbal reciprocal agreements with these communities.

Agency views.—The policy of the Atomic Energy Commission has been to acquire no legislative jurisdiction. Indeed, in the case of certain lands acquired from other Federal agencies which were subject to the exclusive jurisdiction of the United States, the Commission has sponsored legislation which allowed it to retrocede jurisdiction to the States.

The Atomic Energy Commission has found that a proprietorial interest only is entirely satisfactory for all categories of property operated by that agency. For properties on which communities are located the Commission considers that a proprietorial interest only offers distinct advantages over other jurisdictional categories.

CENTRAL INTELLIGENCE AGENCY

Data from questionnaire A.—The Central Intelligence Agency reports that it has two properties, both used for foreign radio monitoring. These properties cover 579.3 acres of acquired land, all of which are held in a simple proprietorial interest, although greater jurisdiction could have been obtained under the applicable State laws.

Data from questionnaire B.—The Central Intelligence Agency operates only 1 property located in the 3 selected States, that one being in California. This is a foreign radio monitoring station on 483 acres of acquired land, all held under a proprietorial interest only. A broader jurisdiction could have been accepted under the laws of California.

The California station reports that, "We have not experienced known disadvantage because of the application of State and local building, fire and health regulations, or other State or local law. Arrangements with local authorities and efficiency of administration doubtless have been furthered by our compliance with local pattern."

There are no residents on the California property, hence no vital statistics. Likewise, there has never been an occasion to use the services of a coroner.

A notary public is not available; the nearest one is situated about 8 miles away.

There is believed no need for the services of a United States Commissioner in the administration of the premises.

Services of State police have not been needed, but it is understood that they will be furnished if needed.

Fire protection is provided by the Central Intelligence Agency. No reciprocal arrangements with nearby localities are reported.

Agency views.—The policy of the Central Intelligence Agency with respect to the acquisition of legislative jurisdiction has been to acquire no jurisdiction over any of its properties.

Since, in the view of the Agency, the status of proprietorial—interest—only is not inconsistent with high security standards, it favors a proprietorial interest status for all its properties.

FEDERAL COMMUNICATIONS COMMISSION

Data from questionnaire A.—The Federal Communications Commission reports that it operates 12 properties having an area of 1,715.45 acres. All 12 properties are used as radio monitoring stations. Of this acreage 87.27 is stated to be under the exclusive jurisdiction of the United States, and the remaining 1,628.18 acres are under a simple proprietorial interest only.

Data from questionnaire B.—For radio monitoring purposes, the Commission holds 190 acres of acquired land in a proprietorial interest in California. It also maintains 7,700 square feet of office space in that State. In the State of Virginia it occupies 1,020 square feet of office space. It neither holds, supervises, nor uses any land in Kansas.

The Commission feels that the proprietorial status of its California lands is adequate for the purposes for which they are held. It notes that no particular disadvantages, problems, or advantages have arisen from the application of State or local laws.

There are no residents on the premises.

Should the occasion arise, a local coroner would investigate deaths, and records of vital statistics would be kept by the local authorities.

Notaries are available at only one of the California monitoring stations.

Generally at the monitoring stations there is no need for the services of a United States commissioner. However, at the various district offices such services are occasionally necessary in connection with enforcement matters.

Agency views.—Since 1940 it has been the policy of the Commission not to obtain any measure of legislative jurisdiction over its land acquisitions.

It is the view of the Commission a proprietorial interest only is wholly sufficient for the performance of all its Federal functions.

GENERAL SERVICES ADMINISTRATION

Data from questionnaire A.—The General Services Administration, as the manager of Federal buildings throughout the United States used by various Federal agencies for various purposes, including predominantly post offices and general office space, supervises a much larger number of individual properties (3,904) than any other agency of the United States, more than a third (by number) of all properties owned by the Federal Government. The use and description of the 3,904 properties reported by General Services Administration, including the acreage and the jurisdictional status of the holdings are presented in the following chart:

Description	Property-use code	Pieces of property in category	Land			Exclusive	Concurrent	Partial	Proprietary	Total
			Building (square feet)	Urban (acres)	Rural (acres)					
I. Office-office building.....	113, 210.....	3, 471	102, 328, 469	3, 621.7	408.1	3, 244	12	204	11	3, 471
II. Vacant post office sites.....	121.....	163	120, 694	114.3	9.9	136	14	12	1	163
III. Vacant.....	119.....	53	500	98.4	730.8	51	---	2	---	53
IV. Other land.....	170, 101, 106, 107, 116.....	32	839, 360	453.0	18, 965.2	26	1	6	---	32
V. Housing.....	230.....	31	3, 169, 532	423.6	827.9	27	---	4	---	31
VI. Storage, land and building.....	117, 240.....	41	10, 214, 989	386.4	439.4	35	2	4	---	41
VII. Industrial.....	105, 250.....	54	9, 062, 458	6, 733.3	10, 177.6	45	3	6	---	54
VIII. Structures and facilities.....	370, 304, 115, 111.....	15	480, 879	187.9	148.2	10	---	5	---	15
IX. Institutional.....	110, 221, 229.....	44	16, 644, 747	6, 220.0	28, 943.0	42	---	1	---	44
Total.....	-----	3, 904	142, 859, 628	18, 198.6	60, 350.1	3, 616	32	243	13	3, 904

While the area of GSA properties held in each jurisdictional status is not specified in the GSA report, it is indicated that 3,616 properties (92.6 percent) are held in an exclusive jurisdiction status, 32 properties (0.8 percent) in a concurrent jurisdictional status, 243 (6.2 percent) in a partial jurisdiction status, and 13 (0.4 percent) in a proprietary interest only status. By applying these percentages across the board to the total areas of its properties in each of the categories (buildings, urban land, and rural land) reported by GSA the following results are obtained:

	Number	Percent	Buildings (square feet)	Land	
				Urban (square feet) ¹	Rural (acres)
Exclusive.....	3,616	92.6	132,288,015	734,068,921	55,884
Concurrent.....	32	.8	1,142,877	6,341,848	483
Partial.....	243	6.2	8,857,297	49,149,323	3,742
Proprietary.....	13	.4	571,439	3,170,924	241
Total.....	3,904	100.0	142,859,628	792,731,016	60,350

¹ Converted to square feet from acreage reported.

Data from questionnaire B.—The areas and jurisdictional statuses of General Services Administration properties in the States of Virginia, Kansas, and California, as to which reasonably detailed information was furnished, are as indicated by the following table:

	Exclusive	Concurrent	Partial	Proprietary	Unknown
Kansas:					
Square feet.....	409,956				
Acres.....	0.34				
Virginia:					
Square feet.....	9,131,604		605,700		0.46
Acres.....	0.4				
California:					
Square feet.....	2,664,693		86,084	885,938	1,548,423
Acres.....	41.3		3.6	22.5	3,411.4

Individual General Services Administration installations in California (29 in number), the legislative jurisdictional status of which is known, whatever that jurisdictional status, without exception indicate that a proprietary interest status is the most desirable for the installation involved. Individual installations in Virginia (15 in number) the jurisdictional status of which is known, nearly all being in an exclusive status, are approximately evenly divided on whether that is the most desirable status, with half of the installations favoring lessening the status to one under which the State would be authorized and required to render police and fire services. Individual installations in Kansas (6 in number) the jurisdictional status of which is known, all but 1 recently acquired property being in an

exclusive status, consider exclusive jurisdiction the most desirable status.

Only one installation (Tecale, Calif.) indicated that there were any residents on the area. This installation reported a total of 10 residents and no children. Although the installation is held under exclusive jurisdiction, the report indicated that equal schooling was available. It likewise disclosed that these residents were granted equal privileges and equal use of facilities.

In a substantial majority of the cases, vital statistics are taken and maintained by local authorities regardless of the status of jurisdiction. The reports also disclose that in the majority of cases no occasion has arisen requiring the services of a coroner. Only 3 reports show that a local coroner investigates deaths, in 1 instance by contract with the installation, which had an exclusive jurisdiction status.

Availability of notarial services was reported affirmatively in 20 instances and negatively in 30 cases. This question was not answered in 16 reports. Where no notary was on the installation such services were generally available within a short distance. In 13 cases these services were performed on areas under exclusive Federal jurisdiction, notwithstanding the questionable validity of such notarizations.

Services of a United States commissioner were required in only 4 instances and a negative report was received in 47 cases. In the four cases requiring the services of a United States commissioner, such services were available in the same building.

Twenty-seven installations reported a need for local police services while 24 installations indicated no need for such services. In none of the 27 reports indicating a need for local police services was there any indication that such services were in fact rendered. However, 6 installations reported that the local police were reluctant to make arrests or to quell disturbances on the area, thus indicating that services were rendered in part.

Whether or not local fire protection was rendered does not appear to depend upon the jurisdictional status of the land in question. This is substantiated by the fact that 50 installations, 26 of which are held under exclusive Federal jurisdiction, reported that local authorities furnished fire protection for the area. Only two installations reported that such protection was rendered by the Federal Government, and no report disclosed a reciprocal arrangement.

Agency views.—The apparent practice of General Services Administration and its predecessor agencies with respect to the acquisition of legislative jurisdiction was until about 1947 to obtain exclusive jurisdiction over all properties acquired, without reference to the

needs of the Federal agencies which might occupy the property. The practice subsequent to that time has not been made known to the Committee but from the facts furnished the Committee it is surmised that exclusive jurisdiction is almost uniformly acquired.

The General Services Administration did not in the first instance express any agency opinion as to the desirability of any particular measure of legislative jurisdiction. The opinion among regional counsel, whose views were forwarded, was divided. Among those who had little or no experience with any form of legislative jurisdiction other than exclusive, the consensus was to maintain the status quo. Among those who had substantial experience with lesser forms of jurisdiction the consensus was in favor of concurrent jurisdiction or a proprietorial interest only. Later, the General Services Administration expressed the view that with amendment of existing legislation so as to permit appointment of special police without reference to jurisdictional status a proprietorial interest only would be sufficient for its properties. In the absence of such amendment, a concurrent legislative jurisdiction status would be desirable for properties requiring special police service, and a proprietorial interest for others.

HOUSING AND HOME FINANCE AGENCY

Data from questionnaire A.—The only subagency of the Housing and Home Finance Agency which occupies, operates, or supervises properties of a type to bring them within the cognizance of this Committee is the Public Housing Administration. That Administration holds an estimated 17,205.28 acres (plus certain unascertained acreage) of federally owned land, on which are located 403 projects, with approximately 121,879 housing units, of which approximately 79,263 are occupied. Some of these projects are located in part on leased lands, but the leased land is not included in the mentioned acreage. In addition, the Public Housing Administration is in charge of and operates housing projects situated on land owned by the United States which is under the supervision of other Government agencies, particularly the Department of Defense. The jurisdictional status of nearly all of this acreage is proprietorial.

Data from questionnaire B.—In the three States to which the Committee's questionnaire B pertains (California, Kansas, and Virginia) the Agency holds something over 7,708 acres of land, principally under a proprietorial interest only status, on which are located 74 housing projects.

In California, Kansas, and Virginia, a total of 42,685 children are resident on land of the Agency; 16,263 of this total are children of civilians, and 26,422 are children of military personnel.

No report is made of any practice by States or municipalities of discrimination against residents of such of these properties as are under a proprietorial jurisdictional status with respect to voting or other rights and privileges generally accorded to State residents. Some such discriminations are indicated as having been practiced, at least in Kansas, with respect to residents of areas under the exclusive legislative jurisdiction of the United States. It appears, however, that in most instances land in Kansas and elsewhere utilized for housing projects by the Agency, though formerly under the exclusive legislative jurisdiction of the United States, has been held to revert to the jurisdiction of the State (because of a provision of the Lanham Act (42 U. S. C. 1547)). California, pursuant to State judicial decisions, apparently permits the full exercise of civil rights and privileges by residents of Federal housing projects. All housing now held by the Agency in Virginia is in a proprietorial interest only status and no question of denial of civil rights or privileges arises.

Agency views.—In the view of the Housing and Home Finance Agency there is no need for the acquisition of legislative jurisdiction over Federal housing projects and the practice of the Agency has been to acquire none.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Data from questionnaire A.—The number of properties owned by the United States and occupied, operated, or supervised by the International Boundary and Water Commission is 7, comprising 99,284 acres. The jurisdictional status of these lands is reflected in the following table:

Category	Number	Concurrent acreage	Proprietorial acreage	Total acreage
Flood control	4	488	17,604	18,092
Multipurpose (flood control, water storage, and power generation)	2	-----	81,125	81,125
Storage	1	-----	67	67
Total	7	488	98,796	99,284

Data from questionnaire B.—As the United States does not hold title to land in Virginia, Kansas, or California under the supervision of the Commission, there were no responses to questionnaire B.

Agency views.—It is the opinion of the commissioner that there is no need for Federal legislative jurisdiction with respect to the various categories of Federal lands operated by the agency.

TENNESSEE VALLEY AUTHORITY

Data from questionnaire A.—The properties owned by the United States and occupied, operated, or supervised by the Tennessee Valley Authority number 487 aggregating 761,226 acres of land, plus 158,634 square feet of office space in 3 buildings. Nearly 98 percent of the total acreage of Tennessee Valley Authority properties is accounted for by 38 dam and reservoir sites, but substantial areas are utilized for steam plants, transmission substations, radio stations and micro-wave links, general offices, field headquarters, chemical plants, phosphate mining, river terminals, tree crop nurseries, garages, general service reservations, quarry sites and tributary watershed erosion control.

The jurisdictional status of these lands is as indicated in the table following:

Jurisdiction	Number	Area
Exclusive.....	{ 10	2,855 acres.
Concurrent.....	2	95,700 square feet.
Partial.....	None	None.
Proprietorial.....	None	None.
	{ 474	758,371 acres.
	1	62,934 square feet.

Data from questionnaire B.—Of the three States to which questionnaire B pertains, Tennessee Valley Authority has property in only 1, Virginia, in which are located 4 installations consisting of part of a reservoir, 2 transmission substations, and a transmission line, with a total area of 1,211 acres, all of which are in a proprietorial—interest—only status.

The United States Forest Service gives fire protection to certain of the premises, with additional such protection available from State authorities. The other premises are given fire protection by a neighboring municipality, on a reimbursable basis for any services actually rendered.

Police services which may be required with respect to any of the premises from time to time, and such other governmental services as may be needed in the case of drownings in the reservoirs, are furnished by local authorities.

The premises have no residents, and only one employee, and have no requirement for any governmental services other than those mentioned. The Tennessee Valley Authority indicates that no problems arise out of the fact that the United States has only a proprietorial interest in these premises, with general legislative jurisdiction left in the State, and it considers this jurisdictional status as best suited to the premises.

Agency views.—The Tennessee Valley Authority has had a policy of not accepting legislative jurisdiction over lands acquired for its purposes, and the United States holds such jurisdiction over only such of Tennessee Valley Authority's property as was acquired from other Federal agencies.

UNITED STATES INFORMATION AGENCY

Data from questionnaire A.—The United States Information Agency holds five properties, all of which are used for radio transmitter purposes. These properties total 5,229.5 acres, all held in a proprietorial capacity by the United States. It is not stated whether these lands were in the public domain or were acquired.

Data from questionnaire B.—The United States Information Agency holds 2 properties in the State of California, each comprising 640 acres. These 1,280 acres of acquired land are held in a proprietorial interest, and both are used for radio transmitters. No lands are held by the agency in Kansas or Virginia.

These installations feel that a proprietorial status is best suited for their purposes. They do not specify any reasons for this belief, however. Local laws and regulations, they report, have created neither disadvantages and problems nor advantages.

There are no residents on either of these properties.

Notarial services are not needed or available on the premises. Notaries are located within 1 and 5 miles of the 2 installations.

The services of a United States commissioner are not required. Likewise there is no need for local police services.

Fire protection is provided by the local authorities.

Agency views.—In the view of the United States Information Agency a proprietorial—interest—only status is most suitable for its properties. Consequently, the practice of that agency has been to acquire no legislative jurisdiction over the sites of its installations.

VETERANS' ADMINISTRATION

Data from questionnaire A.—The properties owned by the United States and occupied, operated, or supervised by the Veterans' Administration number 176 installations, plus 14 vacant installation sites, and are located in all 48 States. The areas occupied by these units in the States vary in size from 3 acres to 2,367 acres, with an average area of 230 acres, and a total area of 43,874 acres. The numbers and total approximate areas of properties reported to be under the several types of jurisdiction are indicated in the following table:

Jurisdiction	Number	Acreage
Exclusive.....	149 and parts of 4.....	38, 256. 32
Concurrent.....	11.....	1, 787. 3
Partial.....	6.....	679. 0
Proprietorial.....	18 and parts of 4.....	3, 151. 375

In addition, the Veterans' Administration reports occupancy of one parcel, consisting of 24.04 acres, owned by the Departments of the Army and Air Force, subject to exclusive jurisdiction, and 1 parcel, consisting of 96.2 acres, which may be subject to either exclusive or partial jurisdiction.

Data from questionnaire B.—The Veterans' Administration reported 3 properties in Virginia (totaling 687 acres), 3 in Kansas (totaling 1,117 acres), and 10 in California, including a vacant site of 208 acres (totaling 2,173 acres). These landholdings constitute 5 percent of the total holdings reported by the Veterans' Administration, and no reason appears why they should not constitute a fair sample of all Veterans' Administration properties. The following table summarizes certain information concerning the properties in the 3 States. The meanings of the letters following the jurisdictional designations are explained in the matter following the table.

Location	Area	Jurisdiction
Virginia:	<i>Acres</i>	
Kecoughtan.....	85	Exclusive a, a, a, a.
Richmond.....	156	Partial c, b, b, c.
Roanoke.....	445	Exclusive a, a, a, a.
Kansas:		
Topeka:		
2 tracts.....	423	Partial c, a, a, c.
2d tract.....		Partial or proprietorial c, (?), a, c, or d.
Wadsworth.....	645	Exclusive c, a, a, a.
Wichita.....	49	Partial c, c, a, c.
California:		
Livermore.....	234	Partial c, c, a, c.
Los Angeles.....	713	Exclusive a, a, a, a.
Oakland.....	3	Proprietorial d, d, d, d.
Fresno.....	18	Proprietorial d, d, d, d.
Long Beach.....	100	Partial c, c, a, c.
Palo Alto.....	96	Exclusive d, a or c, b or c, a.
San Fernando.....	617	Partial d, c, d, c.
San Francisco.....	23	Exclusive a, a, a, a.

The letters in the last column of the table represent the several types of jurisdiction as defined by the Committee: a=exclusive; b=concurrent; c=partial; and d=proprietorial interest only. The letter or letters before the first comma after each spelled-out specification of jurisdiction in the table indicate the view of the Assistant Administrator for Construction, Veterans' Administration, as to the character of the jurisdiction of the United States over the piece of property involved; the letter or letters between the first two commas indicate the view of the manager of the establishment as to the jurisdiction had over the property; the next letter or set of letters indicates

the view of the General Counsel of the Veterans' Administration; and the last letter or set of letters indicates the view of the Committee staff. Of considerable significance is deemed the fact that in only 6 of the 14 cases analyzed did all 4 parties agree on the character of the jurisdiction held by the United States.

The establishment managers expressed nearly 100 percent satisfaction with the jurisdictional status had by the establishments under their supervision, whatever that status might be. In one instance only did the manager of an establishment suggest the desirability of a change in its status, from exclusive to concurrent jurisdiction.

The 14 reported installations each have from 14 to 676 more or less permanent residents. The total is 2,237 of whom 175 are children of school age. In addition, of course, there are many thousands of persons on these installations as patients and similar inhabitants.

It is indicated by the returns that at 11 of the installations the permanent residents are permitted to vote in State elections on the basis of their residence on the installation involved, whatever the jurisdictional status of such installation may be. This privilege is denied to residents of only three installations.

With respect to every installation it is indicated that children are accepted at local public schools on the same basis as State residents, and in only one case is it indicated that the school district involved receives Federal assistance (Wichita) and in one case that the children are given Federal transportation to the school (Livermore).

In all but two instances it is reported that residents of the Federal areas receive equal use of State and local governmental facilities and equal privileges with persons domiciled in the State involved. In the two instances which are exceptions it is indicated in one (Kecoughtan) simply that residents have access to governmental facilities furnished by local and State governments but are not granted other privileges usually accorded only to persons domiciled in the State, and it is indicated in the other (Wichita), that while State laws make some discriminations against persons not domiciled in the State, such discriminations in practice have not been applied against residents of the Federal installation involved, although doubt is expressed as to whether a discrimination might not be applied in certain instances.

In every instance agencies of the appropriate city, county, or State, maintain vital statistics for the Veterans' Administration installations which reported to the Committee. In all but three cases the local coroner investigates deaths occurring on the premises under unknown circumstances; in only one of such cases the FBI investigates (Los Angeles), in another case the circumstances are made known to the coroner and there apparently exists complete cooperation be-

tween him and the installation authorities, although he has not conducted a personal investigation in many years (Kecoughtan), and in the third case no explanation is given beyond the fact that the local coroner does not conduct investigations in connection with such deaths.

In all but two cases services of a State notary are available on the premises, frequently furnished by an employee of the Veterans' Administration.

In three instances where the United States has exclusive jurisdiction with respect to punishment for crimes (Palo Alto, San Fernando, and San Francisco), the manager indicated that there was no requirement for the services of a United States commissioner in the administration of the premises. This may be explained by the fact that in these 3 instances, and in 6 others, services are rendered to the premises by local police, who presumably utilize the local system of judicial administration in processing offenders against the laws. Another explanation may lie in the sometimes considerable distance of installations from the nearest commissioner, who may be as far as 35 miles away (Livermore). In 1 of the only 5 cases in which local police do not render services (Roanoke) the manager suggests the advisability of a change in the status of his installation from exclusive to concurrent jurisdiction.

In 9 of the 14 reporting cases the Federal Government maintains fire-fighting equipment, but in each instance such equipment apparently is inadequate to cover all possible emergencies, since in each instance arrangements have been made on a reciprocal or other basis for assistance from local municipal or other fire-fighting equipment. In the five other cases fire-fighting protection is furnished only by equipment of the local municipality.

Agency views.—The policy of the Veterans' Administration with respect to the acquisition of legislative jurisdiction has for many years been to acquire exclusive jurisdiction where possible, except as to office buildings and some other types of buildings located in cities.

It was the consensus of the Administration that exclusive Federal legislative jurisdiction except as to some urban buildings in general best suits the requirements of the Veterans' Administration, although in some specific instances certain rights should be had by the States on a concurrent basis.

MISCELLANEOUS AGENCIES

Various agencies have reported to the Interdepartmental Committee that their landholdings, if any, either were insubstantial or were administered or controlled by other Government agencies. Accordingly, reports from these agencies are summarized together.

The following agencies reported that they administered or controlled no real estate within the purview of the study:

- (a) Arlington Memorial Amphitheater Commission.
- (b) National Capital Planning Commission.
- (c) Rubber Producing Facilities Disposal Commission.
- (d) Office of Defense Mobilization.
- (e) Farm Credit Administration, including Government-owned corporate units thereunder.

The following agencies reported that they occupied some property, generally office space, which was controlled and administered by other agencies. These latter agencies have presumably included the amounts thereof in their reports:

- (a) Department of Labor.
- (b) Railroad Retirement Board.
- (c) Federal Civil Defense Administration.
- (d) Department of State.
- (e) Federal Power Commission.
- (f) Civil Aeronautics Board.
- (g) Small Business Administration.
- (h) Post Office Department.

The following agency reported relatively small landholdings for which it is charged with the responsibilities of control and administration:

National Advisory Committee for Aeronautics. The extent of and types of jurisdiction relative to holdings of NACA can be summarized as follows:

Jurisdiction	Number of properties	Area
Exclusive.....	2	¹ 317. 14
Concurrent.....	2	² 9, 069
Partial.....		
Proprietary.....		

¹ Includes 67.77 acres held by permit from Department of the Navy.

² Includes 200 acres held by permit from Department of the Air Force.

In addition NACA occupies 16,000 square feet of space on lease from the Department of Defense (Air Force), for which no jurisdictional status was specified. The agency holds 8,869 acres in Virginia under concurrent jurisdiction, 39.37 acres in California under exclusive jurisdiction, and no acreage in Kansas.

The agencies listed in the immediately preceding paragraphs which occupied property were unanimous in stating that no difficulties had arisen with respect to the jurisdictional status under which they held their properties. Accordingly, no agency considered itself in a posi-

tion to comment upon the desirability of one type of Federal jurisdiction rather than another.

The St. Lawrence Seaway Corporation, in an interim reply to the Committee, reported that the land acquisition program on behalf of the Corporation had not been completed and that the Corporation itself was not as yet operating any works upon the St. Lawrence River. The reply further stated that while the officers and staff of that agency had been discussing for some time the various problems which might arise in connection with security, search, and seizure on the St. Lawrence River within the boundaries of the seaway, police jurisdiction along the locks and canals of the seaway, and similar problems, the Corporation had not as yet arrived at a policy determination with respect to these matters.

Tables I, II, and III, which follow, summarize some of the information obtained from the agencies through questionnaires A and B. Table I contains information as to the amount of real property held countrywide by Federal agencies and its legislative jurisdictional status. Table II contains similar information with respect to Federal real property located in the States of Virginia, Kansas, and California. Table III reports the number of residents (other than persons in the military service and inmates of institutions) and the number of children living on installations of the various Federal agencies in the three States concerning which information was sought.

TABLE I.

Agency	Number of properties	Total	Exclusive	Partial	Concurrent	Proprietorial	Unknown
Treasury Department.....	1 639	†666,154 square feet, 9,348.6 acres.....	-----	-----	-----	‡666,154 square feet, 9,348.6 acres.....	8,982 acres.
Department of the Army.....	† 574	7,028,120 acres.....	1,671,551 acres.....	1,030,489 acres.....	151,307 acres.....	3,277,367 acres.....	857,406 acres.
Department of the Air Force.....	180	6,367,498 acres.....	371,100 acres.....	201,018 acres.....	10,895 acres.....	5,744,483 acres.....	-----
Department of the Navy.....	614	†87,000 square feet, 3,417,174 acres.†	†87,000 square feet, 1,083,098 acres.....	158,080 acres.....	214,821 acres.....	1,046,891 acres.....	-----
Department of Justice.....	48	26,534.38 acres.....	16,206.44 acres.....	2,016.4 acres.....	-----	2,902.84 acres.....	4,349.9 acres.
Department of the Interior.....	1,070	†383,467 square feet, 216,703,553.38 acres.....	2,973,852.63 acres.....	5,241,509.14 acres.....	5,664.58 acres.....	†383,467 square feet, 207,482,497.03 acres.....	-----
Department of Agriculture.....	532	†39,433 square feet, 103,351,577 acres.....	138,132.6 acres.....	5,644,039.7 acres.....	8,406.6 acres.....	†39,433 square feet, 162,660,998.1 acres.....	400.74 acres.
Department of Commerce.....	265	†474,360 square feet, 32,088.08 acres.....	48.3 acres.....	619 acres.....	-----	31,623.64 acres.....	82.9 acres.
Department of Health, Education, and Welfare.....	37	3,848,063 acres.....	3,503,534 acres.....	70,829 acres.....	-----	163.8 acres.....	-----
Atomic Energy Commission.....	35	1,605,817.36 acres.....	11,059 acres.....	682 acres.....	0.36 acres.....	1,594,076 acres.....	-----
Central Intelligence Agency.....	2	576.3 acres.....	-----	-----	-----	579.3 acres.....	-----
Federal Communications Commission.....	12	1,715.45 acres.....	87.27 acres.....	-----	-----	1,628.18 acres.....	-----
General Services Administration.....	† 3,904	†142,859,628 square feet, †792,731,016 square feet, 60,350 acres.....	†132,288,015 square feet, †734,063,291 square feet, 55,884 acres.....	†8,857,297 square feet, †49,149,323 square feet, 3,742 acres.....	†1,422,877 square feet, †6,341,848 square feet, 453 acres.....	†571,439 square feet, †3,170,924 square feet, 241 acres.....	-----
Housing and Home Finance Agency.....	403	17,205.28 acres.....	-----	-----	-----	17,205.28 acres.....	-----
International Boundary and Water Commission, United States and Mexico.....	7	99,284 acres.....	-----	-----	488 acres.....	98,796 acres.....	-----
Tennessee Valley Authority.....	487	†158,634 square feet, †61,226 acres.....	†95,700 square feet, 2,855 acres.....	-----	-----	†62,934 square feet, †788,371 acres.....	-----
U. S. Information Agency.....	5	5,229.5 acres.....	-----	-----	-----	5,229.5 acres.....	-----
Veterans' Administration.....	190	43,873.995 acres.....	38,256.32 acres.....	679 acres.....	1,787.3 acres.....	3,151.375 acres.....	-----

† Includes only areas of known jurisdictional status.

‡ Building space.

* Does not include river and harbor and flood-control projects.

† Urban land.

† Total based on corrected figures furnished by Navy. Corrected breakdown by jurisdictional status not furnished by the Navy.

* Areas of these properties under each type of jurisdiction are computed from the total percent of each type of classification and from the total area.

TABLE II

Agency	State	No. of properties	Total	Exclusive	Partial	Concurrent	Proprietorial	Unknown
Treasury Department...	California...	(?)	95,164 square feet; 1,113,954 acres.	1,104,194 acres			2.76 acres, 94,164 square feet.	7 acres.
	Kansas...	(?)	277,204 acres, 1.03 rod and 18 perch.	189.31 acres	18,729	0.42	08.525 acres, 1.03 rod and 18 perch.	0.22 acres.
	Virginia...						1,008,117 acres	
Department of the Army	California...	49	1,049,909 acres.	23,244 acres	18,548			
	Kansas...	4	83,890 acres	9,563 acres	74,327			
	Virginia...	14	158,518 1/2 acres	34,883 acres		122,614	1,909 acres	
	California...	67	93,418 square feet, 2,435,154 acres 2/3	186,309 acres	136,405	32	2,114,028 acres	
Department of the Navy	Kansas...	2	20,000 square feet;	4,157 acres				
	Virginia...		4,157 acres.					
Department of the Air Force.	California...	39	118,108 acres	41,322 acres		3,633	73,150 acres	
	California...	16	421,829 acres 1/2	100,792 acres	165,425		155,304 acres	
	Kansas...	5	40,531 acres	160 acres	40,371			
	Virginia...	2	9,003 acres			9,003		
Department of Justice...	California...	8	151.74 acres	44.04 acres			107.7 acres	
	Kansas...	1	768.21 acres		768.21			
	Virginia...	2	1,540.4 acres	1,540.4 acres			(1)	
Department of the Interior.	California...	(?)	22,966,613 acres	944,163 acres	1,075,552	1,120	20,908,501 acres	37,185 acres.
	Kansas...	(?)	48,712 acres		103		37,612 acres	10,997 acres.
	Virginia...	(?)	246,106 acres	196,190 acres		7,198	43,012 acres	
Department of Agriculture.	California...	36	19,975,694.1 acres	218 acres			19,978,476.1 acres	
	Kansas...	12	2,469 square feet;				2,450 square feet,	
	Virginia...	5	107,655.4 acres.	4,118 acres	30,000		107,655.4 acres.	
Department of Commerce.	California...	30	1,416,423.8 acres.				1,382,303.8 acres	2.5 acres.
	Kansas...		4,967.3 acres.				4,964.3 acres	
Department of Health, Education, and Welfare.	California...	10	3,848.93 acres		616		3,045.93 acres	187 acres.
	Virginia...	2	40,101 acres	34,501 acres			5.6 acres	
	Kansas...	2						
Atomic Energy Commission.	California...	(?)	22,112 acres	13,433 acres	8,679		34,224 acres	
	Virginia...	2	34,905 acres		681			
	Kansas...							
Central Intelligence Agency.	California...	1	483 acres				483 acres	
	Kansas...							
	Virginia...	4	1,211 acres				1,211 acres	

	California.	2	7,700 square feet, 100 acres.		7,700 square feet, 100 acres.		7,700 square feet, 100 acres.
Federal Communications Commission.	{ Kansas Virginia California.	(7)	1,020 square feet. 6,186,138 square feet, 3,478.8 acres.	2,664,693 square feet, 41.3 acres.	86,084 square feet, 3.6 acres.	1,020 square feet. 86,084 square feet, 22.6 acres.	1,548,423 square feet, 3,411.4 acres. 0.46 acre.
General Services Administration.	{ Kansas Virginia.	7	409,456 square feet, 0.8 acre.	409,956 square feet, 0.34 acre.			
Housing and Home Finance Agency.	{ California Kansas Virginia.	16	9,737,304 square feet, 0.4 acre.	9,131,604 square feet, 0.4 acre.			
International Boundary and Water Commission, United States and Mexico's	{ California Virginia California.	38	4,241.2 acres.			4,241.2 acres.	
Tennessee Valley Authority.	{ Kansas Virginia California.	4	1,211 acres.			1,211 acres.	
United States Information Agency.	{ Kansas Virginia California.	2	1,280 acres.			1,280 acres.	
Veterans' Administration.	{ California Kansas Virginia.	10	2,173 acres.	982 acres.	951 acres.	240 acres.	
	{ Kansas Virginia.	3	1,117 acres.	645 acres.	472 acres.		
	{	2	687 acres.	530 acres.	157 acres.		

¹ This total is 593 acres less than the total of the separate types of properties, the result of arithmetical errors.

² Total acreage given was 1,620 acres less than reported in jurisdictional breakdown.

³ This total is 246 acres more than the total of the separate types of properties, resulting from an error in computation with respect to March Air Force Base, California.

⁴ One installation (Guantanamo) of unknown area.

⁵ Does not include Bureau of Indian Affairs.

⁶ No land in any of the 3 States.

TABLE III.—*California, Kansas, and Virginia*

Agency	Residents	Schoolchildren	
		Military	Nonmilitary
Department of the Treasury.....	181	40	32
Department of the Army.....	20,991	7,323	1,416
Department of the Navy.....	37,595	13,684	2,449
Department of the Air Force.....	¹ 10,692	6,874	279
Department of Justice.....	333	-----	120
Department of the Interior.....	2,132	-----	524
Department of Agriculture.....	6,431	-----	1,328
Department of Commerce.....	11	-----	4
Department of Health, Education, and Welfare.....	125	-----	29
Atomic Energy Commission.....	120	15	18
Central Intelligence Agency.....	-----	-----	-----
Federal Communications Commission.....	-----	-----	-----
General Services Administration.....	10	-----	-----
Housing and Home Finance Agency.....	(²)	26,422	16,263
International Boundary and Water Commission, United States and Mexico.....	-----	-----	-----
Tennessee Valley Authority.....	-----	-----	-----
United States Information Agency.....	-----	-----	-----
Veterans' Administration.....	2,237	-----	175

¹ Apparently excluding dependents of Armed Forces personnel in Kansas.

² Number of residents not indicated in report. However, it was indicated that there were 27,154 housing units in the 3 States concerned.

APPENDIX B

PART A. STATE CONSTITUTIONAL PROVISIONS AND STATUTES OF GENERAL EFFECT RELATING TO THE ACQUISITION OF LEGISLATIVE JURISDICTION BY THE UNITED STATES

ALABAMA

The Code of Alabama (adopted by act of the Legislature of Alabama, approved July 2, 1940) title 59, sections—

§ 1. (3147) (2413) (626) (19) (19) (22) (24) *The United States may acquire lands.*—The United States may acquire and hold lands within the limits of this state, as sites for forts, magazines, arsenals, dockyards, and other needful buildings, or either of them, as contemplated and provided by the constitution of the United States, which purchase may be made by contract with the owners, or as hereinafter provided. In like manner the United States may acquire and hold lands, rights of way, and material needed in maintaining, operating, or prosecuting works for the improvement of rivers and harbors within this state.

§ 3. (3162) (2428) (629) (22) (22) *Cession of sites covered by navigable waters.*—Whenever the United States desires to acquire title to land belonging to this state, and covered by the navigable waters of the United States, and within the limits of this state, for the site of a lighthouse, beacon, or other aid to navigation, and application is made therefor by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state may convey the title to the United States, and may also cede to the United States such jurisdiction over the same as may be necessary for the purposes of the United States; and upon like application the governor may convey to the United States the title to any land belonging to this state and covered by the navigable waters of the United States upon which any lighthouse or other aid to navigation has heretofore been erected, and may also cede to the United States such jurisdiction over the same as may be necessary for the purpose of the United States; but no single tract shall contain more than ten acres.

§ 18. (3161) (2427) (628) (21) (21) (24) (23) *Governor to cede jurisdiction; restriction.*—The governor, upon application made to

him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of title in the United States, describing the lands, is authorized on the part of the state by patent to be recorded in the office of the secretary of state to cede to the United States such jurisdiction as he may deem wise over such lands, to hold, to use, and occupy the same for the purposes of the cession, and none other.

§ 19. (3166) *Jurisdiction of United States over ceded lands.*—The jurisdiction heretofore ceded to the United States over any lands acquired by it within the State of Alabama, with the consent of the state, shall be subject to such reservations, restrictions, and conditions as provided in the act or instrument of cession relating to such acquisition; and shall be subject to the exercise by the state of such jurisdiction, rights, privileges, or powers as may now or hereafter be ceded by the United States to the state. The jurisdiction ceded to the United States over any lands hereafter acquired by it within the State of Alabama, with the consent of the state, pursuant to the provisions of this title or any other law of the state, unless otherwise expressly provided in the act or instrument of cession, shall be subject to the following reservations, restrictions, or conditions. The jurisdiction so ceded shall not prevent the execution upon such lands of any process, civil or criminal, issued under the authority of this state, except as such process might affect the property of the United States thereon. The state expressly reserves the right to tax all persons, firms, corporations, or associations now or hereafter residing or located upon such lands. The state expressly reserves the right to tax the exercise by any person, firm, corporation, or association of any and all rights, privileges, and franchises upon said lands; and to tax property of all persons, firms, corporations, or associations situated upon such lands. The jurisdiction ceded to the United States shall be for the purposes of the cession, and none other; and shall continue during the time the United States shall be or remain the owner thereof and shall use such lands for the purpose of the cession. The state expressly reserves the right to exercise over or upon any such lands any and all rights, privileges, powers, or jurisdiction which may now or hereafter be released or receded by the United States to the state.

ARIZONA

The act of March 27, 1951, codified as sections 11-602, 11-603, and 11-604 of the 1952 Cumulative Supplement to the Arizona Code Annotated, 1939:

(House Bill No. 264)

An act Granting the consent of the State of Arizona to the acquisition by the United States of land in this State for public purposes, and ceding jurisdiction over such land and over land reserved from the public domain in this State for military purposes

Be it enacted by the Legislature of the State of Arizona :

SECTION 1. The consent of the State of Arizona is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, lease, condemnation, or otherwise, of any land in this State required for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or for any other military installations of the government of the United States.

SEC. 2 Exclusive jurisdiction over any land in this State so acquired for any of the purposes aforesaid, and over any public domain land in this state, now or in the future reserved or used for military purposes, is hereby ceded to the United States; but the jurisdiction so ceded shall continue no longer than the said United States shall own or lease such acquired land, or shall continue to reserve or use such public domain land for military purposes.

SEC. 3. As to any land over which exclusive jurisdiction is herein ceded, the State of Arizona retains concurrent jurisdiction with the United States, so far, that all process, civil or criminal, issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the state, upon any person amenable to the same within the limits of such land, in like manner and like effect as if no such cession had taken place.

SEC. 4. All laws and parts of law in conflict with any of the provisions hereof are hereby repealed.

SEC. 5. EMERGENCY. To preserve the public peace, health, and safety, it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor—March 27, 1951.

Filed in the Office of the Secretary of State—March 27, 1951.

ARKANSAS

Arkansas Statutes, 1947, title 10, chapter 11, section—

10-1101. *Consent to purchase of real property by United States—Cession of jurisdiction.*—The State of Arkansas hereby consents to the purchase to be made or heretofore made, by the United States, of any site or ground for the erection of any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, lock, dam, fish hatcheries, or other public buildings of any kind whatever, and the jurisdiction of this State, within and over all grounds thus purchased by the United States, within the limits of this State, is hereby ceded to the United States.

Provided, that this grant of jurisdiction shall not prevent execution of any process of this State, civil or criminal, upon any person who thereof. [Act Apr. 29, 1903, No. 180, § 2, p. 346; C. & M. Dig., § 4565; Pope's Dig., § 5645.]

10-1102. *Relinquishment of right to tax.*—This State releases and relinquishes her right to tax any such site, grounds or real estate, and all improvements which may be thereon or thereafter erected thereon, during the time the United States shall be and remain the owner thereof. [Act Apr. 29, 1903, No. 180, § 2, p. 246; C. & M. Dig., § 4565; Pipe's Dig., § 5645.]

10-1103. *Consent to acquisition by United States of land for river improvements, canals and hydroelectric plants—Cession of jurisdiction.*—The consent of the State of Arkansas is given to the acquisition by the United States by purchase or condemnation with just compensation or by grant or otherwise, of such lands in the State of Arkansas as in the opinion of the federal government may be needed for the construction of dams, reservoirs, floodways, locks, canals, hydroelectric power plants, channel improvements, channel diversions, and for such other works as may be necessary for the control of floods, the development of hydroelectric power, the irrigation of lands, the conservation of the soil, recreation, and other beneficial water uses, and the jurisdiction of this state within and over all grounds thus acquired by the United States within the limits of the State of Arkansas is hereby ceded to the United States. Provided, that this grant of jurisdiction shall not prevent execution of any processes of this State, civil or criminal, on any person who may be on said premises. [Acts 1939, No. 327, § 1, p. 857.]

10-1104 *Lands purchased for national cemeteries.—Cession of jurisdiction.*—The jurisdiction of this State within and over all lands purchased by the United States on which national cemeteries may be established within the limits of this State is hereby ceded to the United States, so far as the permanent inclosures of such national cemeteries may extend and no further. [Act Feb. 21, 1867, No. 60, § 1, p. 153; C. & M. Dig., § 4553; Pope's Dig., § 5633.]

10-1107 *Congressional authority with respect to fish and game regulations in national forests—Enforcement.*—The consent of the State of Arkansas is given to the making by Congress of the United States or under its authority, of all such rules and regulations as the federal government may determine to be needful in respect to game animals, game and non-game birds and fish on or in and over national forest lands within the State of Arkansas, Provided however, that all such rules and regulations must be approved by the Game and Fish Commission before such rules and regulations can be enforced. The

authority to enforce such concurrent rules and regulations is hereby extended jointly to the federal government and to the Game and Fish Commission. [Acts 1925, No. 230, § 1, p. 675; Pope's Dig., §§ 5648, 6000; Acts 1941, No. 272, § 1, p. 711.]

CALIFORNIA

Constitution of the State of California, article XIV, section—

§ 4. *Water Rights of Government Agencies.*

Whenever any agency of government, local, state, or federal, hereafter acquires any interest in real property in this State, the acceptance of the interest shall constitute an agreement by the agency to conform to the laws of California as to the acquisition, control, use, and distribution of water with respect to the land so acquired. [New section added November 2, 1954.]

Deering's California Codes, Government Code, title I, division 1, chapter 1, sections—

§ 115. *Ceded jurisdiction limited by retrocession.* All jurisdiction ceded to the United States by this article is limited by the terms of any retrocession of jurisdiction heretofore or hereafter granted by the United States and accepted by the State.

§ 126. *Consent to acquisition of land by United States; Conditions; "Acquisition"; Application of section.* Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:

(a) The acquisition must be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment consolidation and extension of national forests under the provisions of the act of Congress approved March 1, 1911, (36 Stat. 961) known as the "Weeks Act";

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section and in Section 4 of Article XIV of the Constitution prescribed;

(d) The conditions prescribed in subdivisions (a), (b), and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the commission

must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the Office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each state agency, county, city, city and county political subdivision or public district of or in the State; and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given.

(f) This consent continues only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

(g) Acquisition as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, and (3) leaseholds acquired by the United States over private lands or state-owned lands.

(h) In granting this consent, the Legislature and the State reserve jurisdiction over the land, water and use of water with full power to control and regulate the acquisition, use, control and distribution of water with respect to the land acquired.

The finding and declaration of the State Lands Commission provided for in subdivision (d) of this section shall be made only after a public hearing. Notice of such hearing shall be published once in a newspaper of general circulation in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provisions of sections 375 to 380, inclusive, of the Fish and Game Code. [Amended by Stats. 1953, ch. 1856, § 1; Stats. 1955, ch. 649, § 1.]

§ 127. *Same; Index; Degree of United States jurisdiction.*—In addition to other records maintained by the State Lands Commission, the commission shall prepare and maintain an adequate index of record of documents with description of the lands over which the United States acquired jurisdiction pursuant to Section 126 of this code or pursuant to any prior state law. Said index shall record the degree of jurisdiction obtained by the United States for each acquisition.

Government Code, title 3, division 2, part 2, chapter 5, article 4, sections—

§ 25420. *Acquisition and conveyance of lands to United States for military purposes.* Pursuant to this article, the board of supervisors may acquire and convey lands to the United States for use for any military purposes authorized by any law of the United States, including permanent mobilization, training, and supply stations.

§ 25421. *Determination of desirability of incurring indebtedness.* Whenever the Secretary of War agrees on behalf of the United States to establish in any county a permanent mobilization, training, and supply station for any military purposes authorized by any law of the United States, on condition that land aggregating approximately a designated number of acres at such location or locations within the county as he from time to time selects or approves be conveyed to the United States with the consent of the State in consideration of the benefits to be derived by the county from the use of the lands by the United States for such purpose, the board may determine that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to incur an indebtedness in an amount sufficient to acquire land in the county for such purposes.

§ 25432. *Consent of Legislature.* Pursuant to the Constitution and laws of the United States, and especially to paragraph 17 of Section 8 of Article 1 of such Constitution, the consent of the Legislature is given to the United States to acquire upon the conditions and for the purposes set forth in this article, from any county acting under this article, title to all lands referred to in this article.

§ 25433. *Evidence of title: Consent to exclusive legislation by Congress: Conditions subsequent.* The title shall be evidenced by a deed or deeds of the county, signed by the chairman of its board of supervisors and attested by the clerk of the county under seal, and the consent of the State is given to the exercise by Congress of exclusive legislation in all cases over any tracks or parcels of land conveyed to it pursuant to this article. The board may insert in every conveyance made pursuant to this article such conditions subsequent as it deems necessary to insure the use of the land by the United States for the purposes mentioned in and to carry out the provisions of this article.

Government Code, title 5, division 1, part 1, chapter 2, article 3, sections—

§ 50360. *Conveyance of land to United States for federal purposes: Acquisition of land.* The legislative body of a local agency may convey land which it owns within its boundaries to the United States to be used for federal purposes and may acquire land for this purpose pursuant to this article.

§ 50362. *Conveyance of land for use by War or Navy Department or as customs and immigration offices: Expenditure from general fund to acquire or improve land.* By a four-fifths vote the legislative body of a local agency may convey land which it owns within the State to the United States for use by the War Department, the Navy Department, or as customs and immigration offices and may expend money from the general fund to acquire such land or to improve the land it owns or has acquired and desires to convey to the United States.

§ 50367. *Consent of Legislature given to United States to acquire land.* The consent of the Legislature is given to the United States to acquire land upon the conditions and for the purposes set forth in this article.

§ 50370. *Exclusive jurisdiction ceded to United States: Concurrent jurisdiction reserved for certain purposes.* The Legislature cedes to the United States exclusive jurisdiction over land conveyed pursuant to this article, reserving concurrent jurisdiction with the United States for the execution of all civil and criminal process, issued under authority of the State as if a conveyance had not been made.

Public Resources Code, division 6, part 4, chapter 1, section—

§ 8301. *Authority to convey tract for site of lighthouse, beacon or other navigation aid: Jurisdiction over tract after conveyance.* The Governor, on application therefor by a duly authorized agent, may convey to the United States any tract of land not exceeding 10 acres, belonging to the State and covered by navigable waters, for the site of a lighthouse, beacon, or other aid to navigation. After conveyance, the United States shall have jurisdiction over the tract, subject to the right of the State to have concurrent jurisdiction so far that all process, civil or criminal, issued under authority of the State may be executed by the proper officers thereof within the tract, upon any person amenable thereto, in like manner and with like effect as if the conveyance had not been made.

Division 6, part 4, chapter 3, section—

§ 8401. *Authority to grant, transfer and convey property.* The boards of supervisors of the several counties may grant, transfer and convey, without consideration, any real property or interest therein

now owned or hereafter acquired by any county, to the United States to be used for national park purposes.

Deering's General Laws of the State of California, volume III, page 3393 :

Act 8835. Validation of Grants to United States for Military or Naval Purposes. [Stats. 1943, ch. 598.]

AN ACT Validating grants by municipal corporations or any State agency to the United States of America for military or naval purposes.

§ 1. Grants of property of municipal corporation ratified.

§ 2. Grants by State agency ratified.

§ 1. *Grants of property of municipal corporation ratified.* Every grant, including lease, to the United States of America for military or naval uses, of property of any municipal corporation heretofore made by any legislative body thereof, whether with or without consideration and whether or not previous authority for such grant or lease existed, hereby is ratified and validated; provided, that such grant or lease contains a reservation to the State of deposits of oil and gas and other hydrocarbon and mineral deposits and of rights of way for access to all such deposits as prescribed in Section 6402 of the Public Resources Code, except in the case where any such lands have been granted to such municipal corporation without reserving such deposits to the State.

§ 2. *Grants by State agency ratified.* Every grant and lease of real property of the State executed by any State agency to the United States of America for military or naval purposes, is hereby ratified and validated if it was approved by the Governor and if it reserved to the State the mineral deposits and right of way as described in Section 1 hereof.

Gen. Laws 107.

COLORADO

Colorado Revised Statutes 1953, chapter 142, article I, sections—

142-1-1. *Consent to acquisition of lands by United States.*—The consent of this state is hereby given to the purchase by the United States of such ground in the city of Denver, or any other city or incorporated town in this state, as its authorities may select, for the accommodation of the United States circuit and district courts, post offices, land offices, mints, or other government offices in said cities or incorporated towns, and also to the purchase by the United States of such other lands within this state as its authorities may from time to time select for the erection of forts, magazines, arsenals and other needful buildings.

142-1-2. *Consent to condemn land—when notice required.*—The consent of the state of Colorado is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the constitution of the United States, to the acquisition by the United States, by pur-

chase, condemnation or otherwise, of any land in this state required for customhouses, courthouses, post offices, arsenals, or other buildings whatever, or for any other proper purpose of the United States government. Before any privately owned land in this state is acquired for any purpose other than for customhouses, courthouses, post offices, arsenals, or other governmental buildings, the United States shall give written notice of intention to acquire such land to the board of county commissioners of the county wherein such land is situated and to the Colorado tax commission, which notice shall be given at least thirty days prior to the date of such intended acquisition.

142-1-3. *Jurisdiction of United States over land.*—Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except the service of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such land.

142-1-4. *When jurisdiction vests—tax exemption.*—The jurisdiction ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the said United States when acquired and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state.

CONNECTICUT

The General Statutes of Connecticut, Revision of 1949, title II, chapter 7, section—

130. *Sites for beacon lights and other buildings.* The treasurer is authorized to execute on behalf of the state and deliver, with the approval of the governor, to the United States of America, a deed of any parcel of land belonging to the state, for the purpose of the erection and maintenance thereon of beacon lights and other buildings and apparatus to be used in aid of navigation. Any such deed shall contain a provision that if such lights, buildings and apparatus are not erected thereon within five years from the date of such deed, or if the government of the United States of America abandons the use of such land for such purposes, title to such land shall revert to the state. Jurisdiction of the state over any land deeded to the United States under the provisions of this section shall be ceded to the United States, provided the state shall retain concurrent jurisdiction with the United

States, for the sole purpose of serving and executing thereon civil and criminal process issued under any provision of the statutes.

Title LVII, chapter 360, section—

7172. *United States; ceding jurisdiction to.* The consent of the state of Connecticut is given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state required for customhouses, courthouses, post offices, arsenals or other public buildings or for any other purposes of the government. Exclusive jurisdiction in and over any land so acquired by the United States is ceded to the United States for all purposes except the service of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such land. The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase, condemnation or otherwise; and, so long as such lands shall remain the property of the United States when acquired as aforesaid, the same shall be exempt from all state, county and municipal taxation, assessment or other charges.

DELAWARE

Delaware Code Annotated, Title 29, Chapter I, Sections—

§ 101. *Territorial limitation.*—The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to the rights of concurrent jurisdiction as have been granted to the State of New Jersey or have been or may be granted over any places ceded by this State to the United States.

§ 102. *Consent to purchase of land by the United States.*—The consent of the Legislature of Delaware is given to the purchase by the Government of the United States, or under authority of such government, of any tract, piece or parcel of land, not exceeding ten acres in any one place or locality, for the purpose of erecting thereon light-houses and other needful public buildings whatsoever, and of any tract, piece or parcel of land, not exceeding 100 acres in any one place or locality, for the purpose of erecting thereon forts, magazines, arsenals, dockyards and other needful buildings, from any individuals, bodies politic or corporate, within the boundaries or limits of the State; and all deeds, conveyances, or title papers for the same shall be recorded as in other cases upon the land records of the county in which the land so conveyed may be situated; and in like manner may be recorded a sufficient description, by metes and bounds, courses and distances, of any tracts or legal divisions of any public land

belonging to the United States, which may be set apart by the general government for any or either of the purposes before mentioned, by an order, patent, or other official document or papers so describing such land. The consent herein given is in accordance with the eighteenth clause of the eighth section of the First Article of the Constitution of the United States, and with the Acts of Congress in such cases made and provided.

§ 103. *Cession of lands to the United States; taxation; reverter to State.*—(a) Whenever the United States shall desire to acquire a title to land of any kind belonging to this State, whether covered by the navigable waters within its limits or otherwise, for the site of any light-house, beacon, life-saving station, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site or sites required therefor, the Governor may convey the site to the United States, and cede to the United States jurisdiction over the site. No single tract desired for any light-house, beacon, or other aid to navigation shall contain more than ten acres, or for any life-saving station more than one acre.

(b) All the lands, rights and privileges which may be ceded under subsection (a) of this section, and all the buildings, structures, improvements, and property of every kind erected and placed on such lands by the United States shall be exempt from taxation so long as the same shall be used for the purposes mentioned in subsection (a) of this section.

(c) The title of any land, which may be ceded under subsection (a) of this section, shall escheat and revert to the State, unless the construction thereon of the light-house, beacon, life-saving station or other aid to navigation, for which it is ceded, shall be commenced within two years after the conveyance is made, and shall be completed within ten years thereafter.

§ 104. *Execution of process on ceded territory.* The sovereignty and jurisdiction of this State shall extend over any lands acquired by the United States under the provisions of sections 101–103 of this title, to the extent that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired, or the buildings or structures thereon erected.

FLORIDA

Floria Statutes Annotated, title II, chapter 6, sections—

6.02 *United States authorized to acquire lands for certain purposes.*—The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall seek to occupy and hold as sites on which to erect and maintain forts,

magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided.

6.03 *Condemnation of land when price not agreed upon.*—If the officer or other agent employed by the United States to make such purchase and the owner of the land contemplated to be purchased, as aforesaid, cannot agree for the sale and purchase thereof, the same may be acquired by the United States by condemnation in the same manner as is hereinafter provided for condemnation of lands for other public purposes, and any officer or agent authorized by the United States may institute and conduct such proceedings in their behalf.

6.04 *Jurisdiction over such lands, how ceded to the United States.*—Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

6.05 *Transfer of title to and jurisdiction over land owned by state.*—Whenever a tract of land containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital or other public work, and the title to the said land shall be held by the state, then on application by the said officer or agent to the governor of this state, the said executive may transfer to the United States the title to, and jurisdiction over, said land; provided, always that the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States, in and over the lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person amenable to the same, within the limits and extent of the lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States and be exempt from taxation as long as they shall be needed for said purposes.

Title VI, chapter 46, section—

46.12 *Military, naval or other service as residence.*—Any person in any branch of service of the government of the United States, including military and naval service, and the husband or the wife of any such person, if he or she be living within the borders of the State of Florida, shall be deemed prima facie to be a resident of the State of Florida for the purpose of maintaining any suit in chancery or action at law. Laws 1943, c. 21966, § 1.

GEORGIA

Constitution of the State of Georgia of 1945, article VI, section XIV, chapter 2-49—

2-4901. (6538) paragraph 1. *Divorce cases.*—Divorce cases shall be brought in the county where the defendant resides, if a resident of this state; if the defendant be not a resident of this state, then in the county in which the plaintiff resides, provided, that any person who has been a resident of any United States Army Post or military reservation within the State of Georgia for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to said United States Army Post or military reservation.

The Code of Georgia of 1933, sections—

15-301. (25) *Cession to the United States of land for public buildings, forts, etc.*—The consent of the State is hereby given, in accordance with the 17th clause, section 8, of article 1, of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any lands in this State which have been or may hereafter be acquired for sites for customs houses, courthouses, post offices, or for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. (Acts 1906, p. 126; 1927, p. 352.)

15-302. (26) *Jurisdiction.*—Exclusive jurisdiction in and over any lands so acquired by the United States is hereby ceded to the United States for all purposes except service upon such lands of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than said United States shall own such lands. The State retains its civil and criminal jurisdiction over persons and citizens in said ceded territory, as over other persons and citizens in this State, except as to any ceded territory owned by the United States and used by the Department of Defense, but the State retains jurisdiction over the regulation of public utility services in any ceded territory. Nothing herein shall interfere with the jurisdiction of the United States over any matter or subjects set out in the acts of Congress donating money for the erection of public buildings for the transaction of its business in this State, or with any laws, rules, or regulations that Congress may adopt for the preservation and protection of its property and rights in said ceded territory, and the proper maintenance of good order therein. (Acts 1890-1, p. 201; 1927, p. 352; 1952, p. 264.)

15-303. *Time of vesting of jurisdiction; redemption of lands from taxation.*—The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and as long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the State. (Acts 1927, p. 352.)

30-107. (2950) *Period of petitioner's residence in State.*—No court shall grant a divorce of any character to any person who has not been a bona fide resident of the State six months before the filing of the application for divorce: Provided, that any person who has been a resident of any United States army post or military reservation within the State of Georgia for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to said

United States army post or military reservation. (Acts 1893, p. 109; 1939, p. 203; 1950, p. 429.)

45-336. *Federal game regulations on United States Government lands in Georgia; consent of State.*—The consent of the General Assembly is hereby given to the making by Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the northern part of Georgia as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled, "An Act to enable any State to cooperate with any other State or States or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers" (36 United States Statutes at Large, page 961), and Acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereof. (Acts 1922, p. 106.)

IDAHO

Idaho Code containing the General Laws of Idaho Annotated (Published by authority of Laws 1947, chapter 224) chapter 7, sections—

58-701. *Military lands—Yellowstone National Park lands—Cession—Jurisdiction for execution of process reserved.*—Pursuant to article 1, section 8, paragraph 17, of the Constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to all lands embraced within the military posts and reservations of Fort Sherman and Boise Barracks, together with such other lands in the state as may be now or hereafter acquired and held by the United States for military purposes, either as additions to the said posts or as new military posts or reservations which may be established for the common defense; and, also, all such lands within the state as may be included in the territory of the Yellowstone National Park, reserving, however, to the state a concurrent jurisdiction for the execution, upon said lands, or in the buildings erected thereon, of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with this cession. [1890-1891, p. 40, § 1; reen. 1899, p. 22, § 1; reen. R. C. & C. L., § 27; C. S., § 70; I. C. A., § 56-601.]

58-702. *Consent to purchases by United States—Jurisdiction for execution of process reserved.*—Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States, of any lots, or tracts of land, within this state, for the use of such government, and to erect thereon and use such buildings,

or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements, that are, or may be, erected thereon, the said government shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1895, p. 21, § 1; reen. 1899, p. 235, § 1; reen. R. C. & C. L., § 28; C. S., § 71; I. C. A., § 56-602.]

58-705. *Consent to land purchase for migratory labor homes projects—Jurisdiction.*—Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States of any lots, or tracts of land within this state, for migratory labor homes projects; and over such lands and the buildings or improvements that are, or may hereafter be, erected thereon the United States shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon any process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1943, ch. 152, § 1, p. 308.]

ILLINOIS

The two acts of July 10, 1953, repealed all other pertinent statutes.

An act to repeal "An Act ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this State, and authorizing the acquisition thereof", approved April 11, 1899

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. "An Act ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this state, and authorizing the acquisition thereof," approved April 11, 1899, is repealed. (Approved July 10, 1953. Ill. Rev. Stat., Vol. 2, p. 1430.)

An act to repeal "An Act in relation to the acquisition of land in the State by the United States for governmental purposes", approved June 30, 1923

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. "An Act in relation to the acquisition of land in the State by the United States for governmental purposes," approved June 30, 1923 is repealed. (Approved July 10, 1953. Ill. Rev. Stat., Vol. 2, p. 1430.)

Jones Illinois Statutes Annotated, chapter 137, sections—

An act granting to the Government of the United States the right to enter upon and take possession of such small tracts or parcels of land lying within the State of Illinois, and on the waters of the Ohio and Wabash rivers, as may be necessary to facilitate the improvement of said rivers. (Approved April 15, 1875. In force July 1, 1875. L. 1875, p. 88.)

Preamble.] Whereas, the government of the United States has begun, and will probably continue the improvement of the Ohio and Wabash rivers; and whereas, it may be advisable, for the removal of all doubts as to the right of the general government to acquire real estate and establish public works within the limits of any State without the consent of such State: therefore,

137.02 *Consent of State given United States to enter land to improve Ohio and Wabash rivers.*] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the consent of the State of Illinois be and is hereby given to the government of the United States to enter upon such small parcels or tracts of land lying on the bank of the Ohio and Wabash rivers, within the State of Illinois, as may be necessary for the construction of locks, lock-keepers' dwellings, and abutments or other works, to be used to facilitate the improvement of the channels of said rivers.

137.03 *Eminent domain.*] § 2. All cases of damages that may arise under the provisions of this Act shall be settled as provided for in "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872. In force July 1, 1872.

For act referred to in text of this section, see 109.248—109.261.

137.04 *Exclusive jurisdiction ceded.*] § 3. Exclusive jurisdiction is hereby ceded to the United States over all or any lands acquired under the provisions of this Act.

INDIANA

Burns Indiana Statutes Annotated (1951 Replacement), title 62, chapter 10, sections—

62—1001 [13993]. *Jurisdiction ceded to United States.*—The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post-offices, custom-houses or other structures exclusively owned by the general government and used for its purposes: Provided, That an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of the state; And, provided further, That this cession is upon the express condition that the state of Indiana shall so far retain concurrent jurisdiction with the United States in and over all lands acquired or hereafter acquired as aforesaid that all civil and criminal process issued by any court of competent jurisdiction or officer having authority of law to issue such process, and all orders made by such court or any judicial officer duly empowered to make such orders and necessary to be served upon any person, may be executed upon said

lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid [Acts 1883, ch. 7, § 1, p. 8.]

62-1002 [13994]. *Exemption from taxation—Limitations.*—The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States: Provided, however, That this exemption shall not extend to or include taxes levied by the state of Indiana upon the gross receipts or income of any person, firm, partnership, association, or corporation which is received on account of the performance of contracts or other activities upon such lands or within the boundaries thereof. [Acts 1883, ch. 7, § 2, p. 8; 1901, ch. 158, § 1, p. 344; 1941, ch. 211, § 1, p. 641.]

62-1003 [13995]. *Light-house sites—Jurisdiction ceded to United States.*—Whenever the United States desires to acquire title to land belonging to the state, and covered by the navigable waters of the United States, within the limits thereof, for the site of a light-house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one [1] of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same: Provided, No single tract shall contain more than ten [10] acres, and that the state shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person or persons amenable to the same, within the limits of the land so ceded, in like manner and to like effect as if this act [section] had never been passed. [Acts 1875 (Spec. Sess.), ch. 14, § 1, p. 60.]

62-1007 [13999]. *Condemnation by United States for river improvements.*—Whenever the United States shall begin the improvement of any navigable river within or bordering upon this state, by means of locks, dams and adjustable chutes, the consent of the state of Indiana is hereby given to the acquisition, by the United States, by purchase or by condemnation, in the manner hereinafter provided, of any lands, buildings, or other property necessary for the purpose of erecting thereon dams, abutments, locks, lock-keepers' houses, chutes, and other necessary structures for the construction and maintenance of slack-water navigation on said rivers; and the United States shall have, hold, use, and occupy the said land or lands, buildings and other property, when purchased or acquired as provided by this act [§§ 62-1007—62-1009], and shall exercise jurisdic-

tion and control over the same. [Acts 1875 (Spec. Sess.), ch. 34, § 1, p. 81.]

62-1008 [14000]. *Proceedings, how had.*—If the United States shall determine to take the lands, buildings or other property necessary for the purposes mentioned in the preceding section, and can not agree with the owner or owners of such land, buildings or other property as to the amount of compensation to be made for such taking, the circuit court having jurisdiction in the county where such lands, buildings or other property are situated, upon application by either the United States or the said owner or owners, or any one in behalf of either, shall appoint three [3] disinterested freeholders to ascertain and determine the amount of compensation to be paid to such owner or owners, who shall make a report to the said court of their award, on or before the first term next after their appointment: *Provided*, That the said United States shall not be authorized to take possession or use or occupy the lands, buildings or other property taken under the provision of this section until the amount of said award shall be paid to the owner or owners thereof: And provided, further: That the said court may set aside the report of said viewers, upon being satisfied that the amount of said award is excessive. [Acts 1875 (Spec. Sess.), ch. 34, § 2, p. 81.]

62-1009 [14001]. *Penalty for injuring acquired property.*—If any person or persons shall wilfully or maliciously injure any of the lands, buildings or other property acquired or held under the provisions of this act [§§ 62-1007—62-1009], such person or persons shall be liable to a fine of not less than twenty dollars [\$20.00] and to an imprisonment of not exceeding six [6] months, or both or either, at the discretion of the court—said offense to be prosecuted and punished in any court of competent jurisdiction. [Acts 1875 (Spec. Sess.), ch. 34, § 3, p. 81.]

62-1010 [14002]. *United States may purchase for Ohio or Wabash River improvements.*—The consent of the legislature of the state of Indiana is hereby given to the purchase, by the government of the United States, or under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate, on the banks of the Ohio or Wabash River, within the limits of this state, for the purpose of creating thereon locks, dams, abutments, lock-keepers' dwellings, or other structures which may be necessary in connection with the improvement of the said river; and all deeds and conveyances of title-papers for the same shall be recorded as in other cases upon the land records of the county in which the lands so conveyed may be—the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section

of the first article of the Constitution of the United States, and with the acts of congress in such cases made and provided. [Acts 1877, ch. 50, § 1, p. 90.]

62-1011 [14003]. *Condemnation.*—In case of failure of the United States to agree with the owner or owners of any such land as the United States may deem necessary for the purposes named in the preceding section, within this state, it shall be lawful for the United States to apply for the condemnation of such land, not exceeding ten [10] acres in any one [1] place, by petition to any judge of a court of record of this state in or nearest to the county where the land may be situated, either in term time or vacation, notice of the time and place of such application having been first duly given by publication for thirty [30] days prior to the day of such application in some newspaper of general circulation published in the county where the land lies, or, if the owner or owners reside in the state of Indiana, by personal service upon the owner or owners of such land at least twenty [20] days prior to such application, and thereupon it shall be lawful for such judge to appoint three [3] disinterested freeholders of the county where such land lies as commissioners, who, having been first duly sworn to well and truly appraise the damages due the owner or owners of said land so proposed to be taken, shall report, in writing, to said judge the amount of damages to be paid to the owner or owners of said land, which report, upon confirmation by said judge, shall be held final and binding upon such owner or owners, and upon the amount of such damages being paid to the owner or owners of said land, the title of said land shall vest in the United States. Exclusive jurisdiction and right of assessment and taxation is hereby ceded to the United States over any lands acquired under the provisions of this act [§§ 62-1010—62-1012] and over the buildings or property of the United States situated thereon [Acts 1877, ch. 50, § 2, p. 90.]

62-1012 [14004]. *Process of state courts.*—This act [§§ 62-1010—62-1012] shall not be construed in such manner as to debar or hinder the process of any court or judge of this state from running within the boundaries of the lands so acquired by the United States, or over any part of such land, for any longer time than the said lands shall be used for the purposes aforesaid. [Acts 1877, ch. 50, § 3, p. 90.]

62-1013 [14005]. *Condemnation by United States.*—Whenever the United States of America shall desire to acquire title to a tract of land in the state of Indiana, for any purpose, and the said state shall have given its consent to such acquisition, it shall be lawful for the said United States to acquire title to such tract of land by condemnation in the manner hereinafter provided. [Acts 1875, ch. 115, § 1, p. 163.]

62-1021. *Consent of state to acquisition of land.*—The consent of the state of Indiana is hereby given to the acquisition by the United States of America by purchase, gift, or condemnation with adequate compensation such lands in the state of Indiana as the United States of America may desire to purchase and acquire, pursuant to any act of Congress for the acquisition, establishment, maintenance, and development of fish hatcheries, wild life preserves, forest preserves, or for agricultural, recreational, or experimental uses. [Acts 1937, ch. 52, § 1, p. 291.]

62-1022. *Powers granted United States of America.*—The United States of America is hereby granted all the power and authority necessary for the maintenance, development, control, and administration of such lands as may be acquired by virtue of this act [§§ 62-1021—62-1027] through its officers, agents, or employees, or through cooperative agreement with the department of conservation of the state of Indiana, except as herein otherwise provided. [Acts 1937, ch. 52, § 2, p. 291.]

62-1024. *Concurrent jurisdiction—Exclusive rights retained by state—Exception.*—(a) The state of Indiana shall retain concurrent jurisdiction with the United States in and over lands so acquired, so far that civil process in all cases and such criminal process as may issue under the authority of the state of Indiana against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in the same manner as if this act [§§ 62-1021—62-1027] had not been passed.

(b) The state of Indiana shall retain the exclusive right to regulate the taking, killing, or hunting of wild birds or wild animals, except migratory birds, on any and all land acquired by the United States under the provisions of this act in the same manner and to the same extent as it may lawfully regulate the taking, killing, or hunting of wild birds or wild animals on land owned by the state and used for conservation purposes. [Acts 1937, ch. 52, § 4, p. 291.]

IOWA

The Code of Iowa, 1954, title 1, chapter 1, sections—

1.2 *Sovereignty.* The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government. [C51, § 2; R60, § 2; C73, § 2; C97, § 2; C24, 27, 31, 35, 39, § 2; C46, 50, § 1.2].

1.3 *Concurrent jurisdiction.* The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary be-

tween this and any other state. [C51, § 3; R60, § 3; C73, § 3; C97, § 3; C24, 27, 31, 35, 39, § 3; C46, 50, § 1.3].

See act of congress, Aug. 4, 1846 [9 Stat. L., p. 56].

1.4 Acquisition of lands by United States. The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise jurisdiction thereover but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States. [R60, §§ 2197, 2198; C73, § 4; C97, § 4; S13, §§ 4a-4d, 2024c; C24, 27, 31, 35, 39, § 4; C46, 50, § 1.4].

Title XVI, chapter 427, section—

427.1 Exemptions. The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including university, agricultural college, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the congress of the United States shall expressly authorize the taxation of such machinery and equipment.

KANSAS

General Statutes of Kansas, Annotated, 1949 (Authenticated by the Attorney General and Secretary of State of the State of Kansas)

Chapter 27, article 1, sections—

27-101. *Consent given to the United States to acquire land.* That the consent of the state of Kansas is hereby given, in accordance with the provisions of paragraph number seventeen, section eight, article

one of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in the state of Kansas, which has been, or may hereafter be, acquired for custom houses, courthouses, post offices, national cemeteries arsenals, or other public buildings, or for other purpose of the government of the United States. [L. 1927, ch. 206, § 1; March 17.]

27-102. *Jurisdiction.* That exclusive jurisdiction over and within any lands so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes; saving, however, to the state of Kansas the right to serve therein any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred or crimes committed in said state, but outside the boundaries of such land; and saving further to said state the right to tax the property and franchises of any railroad, bridge or other corporations within the boundaries of such lands; but the jurisdiction hereby ceded shall not continue after the United States shall cease to own said lands. [L. 1927, ch. 206, § 2; March 17.]

27-102a. *Exemption from taxation.* That the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to said lands; and as long as said lands shall remain the property of the United States, the same shall be exempt from all state, county and municipal taxes. [L. 1927, ch. 206, § 3; March 17.]

27-102b. *Taxing certain property upon military reservations.* The property of any private corporation engaged in the business of owning or operating housing projects upon United States military reservations in this state shall be assessed and taxed annually, and the county in which the housing project lies geographically as determined by the descriptions set out in chapter 18 of the General Statutes of 1949 shall have jurisdiction over such housing projects for the purposes of taxation. [L. 1951, ch. 506, § 1; Feb. 28.]

27-102c. *Same; property declared personalty; collection.* For the purposes of valuation and taxation, all buildings, fixtures and improvements of such housing projects on such military reservations are hereby declared to be personal property and shall be assessed and taxed as such, and the taxes imposed on such buildings, fixtures and improvements shall be collected by levy and sale of the interest of such owner, in the same manner as provided in other cases for the collection of taxes on personal property. [L. 1951, ch. 506, § 2, Feb. 28.]

Chapter 60, article 15, section—

60-1502. *Residence of plaintiff.*—The plaintiff in an action for divorce must have been an actual resident in good faith of the state for

one year next preceding the filing of the petition, and a resident of the county in which the action is brought at the time the petition is filed, unless the action is brought in the county where the defendant resides or may be summoned: *Provided*, That any person who has been a resident of any United States army post or military reservation within the state of Kansas for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to said United States army post or military reservation. [L. 1909, ch. 182, § 664; R. S. 1923, § 60-1502; L. 1933, ch. 216, § 1; June 5.]

KENTUCKY

Kentucky Revised Statutes, 1953, as amended by the Act of March 13, 1954, sections—

SECTION 1. KRS 3.010 is amended to read as follows: "The Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state, by condemnation, gift or purchase, which are needful to their constitutional purposes, but said acquisition shall not be deemed to result in a cession of jurisdiction by this Commonwealth."

SECTION 2. Whenever the United States, or any agency thereof, shall request the Commonwealth to cede jurisdiction over any area, it shall be the duty of the Governor to transmit such request to the next session of the General Assembly for such action as it may deem proper.

SECTION 3. Whenever the United States accepts the cession of jurisdiction over any area, the letter of acceptance shall be entered upon the Executive Journal.

SECTION 4. The Commonwealth consents to any retrocession by the United States of lands within its geographical boundaries whenever the United States shall have ceased to exercise exclusive or special jurisdiction over such lands. Inter alia, the conveyance of lands to private owners shall be deemed to constitute a retrocession of jurisdiction.

Approved March 13, 1954.

3.020 [2376a-1; 2376b-1; 2376c-1, 2376e-2; 2739f-2; 2739f-8; 3766e-17; 3766e-30] *Jurisdiction retained for execution of process.* Kentucky retains jurisdiction for the execution of process, issued under its authority, over all lands in Kentucky heretofore or hereafter ceded to or acquired by the United States for the erection or establishment of post offices, custom houses, courthouses, locks, dams, canals, parks, cemeteries or forest reserves.

LOUISIANA

Louisiana Revised Statutes of 1950, title 52, chapter 1, section—

§ 1. *Consent of state to acquisition.*—The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the Federal Government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States.

(Source: Acts 1892, No. 12, §§ 1, 2; Acts 1942, No. 31, § 1.)

Title 56, chapter 2, section—

§ 711. *Protection of watersheds of navigable streams.*—The consent of the State of Louisiana is given to the Congress of the United States to make or to authorize the proper authorities of the Government of the United States to make such rules and regulations as the Government of the United States determines to be needful in respect to game animals, fish, and game and non-game birds on such lands and in the waters thereof situated in the state as are purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled "An Act to enable any State to cooperate with any other state or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers", and Act of Congress supplementary thereto and amendatory thereof.

(Source: Acts 1940, No. 52, § 1.)

MAINE

Revised Statutes of the State of Maine, 1954, chapter 1, sections—

SEC. 1. *Sovereignty and jurisdiction.*—The jurisdiction and sovereignty of the state extend to all places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by the state to the United States. (R. S. c. 1, § 1.)

SEC. 2. *Sovereignty in space.*—Sovereignty in the space above the lands and waters of the state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. (R. S. c. 1, § 2.)

SEC. 5. *State processes executed in places ceded.*—Civil, criminal and military processes, lawfully issued by an officer of the state, may

be executed in places ceded to the United States, over which a concurrent jurisdiction has been reserved for such purpose. (R. S. c. 1, § 5.)

SEC. 6. *Governor may cede not exceeding 10 acres to the United States; compensation to owner.*—The governor, with the advice and consent of the council, reserving such jurisdiction, may cede to the United States for purposes named in its constitution any territory not exceeding 10 acres, but not including any highway; nor any public or private burying ground, dwelling house or meetinghouse, without consent of the owner. If compensation for land is not agreed upon, the estate may be taken for the intended purpose by payment of a fair compensation, to be ascertained and determined in the same manner as, and by proceedings similar to those provided for ascertaining damages in locating highways, in chapter 89. (R. S. c. 1, §§ 6, 7.)

SEC. 7. *Governor may purchase or take land for forts, etc., and may cede to the United States; compensation to owner; limitation.*—

Whenever the public exigencies require it, the governor with the advice and consent of the council may take in the name of the state, by purchase and deed, or in the manner herein denoted, any lands or right of ways, for the purpose of erecting, using or maintaining any fort, fortification, arsenal, military connection, way, railroad, lighthouse, beacon or other aid to navigation, with all necessary rights, powers and privileges incident to their use, and may deliver possession and cede the jurisdiction thereof to the United States, on such terms as are deemed expedient.

The owner of any land or rights taken shall have a just compensation therefor, to be determined as prescribed in section 6, provided that application is made within 5 years after the land is taken. (R. S. c. 1, §§ 8, 10.)

SEC. 8. *Land surveyed; plan, etc., to be filed and recorded.*—When the governor and council determine that a public exigency requires the taking of any land or rights as provided for in section 7, they shall cause the same to be surveyed, located and so described that the same can be identified, and a plan thereof, with a copy of the order in council, shall be filed in the office of the secretary of state and there recorded. The filing of said plan and copy shall vest the title to the land and rights aforesaid, in the state of Maine or their grantees, to be held during the pleasure of the state and, if transferred to the United States, during the pleasure of the United States. (R. S. c. 1, § 9.)

SEC. 9. *Consent of legislature to acquisition by United States of land within the state for public buildings; record of conveyances.*—In accordance with the constitution of the United States, Article 1, Section VIII, Clause 17, and acts of congress in such cases provided, the consent of the legislature is given to the acquisition by the United States, or under its authority, by purchase, condemnation or otherwise, of any land in this state required for the erection of lighthouses or for sites for customhouses, courthouses, post offices, arsenals or other public buildings, or for any other purposes of the government, deeds and conveyances or title papers for the same shall be recorded upon the land records of the county or registry district in which the land so conveyed may lie; and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tracts and legal divisions of any public lands belonging to the United States set apart by the general government for either of the purposes before mentioned, by an order, patent or other official paper so describing such land. (R. S. c. 1, § 11.)

SEC. 10. *Jurisdiction ceded to United States over land acquired for public purposes; concurrent jurisdiction with United States retained.*—Exclusive jurisdiction in and over any land acquired under the provisions of this chapter by the United States shall be, and the same is ceded to the United States for all purposes except the service upon such sites of all civil and criminal processes of the courts of this state; provided that the jurisdiction ceded shall not vest until the United States of America has acquired title to such land by purchase, condemnation or otherwise; the United States of America is to retain such jurisdiction so long as such lands shall remain the property of the United States, and no longer; such jurisdiction is granted upon the express condition that the state of Maine shall retain a concurrent jurisdiction with the United States on and over such lands as have been or may hereafter be acquired by the United States so far as that all civil and criminal process which may lawfully issue under the authority of this state may be executed thereon in the same manner and way as if said jurisdiction had not been ceded, except so far as said process may affect the real or personal property of the United States. (R. S. c. 1, § 12.)

SEC. 12. *Relinquishment to United States to title to land for erection of lighthouses, forts, etc., when title cannot otherwise be obtained; disposal of purchase money.*—Whenever, upon application of an authorized agent of the United States, it is made to appear to any justice

of the superior court that the United States desires to purchase a tract of land and the right of way thereto, within the state, for the erection of a lighthouse, beacon light, range light or light keeper's dwelling, forts, batteries or other public buildings, and that any owner is a minor, or is insane, or is from any cause incapable of making perfect title to said lands, or is unknown, or a nonresident, or from disagreement in price or any other cause refuses to convey such land to the United States, said justice shall order notice of said application to be published in some newspaper in the county where such land lies, if any, otherwise in a paper in this state nearest to said land, once a week for 3 weeks, which notice shall contain an accurate description of said land, with the names of the supposed owners, provable in the manner required for publications of notice in chapter 112, and shall require all persons interested in said land on a day specified in said notice to file their objections to the proposed purchase, and at the time so specified a justice of said court shall empanel a jury, in the manner provided for the trial of civil actions, to assess the value of said land at its fair market value and all damages sustained by the owner of such land by reason of such appropriation; which amount when so assessed, with the entire costs of said proceedings, shall be paid into the treasury of said county, and thereupon the sheriff thereof, upon the production of the certificate of the treasurer that said amount has been paid, shall execute to the United States and deliver to its agent a deed of said land, reciting the proceedings in said cause, which deed shall convey to the United States a good and absolute title to said land against all persons. The money paid into such county treasury shall there remain until ordered to be paid out by a court of competent jurisdiction. (R. S. c. 1, §§ 14, 15.)

MARYLAND

The Annotated Code of Maryland, Edition of 1951, article 16, section—

An. Code, 1939, sec. 39. 1924, sec. 37A. 1927, chs. 225 and 494. 1947, ch. 849, sec. 39

32. All persons residing on property lying within the physical boundaries of any county of this State or within the boundaries of the City of Baltimore but on property over which jurisdiction is exercised by the Government of the United States by virtue of the 17th clause, 8th section of first article of the Constitution of the United States, and sections 31 and 35 of article 96 of the Annotated Code of the Public Laws of Maryland, shall be considered as residents of the State of Maryland and of the County or City of Baltimore, as the case may be, in which the land is situate for the purpose of jurisdiction in the

Courts of Equity of this State in all applications for divorce and for annulment of marriage.

Article 96, sections—

An. Code, 1939, sec. 1. 1924, sec. 1. 1912, sec. 1. 1904, sec. 1. 1888, sec. 1. 1874, ch. 193, sec. 1

1. The consent of the State is given to the purchase by the government of the United States, or under the authority of the same, of any tract, piece or parcel of land not exceeding five acres, from any individual or individuals, bodies politic or corporate within the boundaries or limits of the State, for the purpose of erecting thereon light-houses, beacons and other aids to navigation; and all deeds and conveyances of title papers for the same shall be recorded, as in other cases, upon the land records of the county in which the lands so conveyed may lie; the consent herein given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States and with the acts of Congress in such cases made and provided.

An. Code, 1939, sec. 2. 1924, sec. 2. 1912, sec. 2. 1904, sec. 2. 1888, sec. 2. 1874, ch. 193, sec. 2

2. With respect to land covered by the navigable waters within the limits of the State, and on which a lighthouse, beacon or other aid to navigation has been built, or is about to be built, the governor of the State, on application of an authorized agent of the United States, setting forth a description of the site required, is authorized and empowered to convey the title to the United States, and to cede jurisdiction over the same; provided, no single tract shall contain more than five acres.

An. Code, 1939, sec. 3. 1924, sec. 3. 1912, sec. 3. 1904, sec. 3. 1888, sec. 3. 1874, ch. 193, sec. 3

3. The lots, parcels or tracts of land so ceded to the United States, together with the tenements and appurtenances, for the purpose before mentioned, shall be held exempt from taxation by the State of Maryland.

An. Code, 1939, sec. 4. 1924, sec. 4. 1912, sec. 4. 1904, sec. 4. 1888, sec. 4. 1874, ch. 192, sec. 4

4. This State shall retain concurrent jurisdiction with the United States in and over the tracts of land aforesaid, so that criminal and civil processes, issued under the authority of the State by any officer thereof, may be executed on said lands and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded; and exclusive jurisdiction shall revert to and revest in this State whenever the said tract of land shall permanently cease to be

used and occupied by the United States for any of the purposes heretofore enumerated.

An. Code, 1839, sec. 5. 1924, sec. 5. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1874, ch. 395, sec. 1

5. Whenever the United States are desirous of purchasing or procuring the title to any tract, piece or parcel of land within the boundaries or limits of this State, for the purpose of erecting thereon any lighthouse, beacon-light, range-light, light-keeper's dwelling, forts, magazines, arsenals, dockyards, buoys, public piers, or necessary public buildings or improvements connected therewith, and cannot agree with the owner thereof as to the price and for the purchase thereof; or if the owner be *feme covert*, under age, *non compos mentis*, or out of the county wherein the said land lies, or for any other cause is incapable of making a perfect title to said lands, the United States, by any agent authorized under the hand and seal of any member of the president's cabinet, may apply by petition in writing to the circuit court for the county where the land lies; which petition shall be filed with the clerk of said court, to have the said land condemned for the use and benefit of the United States; and any such agent of the United States may, for the purpose of ascertaining its bounds and quantity, enter upon the lands, without injury thereto, which the United States may desire to purchase for any of the purposes aforesaid.

An. Code, 1839, sec. 17. 1924, sec. 17. 1912, sec. 17. 1904, sec. 17. 1888, sec. 17. 1874, ch. 395, sec. 13.

17. Jurisdiction is hereby ceded to the United States over such lands as shall be condemned as aforesaid for their use for public purposes, as soon as the same shall be condemned, under the sanction of the general assembly of this State hereinbefore given to said condemnation; provided, always, that this State shall retain concurrent jurisdiction with the United States in and over all lands condemned under the provisions of this Article, so far as that all processes, civil and criminal, issuing under the authority of this State, or any of the courts or judicial officers thereof, may be executed on the premises so condemned, and in any building erected or to be erected thereon, in the same way and manner as if this Article had not been passed; and exclusive jurisdiction shall revert to and revest in the State whenever the said premises shall cease to be owned by the United States and used for some of the purposes mentioned in this Article.

An. Code, 1839, sec. 18. 1924, sec. 18. 1912, sec. 18. 1904, sec. 18. 1888, sec. 18. 1874, ch. 395, sec. 14

18. All the lands that may be condemned under the provisions of this

Article, and the buildings and improvements erected or to be erected thereon, and the personal property of the United States, and of the officers thereof, when upon said land, shall be exonerated and exempted from taxation for state and county purposes, so long as the said land shall continue to be owned by the United States and used for any of the purposes specified in this Article, and no longer.

An. Code, 1839, sec. 19. 1924, sec. 19. 1912, sec. 19. 1904, sec. 19. 1900, ch. 67, sec. 19

19. The consent of the State is given to the purchase by the government of the United States, or under the authority of the same, from any individual or individuals, bodies politic or corporate, of any tract, piece or parcel of land within the boundaries or limits of the State for the purpose of erecting thereon forts, magazines, arsenals, coast defences or other fortifications of the United States, or for the purpose of erecting thereon barracks, quarters and other needful buildings for the use of garrisons required to man such forts, magazines, arsenals, coast defences or fortifications; and all deeds and title papers for the same shall be recorded as in other cases upon the land records of the county in which the land so conveyed may be; the consent herein given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States and with the acts of congress in such cases made and provided.

An. Code, 1839, sec. 20. 1924, sec. 20. 1912, sec. 20. 1904, sec. 20. 1900, ch. 67, sec. 20

20. Whenever the United States are unable to agree with the owners of the land described in Section 19 of this Article as to the purposes and for the purchase thereof, or if the owners for any cause are incapable of making a perfect title to the said land, the United States may institute proceedings for the condemnation of the said land for the use and benefit of the United States in the circuit court of the State for the county where the land lies, or in the superior court of Baltimore City if the land lies in said city, and have the land condemned for the use and benefit of the United States, such condemnation proceedings to be instituted and conducted in accordance with Sections 5 to 16 inclusive, of this Article; provided, however, that the quantity of land condemned under the provisions of this section shall not be subject to the limitation prescribed in Section 16 of this Article.

An. Code, 1839, sec. 21. 1924, sec. 21. 1912, sec. 21. 1904, sec. 21. 1900, ch. 67, sec. 21

21. The provisions of sections 17 and 18 of this Article shall apply to all property or lands purchased or acquired by the United States under the provisions of Sections 19 and 20 of this Article.

An. Code, 1939, sec. 28. 1924, sec. 28, 1912, sec. 28. 1904, sec. 28. 1902, ch. 268, secs. 1, 2. 1904, ch. 357, secs. 1, 2. 1908, ch. 194

28. The jurisdiction of the State of Maryland is hereby ceded to the United States of America over so much land as has been or may be hereafter acquired for public purposes of the United States; provided, that the jurisdiction hereby ceded shall not vest until the United States of America shall have acquired the title to the lands, by grant or deed, from the owner or owners thereof, and evidences thereof shall have been recorded in the office where, by law, the title to said land is required to be recorded and the United States of America are to retain such jurisdiction so long as such lands shall be for the purposes in this section mentioned, and no longer; and such jurisdiction is granted upon the express condition that the State of Maryland shall retain a concurrent jurisdiction with the United States in and over the said lands, so far as that civil process in all cases not affecting real or personal property of the United States, and such criminal or other process as shall issue under the authority of the State of Maryland against any person or persons charged with crimes or misdemeanors committed within or without the limits of said lands may be executed therein, in the same way and manner as if no jurisdiction had been hereby ceded. All lands and tenements which may be granted as aforesaid to the United States shall be and continue so long as the same shall be used for the purposes in this section mentioned, exonerated and discharged from all taxes, assessment and other charges which may be imposed under the authority of the State of Maryland; provided, however, that the rights of citizenship and other rights as residents of Charles County of persons domiciled on land owned by the United States at Indian Head shall be continued and enjoyed by them to the same extent as now provided by law for persons domiciled at the Naval Academy at Annapolis as residents of Anne Arundel County.

An. Code, 1939, sec. 31. 1924, sec. 31. 1912, sec. 31. 1906, ch. 743, sec. 1

31. The consent of the State of Maryland is hereby given in accordance with the seventeenth clause, eighth section of the first article of the constitution of the United States, to the acquisition by the United States by purchase, condemnation or otherwise of any land in this State required for sites for custom houses, courthouses, postoffices, arsenals or other public buildings whatever, or for any other purposes of the government.

An. Code, 1939, sec. 32. 1924, sec. 32. 1912, sec. 32. 1906, ch. 743, sec. 2

35. Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil

and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

An. Code. 1939, sec. 33. 1924, sec. 33. 1912, sec. 33. 1906, ch. 743, sec. 3

36. The jurisdiction ceded shall not vest until the United States shall have acquired the title to said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State.

1947 Supp., sec. 41. 1943, ch. 687

46. Notwithstanding anything contained in any of the sections of this Article to the contrary the State of Maryland hereby reserves as to all lands within the State hereafter acquired by the United States or any agency thereof, whether by purchase, lease, condemnation or otherwise, and as to all property, persons and transactions on any such lands, jurisdiction and authority to the fullest extent permitted by the Constitution of the United States and not inconsistent with the Governmental uses, purposes, and functions for which the land was acquired or is used. Nothing in this section shall be deemed or construed to restrict the jurisdiction and authority of the State over any lands heretofore acquired by the United States, or any agency thereof, or over property, persons or transactions on any such lands.

Laws of the State of Maryland, 1955—

CHAPTER 622 (House Bill 23)

An act to repeal and re-enact with amendments, Sections 76, 77, 78, 81, 82, 83, 84 and 91 of Article 16 of the Annotated Code of Maryland (1951 Edition and 1954 Supplement), title "Chancery", sub-title "Adoption", and to add new Section 80A to said Article and sub-title, to follow immediately after Section 80 thereof, generally revising the adoption laws of the State, and relating to adoption procedure, and correcting certain wording therein

SECTION 1. *Be it enacted by the General Assembly of Maryland:*

That Sections 76, 77, 78, 81, 82, 83, 84 and 91 of Article 16 of the Annotated Code of Maryland (1951 Edition and 1954 Supplement), title "Chancery", sub-title "Adoption", be and they are hereby repealed and re-enacted, with amendments, and that new Section 80A be and it is hereby added to said Article and sub-title, to follow immediately after Section 80 thereof, all to read as follows:

ADOPTION

* * *

78. (Federal Reservations.) All persons residing *or stationed for not less than ninety (90) days* next preceding the filing of a petition

on property lying within the physical boundaries of any county of this State or within the boundaries of the City of Baltimore, but on property over which jurisdiction is exercised by the Government of the United States by virtue of the 17th Clause, Section 8 of Article 1 of the Constitution of the United States, and of Sections 31 and 35 of Article 96 of this Code, shall be considered as residents of the State of Maryland and of the county or City of Baltimore, as the case may be, in which the land is situate, for the purposes of jurisdiction in the courts of equity of this State in all petitions for adoption.

MASSACHUSETTS

The General Laws of the Commonwealth of Massachusetts, Tercentenary Edition, 1932, title 1, chapter 1, sections—

SECTION 2. The sovereignty and jurisdiction of the commonwealth shall extend to all places within its boundaries subject to the concurrent jurisdiction granted over places ceded to or acquired by the United States.

SECTION 6. The department, with the approval of the governor and council, may, upon the application of an agent of the United States, in the name and behalf of the commonwealth, convey to the United States the title of the commonwealth to any tract of land covered by navigable waters and necessary for the purpose of erecting a lighthouse, beacon light, range light or other aid to navigation, or light keeper's dwelling; but such title shall revert to the commonwealth if such land ceases to be used for such purpose.

SECTION 7. The United States shall have jurisdiction over any tract of land within the commonwealth acquired by it in fee for the following purposes: for the use of the United States bureau of fisheries, or for the erection of a marine hospital, custom office, post office, life-saving station, lighthouse, beacon light, range light, light keeper's dwelling or signal for navigators; provided, that a suitable plan of such tract has been or shall be filed in the office of the state secretary within one year after such acquisition of title thereto. But the commonwealth shall retain concurrent jurisdiction with the United States in and over any such tract of land to the extent that all civil and criminal processes issuing under authority of the commonwealth may be executed thereon as if there had been no cession of jurisdiction, and exclusive jurisdiction over any such tract shall revert in the commonwealth if such tract ceases to be used by the United States for such public purpose.

MICHIGAN

The Compiled Laws of the State of Michigan, 1948

Act 3, 1942 (1st Ex. Ses.) p. 11; Imd. Eff. Jan. 28

An act to cede jurisdiction to the United States over certain lands, and for the purchase and condemnation thereof; and to repeal all acts and parts of acts inconsistent with this act

The People of the State of Michigan enact:

3.201 *Ceding of jurisdiction to federal government of needed property.*—SEC. 1. The consent of the state of Michigan is hereby given in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has been, or may hereafter be acquired for forts, magazines, arsenals, dockyards and other needful buildings.

3.202 *Same; limitation; reservation of right to serve process.*—SEC. 2. Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes, except that the state retains the right to serve thereon all civil and criminal process issuing under authority of the state, but the jurisdiction so ceded shall continue no longer than the United States shall own such land.

3.203 *Same; transfer of jurisdiction; exemption from taxation.*—SEC. 3. The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state.

Act 4, 1874, p. 5; Imd. Eff. March 24

An act concerning submarine sites for lighthouses and other aids to navigation and/or aeronautics, and sites for government areas, reservations or other stations including military and naval reservations and the building of sea walls, breakwaters, ramps, and piers outside the water line by the United States, and authorizing the governor to issue deeds for such land

The People of the State of Michigan enact:

3.301 *State land needed by United States; application, conveyance; jurisdiction.*—SEC. 1. That whenever the United States of America desire to acquire title to land belonging to the state of Michigan including land which is now or has in the past been covered by the navigable waters of the United States of America, for sites or for any improvement or addition to any government area, reservation,

or other station including but not limited to military or naval reservations or stations, lighthouses, beacons, or other aids to navigation and/or aeronautics or for the building of sea walls, breakwaters, ramps, and piers, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the United States jurisdiction over the same: *Provided*, The state shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person or persons amenable to the same within the limits of land so ceded, in like manner and to like effect as if this act had never been passed.

Act. 5, 1874, p. 5; Imd. Eff. March 24

An act to cede jurisdiction to the United States on certain land, and for the purchase and condemnation thereof

The People of the State of Michigan enact:

3.321 *Purchase or condemnation of lands by the United States.*—

SEC. 1. That the United States of America shall have power to purchase or to condemn in the manner prescribed by its laws, upon making just compensation therefor, any land in the state of Michigan required for custom houses, arsenals, lighthouses, national cemeteries, or for other purposes of the government of the United States.

History: How. 5202.—C. L. 1897, 1149.—C. L. 1915, 234.—C. L. 1929, 410.

3.322 *Same; entry, exclusive legislation, concurrent jurisdiction, exemption from taxes.*—SEC. 2. The United States may enter upon and occupy any land which may have been, or may be purchased, or condemned, or otherwise acquired, and shall have the right of exclusive legislation, and concurrent jurisdiction together with the state of Michigan, over such land and the structures thereon, and shall hold the same exempt from all state, county and municipal taxation.

Act 52, 1871, p. 63; Imd. Eff. March 29

An act ceding the jurisdiction of this state over certain lands owned by the United States

The People of the State of Michigan enact:

3.341 *Jurisdiction ceded to United States; execution of process.*—

SEC. 1. That the jurisdiction of this state is hereby ceded to the United States of America, over all such pieces or parcels of land within the limits of this state, as have been or shall hereafter be selected and acquired by the United States, for the purpose of erecting postoffices, custom houses or other structures exclusively owned by the general

government, and used for its purposes: Provided, That an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of this state: And provided further, That this cession is upon the express condition that the state of Michigan shall so far retain concurrent jurisdiction with the United States, in and over all lands acquired or hereafter acquired as aforesaid, that all civil and criminal process issued by any court of competent jurisdiction or officers having authority of law to issue such process, and all orders made by such court, or any judicial officer duly empowered to make such orders, and necessary to be served upon any person, may be executed upon said lands, and in the buildings that may be erected thereon, in the same way and manner, as if jurisdiction had not been ceded, as aforesaid.

3.342 *Lands exempt from taxes.*—SEC. 2. The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments, so long as the same shall remain the property of the United States.

MINNESOTA

Minnesota Statutes Annotated sections—

1.041 *Concurrent jurisdiction of state and United States.*—Subdivision 1. *Rights of State.*—Except as otherwise expressly provided, the jurisdiction of the United States over any land or other property within this state now owned or hereafter acquired for national purposes is concurrent with and subject to the jurisdiction and right of the state to cause its civil and criminal process to be executed therein, to punish offenses against its laws committed therein, and to protect, regulate, control, and dispose of any property of the state therein.

Subd. 2. *Land exchange commission may concur.*—In any case not otherwise provided for, the consent of the State of Minnesota to the acquisition by the United States of any land or right or interest therein, in this state desired for any authorized national purpose, with concurrent jurisdiction as defined in subdivision 1, may be given by concurrence of a majority of the members of the Land Exchange Commission created by the Constitution of the State of Minnesota, Article 8, Section 8, upon finding that such acquisition and the methods thereof and the exercise of such jurisdiction are consistent with the best interests of the state, provided application for such consent is made by an authorized officer of the United States, setting forth a description of the property, with a map when necessary for proper identification thereof, and the authority for, purpose of, and method used or to be used in acquiring the same. The commission may pre-

scribe the use of any specified method of acquisition as a condition of such consent.

In case of acquisition by purchase or gift, such consent shall be obtained prior to the execution of any instrument conveying the lands involved or any interest therein to the United States. In case of condemnation, such consent shall be obtained prior to the commencement of any proceeding therefor.

1.042 *Consent of state.*—Subdivision 1. *Given for Certain Purposes.* The consent of the State of Minnesota is hereby given in accordance with the Constitution of the United States, Article I, Section 8, Clause 17, to the acquisition by the United States in any manner of any land or right or interest therein in this state required for sites for customs houses, courthouses, hospitals, sanatoriums, post-offices, prisons, reformatories, jails, forestry depots, supply houses, or offices, aviation fields or stations, radio stations, military or naval camps, bases, stations, arsenals, depots, terminals, cantonments, storage places, target ranges, or any other military or naval purpose of the United States.

Subd. 2. *Jurisdiction ceded to United States.* So far as exclusive jurisdiction in or over any place in this state now owned or hereafter acquired by the United States for any purpose specified in subdivision 1 is required by or under the constitution or laws of the United States, such jurisdiction is hereby ceded to the United States, subject to the right of the state to cause its civil and criminal process to be executed on the premises, which right is hereby reserved to the state. When the premises abut upon the navigable waters of this state, such jurisdiction shall extend to and include the under-water lands adjacent thereto lying between the line of low-water mark and the bulkhead or pier-head line as now or hereafter established.

1.043 *When jurisdiction vests.*—The jurisdiction granted or ceded to the United States over any place in the state under section 1.041 or section 1.042 shall not vest until the United States has acquired the title to or right of possession of the premises affected, and shall continue only while the United States owns or occupies the same for the purpose or purposes to which such jurisdiction appertains as specified in those sections.

1.046 *Evidence of consent.*—The consent of the state given by or pursuant to the provisions of sections 1.041 to 1.048 to the acquisition by the United States of any land or right or interest therein in this state or to the exercise of jurisdiction over any place in this state shall be evidenced by the certificate of the governor, which shall be issued in duplicate, under the great seal of the state, upon application by an authorized officer of the United States and upon proof that title to the property has vested in the United States. The certificate shall

set forth a description of the property, the authority for, purpose of, and method used in acquiring the same, and the conditions of the jurisdiction of the state and the United States in and over the same, and shall declare the consent of the state thereto in accordance with the provisions of sections 1.041 to 1.048, as the case may require. When necessary for proper identification of the property a map may be attached to the certificate, and the applicant may be required to furnish the same. One duplicate of the certificate shall be filed with the secretary of state. The other shall be delivered to the applicant, who shall cause the same to be recorded in the office of the register of deeds of each county in which the land or any part thereof is situated.

MISSISSIPPI

Mississippi Code 1942, Annotated, title 17, chapter 11, sections—

§ 4153. *United States may acquire land for certain purposes.*—The consent of the state of Mississippi is given, in accordance with the 17th clause, 8th section, and of the 1st article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has heretofore been or may hereafter be acquired for custom houses, post offices, or other public buildings.

§ 4154. *Jurisdiction.*—The exclusive jurisdiction in and over any land which has heretofore been, or may hereafter be, so acquired by the United States is hereby ceded to the United States for all purposes, except that the state retains the right to serve thereon all civil and criminal processes issued under authority of the state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands, for the purposes hereinabove set forth.

§ 4155. *Tax exemption.*—The jurisdiction ceded as aforesaid shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be exempt from all state, county and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the state.

§ 4157. *May cede jurisdiction to United States for certain purposes.*—The governor, upon application made to him in writing, on behalf of the United States, for the purpose of acquiring and holding lands or using any part of a public road of any county within the limits of this state, for the purpose of making, building, or constructing levees, canals, or any other works in connection with the improvement of rivers and harbors, or as a site for a fort, magazine, arsenal, dockyard, courthouse, custom house, lighthouse, post office, or other needful

buildings, or for the purpose of locating and maintaining national military parks, or for any other public works or purposes accompanied by proper evidence of the purchase of such lands, or the consent of the board of supervisors of the proper county for such public roads to be used for said purpose, is authorized for the state to cede jurisdiction thereof to the United States for the purpose of the cession and none other.

§ 4158. *Restrictions on cession.*—The concession of jurisdiction to the United States over any part of the territory of the state, heretofore or hereafter made, shall not prevent the execution on such land of any process, civil or criminal, under the authority of this state, nor prevent the laws of this state from operating over such land; saving to the United States security to its property within the limits of the jurisdiction ceded, and exemption of the same, and of such land from taxation under the authority of this state during the continuance of the cession.

Title 23, chapter 2, section—

§ 5926. *Federal regulations, etc.*—Consent is hereby given to the making by Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the State of Mississippi as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled "An Act to enable any State to cooperate with any other State or with the United States for the protection of the watersheds of navigable streams and to appoint a Commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," and Acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereof.

The Director of Conservation of the State of Mississippi shall have the right and authority to enter into a cooperative agreement with the United States Government, or with the proper authorities thereof, for the protection and management of the wild life resources of the national forest lands within the State of Mississippi and for the restocking of the same with desirable species of game, birds, and other animals, and fish.

The Director of Conservation of the State of Mississippi shall have authority to close all hunting and fishing within said lands so contracted for with the Federal Government for such period of time as may, in the opinion of the Director of Conservation, be necessary; shall have authority from time to time to prescribe the season for hunting or fishing therein, to fix the amount of fees required for special hunting licenses and to issue said licenses, to prescribe the number of animals and game, fish and birds that shall be taken therefrom and the

size thereof, and to prescribe the conditions under which the same may be taken.

Any person violating any of the rules so promulgated by the Director of Conservation, or who shall hunt or fish upon said lands at any time, other than those times specified by the said Director of Conservation, shall, upon conviction therefor be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisonment for not less than ten days nor more than thirty days for each and every offense.

Title 23, chapter 5, section—

§ 5964. *Counties may donate rights of way—easements, etc.*—The boards of supervisors of any county within the State of Mississippi through which or adjoining which the United States Government or any of its agencies desired to construct a roadway or a roadway and parkway in connection therewith, shall have full power to donate such rights of way, together with scenic easements of such additional lands as may be required by the United States Government for the purpose of constructing such roadway and parkway. Any and all counties in the State of Mississippi are authorized to receive by donation, gift, will, or by purchase with county funds any and all necessary lands, rights of way or scenic easements, and after the acquisition of such lands or scenic easements may, by resolution or deed or other authorization of the board of supervisors of such county, convey same to the United States or to such subordinate agency of the United States as may be required for the establishment of such roadway and parkway. The board of supervisors of any county in the State of Mississippi is hereby expressly vested with the power of eminent domain to condemn for public use as a public park and for scenic easement all lands adjoining such public park or parkway and for road or roadways and to acquire title to all or any part of the lands which such board of supervisors may deem necessary for the purposes of complying with the requirements of the United States Government in the establishment of any national roadway or parkway through the State of Mississippi and that such right of condemnation shall include the right to condemn houses, outbuildings, orchards, yards, gardens, and other improvement on such lands and all or any right, title, or interest in and to all or any part of such lands and the improvements thereon by the right of eminent domain in condemnation proceedings or by gift, devise, purchase, or any other lawful means for the transfer of title; and such condemnation proceedings shall be carried out and executed as are condemnation proceedings by the Highway Department of the State of Mississippi as authorized under the laws of the State of Mississippi. The United States Government,

or any of its subsidiary agencies, shall have complete control and supervision, severally or in connection with any county or counties in the State of Mississippi or with the Highway Department of the State of Mississippi, with full power and authority to locate, relocate, widen, alter, change, straighten, construct, or reconstruct roads or rights of way, parkways or lands covered by scenic easements on any Federal parkway, highway, or trace being constructed by the United States Government or any of its subsidiary subdivisions or severally or jointly with any county or counties in the State of Mississippi or with the State Highway Department of the State of Mississippi and shall have full and complete authority for the making of all contracts, surveys, plans, and specifications and estimates for the location, laying out, widening, straightening, altering, changing, constructing, reconstructing, and maintaining and securing rights of way therefor of any and all such highways, parkways, and scenic easements and shall further have the right to authorize its employees and agents to enter upon property for such purposes. The said United States Government severally and any county or counties in the State of Mississippi and the said Highway Department, either jointly or severally, is further authorized and empowered to obtain and pay for rights of way to such width and extent as may be necessary to meet the requirement of the United States Government for the construction and building of new parkway or roadway or scenic highway in the State of Mississippi, such rights of way to average along said road, however, not more than one hundred (100) acres to the mile and, in addition thereto, scenic easements to average not more than fifty (50) acres to the mile along said roadway or parkway, and such political authorities, either jointly or severally shall have the right to condemn or acquire by gift or purchase lands necessary for the building and maintenance of said roadway, parkway, or trace.

§ 5970. *Jurisdiction of the United States.*—The United States of America is authorized to acquire by deed or conveyance, gift, will or otherwise lands for the purpose of roadways and parkways as set forth in this Act, but this consent is given upon condition that the State of Mississippi shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases and such criminal process as may issue under the authority of the State of Mississippi against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. Power is hereby conferred on the Congress of the United States to pass such laws as it may deem necessary for the acquisition of the said lands and for incorporation in national roadways, parkways or na-

tional parks, and to pass such laws and make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor as in its judgment may be necessary for the management, control and protection of such lands as may be acquired by the United States under the provisions of this Act, including such lands as are acquired not only for highway and parkway and park purposes but also those lands over which scenic easements are acquired for such purposes, provided, nevertheless, that such jurisdiction shall not vest in the United States of America unless and until it, through the proper officer or officers, notifies the Governor and, through him, the State of Mississippi that the United States of America assumes concurrent police jurisdiction over the land or lands thus deeded and conveyed. But, however, there is saved to the State of Mississippi the right to tax sales of gasoline and other motor vehicle fuels and oils for use in motor vehicles and to tax persons and corporations, their franchises and properties, on all land or lands deeded or conveyed as aforesaid, and saving, except to persons residing in or on any of the land or lands deeded or conveyed as aforesaid, the right to vote at all elections within the county in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such county had not such lands been deeded or conveyed as aforesaid to the United States of America.

Sources : Laws, 1935, ch. 52.

MISSOURI

Vernon's Annotated Missouri Statutes, chapter 12, sections—

12.010. *Consent given United States to acquire land by purchase for certain purposes.*—The consent of the state of Missouri is hereby given in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this state which has been or may hereafter be acquired, for the purpose of establishing and maintaining post offices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, and land for reforestation, recreational and agricultural uses. Land to be used exclusively for the erection of hospitals by the United States may also be acquired by condemnation (R. S. 1939, § 12691, A. L. 1949, p. 316, A. 1949 S. B. 1005).

12.020. *Jurisdiction given with reservations.*—The jurisdiction of the state of Missouri in and over all such land purchased or acquired as provided in section 12.010 is hereby granted and ceded to the United States so long as the United States shall own said land; pro-

vided, that there is hereby reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within such lands or the buildings thereon (R. S. 1939, § 12693).

12.030. *Consent given United States to acquire land by purchase or condemnation for military purposes.*—The consent of the state of Missouri is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise, of any land in this state which has been acquired, prior to the effective date of sections 12.030 and 12.040, as sites for customhouses, courthouses, post offices, arsenals, forts, and other needful buildings required for military purposes. Laws 1955, H. B. No. 371, § 1.

12.040. *Exclusive jurisdiction ceded to the United States—reserving the right of taxation and the right to serve processes.*—Exclusive jurisdiction in and over any land so acquired, prior to the effective date of sections 12.030 and 12.040, by the United States shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the state of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the state of Missouri the right to serve thereon any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred, or crimes committed in said state, outside the boundaries of such land but the jurisdiction so ceded to the United States shall continue no longer than the said United States shall own such lands and use the same for the purpose for which they were acquired. Laws 1955, H. B. No. 371, § 2.

MONTANA

Constitution of the State of Montana, article II, section—

SECTION 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, that there be and is hereby reserved to the State the right to serve all legal process of the State, both civil and criminal, upon persons and property found within any of said reservations, in all cases where the United States has not exclusive jurisdiction.

Revised Codes of Montana, 1947, Annotated, title 83, chapter 1, sections—

83-102. (20) *Territorial jurisdiction, limitations on.*—The sovereignty and jurisdiction of this State extend to all places within its boundaries, as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made.

83-103. (21) *Military reservations.*—Authority is granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana.

All legal process of the State, both civil and criminal, may be served upon persons and property found within any of said reservations, or on any Indian reservation, in all cases where the United States has not exclusive jurisdiction.

83-108. (25) *Jurisdiction over lands purchased by United States.*—Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to

the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state on Montana jurisdiction in the enforcement of state laws relating to the duties of the livestock sanitary board and the state board of health, and the enforcement of any regulations promulgated by said boards in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States court house, post office and for other purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States court house, post-offices and for other like purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

NEBRASKA

Revised Statutes of Nebraska, 1943, article 6, sections—

72-601. *State lands; consent to purchase granted United States.*—The consent of the State of Nebraska is granted to the United States of America to purchase such grounds as may be deemed necessary in any city or incorporated town in the State of Nebraska, for the erection thereon of buildings for the accommodation of the United States circuit and district courts, post office, land office, mints, or any other government office, and also for the purchase by the United States of such other lands within the State of Nebraska as the agents or author-

ities of the United States may from time to time select for the erection of forts, magazines, arsenals and other needful buildings.

72-602. *State lands; conveyance to United States; cession of jurisdiction.*—The jurisdiction of the State of Nebraska in and over the lands mentioned in section 72-601 shall be ceded to the United States; *Provided*, the jurisdiction ceded shall continue no longer than the United States shall own or occupy such lands.

72-603. *State lands; sale to United States; service of process; jurisdiction retained.*—The consent is given and the jurisdiction ceded upon the express condition that the State of Nebraska shall retain concurrent jurisdiction with the United States in and over the lands, so far as civil process in all cases, and such criminal or other process as may issue under the laws or authority of the State of Nebraska, against any person or persons charged with crime or misdemeanors committed within this state, may be executed therein in the same way and manner as if such consent had not been given or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

72-604. *State lands; conveyance to United States; jurisdiction; when effective; exemption from taxation.*—The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase or grant. So long as the lands shall remain the property of the United States, when acquired as provided in section 72-601, and no longer, they shall be exempt from all taxes, assessments, and other charges which may be levied or imposed under the authority of the laws of this state.

NEVADA

Statutes of the State of Nevada, 1955, chapter 202, page 300—

Assembly Bill No. 13. Mr. Leighton—Chapter 202

An act granting the consent of the State of Nevada to the acquisition by the United States of lands required for public purposes, and ceding jurisdiction over such lands heretofore and hereafter acquired, leased or otherwise used by the United States for public purposes; repealing a part of an act in conflict herewith; and other matters properly relating thereto

[Approved March 22, 1955]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. *State consent to Federal acquisition of land required by Department of Defense or Atomic Energy Commission.*—The consent of the State of Nevada is hereby given in accordance with the 17th Clause, 8th Section of the 1st Article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, lease, exchange or otherwise, of any land in this state required

by the Department of Defense or the Atomic Energy Commission for the erection of bases, forts, magazines, arsenals, dockyards and other structures needed for defense or Atomic Energy Commission purposes as authorized by act of Congress.

SEC. 2. *Jurisdiction ceded to United States; reservation:*

1. The State of Nevada, except as hereinafter reserved and provided, hereby cedes jurisdiction to the United States:

(a) Over any land in this state which has been or may be hereafter so acquired; or

(b) Over any land in this state which has been or may be hereafter acquired by exchange for any of the purposes stated in section 1; and

(c) Over any land in this state which is now or may be hereafter held by the United States under lease, easement, license, use permit or otherwise for any of the purposes stated in section 1; and

(d) Over any land in this state which has been or may be hereafter reserved from the public domain, or other land of the United States for any of the purposes stated in section 1;

but the jurisdiction so ceded shall continue no longer than the United States shall own, hold or reserve such land for any of the purposes stated in section 1.

2. The United States shall at the time of the acceptance by the United States of the jurisdiction ceded by this act cause to be recorded a map or drawing of the installation, and a perimeter description thereof in the official records of the county or counties in which the lands comprising the affected installation are situate.

SEC. 3. *Taxation.*—It is hereby reserved and provided by the State of Nevada that any private property upon the lands or premises shall be subject to taxation by the state or any legal subdivision thereof having the right to levy and collect such tax, but any property upon or within such premises which belongs to the government of the United States shall be free of taxation by the state and any of its legal subdivisions.

SEC. 4. *Service of process.*—The State of Nevada reserves the right to serve or cause to be served, by any of its proper officers, any criminal or civil process upon such land or within such premises for any cause there or elsewhere in the state arising, where such cause comes properly under the jurisdiction of the laws of this state or any legal subdivision thereof.

SEC. 5. *Supplementary act; repeal.*—This act shall be deemed supplementary to that certain act entitled "An Act providing a method for the consent of the state to the acquisition by the United States of America of land and water rights; providing for the tax commission to be sole bargaining agency in matters of taxation with the federal

government, and matters related thereto," approved March 27, 1947, and being chapter 108, Statutes of Nevada 1947, at page 405, and, for the specific purposes only set forth in section 1 of this act, shall be deemed a repeal of chapter 108, Statutes of Nevada 1947.

SEC. 6. *Effective date.*—This act shall become effective upon passage and approval.

Nevada Compiled Laws, Supplement 1943-49—

Authorizing acquisition of land by Federal Government for certain purposes

An act providing a method for the consent of the state to the acquisition by the United States of America of land and water rights; providing for the tax commission to be sole bargaining agency in matters of taxation with the Federal government, and matters related thereto

[Approved March 27, 1947, 405]

§ 2898.01. *State consent to acquisition of land by United States for certain purposes.*—§ 1. The consent of the State of Nevada to the acquisition by the United States of America of any land or water right or interest therein in this state, except lands or water rights located within the boundaries of established and existing national forests, desired for any purpose expressly stated in clause 17 of section 8 of article I of the constitution of the United States, may be given by concurrence of a majority of the members of the state tax commission, which majority shall include the governor of the state, upon finding that such proposed acquisition and the method thereof and all other matters pertaining thereto are consistent with the best interests of the state and conforms to the provisions of this act.

§ 2898.02. *State consent to acquisition for reclamation projects, flood-control projects, protection of watersheds, right of way for public roads and other purposes.*—§ 2. The consent of the State of Nevada in accordance with the principles set forth in paragraph one hereof, and subject to the limitations and restrictions of this act, may also be given by concurrence of the said majority of the members of the state tax commission in cases where privately owned or state-owned real property is desired by the United States for reclamation projects, flood control projects, protection of watersheds, right-of-way for public roads, and other purposes.

§ 2898.3. *Right of taxation reserved.*—§ 3. The consent of the State of Nevada to any acquisition pursuant to section 2 hereof, shall be subject to and the state does hereby reserve the right of taxation to itself and to its municipal corporations and taxing agencies, and reserves to all persons now or hereafter residing upon such land all political and civil rights, including the right of suffrage.

§ 2898.06. *Authority of tax commission.*—§ 6. The authority herein conferred upon the tax commission to give or withhold the consent of

the State, shall include all acquisitions of all real property or of rights therein, including water rights of every nature whatsoever, by the United States including gifts.

§ 2898.11. *Conditions and requirements of consent to acquisition.*—

§ 11. The consent of the state in all such cases shall be conditioned upon the following requirements having been complied with and shall be based upon such other factors as the commission in its discretion may take into consideration in the making of its decision.

1. The United States, by a statute then in force and effect must have provided, and must be ready, able, and willing to make tax payments or in lieu of tax payments upon said premises, including the improvements to be placed thereon at the rate that other similar property in the county is taxed, said payments to continue so long as the ownership of the United States continues, said tax payments to be apportioned amongst the state and all municipal corporations and taxing agencies thereof, which would otherwise have the right to tax said property from time to time, if it were in private ownership. The tax commission shall be the sole bargaining agency in matters of taxation between the state, its political subdivisions, and the federal government, and shall determine the ratio of distribution among the payees which the federal government shall hereby be required to pay; *provided, however*, no tax shall be demanded hereunder upon a right-of-way for a public road or postoffice or for any purpose expressly stated in article 1, section 8, clause 17, of the constitution of the United States.

2. The board of county commissioners of each and every county to be affected by each requested acquisition must have given it or their written consent to said tax commission to said acquisition. Said consent shall be expressed by resolution duly adopted and entered in its journal.

3. The United States of America must have consented in writing to the levying and collection of all taxes to which any business, construction contractor, or any other enterprise or occupation thereafter conducted or operated upon said premises would be subject if the property were to remain in private ownership.

4. When it appears to the state tax commission and the county commissioners of the county or counties affected that the purpose for such purchase of land by the United States is to the best interests of the general public, tax payments or in lieu tax payments may be waived.

§ 2896.12. *State reserves jurisdiction to serve process of courts—civil and criminal jurisdiction of courts—civil and political rights reserved.*—§ 12. In granting its consent to any request or application

which may be filed with the tax commission pursuant to this act, the state reserves jurisdiction in all cases, except for acquisitions for land desired for the purposes expressly provided for in article I, section 8, clause 17, of the constitution of the United States and as to such lands the state reserves the right to serve its civil and criminal process upon persons for violations of the laws of this state occurring elsewhere in the state; that as to all other requests and applications for the acquisition of land by the United States under the provisions of this act, the state reserves jurisdiction over all offenses of a criminal nature and as to all cases arising under the civil laws of this state committed or had upon the land so applied for, and also reserves the right for the execution of all civil and criminal process on such land, and the state reserves its entire power of taxation, including that of each municipal corporation and taxing agency upon and concerning said land, and the state reserves to all persons residing on such land all civil and political rights, including the right of suffrage, which they may have had were said acquisitions not so made; provided, in all cases of acquisitions of land under this act there shall be reserved to the state the right to control, maintain, and operate all state highways constructed upon such land. The reservations set forth in this section shall be recited in the certificate provided for in section 13 hereof.

NEW HAMPSHIRE

Laws of the State of New Hampshire, 1955, chapter 223, page 333—

An act relative to jurisdiction of the United States over land within New Hampshire

Be it enacted by the Senate and House of Representatives in General Court convened:

1. *Jurisdiction of the United States.*—Amend Revised Laws, chapter 1, section 1 (section 1, chapter 123, RSA) by inserting after the word “custom-houses” in the third line of said section, the words, military air bases, military installations, so that said section as amended shall read as follows: 1. Ceded to United States. Jurisdiction is ceded to the United States of America over all lands within this state now or hereafter exclusively owned by the United States, and used as sites for post offices, custom-houses, military air bases, military installations or other public buildings: provided, that an accurate description and plan of the lands so owned and occupied, verified by the oath of some officer of the United States having knowledge of the facts, shall be filed with the secretary of this state; and, provided, further, that this session is upon the express condition that the state of New Hampshire shall retain concurrent jurisdiction with the United States in and over all such lands, so far that all civil and criminal process issuing under the

authority of this state may be executed on the said lands and in any building now or hereafter erected thereon, in the same way and with the same effect as if this statute had not been enacted; and that exclusive jurisdiction shall revert to and revest in this state whenever the lands shall cease to be the property of the United States.

2. *Takes effect.*—This act shall take effect upon its passage.

[Approved June 23, 1955.]

NEW JERSEY

New Jersey Statutes Annotated, title 52, chapter 30, sections—

52:30-1. *Consent to acquisition of land by United States.*—The consent of this state is hereby given, pursuant to the provisions of article one, section eight, paragraph seventeen, of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land within this state, for the erection of dockyards, custom houses, courthouses, post offices or other needful buildings.

52:30-2. *Jurisdiction over lands acquired.*—Exclusive jurisdiction in and over any land so acquired by the United States is hereby ceded to the United States for all purposes except the service of process issued out of any of the courts of this state in any civil or criminal proceeding.

Such jurisdiction shall not vest until the United States shall have actually acquired ownership of said lands, and shall continue only so long as the United States shall retain ownership of said lands.

52:30-3. *Lands exempt from taxes.*—So long as said lands shall remain in the ownership of the United States the same shall be exempt from all taxes, assessments, or other charges leviable by this state or any of its municipalities.

NEW MEXICO

New Mexico Statutes, 1953, Annotated, chapter 3, article 1, section—

3-1-1. *Definitions.*—The provisions of chapter 41, New Mexico Statutes Annotated, Compilation of 1929, and the amendments thereof and this chapter shall be known as the "Election Code" and may be so designated in this act and in any legislative act applicable thereto.

As used in this act, unless the context requires otherwise: The words "qualified elector," "elector" or "voter" means any citizen of the United States who at the date of the election will be over the age of twenty-one (21) years and will have resided in the state twelve (12) months, in the county ninety (90) days, and in the precinct in which he offers to vote thirty (30) days, next preceding the election, except idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights.

Residence within the meaning of the above paragraph shall be residence upon land privately owned, or owned by the state of New Mexico, any county or municipalities thereof; or upon lands originally belonging to the United States of America or ceded to the United States of America by the state of New Mexico, any county thereof, or any municipal corporation or private individual, by purchase, treaty, or otherwise.

* * *

Chapter 7, article 2, sections—

7-2-2. *Consent to acquisition of land for Federal purposes.*—The consent of the state of New Mexico is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom-houses, court-houses, post-offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

7-2-3. *Jurisdiction over Federal land—Limitations—Duration.*—Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands.

7-2-4. *Vesting of Federal jurisdiction—Tax exemption—Limitation.*—The jurisdiction ceded shall not vest until the United States shall have acquired the title to said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this state.

Chapter 22, article 7, section—

22-7-4. *Residence requirement.*—The plaintiff in action for the dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint; Provided, however, that in a suit for the dissolution of the bonds of matrimony wherein the wife is plaintiff, the residence of the husband in this state shall inure to her benefit and she may institute such action setting up any of the causes mentioned in section 2773 (25-701) [22-7-1] immediately after the accrual thereof, providing her husband shall have been qualified as to residence to institute a similar action; and Provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in the state of

New Mexico for such period of one (1) year, shall for the purposes hereof, be deemed residents in good faith of the state and county where such military base or installation is located.

NEW YORK

McKinney's Consolidated Laws of New York, Annotated, 1952, State Law, article 4, sections—

§ 35. *Cession of jurisdiction to lands acquired for light-house purposes.*—The jurisdiction to such tracts of land, not exceeding ten acres, acquired by the United States for the construction and maintenance of light-houses and keepers' dwellings before April eighteenth, eighteen hundred sixty-one, or as shall have been acquired since such date, or as shall be hereafter acquired, upon the selection by an authorized officer of the United States, the approval of the governor, the filing in the office of the secretary of state of a description of the boundaries thereof, with the approval of the governor indorsed thereon, and the filing in such office of a map thereof, which map shall be drawn with pen and India ink upon tracing cloth and shall be otherwise in form and manner suitable to the files, records and purposes of the office of the secretary of state, is ceded to the United States, upon condition that the jurisdiction so ceded shall not prevent the execution thereon of any process, civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States therein, and that such jurisdiction shall continue in the United States so long only as the land shall be used and occupied for the purposes of the cession, unless the consent of the state to a different use shall have been granted. As amended L. 1939, c. 521; L. 1944, c. 600, eff. April 6, 1944.

§ 36. *Acquisition by condemnation.*—When the United States shall have been authorized by law to acquire title to any real property within this state, such title may be acquired by gift or grant from the owners thereof, or by condemnation if, for any reason, the United States is unable to agree with the owners for the purchase thereof.

§ 50. *Consent of state to purchase of land; authority to dispose of land to United States; record of conveyances.*—1. The consent of the state of New York is hereby given to the purchase by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate within the boundaries of this state, for the purpose of parade or maneuver grounds, aviation fields, navy yards and naval stations, or for the purpose of erecting thereon lighthouses, beacons, lighthouse keepers' dwellings, hospitals, sanatoriums, works for improving navigation, post offices, custom houses, fortifications, or

buildings and structures for the storage, manufacture or production of supplies, ordnance, apparatus or equipment of any kind whatsoever for the use of the army or navy and any other needful buildings and structures.

2. In addition to the consent to purchase given in subdivision one of this section, the consent of the state is hereby given to the acquisition by exchange, donation or otherwise by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any county, city, town or village within this state for the purpose of parade or maneuver grounds or aviation fields, and every such county, city, town or village is hereby authorized and empowered to sell, exchange, donate or otherwise dispose of such tract, piece or parcel of land to the United States for such purpose or purposes; and all deeds, conveyances or other papers.

3. All deeds, conveyances or other papers relating to the title of any such lands acquired by the United States as authorized in this section shall be recorded in the office of the register, if any, or if not in the office of the county clerk, of the county where the said lands are situated. As amended L. 1910, c. 109, § 1; L. 1911, c. 527, § 1; L. 1917, c. 819, § 1; 1922, c. 14; L. 1941, c. 568, eff. April 19, 1941.

§ 52. *Governor may execute deed or release.*—Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, or the administrator of veterans' affairs of the government of the United States, shall cause to be filed in the office of the secretary of state of the state of New York, maps or plats and descriptions by metes and bounds of any tracts or parcels of land within this state, which have been acquired by the United States for any of the purposes aforesaid, and a certificate of the attorney general of the United States that the United States is in possession of said lands and premises for either of the works or purposes aforesaid, under a clear and complete title, the governor of this state is authorized, if he deems it proper, to execute in duplicate, in the name of the state and under its great seal, a deed or release of the state ceding to the United States the jurisdiction of said tracts or parcels of land as hereinafter provided. Such maps shall be drawn with pen and India ink upon tracing cloth and shall be otherwise in form and manner suitable to the files, records and purposes of the office of the secretary of state, and show such data thereon, or in relation thereto, as may be required by the secretary of state. As amended L. 1939, c. 521; L. 1944, c. 600; L. 1946, c. 839, eff. April 17, 1946.

§ 53. *Concurrent jurisdiction as to service of process.*—The said jurisdiction so ceded shall be upon the express condition that the state

of New York shall retain a concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States.

§ 54. *Exemption of property from State taxation.*—The said property shall be and continue forever thereafter exonerated and discharged from all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted, shall continue in respect to said property so long as the same shall remain the property of the United States, and be used for the purposes aforesaid, and no longer.

§ 55. *Delivery and filing of deeds and releases.*—One of the deeds or releases so executed in duplicate shall be delivered to the duly authorized agent of the United States, and the other deed or release shall be filed and recorded in the office of the secretary of state of the state of New York; and said deed or release shall become valid and effectual only upon such filing and recording in said office. As amended L. 1909, c. 240, § 76, eff. April 22, 1909.

§ 56. *Statement to be published in session laws.*—The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the application of the United States for said deed and a copy of the description of the lands so conveyed or ceded, together with the date of the recording of said deed in the office of the said secretary of state.

§ 57. *Article not to apply to Orange County; exception.*—This article shall not apply to the county of Orange, except with respect to a certain tract, piece or parcel of land in the town of Newburgh in such county containing two hundred twenty-one and eight-tenths acres more or less, commonly known and designated both as Newburgh airport and as Stewart field, and except with respect to additional lands adjoining and contiguous to such airport and field, as now constituted, aggregating not more than one thousand acres, and also except with respect to lands in the town of Cornwall adjoining and contiguous to lands in such town now owned by the United States and to state highway number eighty-five hundred, part one, aggregating not more than two and one-half acres. As amended L. 1940, c. 214; L. 1941, c. 178, eff. March 27, 1941.

§ 58. *Lands to be acquired; commission.*—Whenever any lands, structures or waters, situated within the boundaries of this state, are,

in the judgment of the governor, necessary for purposes of public defense, or for other public purposes incidental thereto including public highway purposes, the estates, titles and interests in and to such lands, structures or waters, belonging to or vested in any person, corporation or municipality, may be acquired by the state as provided in this article. If any of such lands are, in the judgment of the governor, needed for public highway purposes leading to, from, across or around such appropriated lands, such estate as may in his judgment be necessary therefor may be acquired in such strips of land, not exceeding one hundred feet in width, as in his judgment are needed for such purposes. The governor shall, whenever lands, structures or waters, to be designated by him, are required for such purposes, direct the adjutant-general, attorney-general, and the superintendent of public works, to take such actions and institute such proceedings as may be necessary to acquire such lands and easements in the name and for the benefit of the people of the state. Such officers when so directed are in each instance hereby constituted a temporary commission for the purpose of acquiring title to the lands so designated and the structures and waters thereon. Added L. 1917, c. 13; amended L. 1917, c. 130; L. 1928, c. 380, eff. March 16, 1928.

§ 59-c. *Searches of title.*—The attorney-general shall furnish to the commission all searches necessary to prove the title to the lands taken as provided in this article. The expense of making such searches shall be paid from the treasury out of the funds appropriated therefor, on the audit and warrant of the comptroller. Added L. 1917, c. 13; amended L. 1917, c. 130; L. 1928, c. 380, § 1, eff. March 16, 1928.

§ 59-d. *Use of lands so acquired.*—Whenever lands and the structures and waters thereon shall have been so appropriated for the purposes hereinbefore prescribed, the governor shall have the authority to direct the carrying out of such purposes for and on behalf of the people of the state or in co-operation with the government of the United States, and the expense thereof shall be paid from the treasury out of funds appropriated therefor, on the audit and warrant of the comptroller. Added L. 1917, c. 130; amended L. 1928, c. 380, § 2, eff. March 16, 1928.

§ 59-e. *Deed or release of land so acquired to United States.*—The governor may, if requested by any officer or agent of the United States duly authorized under the hand and seal of any head of an executive department of the government of the United States, execute a deed or release to the government of the United States of the lands and the structures and waters thereon, described in the survey and map filed in the office of the secretary of state as hereinbefore provided, excepting and reserving therefrom an easement for public highway

purposes in and over the lands acquired for highway purposes pursuant to this article. Such deed or release may be so executed at any time after the commission shall have entered upon and taken possession of such lands, structures and waters. Such deed or release shall be in the form agreed upon by the governor and the proper representative of the government of the United States and shall convey title to the lands, structures and waters described therein to the government of the United States, to be used for purposes of public defense and shall cede to the United States the jurisdiction over the tracts or parcels of land so described, to the extent and in the manner hereinafter provided. Such deed or release shall be executed in duplicate in the name of the state and under its great seal. One of such duplicates shall be filed and recorded in the office of the secretary of state of the state of New York, and the other shall be delivered to the proper executive department of the government of the United States. Formerly § 59-d, added L. 1917, c. 13; renumbered 59-e and amended L. 1917, c. 130, eff. April 4, 1917.

§ 59-f. *Concurrent jurisdiction as to service of process.*—The jurisdiction so ceded shall be upon the express condition that the state of New York shall retain concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States. Formerly § 59-e, added by L. 1917, c. 13; renumbered 59-f, L. 1917, c. 130, eff. April 4, 1917.

§ 59-g. *Exemption of property from State taxation.*—The property so conveyed and released to the United States shall be exempted from all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted shall continue in respect to such property so long as the same shall remain the property of the United States and be used for purposes of public defense, and no longer. Formerly § 59-f, added L. 1917, c. 13; renumbered 59-g, L. 1917, c. 130, eff. April 4, 1917.

§ 59-h. *Statement to be published in session laws.*—The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the filing of the survey and map of the lands, structures and waters so appropriated, and a copy of the deed or release of the lands, structures and waters so conveyed or ceded, together with the date of the recording of said deed or release in the office of the department of state.

Formerly § 59-g, added L. 1917, c. 13; renumbered 59-h, L. 1917, c. 130; amended L. 1928, c. 380, § 3, eff. March 16, 1928.

General Municipal Law, article 11, sections—

§ 210. *United States may acquire land in cities.*—The United States is hereby authorized to acquire by condemnation, purchase or gift in conformity with the laws of this state, one or more pieces of land not exceeding two acres in extent, in any city or village of this state, for the purpose of erecting and maintaining thereon a public building for the accommodation of post offices and other governmental offices in any such city or village.

§ 211. *Certified copy of transfer to be filed.*—Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed in the office of the secretary of state of this state, maps and descriptions by metes and bounds of any such pieces of land which had been acquired by the United States for the purposes specified in section two hundred and ten of this article, exclusive jurisdiction, except as provided in section two hundred and twelve, is thereupon ceded to the United States over the lands so described, during the time that the United States shall be or remain the owner thereof. Such maps shall be drawn with pen and India ink upon tracing cloth and shall be otherwise in form and manner suitable to the files, records and purposes of the office of the secretary of state, and show such data thereon, or in relation thereto, as may be required by the secretary of state. As amended L. 1939, c. 520; L. 1944, c. 684, eff. April 9, 1944.

§ 212. *Jurisdiction of state not affected.*—The jurisdiction ceded to the United States as prescribed by this article shall not prevent the execution on the land acquired for the purposes specified in section two hundred and ten of any process civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States thereon.

NORTH CAROLINA

The general Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, sections—

§ 104-1. *Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved.*—The United States is authorized, by purchase or otherwise, to acquire title to any tract or parcel of land in the State of North Carolina, not exceeding twenty-five acres, for the purpose of erecting thereon any custom house, courthouse, post office, or other building, including lighthouses, lightkeeper's dwellings, lifesaving stations, buoys and coal depots and buildings connected therewith, or for the establishment of a fish-cultural station

and the erection thereon of such buildings and improvements as may be necessary for the successful operations of such fish-cultural station. The consent to acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such lands as that all civil and criminal process issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given, and that the State of North Carolina also retains authority to punish all violations of its criminal laws committed on any such tract of land. (1870-1, c. 44, s. 5; Code, ss. 3080, 3083; 1887, c. 136; 1899, c. 10; Rev., s. 5426; C. S., s. 8053.)

§ 104-2. *Unused lands to revert to State.*—The consent given in § 104-1 is upon consideration of the United States building light-houses, lighthouse-keepers' dwellings, lifesaving stations, buoys, coal depots, fish stations, post offices, custom houses, and other buildings connected therewith, on the tracts or parcels of land so purchased, or that may be purchased; and that the title to land so conveyed to the United States shall revert to the State unless the construction of the aforementioned buildings be completed thereon within ten years from the date of the conveyance from the grantor. (1080-1, c. 44, s. 5; Code, ss. 3080, 3083; 1887, c. 136; 1899, c. 10; Rev. s. 5426; C. S., s. 8054.)

§ 104-3. *Exemption of such lands from taxation.*—The lots, parcels, or tracts of land acquired under this chapter, together with the tenements and appurtenances for the purpose mentioned in this chapter, shall be exempt from taxation. (1870-1, c. 44, s. 3; Code, s. 3082; Rev., s. 5428; C. S., s. 8055.)

§ 104-6. *Acquisition of lands for river and harbor improvement; reservation of right to serve process.*—The consent of the legislature of the State is hereby given to the acquisition by the United States of any tracts, pieces, or parcels of land within the limits of the State, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the improvement of rivers and harbors within and on the borders of the State. The consent hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided; and this State retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this section, so far as that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired, or the buildings or structures thereon erected. (1907, c. 681; C. S., s. 8058.)

§ 104-7. *Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.*—The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (1907, c. 25; C. S., s. 8059.)

§ 104-8. *Further authorization of acquisition of land.*—The United States is hereby authorized to acquire lands by condemnation or otherwise in this State for the purpose of preserving the navigability of navigable streams and for holding and administering such lands for national park purposes: Provided, that this section and § 104-9 shall in nowise affect the authority conferred upon the United States and reserved to the State in §§ 104-5 and 104-6. (1925, c. 152, s. 1.)

§ 104-9. *Condition of consent granted in preceding section.*—This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. (1925, c. 152, s. 2.)

Chapter 113, article 9, section—

§ 113-113. *Legislative consent; violation made a misdemeanor.*—The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and

non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any state to co-operate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U. S. Stat. at Large, p. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-game birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; C. S. c. 2099; 1939, c. 79, §§ 1, 2.)

NORTH DAKOTA

Constitution of North Dakota, article XVI, section—

Sec. 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservation in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

North Dakota Revised Code of 1943, title 54, chapter 54-01, sections—

54-0106 *Jurisdiction over property in State; limitations.*—The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, or purchased or condemned by, the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

54-0107. *Legislative consent to purchase of lands by United States; Jurisdiction.*—The legislative assembly consents to the purchase or condemnation by the United States of any tract within this state for the purpose of erecting forts, magazines, arsenals, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime, may be served and executed thereon in the same manner and by the same officers as if the purchase or condemnation had not been made.

54-0108. *Jurisdiction ceded to lands acquired by United States for military post.*—Jurisdiction is ceded to the United States over any tract of land that may be acquired by the United States on which to establish a military post. Legal process, civil and criminal, of this state, shall extend over all land acquired by the United States to establish a military post in any case in which exclusive jurisdiction is not vested in the United States, and in any case where the crime is not committed within the limits of such reservation.

OHIO

Baldwin's Ohio Revised Code, Annotated, 1953, chapter 159, sections—

159.01 (13768). *Acquisition of title to land by United States.*—Whenever it is necessary for the United States to acquire title to a tract of land in this state for any purpose, and the state gives its consent to such acquisition, the United States may acquire such land by appropriation; and for such purpose the "Act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations," passed April 23, 1872, and all acts amendatory thereof, are hereby made applicable, and said United States, in appropriating such property, shall, in all respects, be governed by the acts referred to in this section, and such other acts supplemental thereto and amendatory thereof as may be in force when such proceedings take place; provided that the United States may pay the cost, including such reasonable attorney fees as are allowed by the court, to the person whose property is sought to be appropriated, and refuse to make the appropriation, if in their judgment the compensation assessed is too great to justify the appropriation.

159.03 (13770). *Consent of state given to acquisition by United States of land required for Government purposes.*—The consent of the state is hereby given, in accordance with clause 17, Section 8, Article I, United States Constitution, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this

state required for sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

159.04 (13771). *Exclusive jurisdiction over land ceded to the United States; exceptions.*—Exclusive jurisdiction in and over any land acquired by the United States under section 159.03 of the Revised Code is hereby ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state. The jurisdiction so ceded shall continue no longer than the said United States owns such lands.

159.05 (13772). *Jurisdiction shall vest; voting.*—The jurisdiction ceded under section 159.04 of the Revised Code shall not vest until the United States has acquired title to the lands by purchase, condemnation, or otherwise. As long as the lands remain the property of the United States they are exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this state. Sections 159.03 to 159.06, inclusive, of the Revised Code do not prevent any officers, employees, or inmates of any national asylum for disabled volunteer soldiers located on any such land over which jurisdiction is ceded, who are qualified voters of this state from exercising the right of suffrage at all township, county, and state elections in any township in which such national asylum is located.

Chapter 3503, section—

3503.03 (4785-32). *Inmates of soldier's homes.*—Infirm or disabled soldiers who are inmates of a national home for such soldiers, who are citizens of the United States and have resided in this state one year next preceding any election, and who are otherwise qualified as to age and residence within the county and township shall have their lawful residence in the county and township in which such home is located.

OKLAHOMA

Oklahoma Statutes Annotated, title 29, section—

§ 604. *National Forest Lands—Rules and regulations of Federal Government.*—The consent of the State of Oklahoma be and hereby is given to the making by Congress of the United States or under its authority, of all such rules and regulations as the Federal Government may determine to be needful in respect to game animals, game and non-game birds and fish on or in and over National Forest Lands within the State of Oklahoma. Laws 1951, p. 90, § 604.

Title 80, sections—

§ 1. *State's consent to acquisition of lands by United States.*—The consent of the State of Oklahoma is hereby given, in accordance with

the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state required for sites for custom houses, postoffices, arsenals, forts, magazines, dockyards, military reserves, forest reserves, game preserves, national parks, irrigation or drainage projects, or for needful public buildings or for any other purposes for the government. (R. L., 1910, § 3190; Laws 1915, ch. 46, § 1.)

§ 2. *Jurisdiction ceded to United States over lands acquired.*—Exclusive jurisdiction in and over any lands so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. (R. L. 1910, § 3191.)

§ 3. *Vesting of jurisdiction—Exemption of lands from taxation.*—The jurisdiction ceded shall not vest until the United States shall have acquired the title of said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States, when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (R. L. 1910, § 3192.)

OREGON

Oregon Revised Statutes, 1953, chapter 272, sections—

272.020 *Conveyance of site to United States for aid to navigation; jurisdiction.*—Whenever the United States desires to acquire title to land belonging to the state, and covered by the navigable waters of the United States, within the limits hereof, for the site of lighthouse, beacon or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of such purposes, the Governor may convey the title to the United States, and cede to the United States jurisdiction over the same; provided, no single tract shall contain more than 10 acres. The State of Oregon shall retain concurrent jurisdiction, so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person amenable to the same within the limits of land so ceded, in like manner and to like effect as if this section had never been passed.

272.030 *Acquisition of land for Federal buildings; jurisdiction.*—Consent hereby is given to the United States to purchase or otherwise acquire any lands within the State of Oregon for the purpose of

erecting thereon any needful public buildings, under authority of any Act of Congress. The United States may enter upon and occupy any such lands which may be purchased or otherwise acquired, and shall have the right of exclusive jurisdiction over the same except that all process, civil or criminal, issuing under authority of the laws of the State of Oregon, may be executed by the proper officers thereof upon any person amenable to the same within the limits of the land so acquired, in like manner and to the same effect as if this section had not been passed.

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated (1953), title 74, sections—

§ 1. *Jurisdiction of state ceded to the United States, in certain cases.*—The jurisdiction of this State is hereby ceded to the United States of America over all such pieces or parcels of land, not exceeding ten acres in any one township, ward or city, or borough, within the limits of this State, as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post offices, custom houses or other structures, exclusively owned by the general government, and used for its purposes: Provided, That an accurate description and plan of such lands, so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the Department of Internal Affairs of this State, as soon as said United States shall have acquired possession of the same.

All such descriptions and plans heretofore filed with the Secretary of the Commonwealth shall, as soon as it may conveniently be done, be transferred to the Department of Internal Affairs, and the Department of Internal Affairs shall give to the Secretary of the Commonwealth proper receipts for such descriptions and plans.

The jurisdiction so ceded to the United States of America is granted upon the express condition that the Commonwealth of Pennsylvania shall retain concurrent jurisdiction, with the United States in and over the lands and buildings aforesaid, in so far that civil process in all cases, and such criminal process as may issue under the authority of the Commonwealth of Pennsylvania against anyone charged with crime committed outside said land, may be executed thereon in the same manner as if this jurisdiction had not been ceded. The United States shall retain such jurisdiction so long as the said land shall be used for the purposes for which jurisdiction is ceded and no longer.

The jurisdiction so ceded to the United States shall be upon the further condition that the Commonwealth reserves to itself and its

political subdivisions whatever power of taxation it may constitutionally reserve, to levy and collect all taxes now or hereafter imposed by the Commonwealth and its political subdivisions upon property, persons, and franchises within the boundaries so ceded. 1883, June 13, P. L. 118; § 1; 1905, March 17, P. L. 45, § 1; 1933, May 2, P. L. 223, § 1; 1945, April 17, P. L. 235, § 1.

§ 11. *Consent to acquisition of lands for dams, locks, etc., by the United States.*—Whenever the United States shall make an appropriation, and shall be about to begin the improvement of any of the navigable waters within the state of Pennsylvania, by means of locks and permanent and moveable dam or dams with adjustable chutes, the consent of the state of Pennsylvania, through the governor thereof, is hereby given to the acquisition by the United States, by purchase, or by condemnation in the manner hereinafter provided, of any lands, buildings or other property, necessary for the purpose of erecting thereon dams, abutments, locks, lockhouses, chutes and other necessary structures for the construction and maintenance of slack water navigation on said rivers, and the United States shall have, hold, use and occupy the said land or lands, buildings, or other property, when purchased or acquired as provided by this act, and shall exercise jurisdiction and control over the same, concurrently with the state of Pennsylvania. 1887, May 18, P. L. 121, § 1.

RHODE ISLAND

Rhode Island General Laws of 1938 (Annotated), title 1, chapter 1, sections—

§ 2. The jurisdiction of the state shall extend to, and embrace, all places within the boundaries thereof, except as to those places that have been ceded to the United States, or have been purchased by the United States with the consent of the state, Provided, however, with respect to all land, the jurisdiction over which shall have been ceded to the United States by the State of Rhode Island, the said State of Rhode Island shall have and hereby does retain concurrent jurisdiction with the United States of and over said land, for the sole and only purpose of serving and executing thereon civil and criminal process issuing by virtue of and under the laws and authority of the State of Rhode Island.

§ 4. The premises described in the preceding section shall be exempt from all taxes and assessments and other charges which may be levied or imposed under the authority of said state and shall so continue to be exempt as long as said property shall remain the property of the United States and no longer. (P. L., 1919, Ch. 1717.)

Title 1, chapter 2, sections—

§ 1. The consent of the state of Rhode Island is given to the purchase by the government of the United States, or under the authority of the same, of any tract, piece, or parcel of land from any person within the limits of the state for the purpose of erecting thereon post-offices, light-houses, beacon-lights, range-lights, life-saving stations, and light-keepers' dwellings, and other needful public buildings or for the location, construction, or prosecution of forts, fortifications, coast defences, and appurtenances thereto, or for the location and maintenance of any cable-lines, landing-places, terminal stations, and other needful buildings connected therewith for weather-bureau purposes, or for the establishment of naval stations or coal depots, or the erection of buildings, piers, wharves, or other structures for naval uses, or for the establishment of fish or lobster cultural stations or hatcheries, or the erection or construction of other needful buildings connected therewith or for the erection or construction of piers, wharves, dams, or other structures for use in connection with said fish or lobster cultural stations or hatcheries; and all deeds, conveyances, or title papers for the same shall be recorded, as in other cases, upon the land records of the town in which the land so conveyed may lie; the consent herein given being in accordance with the 17th clause of the 8th section of the first article of the constitution of the United States and with the acts of congress in such cases made and provided. (P. L., 1926, Chap. 805, amending P. L., 1918, Chap. 1608.)

§ 2. The lots, parcels, or tracts of land so selected, together with the tenements and appurtenances for the purposes before mentioned, shall be held exempt from taxation by the State of Rhode Island.

§ 5. Whenever it shall be made to appear to the superior court, upon the application of any authorized agent of the United States, that said United States is desirous of purchasing any tract of land, and the right of way thereto, within the limits of this state, for the erection of a light-house, beacon-light, range-light, life-saving station, or light-keeper's dwelling, or for the location, construction, or prosecution of forts, fortifications, coast defences and appurtenances thereto, and that the owner of said land is unknown, nonresident, or a minor, or from any other cause is incapable of making a perfect title to said lands, or in case the said owners, being residents and capable of conveying, shall, from disagreement in price, or from any other cause, refuse to convey said lands to the United States the said court shall order notice upon said application to be published in the newspaper published nearest the place where the land lies, also in a newspaper published in Newport, and in a newspaper published in Providence, once in each week for the space of 4 months, which notice shall contain

an accurate description of the said lands, together with the names of the owners, or supposed owners, and shall require all persons interested in said lands to appear on a day and at a place to be specified in said notice, and to make their objections, if any they have, to having the lands condemned to the United States for the use aforesaid. Whereupon, the said court shall proceed to empanel a jury, as in other cases, to appraise the value of said lands, as their fair market value, and all damages sustained by the owners thereof by the appropriation thereof by the United States for the purpose aforesaid; which award, when so assessed, with the entire costs of said proceedings, shall be paid into the general treasury of the state, and thereupon the sheriff of the county in which such land lies, upon the production of the certificate of the general treasurer that the said amount has been paid, shall execute to the United States, and deliver to their authorized agent, a deed of the said lands, reciting the proceedings in said cause, which said deed shall convey to the United States a good and absolute title to the said lands for the purposes aforesaid, against all persons whatsoever.

§ 9. All civil and criminal processes issued under the authority of this state or of any department, division or officer thereof may be served and executed on any lot, piece, parcel or tract of land acquired by the United States as aforesaid under the authority of this chapter, and in any buildings or structures that may be erected thereon, in the same manner as if jurisdiction had not been ceded as aforesaid. (P. L. 1935, Ch. 2199.)

SOUTH CAROLINA

Code of Laws of South Carolina, 1952, Annotated, title 28, chapter 1, article 3, section—

§ 28-40. *Consent to Congress making rules and regulations.*—The consent of the General Assembly is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the Federal government shall determine to be needful in respect to game animals, game birds, non-game birds and fish on such lands and waters in the State as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An Act to Enable any State to Cooperate with any other State or States, or with the United States for the Protection of the Watersheds of Navigable Streams and to Appoint a Commission for the Acquisition of Lands for the Purpose of Conserving the Navigability of Navigable Rivers" (36 United States Statutes at Large, page 961) and acts of Congress supplementary thereto and amendatory thereof. (Acts 1922, p. 106.)

1952 (47) 2179.

Title 39, chapter 2, article 1, sections—

§ 39-51. *General consent to acquire lands.*—The consent of this State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise of any land in this State required for sites for custom houses, court houses, post offices, arsenals or other public buildings whatever or for any other purposes of the government.

1942 Code § 2042; 1932 Code § 2042; 1908 (25) 1127.

§ 39-52. *Jurisdiction over such lands; service of process.*—Exclusive jurisdiction in and over any land so acquired by the United States pursuant to the consent given by § 39-51 shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State. The jurisdiction so ceded shall continue no longer than the United States shall own such lands.

1942 Code § 2042; 1932 Code § 2042; 1908 (25) 1127.

§ 39-53. *Jurisdiction not to vest until title acquired.*—The jurisdiction ceded in any case pursuant to § 39-52 shall not vest until the United States shall have acquired the title to any such lands by purchase condemnation or otherwise.

1942 Code § 2042; 1932 Code § 2042; 1908 (25) 1127.

§ 39-54. *Exemption from taxation.*—So long as any land acquired by the United States pursuant to the consent given by § 39-51 shall remain the property of the United States, and no longer, such lands shall be and continue exempt and exonerated from all State, county and municipal taxation, assessments or other charges which may be levied or imposed under the authority of this State.

1942 Code § 2042; 1932 Code § 2042; 1908 (25) 1127.

Chapter 2, article 2, sections—

§ 39-61. *Land purchased for arsenals and magazines.*—In addition to the authority granted with respect to arsenals by article 1 of this chapter the United States or such person as may be by it authorized may purchase in any part of this State that may be thought most eligible the fee simple of any quantity of land, not exceeding two thousand acres, for the purpose of erecting arsenals and magazines thereon.

1942 Code § 2043; 1932 Code § 2043; Civ. C. '22 § 5; Civ. C. '12 § 5; Civ. C. '02 § 4; G. S. 4; R. S. 4; 1795 (5) 260.

§ 39-62. *Valuing lands if parties cannot agree.* If the person whose land may be chosen for the above mentioned purpose should not be disposed to sell it or if the persons appointed to make the purchase should not be able to agree upon terms with such owner of such land, it shall be valued, upon oath, by a majority of persons to be appointed by the court of common pleas of the county where such land is situated for that purpose and the land shall be vested in the United States upon their paying the amount of such valuation to the owner of such land.

1942 Code § 2044; 1932 Code § 2044; Civ. C. '22 § 6; Civ. C. '12 § 6; Civ. C. '02 § 5; R. S. 5; 1795 (5) 260.

§ 39-63. *Concurrent jurisdiction retained by State over such lands.*—Such land, when purchased, and every person and officer residing or employed thereon, whether in the service of the United States or not, shall be subject and liable to the government of this State and the jurisdiction, laws and authority thereof. The United States shall exercise no more authority or power within the limits of such land than it might have done before acquiring it or than may be necessary for the building, repairing or internal government of the arsenals and magazines thereon to be erected and the regulation and the management thereof and of the officers and persons by them to be employed in or about the same.

1942 Code § 2045; 1932 Code § 2045; Civ. C. '22 § 7; Civ. C. '12 § 7; Civ. C. '02 § 6; G. S. 6; 1795 (5) 260.

§ 39-64. *Exemption from taxation.*—Such lands shall forever be exempt from any taxes to be paid to this State.

1942 Code § 2045; 1932 Code § 2045; Civ. C. '22 § 7; Civ. C. '12 § 7; Civ. C. '02 § 6; G. S. 6; 1795 (5) 260.

Chapter 2, article 3, sections—

§ 39-71. *Power of Governor to convey or cede tracts.*—Whenever the United States desires to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon or other aid to navigation and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, the Governor may convey the title to the United States and cede to the United States jurisdiction over such land; *provided*, that no single tract so conveyed shall contain more than ten acres.

1942 Code § 2047; 1932 Code § 2047; Civ. C. '22 § 9; Civ. C. '12 § 9; Civ. C. '02 § 8; G. S. 8; R. S. 8; 1874 (15) 790.

§ 39-72. *Concurrent jurisdiction; service of process.*—The State shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the State, may be executed by the proper officers thereof upon any person amenable to such process within the limits of land so ceded in like manner and to like effect as if this article had never been enacted.

1942 Code § 2047; 1932 Code § 2047; Civ. C. '22 § 9; Civ. C. '12 § 9; Civ. C. '02 § 8; G. S. 8; R. S. 8; 1874 (15) 790.

Chapter 2, Article 4, Sections—

§ 39-81. *Jurisdiction ceded.*—The jurisdiction of the State is hereby ceded to the United States over so much land as is necessary for the public purposes of the United States; *provided*, that the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the lands by grant or deed from the owner thereof and the evidences thereof shall have been recorded in the office where, by law, the title to such land is recorded. The United States is to retain such jurisdiction so long as such lands shall be used for the purposes aforementioned and no longer.

1942 Code § 2048; 1932 Code § 2048; Civ. C. '22 § 10; Civ. C. '12 § 10; Civ. C. '02 § 9; G. S. 9; R. S. 9; 1871 (14) 535.

§ 39-82. *Retention of certain jurisdiction; service of process.*—Such jurisdiction is granted upon the express condition that the State shall retain a concurrent jurisdiction with the United States in and over such lands, so far as that civil process in all cases not affecting the real or personal property of the United States and such criminal or other process as shall issue under the authority of the State against any person charged with crimes or misdemeanors committed within or without the limit of such lands may be executed therein in the same way and manner as if no jurisdiction had been hereby ceded.

1942 Code § 2048; 1932 Code § 2048; Civ. C. '22 § 10 Civ. P. '12 § 10; Civ. C. '02 § 9; G. S. 9; R. S. 9; 1871 (14) 535.

§ 39-83. *Exemption from taxation.*—All lands and tenements which may be granted to the United States pursuant to the provisions of § 39-81 shall be and continue, so long as the same shall be used for the purposes in said section mentioned, exonerated and discharged from all taxes, assessments and other charges which may be imposed under the authority of the State.

1942 Code § 2049; 1932 Code § 2049; Civ. C. '22 § 11; Civ. C. '12 § 11; Civ. C. '02 § 10; G. S. 10; R. S. 10; 1871 (15) 536.

SOUTH DAKOTA

Constitution of South Dakota, article XXVI, section 18, paragraph—

FIFTH. That jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall and Fort Sully, heretofore declared by the President of the United States: Provided legal process, civil and criminal, of this state shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States, and also the people of the said state of South Dakota, expressed by their legislative assembly.

South Dakota Code of 1939, chapter 55.01, sections—

55.0101 *Sovereignty and jurisdiction: extent and limitations.*—The sovereignty and jurisdiction of this state extends to all territory within its established boundaries except as to such places wherein jurisdiction is expressly ceded to the United States by the state Constitution, or wherein jurisdiction has been heretofore or may be hereafter ceded to the United States, with the consent of the people of this state, expressed by their Legislature and the consent of the United States.

55.0102 *United States government: jurisdiction; authority to acquire land; purchase or condemnation; concurrent rights, service of process state and federal government.*—The people of this state by their Legislature consent to the purchase or condemnation, by the United States, in the manner prescribed by law, of any tract of land within this state owned by any natural person or private corporation, required by the United States for any public building, public work, or other public purpose; provided that in the case of public buildings such tract shall not exceed ten acres in extent.

Jurisdiction is ceded to the United States over any tract of land acquired under the provisions of this section to continue only so long as the United States shall own and occupy such tract. During which time the same shall be exempt from all taxes, assessments, and other charges levied or imposed under authority of the state.

The consent and jurisdiction mentioned in this section are given and ceded upon the express condition that all civil and criminal process, issued from the courts of this state, may be served and executed in and upon any tract of land so acquired by the United States, in the same manner and by the same officers as if such purchase or condemnation had not been made, except in so far as such process may affect the real or personal property of the United States.

55.0107 *General cession of jurisdiction to United States: property acquired by donation or otherwise for public purposes; acquired grants confirmed; concurrent jurisdiction for service of process retained.*—Jurisdiction of the lands and their appurtenances which have been or may be acquired by the United States through donations from this state or other states or private persons or which may have been acquired by exchange, purchase, or condemnation by the United States for use of the National Sanitarium in Fall River county; Fish Lake in Aurora county; Wind Cave National Park; the Bad Lands National Monument or Park, and for other public purposes of the United States is hereby ceded to the United States and all such prior grants or donations of this state are hereby confirmed; provided however, that all civil or criminal process, issued under the authority of this state or any officer thereof, may be executed on such lands and in the buildings which may be located thereon in the same manner as if jurisdiction had not been ceded.

TENNESSEE

Williams Tennessee Code, Annotated, 1934, part I, title 2, chapter 1, article II, sections—

96-82 (70). *Sovereignty is coextensive with boundary.*—The sovereignty and jurisdiction of the state is coextensive with the boundaries thereof, but the extent of such jurisdiction over places that have been or may be ceded to the United States is qualified by the terms of such cession.

98-99. [Repealed.]

COMPILER'S NOTE.—Section 1, Acts 1943, ch. 10, repealed these sections, the same being the general acts of cession.

Section 2, Acts 1943, ch. 10, provides: "As to any lands heretofore acquired by the United States Government, the map or plans of which and description by metes and bounds has not been filed in the county court clerk's office of the county in which the same was situated, by the date of the passage of this act, the same shall not be permitted to be filed. It is the purpose of this act to terminate definitely on the date of its passage any further or additional cession of jurisdiction of property to the United States under the provisions of Code sections 98 and 99. Jurisdiction over property in respect to which Code sections 98 and 99 have not been fully complied with shall not be treated or deemed as ceded and it is specifically provided that section 12 of the Code, or any similar section, shall have no application to the provisions and requirements of this act."

Emergency Clause.—Section 3, Acts 1943, ch. 10 declared an emergency.

Part I, title 3, chapter 7A, article V, section—

1012.33. *Acknowledgments, affidavits, etc., of members of the armed forces taken before commissioned officers thereof.*—1. As used in this act the term “armed forces” shall include all persons serving in the army, navy and marine corps of the United States.

2. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise provided by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed in connection with any pleading or other instrument to be filed or used in any court in this state, before or by any commissioned officer in active service of the armed forces of the United States, with the rank of second lieutenant or higher, in the army or marine corps, or with the rank of ensign or higher, in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who is a member of the armed forces of the United States.

3. Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts as aforesaid, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to, shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect, as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit or other notarial act as aforesaid, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law. Provided the validation of such instruments shall apply only to those executed since the first day of November, 1940.

4. In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act, or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank and branch of service or subdivision thereof of any such commissioned officer appear upon such instrument or

document, or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this act. (1945, ch. 5, secs. 1-4.)

Part I, Title 5, Chapter 1, Article IV, Section—

1085 689 (542). *Exemptions enumerated.*—The property herein enumerated shall be exempt from taxation :

(1) *Public property.*—All property of the United States, all property of the State of Tennessee, or any county, or of any incorporated city, town, or taxing district in the state that is used exclusively for public, county or municipal purposes. (1907, ch. 602, sec. 2.)

Part III, title 2, Chapter 15A, Section—

9572.18. *Who may petition for adoption and change of name; joinder of spouse.*—(1) Any person over twenty-one years of age may petition the chancery court to adopt a minor child and may pray for a change of the name of such child. If the petitioner has a husband or wife living, competent to join in the petition, such spouse shall join in the petition.

(2) Provided, however, that if the spouse of the petitioner is a natural parent of the child to be adopted, such spouse need not join in the petition but need only to give consent as provided herein.

(3) Provided further, that the petitioner or petitioners shall have resided in Tennessee, or on federal territory within the boundaries of Tennessee for one year next preceding the filing of the petition. (1951, ch. 202, sec. 4.)

Public Statutes of the State of Tennessee, 1858-71—

Cemeteries

1866-7.—Chapter XLIV

Whereas, In the late bloody sacrifice to restore and maintain to the people of Tennessee the imperiled free institutions of our fathers, more than fifty-five thousand of our fallen patriots were buried in our State, and the government of our common Union has provided appropriate cemeteries for the remains of these victims of rebellion, and requires that these cemeteries be held sacred under the protection of the nation; therefore,

* * *

SEC. 2. That the exclusive jurisdiction over all tracts and parcels of land, with the buildings and appurtenances belonging to the same,

including the quarters for officers, keepers, guards, or soldiers in charge of the same and the premises connected therewith, now, or at any time hereafter purchased, used or occupied by the United States, their officers or agents, for cemeteries or burial places, within the limits of this State, is hereby ceded to the United States; and whenever such premises shall be no longer required, used, or occupied by the United States, the jurisdiction of such abandoned property may revert to the State of Tennessee.

SEC. 3. The property over which jurisdiction is ceded herein, shall be held exonerated and free from any taxation or assessment under the authority of this State, or of any municipality therein, until the jurisdiction shall have reverted; and the title and possession to said cemeteries, grounds, buildings, and appurtenances, shall be protected to the United States; and no process of any court shall be permitted against the same, or to dispossess the officers or agents of the United States thereof, without restricting any just claim for damages or value in the forum or mode provided by the United States for prosecuting the same.

SEC. 4. That any malicious, willful, reckless, or voluntary injury to, or mutilation of the graves, monuments, fences, shrubbery, ornaments, walks, or buildings of any of said cemeteries, or burial places, or appurtenances, shall subject the offender or offenders, each, to a fine of not less than twenty dollars; to which may be added, for an aggravated offense, imprisonment, not exceeding six months, in the county jail or workhouse, to be prosecuted before any court of competent jurisdiction.

TEXAS

Vernon's Annotated Constitution of the State of Texas, article 16, section—

SEC. 34. The Legislature shall pass laws authorizing the Governor to lease, or sell to the Government of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Vernon's Annotated Revised Civil Statutes of the State of Texas (Revision of 1955), title 85—

ART. 5242. 5252 *Authorized uses.*—The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and

maintain lighthouses, forts, military stations, magazines, arsenals, dock yards, customhouses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures, or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. Acts 1905, p. 101.

ART. 5243. 5253 *Condemnation proceedings.*—Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner. Id.

ART. 5244. 5271 *Immediate occupancy.*—Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. Id.

ART. 5244a. *Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated.*—SECTION 1. When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or

easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by resolution of its governing body may have heretofore agreed or may hereafter agree to acquire and convey the same, for ultimate conveyance to the United States of America and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

SEC. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. Acts 1937, 45th Leg., p. 145, ch. 77.

ART. 5244a-2. *Commissioners' Courts authorized to convey land to United States for flood control near Mexican boundary.*—SECTION 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any such county, which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to secure by gift, purchase or by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for

the same out of any special flood-control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge, after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance to the United States. Said declaration shall contain and have annexed thereto—

(1) A description of the land taken sufficient for the identification thereof.

(2) A statement of the estate or interest in said land taken, and the public use to be made thereof.

(3) A plan showing the lands taken.

(4) A statement of the amount of damage awarded by the Special Commissioners, or, by the jury on appeal for the taking of said land.

SEC. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk, subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall be deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said declaration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall be the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose. Acts 1939, 46th Leg., p. 482.

ART. 5245. 5273, 372, 331. *State land*.—When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner

as other patents are issued. Acts 1854, p. 102; P. D. 5450; G. L. vol. 3, p. 1546.

ART. 5246. 5274, 373, 332. *To record title.*—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. Acts 1871, p. 19; P. D. 7693, G. L. Vol. 6, p. 921.

ART. 5247. 5275-6. *Federal jurisdiction.*—Whenever the United States shall acquire any lands under this title and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. Acts 1849, p. 12; G. L. vol 3, p. 450.

ART. 5248. 5277, 376, 335. *Exempt from taxation.*—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise; provided, however, that any personal property located on said lands which is privately owned by any person, firm, association of persons or corporation shall be subject to taxation by this State and its political subdivisions; and provided, further, that

any portion of said lands and improvements which is used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions. As amended Acts 1950, 51st Leg., 1st C. S., p. 105, ch. 37, § 1.

Emergency. Effective March 17, 1950.

ART. 5248c. *Counties authorized to convey lands to the United States.*—SECTION 1. That any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

SEC. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

SEC. 3. That all proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provide for the conveyance of a part or parts of any plot of ground such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

SEC. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose of serving all State criminal and civil process. Acts 1939, 46th Leg., p. 138.

UTAH

Utah Code Annotated 1953, title 20, chapter 2, section 14, subsection—

(11) Any person living upon any Indian or military reservation shall not be deemed a resident of Utah within the meaning of this chapter, unless such person had acquired a residence in some county in Utah prior to taking up his residence upon such Indian or military reservation.

Title 63, chapter 8, sections—

63-8-1. *Jurisdiction over land acquired or leased by United States—Reservations by state—Duration of jurisdiction.*—Jurisdiction is hereby ceded to the United States in, to and over any and all lands or territory within this state which have been or may be hereafter acquired by the United States by purchase, condemnation or otherwise for military or naval purposes and for forts, magazines, arsenals, dockyards and other needful buildings of every kind whatever authorized by Act of Congress, and in, to and over any and all lands or territory within this state now or hereafter held by the United States under lease, use permit, or reserved from the public domain for any of the purposes aforesaid; this state, however, reserving the right to execute its process, both criminal and civil within such territory. The jurisdiction so ceded shall continue so long as the United States shall own, hold or reserve land for any of the aforesaid purposes, or in connection therewith, and no longer.

63-8-2. *Governor to execute conveyances.*—The governor is hereby authorized and empowered to execute all proper conveyances in the cession herein granted, upon request of the United States or the proper officers thereof, whenever any land shall have been acquired, leased, used, or reserved from the public domain for such purposes.

63-8-4. *Concurrent jurisdiction with United States.*—The state of Utah retains concurrent jurisdiction, both civil and criminal, with the United States over all lands affected by this act.

VERMONT

The Vermont Statutes, Revision of 1947, title 3, chapter 4, sections—

60. *Concurrent jurisdiction reserved.*—When, pursuant to article one, section eight, clause seventeen of the Constitution of the United States, consent to purchase is given and exclusive jurisdiction ceded to the United States in respect to and over any lands within this state which shall be acquired by the United States for the purposes described in such clause of the Constitution, such jurisdiction shall

continue so long as the lands are held and occupied by the United States for public purposes; but concurrent jurisdiction is reserved for the execution upon such lands of all process, civil or criminal, issued by the courts of the state and not incompatible with the cession. The deed or other conveyance of such land to the United States shall contain a description of such lands by metes and bounds and shall be recorded in the town clerk's office of the town in which such lands lie or an accurate map or plan and description by metes and bounds of such lands shall be filed in such clerk's office.

P. L. § 51. G. L. § 40. 1917, No. 254, § 44. 1910, No. 1, § 2. P. S. § 38. V. S. § 2207. 1891, No. 15, § 1.

61. *Consent to purchase.*—Subject to the provisions of section 60, consent to purchase is hereby given and exclusive jurisdiction is ceded to the United States in respect to and over so much land as the United States has or may acquire for the purposes described in article one, section eight, clause seventeen of the Constitution of the United States. However, with respect to land hereafter sought to be acquired by the United States for flood control purposes or for other needful buildings as specified in such clause of the Constitution of the United States, the consent of the state shall not be deemed to have been given unless and until such land has been acquired by the state and conveyed to the United States in the manner provided by chapter 241 with respect to public works projects and with the written approval of the governor.

1939, No. 2, § 1. P. L. § 52. G. L. § 41. 1917, No. 254, § 45. 1910, No. 1, §§ 1, 2.

VIRGINIA

Code of Virginia, 1950, Annotated, title 7, chapter 3, sections—

§ 7-17. *Lands acquired for various purposes.*—The United States, having by consent of the General Assembly purchased, leased, or obtained jurisdiction over various parcels of land in this State for the erection of forts, magazines, arsenals, dockyards and other needful buildings, for national cemeteries, for conservation of forests and natural resources, and for various other purposes, and the transfers of the property and jurisdiction authorized by the several acts of the Assembly under which the cessions were made being subject to certain terms and conditions therein expressed, and under certain restrictions, limitations and provisions therein set forth, it is hereby declared that this State retains concurrent jurisdiction with the United States over the said places, so far as it lawfully can, consistently with the acts of Assembly before-mentioned, and its courts, magistrates and officers may take such cognizance, execute such process, and discharge such

other legal functions within and upon the same as may not be incompatible with the true intent and meaning of such acts of Assembly. (Code 1919, § 17.)

§ 7-18. *Sites for lighthouses or other aids to navigation.*—Whenever the United States desires to acquire title to, or to lease land, whether under water or not, belonging to the State for the site of a lighthouse, beacon, life-saving station, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for any of the purposes aforesaid, the Governor of the State shall have authority to convey or to lease, as the case may be, the site to the United States, provided, that no single parcel shall contain more than ten acres. And it is hereby declared that the title to the land so conveyed or leased to the United States, and the possession thereof, shall revert to the State, unless the construction of a lighthouse, beacon, life-saving station, or other aid to navigation be begun within two years after such conveyance or lease is made, and be completed within ten years thereafter; or, if completed, the use of the site for the purpose for which it is granted or leased be discontinued for five years consecutively after such construction is completed.

It is expressly provided, however, that, in case of any such lease or conveyance of any such property, there is hereby reserved in the Commonwealth of Virginia, over all lands therein embraced, the jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants thereon owned by others than the United States and a tax on the sale thereof, on such lands, except sales to the United States for use in the exercise of essentially governmental functions. There is further expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands and to license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands and to tax all property, including buildings erected thereon, not belonging to the United States and to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. Any such conveyance or lease as herein provided for shall be deemed to have been made upon the express condition that the reservations of power and limitations hereinabove provided for are recognized as valid by the United States, and, in the event the United States shall deny the validity of the same as to all or any part of such lands, then, and in that event, the title and possession of all or any such part of such lands shall immediately revert to the Commonwealth. Over all lands leased or conveyed to the United States by the Governor pursuant to the

authority herein conferred, the Commonwealth hereby cedes to the United States the power and jurisdiction to protect such lands and all property of the United States thereon from damage, depredation or destruction, to regulate traffic on the highways thereon and all necessary jurisdiction and power to operate and administer such lands and property thereon for the purposes for which the same may be conveyed to the United States, but the jurisdiction and power hereby ceded to the United States shall not be construed as being in any respect inconsistent with or as in any way impairing the jurisdiction and powers hereinabove specifically reserved to the Commonwealth. (Code 1919, § 18; 1936, p. 609.)

§ 7-19. *Sites for customs houses, courthouses, arsenals, forts, naval bases, etc.*—The conditional consent of the Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any lands in Virginia, whether under water or not, from any individual, firm, association or body corporate, for sites for customs houses, courthouses, arsenals, forts, naval bases, military or naval air ports or airplane landing fields or for any military or naval purpose. The conditions upon which this consent is given are as follows:

That there is hereby reserved in the Commonwealth, over all lands so acquired by the United States for the purposes aforesaid, the jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants thereon owned by others than the United States and a tax on the sale thereof, on such lands, except sales to the United States for use in the exercise of essentially governmental functions. There is further expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands and to license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands and to tax all property, including buildings erected thereon, not belonging to the United States and to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. Any such acquisition by or conveyance or lease to the United States, as is herein provided for, shall be deemed to have been secured or made upon the express condition that the reservations of power and limitations hereinabove provided for are recognized as valid by the United States, and, in the event the United States shall deny the validity of the same, as to all or any part of such lands, then and in that event, the title and possession of all or any such part of such lands conveyed to the United States by the Commonwealth shall im-

mediately revert to the Commonwealth. Over all lands acquired by or leased or conveyed to the United States pursuant to the conditional consent herein conferred, the Commonwealth hereby cedes to the United States concurrent jurisdiction, legislative, executive and judicial, with respect to the commission of crimes and the arrest, trial and punishment therefor, and also cedes to the United States the power and jurisdiction to protect such lands and all property of the United States thereon from damage, depredation or destruction, to regulate traffic on the highways thereon and all necessary jurisdiction and power to operate and administer such lands and property thereon for the purposes for which the same may be conveyed to the United States, but the jurisdiction and power hereby ceded to the United States shall not be construed as being in any respect inconsistent with or as in any way impairing the jurisdiction and powers hereinabove specifically reserved to the Commonwealth. The jurisdiction and powers hereby ceded shall not apply to lands acquired for the purposes enumerated in § 7-21. Whenever the United States shall cease to use any of such lands so acquired for any one or more of the purposes hereinabove set forth, the jurisdiction and powers herein ceded shall as to the same cease and determine, and shall revert to the Commonwealth.

Nothing herein contained shall affect any special act heretofore or hereafter passed ceding jurisdiction to the United States. (Code 1919, § 19; 1936, p. 610; 1940, p. 754.)

§ 7-20. *Sites for post offices, etc.*—The unconditional consent of the Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any lands in Virginia, from any individual, firm, association or body corporate, for sites for post offices, or for services incidental to postal work; provided, however, there is hereby expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands.

Whenever the United States shall cease to use any of such lands so acquired for any one or more of the purposes hereinabove set forth, the jurisdiction and powers herein ceded shall as to the same cease and determine, and shall revert to the Commonwealth. (1940, p. 749; Michie Code 1942, § 19f.)

§ 7-21. *Soldiers' homes, conservation, improvement of rivers, harbors, etc.*—The conditional consent of the Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase or lease, or in cases where it is appropriate that the United States exercise the power of eminent domain, then by condemnation, of any lands in Virginia from any individual, firm, association or private corporation, for soldiers' homes, for the con-

ervation of the forests or natural resources, for the retirement from cultivation and utilization for other appropriate use of sub-marginal agricultural lands, for the improvement of rivers and harbors in or adjacent to the navigable waters of the United States, for public parks and for any other proper purpose of the government of the United States not embraced in § 7-19.

Over all lands heretofore or hereafter acquired by the United States for the purposes mentioned in this section, the Commonwealth hereby cedes to the United States the power and jurisdiction to regulate traffic over all highways maintained by the United States thereon, to protect the lands and all property thereon belonging to the United States from damage, depredation or destruction and to operate and administer the lands and property thereon for the purposes for which the same shall be acquired by the United States. The Commonwealth hereby reserves to herself all other powers and expressly and specifically reserves the jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants, on such lands, not belonging to the United States, and a tax on the sale thereof on any part of any lands acquired by the United States for the purposes embraced in this section. The Commonwealth hereby further reserves expressly and specifically the jurisdiction and power to tax, license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands so acquired; to tax all property, including buildings erected thereon, not belonging to the United States; to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. The above powers enumerated as expressly and specifically reserved to the Commonwealth shall not be construed as being in any respect inconsistent with or impaired by the powers herein ceded to the United States.

The Commonwealth hereby further reserves unto herself over all such lands exclusive governmental, judicial, executive and legislative powers, and jurisdiction in all civil and criminal matters, except in so far as the same may be in conflict with the jurisdiction and powers herein ceded to the United States. (1936, p. 611; Michie Code 1942, § 19c.)

§ 7-23. *Waste, unappropriated and marsh lands.*—(1) *Waste and unappropriated lands.*—The Governor is authorized to execute in the name of the Commonwealth deeds conveying, subject to the jurisdictional and other limitations and reservations contained in §§ 7-21 and 7-25, to the United States such title as the Commonwealth may have

in waste and unappropriated lands entirely surrounded by lands owned by the United States, when the same are certified as being vacant and unappropriated by a duly authorized agent of the United States and are described by metes and bounds descriptions filed with the Secretary of the Commonwealth and with the clerk of the court in the county wherein such unappropriated land is situated.

(2) *Marsh lands in certain counties.*—The Governor is authorized to execute, in the name and on behalf of the Commonwealth, a deed or other appropriate instrument conveying to the United States of America, without any consideration but subject to the jurisdictional limitations and reservations contained in §§ 7-21 and 7-25, such right, title and interest in or easement over and across the marshes lying along the sea side of the counties of Accomack and Northampton as may be necessary and proper for the construction, operation and maintenance of a canal or channel for small boats over and through such marsh lands. (1946, pp. 94, 651.)

§ 7-24. *Ceding additional jurisdiction to the United States.*—(1) In addition to the jurisdiction and powers over certain lands ceded to the United States by §§ 7-18, 7-19 and 7-21, there is hereby ceded to the United States concurrent jurisdiction over crimes and offenses committed on lands acquired since March twenty-eighth, nineteen hundred and thirty-six, and hereafter acquired by the United States in Virginia by purchase, lease, condemnation or otherwise, for sites for customs houses, courthouses, arsenals, forts, naval bases, military or naval airports, or airplane landing fields, veterans hospitals, or for any military or naval purpose, and there is hereby ceded to the United States such additional jurisdiction and powers over lands acquired by the United States in Virginia by purchase or condemnation as hereinafter provided.

(2) Whenever the head or other authorized officer of any department or independent establishment or agency of the United States shall deem it desirable that such additional jurisdiction or powers be ceded over any lands in Virginia acquired or proposed to be acquired by the United States under his immediate jurisdiction, custody or control, and whenever the Governor and Attorney General of Virginia shall agree to the same, the Governor and Attorney General shall execute and acknowledge a deed in the name of and under the lesser seal of the Commonwealth ceding such additional jurisdiction. The deed shall accurately and specifically describe the area and location of the land over which the additional jurisdiction and powers are ceded and shall set out specifically what additional jurisdiction and powers are ceded, and may set out any reservations in the Com-

monwealth of jurisdiction which may be deemed proper in addition to those referred to in subsection (6) hereof.

(3) In the event that the United States does not desire to accept all or any part of the jurisdiction and powers ceded by §§ 7-18, 7-19 and 7-21 the deed shall set out specifically the jurisdiction and powers which it is desired not to accept.

(4) No such deed shall become effective or operative until the jurisdiction therein provided for is accepted on behalf of the United States as required by section three hundred and fifty-five of the Revised Statutes of the United States. The head or other authorized officer of a department or independent establishment or agency of the United States shall indicate such acceptance by executing and acknowledging such deed and admitting it to record in the office of the clerk of the court in which deeds conveying the lands affected would properly be recorded.

(5) When such deed has been executed and acknowledged on behalf of the Commonwealth and the United States, and admitted to record as hereinbefore set forth, it shall have the effect of ceding to and vesting in the United States the jurisdiction and powers therein provided for and none other.

(6) Every such deed as is provided for in this section shall reserve in the Commonwealth over all lands therein referred to the jurisdiction and power to serve civil and criminal process on such lands and in the event that the lands or any part thereof shall be sold or leased to any private individual, or any association or corporation, under the terms of which sale or lease the vendee or lessee shall have the right to conduct thereon any private industry or business, then the jurisdiction ceded to the United States over any such lands so sold or leased shall cease and determine, and thereafter the Commonwealth shall have all jurisdiction and power she would have had if no jurisdiction or power had been ceded to the United States. This provision, however, shall not apply to post exchanges, officers' clubs and similar activities on lands acquired by the United States for purposes of national defense. It is further provided that the reservations provided for in this subsection shall remain effective even though they should be omitted from any deed executed pursuant to this section.

(7) Nothing contained in this section shall be construed as repealing any special acts ceding jurisdiction to the United States to acquire any specific tract of land. (1940, p. 761; Michie Code 1942, § 19e.)

§ 7-25. *Reversion to Commonwealth; recorded title prerequisite to vesting of jurisdiction.*—If the United States shall cease to be the owner of any lands, or any part thereof, granted or conveyed to it by the Commonwealth, or if the purposes of any such grant or conveyance

of the United States shall cease, or if the United States shall for five consecutive years fail to use any such land for the purposes of the grant or conveyance, then, and in that event, the right and title to such land or such part thereof, shall immediately revert to the Commonwealth.

All deeds, conveyances or title papers for the transfer of title of lands to the United States shall be recorded in the county or corporation wherein the land or the greater part thereof lies, but no tax shall be required on any such instrument made to the United States by which they acquire lands for public purposes.

The jurisdiction ceded by §§ 7-18, 7-19 and 7-21, shall not vest until the United States shall have acquired the title of record to such lands, or rights or interest therein, by purchase, condemnation, lease or otherwise. So long as the lands, or any rights or interest therein, are held in fee simple by the United States, and no longer, such lands, rights or interest, as the case may be, shall continue exempt and exonerated, from all state, county and municipal taxes which may be levied or imposed under the authority of this State. (1936, p. 612; Michie Code 1942, § 19d.)

WASHINGTON

The Constitution of the State of Washington, article XXV, section—

§ 1. *Authority of the United States.*—The consent of the State of Washington is hereby given to the exercise, by the congress of the United States, of exclusive legislation in all cases whatsoever over such tracts or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dockyards, lighthouses and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first article of the Constitution of the United States, so long as the same shall be so held and reserved by the United States. *Provided:* That a sufficient description by metes and bounds, and an accurate plat or map of each such tract or parcel of land be filed in the proper office of record in the county in which the same is situated, together with copies of the orders, deeds, patents or other evidences in writing of the title of the United States: and *provided*, that all civil process issued from the courts of this state and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservations, may be served and executed thereon in the same mode and manner, and by the same officers, as if the consent herein given had not been made.

Revised Code of Washington, 1951, 37, title 37, chapter 37.04, sections—

37.04.010. *Consent given to acquisition of land by United States.*—The consent of this state is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired, in this state by the United States, from any individual, body politic or corporate, as sites for forts, magazines, arsenals, dockyards, and other needful buildings or for any other purpose whatsoever. The evidence of title to such land shall be recorded as in other cases. [1939 c 126 § 1; RRS § 8108-1.]

37.04.020. *Concurrent jurisdiction ceded—Reverter.*—Concurrent jurisdiction with this state in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes for which the land was acquired; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such land, and if the purposes of any grant to or acquisition by the United States shall cease, or the United States shall for five consecutive years fail to use any such land for the purposes of the grant or acquisition, the jurisdiction hereby ceded over the same shall cease and determine, and the right and title thereto shall revert in the state. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. [1939 c 126 § 2; RRS § 8108-2.]

37.04.030. *Reserved jurisdiction of state.*—The state of Washington hereby expressly reserves such jurisdiction and authority over land acquired or to be acquired by the United States as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition. [1939 c 126 § 3; RRS § 8108-3.]

37.04.040. *Previous cessions of jurisdiction saved.*—Jurisdiction heretofore ceded to the United States over any land within this state by any previous act of the legislature shall continue according to the terms of the respective cessions: *Provided*, That if jurisdiction so ceded has not been affirmatively accepted by the United States, or if the United States has failed or ceased to use any such land for the purposes for which acquired, jurisdiction thereover shall be governed by the provisions of this chapter. [1939 c 126 § 4; RRS § 8108-4.]

Title 37, Chapter 37.08, Sections—

37.08.010. *County may aid in acquisition of land for permanent military reservations.* Whenever the Secretary of War shall agree, on behalf of the federal government, to establish in any county now or hereafter organized in this state a permanent mobilization, training, and supply station for any or all such military purposes as are

now or may be hereafter authorized or provided by or under federal law, on condition that land in such county aggregating approximately a designated number of acres at such location or locations as may have been or hereafter be from time to time selected or approved by the Secretary of War, be conveyed to the United States, with the consent of the state of Washington, free from cost to the United States, and the board of county commissioners of such county shall adjudge that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to incur an indebtedness in an amount sufficient to acquire land in such county aggregating approximately the number of acres so designated at such location or locations as have been or may be hereafter selected or approved by the Secretary of War, and convey all of such lands to the United States to be used by the United States for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of the United States army, state militia, and other military organizations as are now or may be hereafter authorized or provided by or under federal law, such county is hereby authorized and empowered by and through its board of county commissioners to contract indebtedness for such purposes in any amount not exceeding, together with the existing indebtedness of such county, five percent of the taxable property of such county, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, whenever three-fifths of the voters of such county, voting on the question assent thereto at an election to be held for that purpose consistent with the general election laws, which election may be a special or general election. [1917 c 4 § 2.]

37.08.180. *Jurisdiction ceded.*—Pursuant to the Constitution and laws of the United States, and especially article 1, section 8, paragraph 17 of such Constitution, the consent of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions hereof, title to all lands acquired hereunder to be evidenced by the deed or deeds of such county, signed by the chairman of its board of county commissioners and attested by the clerk thereof under the seal of the board; and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: *Provided*, That upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each tract or parcel of land shall be filed in the office of the auditor of the county in which the lands are situated, together with copies

of the orders, deeds, patents, or other evidences in writing of the title of the United States: *Provided further*, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the some mode and manner and by the same officers as if the consent herein given had not been made [1917 c 4 § 22.]

WEST VIRGINIA

The West Virginia Code of 1955, Annotated, chapter 1, article 1, sections—

§ 3. [3] *Acquisition of Lands by United States; Jurisdiction.*—The consent of this State is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired in this State by the United States, from any individual, body politic or corporate, for sites for lighthouses, beacons, signal stations, post offices, customhouses, courthouses, arsenals, soldiers' homes, cemeteries, locks, dams, armor plate manufacturing plants, projectile factories or factories of any kind or character, or any needful buildings or structures or proving grounds, or works for the improvement of the navigation of any water-course, or work of public improvement whatever, or for the conservation of the forests, or for any other purpose for which the same may be needed or required by the government of the United States. The evidence of title to such land shall be recorded as in other cases.

Any county, magisterial district or municipality, whether incorporated under general law or special act of the legislature, shall have power to pay for any such tract or parcel of land and present the same to the Government of the United States free of cost, for any of the purposes aforesaid, and to issue bonds and levy taxes for the purpose of paying for the same; and, in the case of a municipal corporation, the land so purchased and presented may be within the corporate limits of such municipality or within five miles thereof: *Provided*, however, That no such county, magisterial district or municipality shall, by the issue and sale of such bonds, cause the aggregate of its debt to exceed the limit fixed by the Constitution of this State: *Provided further*, That the provisions of the Constitution and statutes of this State, or of the special act creating any municipality, relating to submitting the question of the issuing of bonds and all questions connected with the same to a vote of the people, shall, in all respects, be observed and complied with.

Concurrent jurisdiction with this State in and over any land so acquired by the United States shall be, and the same is hereby, ceded

to the United States for all purposes; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such lands and if the purposes of any grant to the United States shall cease, or the United States shall for five consecutive years fail to use any such land for the purposes of the grant, the jurisdiction hereby ceded over the same shall cease and determine, and the right and title thereto shall reinvest in this State. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. Jurisdiction heretofore ceded to the United States over any land within this State by any previous acts of the legislature shall continue according to the terms of the respective cessions. (1881, c. 20 § 4; 1909, c. 61; 1917, 2nd Ex. Sess., c. 5; Code 1923, c. 1, § 4.)

§ 4. [4] *Execution of Process and Other Jurisdiction as to Land Acquired by United States.*—The State of West Virginia reserves the right to execute process civil or criminal within the limits of any lot or parcel of land heretofore or hereafter acquired by the United States as aforesaid, and such other jurisdiction and authority over the same as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition (1881, c. 20 § 5; Code 1923, c. 1, § 5.)

WISCONSIN

Wisconsin Statutes, 1953, title 1, chapter 1, sections—

1.01. *State sovereignty and jurisdiction.*—The sovereignty and jurisdiction of this state extend to all places within the boundaries thereof as declared in the constitution, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over any places therein; and it shall be the duty of the governor, and of all subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction. Such sovereignty and jurisdiction are hereby asserted and exercised over the St. Croix river from the eastern shore thereof to the center or thread of the same, and the exclusive jurisdiction of the state of Minnesota to authorize any person or corporation to obstruct the navigation of said river east of the center or thread thereof, or to enter upon the same and build piers, booms or other fixtures, or to occupy any part of said river east of the center or thread thereof for the purpose of sorting or holding logs, is denied; such acts can only be authorized by the concurrent consent of the legislature of this state.

1.02. *United States sites and buildings.*—Subject to the conditions mentioned in section 1.03 the legislature hereby consents to the acquisition heretofore effected and hereafter to be effected by the United States, by gift, purchase or condemnation proceedings, of the title to places or tracts of land within the state; and, subject to said conditions,

the state hereby grants, cedes and confirms to the United States exclusive jurisdiction over all such places and tracts. Such acquisitions are limited to the following purposes:

(1) To sites for the erection of forts, magazines, arsenals, dockyards, custom houses, courthouses, post offices, or other public buildings or for any purpose whatsoever contemplated by the seventeenth clause of section eight of article one of the constitution of the United States.

(2) To all land now or hereafter included within the boundaries of Camp McCoy in townships 17, 18 and 19 north, ranges 2 and 3 west, near Sparta, in Monroe county, to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army may deem necessary and proper.

(3) To erect thereon dams, abutments, locks, lockkeepers' dwellings, chutes, or other structures necessary or desirable in improving the navigation of the rivers or other waters within and on the borders of this state.

(4) To the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 6, township 19 north, range 2 west of the fourth principal meridian to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army may deem necessary and proper.

HISTORY : 1953 c. 548, 549.

1.03 *Concurrent jurisdiction over United States sites; conveyances.*—The conditions mentioned in section 1.02 are the following conditions precedent:

(1) That an application setting forth an exact description of the place or tract so acquired shall be made by an authorized officer of the United States to the governor, accompanied by a plat thereof, and by proof that all conveyances and a copy of the record of all judicial proceedings necessary to the acquisition of an unincumbered title by the United States have been recorded in the office of the register of deeds of each county in which such place or tract may be situated in whole or in part.

(2) That the ceded jurisdiction shall not vest in the United States until they shall have complied with all the requirements on their part of sections 1.02 and 1.03, and shall continue so long only as the place or tract shall remain the property of the United States.

(3) That the state shall forever retain concurrent jurisdiction over every such place or tract to the extent that all legal and military process issued under the authority of the state may be served anywhere thereon, or in any building situate in whole or in part thereon.

1.04. *United States sites exempt from taxation.*—Upon full compliance by the United States with the requirements of sections 1.02 and 1.03, relating to the acquisition of any place or tract within the state

the governor shall execute in duplicate, under the great seal, a certificate of such consent given and of such compliance with said sections, one of which shall be delivered to such officer of the United States and the other filed with the secretary of state. Such certificate shall be sufficient evidence of such consent of the legislature and of such compliance with the conditions specified. All such places and tracts after such acquisition and while owned by the United States, shall be and remain exempt from all taxation and assessment by authority of the state.

1.05. *United States sites for aids to navigation.*—Whenever the United States shall desire to acquire title to any land belonging to the state and covered by the navigable waters of the United States, for sites for lighthouses, beacons, or other aids to navigation, the governor may, upon application therefor by any authorized officer of the United States, setting forth an exact description of the place desired, and accompanied by a plat thereof, grant and convey to the United States, by a deed executed by him in the name of the state and under the great seal, all the title of the state thereto; and such conveyance shall be evidence of the consent of the legislature to such purchase upon the conditions specified in section 1.03.

WYOMING

Wyoming Compiled Statutes, 1945, Annotated, chapter 24, article 8, sections—

24-801. *Acquisition of lands by purchase or condemnation—Reservation of mineral rights.*—The United States shall be and is authorized to acquire by purchase or condemnation or otherwise, any land in this State required for public buildings, custom houses, arsenals, national cemeteries, or other purposes essential to the National Defense in necessary use of said land by armed naval, air or land forces, or land to be physically occupied by the Boysen Dam, its reservoir, power plant and distribution systems, or lands to be physically occupied by dams, reservoirs, power plants and distribution systems in United States Reclamation Service Projects, and the State of Wyoming hereby consents thereto, provided that the mineral content of lands so acquired, if owners thereof so elect, shall be reserved to such owners. [Laws 1897, ch. 17, § 1; R. S. 1899, § 2657; C. S. 1910, § 697; C. S. 1920, § 810; R. S. 1931, § 118-101; Laws 1941, ch. 97, § 1.]

24-802. *Jurisdiction ceded to United States.*—The jurisdiction of the State of Wyoming in and over any land so acquired by the United States shall be, and the same is hereby [§§ 24-801—24-804] ceded to the United States, but the jurisdiction so ceded shall continue no longer than the said United States shall own the said land. [Laws

1897, ch. 17, § 2; R. S. 1899, § 2658; C. S. 1910, § 698; C. S. 1920, § 811; R. S. 1931, § 118-102.]

24-803. *Jurisdiction retained by state in certain cases.*—The said consent is given and the said jurisdiction ceded upon the express condition that the state of Wyoming shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process, in all cases, and such criminal and other process as may issue under the laws or authority of the state of Wyoming against any person or persons charged with crimes or misdemeanors committed within said state, may be executed therein in the same way and manner as if such consent had not been given or jurisdiction ceded, except so far as such process may affect the real or personal property of the United States. [Laws 1897, ch. 17, § 3; R. S. 1899, § 2659; C. S. 1910, § 699; C. S. 1920, § 812; R. S. 1931, § 118-103.]

24-804. *When jurisdiction vests.*—The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase or condemnation or otherwise, and so long as the said land shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exonerated from all taxes, assessments and other charges which may be levied or imposed under the authority of this state. [Laws 1897, ch. 17, § 4; R. S. 1899, § 2660; C. S. 1910, § 700; C. S. 1920, § 813, R. S. 1931, § 118-104.]

GENERAL STATUTES GRANTING CONSENT OF STATES TO PURCHASE OF LANDS UNDER THE MIGRATORY BIRD CONSERVATION ACT¹
(16 U. S. C. 715-715r)

Alabama.—The Code of Alabama, 1940, title 8, section 110.

Arkansas.—Arkansas Statutes, 1947, section 10-1111.

California.—Deering's California Codes, Fish and Game Code division 3, chapter 5, sections 375-380.

Colorado.—Colorado Revised Statutes, 1953, chapter 142, article 1, section 142-1-2.

Connecticut.—The General Statutes of Connecticut, Revision of 1949, title LVII, chapter 360, section 7172.

¹ Section 8 of the Migratory Bird Conservation Act (16 U. S. C. 715g) expressly provides that the jurisdiction of the State over persons upon migratory-bird reservations shall not be affected or changed; and section 12 of the Weeks Forestry Act, as amended (16 U. S. C. 480), states that the State in which any national forest is situated shall not lose its jurisdiction over such national forest, nor the inhabitants thereof their rights and privileges as citizens. In view of these provisions of Federal law the United States does not exercise legislative jurisdiction over the properties to which they pertain and holds them in proprietorial interest status only, notwithstanding State consent to Federal acquisition of such properties. The Committee feels that the mentioned State consent statutes are of sufficient importance and are sufficiently related to the subject of legislative jurisdiction that references to them should be included in this Appendix.

Delaware.—Laws of the State of Delaware, 1931, title 2, chapter 3, pages 18–19.

Georgia.—Code of Georgia, Annotated, 1933, section 15–304.

Idaho.—Idaho Code (Published by authority of Laws 1947, chapter 224), chapter 26, section 36–2605.

Illinois.—Jones Illinois Statutes Annotated, chapter 126, sections 126.369–126.370.

Indiana.—Burns Indiana Statutes Annotated (1951 Replacement), title 11, chapter 9, section 11–909.

Iowa.—Code of Iowa, 1954, title 1, chapter 1, sections 1.9–1.10.

Kansas.—General Statutes of Kansas, Annotated, 1949, chapter 27, article 1, section 27–115.

Kentucky.—Kentucky Revised Statutes, 1953, chapter 150, section 150.270.

Louisiana.—Louisiana Revised Statutes of 1950, title 52, chapter 1, section 1.

Maine.—Revised Statutes of the State of Maine, 1954, chapter 36, section 31.

Maryland.—The Annotated Code of Maryland, Edition of 1951, article 96, section 31.

Michigan.—The Compiled Laws of the State of Michigan, 1948, section 3.321.

Minnesota.—Minnesota Statutes Annotated, part 1, chapter 1, section 1.041.

Mississippi.—Mississippi Code 1942, Annotated, title 23, chapter 2, section 5928.

Missouri.—Vernon's Annotated Missouri Statutes, title II, chapter 12, section 12.050.

Nebraska.—Revised Statutes of Nebraska, 1943, chapter 37, article 4, section 37–423.

Nevada.—Nevada Compiled Laws, Supplement 1943–49, sections 2898.02–2898.16.

New Hampshire.—New Hampshire Revised Statutes Annotated, 1955, title IX, chapter 121, sections 121 : 1–21 : 8.

New Jersey.—New Jersey Statutes Annotated, title 23, chapter 4, section 23 : 4–56.

New Mexico.—New Mexico Statutes, 1953, Annotated, chapter 7, article 2, section 7–2–2.

New York.—McKinney's Consolidated Laws of New York, Annotated, Book 10, Conservation Law, article 4, section 367.

North Carolina.—The General Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, section 104–10.

North Dakota.—North Dakota Revised Code of 1943, title 20, chapter 20-11, section 20-1113.

Ohio.—Baldwin's Ohio Revised Code, Annotated, 1953, section 159.03.

Oklahoma.—Oklahoma Statutes Annotated, title 29, section 603.

Oregon.—Oregon Revised Statutes, 1953, chapter 272, section 272.060.

Rhode Island.—Rhode Island General Laws of 1938 (Annotated), title 1, chapter 2, section 3.

South Carolina.—Code of Laws of South Carolina, 1952, title 39, chapter 2, article 1, section 39.51.

South Dakota.—South Dakota Code of 1939, title 25, chapter 25.02, section 25.0202.

Tennessee.—Williams Tennessee Code, Annotated, 1934, title 12, chapter 3, article XV, sections 5193.1-5193.2.

Texas.—Vernon's Annotated Revised Civil Statutes of the State of Texas (Revision of 1925), title 67, article 4050a.

Vermont.—The Vermont Statutes, Revisions of 1947, title 30, chapter 279, section 6556.

Virginia.—Acts of the General Assembly of the State of Virginia, 1930, chapter 272, approved March 24, 1930, page 697.

Washington.—Revised Code of Washington, 1951, title 37, chapter 37.08, section 37.08.230.

West Virginia.—The West Virginia Code of 1955, chapter 1, article 1, section 3.

Wisconsin.—Wisconsin Statutes, 1953, title 1, chapter 1, section 1.036.

STATE STATUTES GIVING CONSENT OF STATES TO PURCHASE OF
LANDS UNDER THE WEEKS FORESTRY ACT OF MARCH 1, 1911¹
(36 STAT. 961), AS AMENDED

Alabama.—The Code of Alabama, 1940, title 59, section 2.

Arkansas.—Arkansas Statutes, 1947, sections 10-1105 and 10-1106.

California.—Deering's California Codes, Government Code, title I, division 1, chapter 1, section 126.

Florida.—Florida Statutes Annotated, title II, chapter 6, sections 6.06-6.07.

Georgia.—Code of Georgia, Annotated, section 15-304.

Idaho.—Idaho Code (Published by Authority of Laws 1947, chapter 224), title 58, chapter 7, section 58-706.

Illinois.—Jones Illinois Statutes Annotated, chapter 137, sections 137.19-137.20.

¹ See footnote on p. 226.

Indiana.—Burns Indiana Statutes Annotated (1951 Replacement), title 62, chapter 10, sections 62–1019 and 62–1020.

Iowa.—Code of Iowa, 1954, title 1, chapter 1, sections 1.9–1.10.

Kentucky.—Kentucky Revised Statutes, 1953, chapter 3, section 3.080.

Louisiana.—Louisiana Revised Statutes of 1950, title 56, chapter 4, section 1483.

Maine.—Revised Statutes of the State of Maine, 1954, chapter 36, sections 28–32.

Michigan.—The Compiled Laws of the State of Michigan, 1948, sections 3.401 and 3.402.

Minnesota.—Minnesota Statutes Annotated, sections 1.041–1.043, 1.045–1.047.

Mississippi.—Mississippi Code 1942, Annotated, title 17, chapter 11, sections 4156 and 4156A.

Missouri.—Vernon's Annotated Missouri Statutes, title 2, chapter 12, sections 12.010 and 12.020.

Montana.—Revised Codes of Montana, 1947, Annotated, title 83, chapter 1, section 83–110.

Nevada.—Nevada Compiled Laws, Supplement 1931–1941, sections 2899–2899.02.

New Hampshire.—Laws of the State of New Hampshire, 1903, chapter 137, approved January 20, 1903, page 147; New Hampshire Revised Statutes Annotated, 1955, title IX, chapter 121, sections 121:1–121:8.

New Mexico.—Laws of the State of New Mexico, 1937, chapter 158, approved March 15, 1937, page 441.

North Carolina.—The General Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, section 104–5.

North Dakota.—North Dakota Revised Code of 1943, title 54, chapter 54–01, sections 54–0115 and 54–0116.

Ohio.—Baldwin's Ohio Revised Code, Annotated, 1953, chapter 1503, section 1503.32.

Oklahoma.—Oklahoma Statutes Annotated, title 80, sections 6–7.

Oregon.—Oregon Revised Statutes, 1953, chapter 272, sections 272.040, 272.050.

Pennsylvania.—Purdon's Pennsylvania Statutes Annotated, Title 32, chapter 3, sections 101–4.

Rhode Island.—Rhode Island General Laws of 1938 (Annotated), title I, chapter 2, section 4.

South Carolina.—Code of Laws of South Carolina, 1952, Annotated, title 39, chapter 2, article 5, sections 39–91 to 39–95.

South Dakota.—South Dakota Code of 1939, title 55, chapter 55.01, section 55.0103.

Tennessee.—Williams Tennessee Code, Annotated, 1934, title 12, chapter 3, article XVII, sections 5201.2–5201.8.

Texas.—General Laws of the State of Texas, 1933, Senate Concurrent Resolution No. 73, filed in Department of State, May 26, 1933, page 1013.

Utah.—Utah Code Annotated 1953, title 65, chapter 6, section 65-6-1.

Vermont.—The Vermont Statutes, Revision of 1947, title 3, chapter 4, sections 63–65.

Virginia.—Acts and Joint Resolutions passed by the General Assembly of the State of Virginia, Extra Session of 1901, chapter 229, approved February 15, 1901, page 247.

Washington.—Revised Code of Washington, 1951, title 37, chapter 37.08, section 37.08.220.

West Virginia.—Acts of the Legislature of West Virginia, 1909, chapter 61, approved February 27, 1909, page 494.

Wisconsin.—Wisconsin Statutes, 1953, title 1, chapter 1, section 1.055.

PART B. FEDERAL CONSTITUTIONAL PROVISIONS AND STATUTES OF GENERAL EFFECT RELATING TO THE ACQUISITION AND EXERCISE OF LEGISLATIVE JURIS- DICTION BY THE UNITED STATES

CONSTITUTION OF THE UNITED STATES

Article I, section 8, clause 17:

The Congress shall have Power * * *.

* * *

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

Article IV, section 3, clause 2:

* * *

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

STATUTES RELATING TO THE ACQUISITION OF LEGISLATIVE JURISDICTION BY THE UNITED STATES

Portion of the act of July 30, 1947, United States Code, 1952 Edition, title 4, section—

§ 103. *Assent to purchase of lands for forts.*—The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained (July 30, 1947, ch. 389, § 1, 61 Stat. 641).

Portion of the act of July 1, 1870, United States Code, 1952 Edition, title 24, section—

§ 287. *Jurisdiction of United States.*—From the time any State legislature shall give the consent of such State to the purchase by the

United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section 8, Article I, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same. (R. S. § 4882.)

DERIVATION : Act July 1, 1870, ch. 200, § 1, 16 Stat. 188.

Portion of the Act of March 3, 1821, United States Code, 1952 Edition, Title 33, Section—

§ 727. *Lighthouse and other sites; necessity for cession by State of jurisdiction.*—No lighthouse, beacon, public piers, or landmark, shall be built or erected on any site until cession of jurisdiction over the same has been made to the United States. (R. S. § 4661.)

DERIVATION : Act Mar. 3, 1821, ch. 52, § 3, 3 Stat. 644.

Act of March 2, 1795, United States Code, 1952 Edition, Title 33, Section—

§ 728. *Sufficiency of cession by State; service of State process in lands ceded.*—A cession by a State of jurisdiction over a place selected as the site of a lighthouse, or other structure or work, shall be deemed sufficient within section 727 of this title, notwithstanding it contains a reservation that process issued under authority of such State may continue to be served within such place. And notwithstanding any such cession of jurisdiction contains no such reservation, all process may be served and executed within the place ceded, in the same manner as if no cession had been made (R. S. § 4662).

DERIVATION : Act Mar. 2, 1795, ch. 40, §§ 1, 2, 1 Stat. 426.

Portion of the act of September 11, 1841, which became section 355 of the Revised Statutes of the United States (33 U. S. C. 733, 34 U. S. C. 520, 40 U. S. C. 255, 50 U. S. C. 175 (1934 Edition)), as codified prior to amendment of February 1, 1940—

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given.

Portions of section 355 of the Revised Statutes of the United States, as amended (Code, 1952 Edition)—

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, light-house, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title.

* * *

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial not theretofore obtained over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted. (R. S. § 355; June 28, 1930, ch. 710, 46 Stat. 828; Feb. 1, 1940, ch. 18, 54 Stat. 19; Oct. 9, 1940, ch. 793, 54 Stat. 1083, July 26, 1947, ch. 343, title II, § 205 (a), 61 Stat. 501.)

**STATUTES PRESERVING JURISDICTION OF STATES OVER CERTAIN
FEDERAL AREAS AND CIVIL AND POLITICAL RIGHTS OF
INHABITANTS THEREOF**

Portion of the act of August 21, 1935, United States Code, 1952 Edition, title 16—

By this act, the Secretary of the Interior, through the National Park Service, is authorized to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States, and is empowered, for the purposes of the act, to acquire in the name of the United States real or personal property. Section 5, which relates to the jurisdiction of States in lands acquired, is set out in the Code as follows:

§ 465. *Jurisdiction of States in lands acquired.*—Nothing in sections 461–467 of this title shall be held to deprive any State, or political subdivision thereof, of its civil and criminal jurisdiction in and over

lands acquired by the United States under said sections. (Aug. 21, 1935, ch. 593, § 5, 49 Stat. 668.)

Portions of the "Weeks Forestry Act" of March 1, 1911, as amended, United States Code, 1952 Edition, title 16, sections—

§ 480. *Civil and criminal jurisdictions.*—The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. (June 4, 1897, ch. 2, § 1, 30 Stat. 36; Mar. 1, 1911, ch. 186, § 12, 36 Stat. 963.)

§ 516. *Purchase of lands approved by commission; consent of State; exchange of lands; cutting and removing timber.*—The Secretary of Agriculture is authorized to purchase, in the name of the United States, such lands as have been approved for purchase by the National Forest Reservation Commission at the price or prices fixed by said commission. No deed or other instrument of conveyance shall be accepted or approved by the Secretary of Agriculture under this section until the legislature of the State in which the land lies shall have consented to the acquisition of such land by the United States for the purpose of preserving the navigability of navigable streams. * * *

Portions of the "Migratory Bird Conservation Act" United States Code, 1952 Edition, title 16—

By this Act, the Migratory Bird Conservation Commission was created to pass upon areas of land, water or land and water recommended by the Secretary of the Interior for purchase or rental as wildlife refuges. The Secretary was authorized to purchase or rent such areas as have been approved by the Commission. Sections 7 and 8 of the Act are set out in the Code as follows:

§ 715f. *Same; consent of State to conveyance.*—No deed or instrument of conveyance shall be accepted by the Secretary of the Interior under sections 715—715d, 715e, 715f—715k, and 715l—715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State. (Feb. 18, 1929, ch. 257, § 7, 45 Stat. 1223; 1939 Reorg. Plan No. II, § 4 (f), eff. July 1, 1929, 4 F. R. 2731, 53 Stat. 1432.)

§ 715g. *Jurisdiction of State over areas acquired.*—The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715—715d, 715e, 715f—715k, and 715l—715r of this title

shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned. (Feb. 18, 1929, ch. 257, § 8, 45 Stat. 1224.)

Portion of the Federal Power Act, United States Code, 1952 Edition, title 16—

The Federal Power Commission, which was created and established by the Act, was authorized, among other things, to make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed and to issue licenses for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction to regulate commerce. In the Code, section 27 appears as follows:

§ 821. *State laws and water rights unaffected.*—Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. (June 10, 1920, ch. 285, § 27, 41 Stat. 1077.)

Portion of the act of June 29, 1936, as amended, United States Code, 1952 Edition, title 40, section—

§ 421. *Jurisdiction of State or political subdivision; civil rights under local law preserved.*—The acquisition by the United States of any real property in connection with any low-cost housing, or slum-clearance project constructed with funds allotted to the Administrator of General Services pursuant to any law shall not be held to deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or to impair the civil rights under the local law of the tenants or inhabitants on such property; and insofar as any such jurisdiction has been taken away from any such State or subdivision, or any such rights have been impaired, jurisdiction over any such property is ceded back to such State or subdivision. (June 29, 1936, ch. 860, § 1, 49 Stat. 2025; 1939 Reorg. Plan No. 1, §§ 301, 305, eff. July 1, 1939, 4 F. R. 2729, 53 Stat. 1426, 1427; 1943 Ex. Ord. No. 9357, June 30, 1943, 8 F. R. 9041; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380.)

Portion of the United States Housing Act of 1937, as amended, United States Code, 1952 Edition, title 42—

The Public Housing Administration was authorized to make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent-housing or slum-clearance projects by such agencies. The Administration may foreclose on any property

and may purchase at foreclosure or acquire any project which it previously owned or in connection with which it made a loan. Section 13 (b) of the Act relating to State civil and criminal jurisdiction appears in the Code as Section 1413 (b) and reads as follows:

(b) *Civil and criminal jurisdiction of States.*—The acquisition by the Administration of any real property pursuant to this chapter shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property or impair the civil rights under the State or local law of the inhabitants on such property; and, insofar as any such jurisdiction may have been taken away or any such rights impaired by reason of the acquisition of any property transferred to the Administration pursuant to section 1404 (d) of this title, such jurisdiction and such rights are fully restored.

Portions of the act of October 14, 1940, as amended, United States Code, 1952 Edition, title 42, sections—

§1521. *Housing and House Finance Administrator's powers respecting defense housing.*—In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of title 10 and section 5 of title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 40a and 34 of title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361—386, and 258a—258e of title 40).

* * *

§ 1547. *Preservation of local civil and criminal jurisdiction and civil rights.*—Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to subchapters II—VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term "State" shall include the District of Columbia. (Oct. 14, 1940, ch. 862, title III, § 10, 54 Stat. 1128; renumbered § 307

and amended June 28, 1941, ch. 260, § 4 (b), 55 Stat. 363; 1942 Ex. Ord. No. 9070, § 1, Feb. 24, 1942, 7 F. R. 1529; Apr. 10, 1942, ch. 239, § 3 (b), 56 Stat. 212; 1947 Reorg. Plan. No. 3, eff. July 27, 1947, 12 F. R. 4981, 61 Stat. 954; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73.)

Portions of the Defense Housing and Community Facilities and Services Act of 1951, United States Code, 1952 Edition, title 42, sections—

§ 1592. *Authority of Administrator.*—Subject to the provisions and limitations of sections 1591—1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the “Administrator”) is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area. (Sept. 1, 1951, ch. 378, title III, § 301, 65 Stat. 303.)

§ 1592f. *Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts.*—Notwithstanding any other provisions of law, the acquisition by the United States of any real property pursuant to this subchapter or subchapter X of this chapter shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property, or impair the civil or other rights under the State or local law of the inhabitants of such property. Any proceedings by the United States for the recovery of possession of any property or project acquired, developed, or constructed under this subchapter or subchapter X of this chapter may be brought in the courts of the States having jurisdiction of such causes. (Sept. 1, 1951, ch. 378, title III, § 307, 65 Stat. 307.)

Portions of the Reclamation Law, United States Code, 1952 Edition, title 43—

This act provides for the irrigation of, and related benefits to, lands in the 17 Western States by the Federal Government. Section 383 of the Code which states that the law shall not be construed as affecting or interfering with State laws relating to water is set out as follows:

§ 383. *Vested rights and State laws unaffected by certain sections.*—Nothing in sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 496 of this title shall be construed as affecting or intended to affect or in any way interfere with the laws of any

State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of such sections, shall proceed in conformity with such laws, and nothing in such sections shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof. (June 17, 1902, ch. 1093, § 8, 32 Stat. 390.)

Sections 455-455c provide that the lands of homestead and desert-land entrymen may be taxed by the States or political subdivisions in which they are located, and that such taxes shall be a lien upon the lands, but that if the lands of such entrymen revert to the United States all liens shall be extinguished.

STATUTES EXTENDING CERTAIN STATE LEGISLATION TO FEDERAL AREAS

Lea Act (Portion of act of July 30, 1947), United States Code, 1952 Edition, title 4, section—

§ 104. *Tax on motor fuel sold on military or other reservation, reports to State taxing authority.*—(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located.

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

Buck Act (Portions of act of July 30, 1947), United States Code, 1952 Edition, title 4, sections—

§ 105. *State, and so forth, taxation affecting Federal areas; sales or use tax.*—(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any

State, or by any duty constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

§ 106. *Same; income tax.*—(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

§ 107. *Same; exception of United States, its instrumentalities, and authorized purchases therefrom.*—(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

§ 108. *Same; jurisdiction of United States over Federal areas unaffected.*—The provisions of sections 105–110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

§ 109. *Same; exception of Indians.*—Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

§ 110. *Same; definitions.*—As used in sections 105–109 of this title—

(a) The term “person” shall have the meaning assigned to it in section 3797 of title 26.

(b) The term “sales or use tax” means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term “income tax” means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term “State” includes any Territory or possession of the United States.

(e) The term “Federal area” means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State. (July 30, 1947, ch. 389, § 1, 61 Stat. 641.)

Portion of the Public Salary Tax Act of 1939, United States Code, 1952 Edition, Title 5, Section—

§ 84a. *Consent of United States to taxation of compensation of officers and employees of United States, Territories, etc.*—The United States consents to the taxation of compensation, received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation. (Apr. 12, 1939, ch. 59, Title I, § 4, 53 Stat. 575.)

Act of July 17, 1952, United States Code, 1952 Edition, title 5—

§ 84b. *Withholding State income taxes of Federal employees by Federal agencies.*—Where—

(1) the law of any State or Territory provides for the collection of a tax by imposing upon employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the authorities of such State or Territory, and

(2) such duty to withhold is imposed generally with respect

to the compensation of employees who are residents of such State or Territory.

then the Secretary of the Treasury, pursuant to regulations promulgated by the President, is authorized and directed to enter into an agreement with such State or Territory within one hundred and twenty days of the request for agreement from the proper official of such State or Territory. Such agreement shall provide that the head of each department or agency of the United States shall comply with the requirements of such law in the case of employees of such agency or department who are subject to such tax and whose regular place of Federal employment is within the State or Territory with which such agreement is entered into. No such agreement shall apply with respect to compensation for service as a member of the Armed Forces of the United States. (July 17, 1952, ch. 940, § 1, 66 Stat. 765.)

Portion of the Immigration and Nationality Act, United States Code, 1952 Edition, Title 8, Section—

§ 13.58. *Local jurisdiction over immigrant stations.*—The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the States and Territories. For the purpose of this section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations. (June 27, 1952, ch. 477, title II, ch. 9, § 288, 66 Stat. 234.)

Portions of the act of August 5, 1947, United States Code, 1952 Edition, title 10—

§ 1270. *Lease of real or personal property; period of lease; terms and conditions; revocation; disposition of receipts; report to Congress.*—Whenever the Secretary of the Army shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest * * *.

CODIFICATION: Similar provisions relating to the Air Force and Navy are set out as section 626s-3 of title 5, Executive Departments and Government Officers and Employees and section 522a of title 34, Navy, respectively.

§ 1270d. *Same; State or local taxation; renegotiation of leases.*—The lessee's interest made or created pursuant to the provisions of sections 1270–1270b, and 1270d of this title, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of said sections shall contain a provision that if and to the extent that such property is made taxable by State and local governments by act of Congress, in such event the terms of such lease shall be renegotiated. (Aug. 5, 1947, ch. 493, § 6, 61 Stat. 775.)

CODIFICATION: Similar provisions relating to the Air Force and the Navy are set out as section 626s–6 of title 5, Executive Departments and Government Officers and Employees and section 522e of title 34, Navy.

Act of February 1, 1928, United States Code, 1952 Edition, title 16—
 § 457. *Action for death or personal injury within national park or other place under jurisdiction of United States; application of State laws.*—In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be. (Feb. 1, 1928, ch. 15, 45 Stat. 54.)

Portions of the act of June 25, 1948, as amended, United States Code, 1952 Edition, title 18—

§ 7. *Special maritime and territorial jurisdiction of the United States defined.*—The term “special maritime and territorial jurisdiction of the United States”, as used in this title, includes:

* * *

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof; or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

§ 13. *Laws of States adopted for areas within Federal jurisdiction.*—Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or

omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment. (June 25, 1948, ch. 645, § 1, 62 Stat. 686.)

(Assimilative Crimes Act.)

Portion of Internal Revenue Code, United States Code, 1952 Edition, title 26, section 1606, subsections—

(b) The legislature of any State may require any instrumentality of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 1603 and (except as provided in section 5240 of the Revised Statutes, as amended, and as modified by subsection (c) of this section) to comply otherwise with such law. The permission granted in this subsection shall apply (1) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (2) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Secretary of Labor under section 1603 with respect to such year.

* * *

(d) No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

Act of June 25, 1936, United States Code, 1952 Edition, title 40—
 § 290. *State workmen's compensation laws; extension to buildings and works of United States.*—Whatsoever constituted authority of each of the several States is charged with the enforcement of and requiring compliances with the State workmen's compensation laws of said States and with the enforcement of and requiring compliance with the orders, decisions, and awards of said constituted authority of said States shall have the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.

For the purposes set out in this section, the United States of America vests in the several States within whose exterior boundaries such place may be, insofar as the enforcement of State workmen's compensation laws are affected, the right, power, and authority aforesaid: *Provided, however,* That by the passage of this section the United States of America in nowise relinquishes its jurisdiction for any purpose over the property named, with the exception of extending to the several States within whose exterior boundaries such place may be only the powers above enumerated relating to the enforcement of their State workmen's compensation laws as herein designated: *Provided further,* That nothing in this section shall be construed to modify or amend the United States Employees' Compensation Act, as amended. (June 25, 1936, ch. 822, §§ 1, 2, 49 Stat. 1938, 1939.)

Portions of the act of October 14, 1940, as amended, United States Code, 1952 Edition, title 42—

§ 1521. *Housing and Home Finance Administrator's powers respecting defense housing.*—In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of title 10 and section 5 of title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 40a and 34 of title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361–386, and 258a–258e of title 40).

* * *

§ 1547. *Preservation of local civil and criminal jurisdiction and civil rights.*—Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to subchapters II–VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term “State” shall include the District of Columbia. (Oct. 14, 1940, ch. 862, title III, § 10, 54 Stat. 1128; renumbered § 307 and amended June 28, 1941, ch. 260, § 4 (b), 55 Stat. 363; 1942 Ex. Ord. No. 9070, § 1, Feb. 24, 1942, 7 F. R. 1529; Apr. 10, 1942, ch. 239, § 3 (b), 56 Stat. 212; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F. R. 4981, 61 Stat. 954; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73.)

Portions of the Defense Housing and Community Facilities and Services Act of 1951, United States Code, 1952 Edition, title 42—

§ 1592. *Authority of Administrator.*—Subject to the provisions and limitations of sections 1591–1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the “Administrator”) is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area. (Sept. 1, 1951, ch. 373, title III, § 301, 65 Stat. 303.)

§ 1592d. *Administrator’s power with respect to housing facilities, and services*—(a) *Planning, acquisition, construction, etc.*

* * * Notwithstanding any provisions of this Act, housing or community facilities constructed by the United States pursuant to the authority contained herein shall conform to the requirements of

State and local laws, ordinances, rules, or regulations relating to health and sanitation, and, to the maximum extent practicable, taking into consideration the availability of materials and the requirements of national defense, any housing or community facilities, except housing or community facilities of a temporary character, constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State or local laws, ordinances, rules, or regulations relating to building codes.

Portion of the Outer Continental Shelf Lands Act, United States Code, 1952 Edition (Supp. II), title 43—

§ 1333. *Laws and regulations governing lands—(a) Constitution and United States laws; laws of adjacent States; publication of projected States lines; restriction on State taxation and jurisdiction—*

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.*

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

STATUTES GRANTING EASEMENTS, RIGHTS-OF-WAY AND ROADS OVER FEDERAL LANDS AND CEDING JURISDICTION

Act of May 31, 1947, United States Code, 1952 Edition, title 38—

§ 11i. *Grant of easements by Administrator in lands under his control; jurisdiction over exchanged lands; termination of easement.—*

The Administrator of Veterans' Affairs, whenever he deems it advantageous to the Government and upon such terms and conditions as he deems advisable, is authorized on behalf of the United States to grant to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and rights-of-way over lands belonging to the United States which are under his supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Administrator of Veterans' Affairs deems necessary or desirable, is ceded to the State in which the land is located. The Administrator of Veterans' Affairs is authorized to accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as he may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee. (May 31, 1947, ch. 89, 61 Stat. 124.)

Act of May 9, 1941, United States Code, 1952 Edition, title 43—

§ 931a. *Authority of Attorney General to grant easements and rights-of-way to States, etc.*—The Attorney General, whenever he deems it advantageous to the Government and upon such terms and conditions as he deems advisable, is authorized on behalf of the United States to grant to any State, or any agency or political subdivision thereof, easements in and rights-of-way over lands belonging to the United States which are under his supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the Attorney General deems necessary or desirable, is ceded to such State. The Attorney General is authorized to accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as he may deem necessary or desirable over the land so acquired. (May 9, 1941, ch. 94, 55 Stat. 183.)

Portion of the War Department Civil Appropriation Act, 1942, as amended, United States Code, 1952 Edition, title 24—

§ 289. *Conveyance to State or municipality of approach road to national cemetery.*—The Secretary of the Army is authorized to convey

to any State, county, municipality, or proper agency thereof, in which the same is located all the right, title, and interest of the United States in and to any Government owned or controlled approach road to any national cemetery: *Provided*, That prior to the delivery of any instrument of conveyance hereunder, the State, county, municipality, or agency to which the conveyance herein authorized is to be made, shall notify the Secretary of the Army in writing of its willingness to accept and maintain the road included in such conveyance: *Provided further*, That upon the execution and delivery of any conveyance herein authorized the jurisdiction of the United States of America over the road conveyed shall cease and determine and shall thereafter vest in the State in which said road is located. (May 23, 1941, ch. 130, § 1, 55 Stat. 191, July 26, 1947, ch. 343, title II, § 205 (a), 61 Stat. 501.)

MISCELLANEOUS FEDERAL STATUTES

Portion of the act of June 25, 1948, as amended, United States Code, 1952 Edition, title 18—

§ 3401. *Petty offenses; application of probation laws; fees.*—(a) Any United States commissioner specially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial district for which such commissioner was appointed.

(b) Any person charged with a petty offense may elect, however, to be tried in the district court of the United States. The commissioner shall apprise the defendant of his right to make such election and shall not proceed to try the case unless the defendant after being so apprised, signs a written consent to be tried before the commissioner.

(c) The probation laws shall be applicable to persons so tried and the commissioner shall have power to grant probation.

(d) For his services in such cases the commissioner shall receive the fees, and none other, provided by law for like or similar services.

(e) This section shall not apply to the District of Columbia nor shall it repeal or limit existing jurisdiction, power or authority of commissioners appointed for Alaska or in the several national parks. (June 25, 1948, ch. 645, § 1, 62 Stat. 830.)

Portions of the act of June 1, 1948, as amended, United States Code, 1952 Edition, title 40—

§ 318. *Protection of Federal property under jurisdiction of Administrator of General Services; appointment of guards as special policemen; compensation; duties; jurisdiction.*—The Administrator of General Services or officials of the General Services Administra-

tion duly authorized by him may appoint uniformed guards of said Administration as special policemen without additional compensation for duty in connection with the policing of public buildings and other areas under the jurisdiction of the General Services Administration. Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the General Services Administration for the property under their jurisdiction: *Provided*, That the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process and shall be restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction (June 1, 1948, ch. 359, § 1, 62 Stat. 281; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380.)

§ 318a. *Same; rules and regulations; posting.*—The Administrator of General Services or officials of the General Services Administration duly authorized by him are authorized to make all needful rules and regulations for the government of the Federal property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the limits prescribed in section 318c of this title, as will insure their enforcement: *Provided*, That such rules and regulations shall be posted and kept posted in a conspicuous place on such Federal property. (June 1, 1948, ch. 359, § 2, 62 Stat. 281; June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380.)

§ 318b. *Same; application for protection; detail of special police; utilization of Federal law-enforcement agencies.*—Upon the application of the head of any department or agency of the United States having property of the United States under its administration and control and over which the United States has acquired exclusive or concurrent criminal jurisdiction, the Administrator of General Services or officials of the General Services Administration duly authorized by him are authorized to detail any such special policemen for the protection of such property and if he deems it desirable, to extend to such property the applicability of any such regulations and to enforce the same as set forth in sections 318–318c of this title; and the Administrator of General Services or official of the General Services Administration duly authorized by him, whenever it is deemed economical and in the public interest, may utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law-enforcement agencies. (June 1, 1948, ch. 359,

§ 3, 62 Stat. 281, June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380.)

§ 318c. *Same; penalties.*—Whoever shall violate any rule or regulation promulgated pursuant to section 318a of this title shall be fined not more than \$50 or imprisoned not more than thirty days, or both. (June 1, 1948, ch. 359, § 4, 62 Stat. 281.)



JURISDICTION OVER FEDERAL
AREAS WITHIN THE STATES

VS- REPORT OF THE
INTERDEPARTMENTAL COMMITTEE
FOR THE STUDY OF
JURISDICTION OVER FEDERAL AREAS
WITHIN THE STATES

PART II

A Text of the Law of Legislative Jurisdiction

Submitted to the Attorney General and transmitted to the President

June 1957

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LETTER OF ACKNOWLEDGMENT

THE WHITE HOUSE,
Washington, July 8, 1957.

DEAR MR. ATTORNEY GENERAL: I have taken note of the final report (Part II) which you transmitted to me, rendered by the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States. It is my understanding that the report is to be published and distributed, for the purpose of making available to Federal administrators of real property, Federal and State legislators, the legal profession, and others, this text of the law of legislative jurisdiction in these areas.

In view of the fact that the work of the Committee is completed, and since other departments and agencies of the Government now have clear direction for turning this work into permanent gains in improved Federal-State relations, the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States is hereby dissolved.

Chairman Perry W. Morton and the members of this Committee have my congratulations and sincere appreciation of their service to our country in bringing to light the facts and law in this much neglected field. This monumental work, culminating three years of exhaustive effort, lays an excellent foundation for allocating to the States some of the functions which under our Federal-State system should properly be performed by State governments.

Sincerely,



THE HONORABLE HERBERT BROWNELL, JR.,
The Attorney General,
Washington, D. C.

LETTER OF TRANSMITTAL

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 28, 1957.

DEAR MR. PRESIDENT: The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States now has submitted the second, and final, part of its report, a text of the law of legislative jurisdiction over such areas.

This exhaustive and analytical exposition of the law in this hitherto little explored field is a valuable supplement to the first part of the report, the compilation of facts, with recommendations, which received your commendation in April 1956, and constitutes a major addition to legal bibliography.

Together, the two parts of this Committee's report and the full implementation of its recommendations will provide a basis for reversing in many areas the swing of "the pendulum of power * * * from our states to the central government" to which you referred in your address to the Conference of State Governors on June 25, 1957.

The excellence of the work of the Committee reflects great credit upon its Chairman and members. Also especially noteworthy is the splendid assistance which the Committee received from the attorneys general of the several States, the general counsels of Federal agencies, and other State and Federal officials.

With the submission of this second part of its report the Committee has completed its work and recommends that it be dissolved. Since the Departments and other permanent agencies of the Federal Government now can carry out directions which you have issued based upon the work of the Committee, I join in this recommendation.

Respectfully,


Attorney General

THE PRESIDENT,
THE WHITE HOUSE.

LETTER OF SUBMISSION

INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

June 17, 1957.

DEAR MR. ATTORNEY GENERAL: With the encouragement of the President, the understanding aid of you and the heads of the other Federal agencies represented on the Committee, and the invaluable assistance of the Attorneys General of the several States and of the principal law officers of nearly all Federal agencies, the Committee now has completed, and herewith submits, the final portion of its report, subtitled "Part II, A Text of the Law of Legislative Jurisdiction."

This "Part II" supplements the portion of the Committee's report which you transmitted to the President on April 27, 1956. With its submission the work assigned to the Committee has been completed, and it is recommended that the Committee be dissolved.

Respectfully submitted,

PERRY W. MORTON,
Assistant Attorney General (Chairman).

ROBERT DECHERT,
General Counsel, Department of Defense (Vice Chairman).

HENRY H. PIKE,
Associate General Counsel, General Services Administration (Secretary).

ARTHUR B. FOCKE,
Legal Adviser, Bureau of the Budget.

ELMER F. BENNETT,
Solicitor, Department of the Interior.

ROBERT L. FARRINGTON,
General Counsel, Department of Agriculture.

PARKE M. BANTA,
General Counsel, Department of Health, Education, and Welfare.

GUY H. BIRDSALL,
General Counsel, Veterans' Administration.

Preface

The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States was formed on December 15, 1954, on the recommendation of the Attorney General approved by the President and the Cabinet. The basic purpose for which the Committee was founded was to find means for resolving the problems arising out of jurisdictional status of Federal lands. Addressing itself to this purpose, the Committee, with assistance from all Federal agencies interested in the problems (a total of 33 agencies), from State Attorneys General, and from numerous other sources, prepared a report entitled *Jurisdiction over Federal Areas within the States—Part I, The Facts and Committee Recommendations*.¹ This report, approved by the President on April 27, 1956, set out the findings of the Committee and recommended changes in Federal and State law, and in Federal agencies' practices, designed to eliminate existing problems arising out of legislative jurisdiction. It included two appendices.

The Committee's research involved a general survey of the jurisdictional status of all federally owned real property in the 48 States, and a detailed survey of the status of individual such properties in the States of Virginia, Kansas, and California. These three named States were selected as containing Federal real properties representative of such properties in all the States. Information was procured concerning the practices and problems related to legislative jurisdiction of the 23 Federal agencies controlling real property, and of the advantages and disadvantages of the several legislative jurisdictional statuses for the various purposes for which federally owned land is used. This information is reflected and ana-

¹ Government Printing Office, April 1956.

lyzed in the several chapters of part I of the report, and is summarized in *appendix A* of the same part.

The Committee's study included a review of the policies, practices, and problems of the 48 States related to legislative jurisdiction. Information concerning these matters similarly is reflected and analyzed in various portions of part I of the report, with chapter V of the part being entirely devoted to the laws and problems of States related to legislative jurisdiction. Also, the texts of State (and Federal) constitutional provisions and statutes related to jurisdiction in effect as of December 31, 1955, are gathered in *appendix B* of part I.

The major conclusions of the Committee, set out in part I of the report, which, of course, are applicable only to the 48 States to which the Committee's study extended, and do not apply to present Territories or the District of Columbia, are to the effect that in the usual case the Federal Government should not receive or retain any of the States' legislative jurisdiction within federally owned areas, that in some special cases (where general law enforcement by Federal authorities is indicated) the Federal Government should receive or retain legislative jurisdiction only concurrently with the States, and that in any case the Federal Government should not receive or retain any of the States' legislative jurisdiction with respect to taxation, marriage, divorce, descent and distribution of property, and a variety of other matters, specified in the report, which are ordinarily the subject of State control.

The conclusions reached by the Committee were, of course, made only after an appraisal of the facts adduced during the study in the light of applicable law, including the great body of decisions handed down by courts and opinions rendered by governmental legal officers, Federal and State, interpretative of situations affected by legislative jurisdiction.

Recommendations made by the Committee, based on the conclusions indicated above and on certain subsidiary findings, now constitute the policy of the Executive branch of the Federal Government, and are being implemented by Federal agen-

cies to the extent possible under existing law. However, full implementation of these recommendations must await the enactment of certain suggested Federal and State legislation.

In the course of its study the Committee ascertained the existence of a serious lack of legal bibliography on the subject-matter of its interest. With the concurrence of the Attorney General of the United States and the encouragement of the President, it has proceeded with the publication of this part II of its report, a compilation of the court decisions and legal opinions it weighed in the course of its study of the subject of legislative jurisdiction.

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Chapter I

OUTLINE OF LEGISLATIVE JURISDICTION

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Outline of Legislative Jurisdiction

FEDERAL REAL PROPERTIES: *Holdings extensive.*—The Federal Government is the largest single owner of real property in the United States. Its total holdings exceed the combined areas of the six New England States plus Texas, and the value of these holdings is enormous. They consist of over 11,000 separate properties, ranging in size from few hundred square foot monument or post office sites to million acre military reservations, and ranging in value from nearly worthless desert lands to extremely valuable holdings in the hearts of large metropolitan centers.

Activities thereon varied.—The activities conducted on these properties are as varied as the holdings are extensive. They include, at one extreme, the development of nuclear weapons, and at the other, the operation of soft drink stands. Some of the activities are conducted in utmost secrecy, with only Government personnel present, and others, such as those in national parks, are designed for the enjoyment of the public, and the presence of visitors is encouraged. In many instances, the performance of these activities requires large numbers of resident personnel, military or civilian, or both, and the presence of these personnel in turn necessitates additional functions which, while not normally a distinctively Federal operation (*e. g.*, the maintenance of a school system for the children of resident personnel), are nevertheless essential to procuring the performance of the primary Federal function.¹

¹For more detailed information as to the extent of the Federal Government's real property holdings within the States, the activities performed on these properties, and the number of persons resident on them, see part I of the *Report of the Interdepartmental Committee for the Study of Juris-*

Legal problems many.—In view of the vastness of Federal real estate holdings, the large variety of activities conducted upon them, and the presence on many areas of resident employees and other persons, it is to be expected that many legal problems will arise on or with respect to these holdings. In addition to the problems normally encountered in administering and enforcing Federal laws, complicated by occasional conflict with overlapping State laws, the ownership and operation by the Federal Government of areas within the States gives rise to a host of legal problems largely peculiar to such areas. They arise not only because of the fact of Federal ownership and operation of these properties, but also because in numerous instances the Federal Government has with respect to such properties a special jurisdiction which excludes, in varying degrees, the jurisdiction of the State over them, and which in other instances is, to varying extents, concurrent with that of the State.

FEDERAL POSSESSION OF EXCLUSIVE JURISDICTION: *By constitutional consent.*—This special jurisdiction which is often possessed by the United States stems, basically, out of article I, section 8, clause 17, of the Constitution of the United States,* which provides, in legal effect, that the Federal Government shall have exclusive legislative jurisdiction over such area, not exceeding 10 miles square, as may become the seat of government of the United States, *and like authority over all places acquired by the Government, with the consent of the State involved, for various Federal purposes.* It is the latter part

diction over Federal Areas within the States, hereinafter referred to as report, part I.

* Article I, section 8, clause 17:

“The Congress shall have Power * * * To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—”

of the clause, the part which has been emphasized, with which this study is particularly concerned. There is a general public awareness of the fact that the United States Government exercises all governmental authority over the District of Columbia, by virtue of power conferred upon it by a clause of the Constitution. There is not the same awareness that under another provision of this same clause the United States has acquired over several thousand areas within the States some or all of those powers, judicial and executive as well as legislative, which under our Federal-State system of government ordinarily are reserved to the States.

By Federal reservation or State cession.—For many years after the adoption of the Constitution, Federal acquisition of State-type legislative jurisdiction occurred only by direct operation of clause 17. The clause was activated through the enactment of State statutes consenting to the acquisition by the Federal Government either of any land, or of specific tracts of land, within the State. In more recent years the Federal Government has in several instances made reservations of jurisdiction over certain areas in connection with the admission of a State into the Union. A third means for transfer of legislative jurisdiction now has come into considerable use, whereby in a general or special statute a State makes a cession of jurisdiction to the Federal Government. Courts and other legal authorities have distinguished at various times between Federal legislative jurisdiction derived, on the one hand, directly from operation of clause 17, and , on the other, from a Federal reservation or a State cession of jurisdiction. In the main, however, the characteristics of a legislative jurisdiction status are the same no matter by which of the three means the Federal Government acquired such status. Differences in these characteristics will be specially pointed out in various succeeding portions of this work.

Governmental power merged in Federal Government.—Whether by operation of clause 17, by reservation of jurisdiction by the United States, or by cession of jurisdiction by

States, in many areas all governmental authority (with recent exceptions which will be noted) has been merged in the Federal Government, with none left in any State. By this means some thousands of areas have become Federal islands, sometimes called "enclaves," in many respects foreign to the States in which they are situated. In general, not State but Federal law is applicable in an area under the exclusive legislative jurisdiction of the United States, for enforcement not by State but Federal authorities, and in many instances not in State but in Federal courts. Normal authority of a State over areas within its boundaries, and normal relationships between a State and its inhabitants, are disturbed, disrupted, or eliminated, as to enclaves and their residents.

The State no longer has the authority to enforce its criminal laws in areas under the exclusive jurisdiction of the United States. Privately owned property in such areas is beyond the taxing authority of the State. It has been generally held that residents of such areas are not residents of the State, and hence not only are not subject to the obligations of residents of the State but also are not entitled to any of the benefits and privileges conferred by the State upon its residents. Thus, residents of Federal enclaves usually cannot vote, serve on juries, or run for office. They do not, as a matter of right, have access to State schools, hospitals, mental institutions, or similar establishments. The acquisition of exclusive jurisdiction by the Federal Government renders unavailable to the residents of the affected areas the benefits of the laws and judicial and administrative processes of the State relating to adoption, the probate of wills and administration of estates, divorce, and many other matters. Police, fire-fighting, notarial, coroner, and similar services performed by or under the authority of a State may not be rendered with legal sanction, in the usual case, in a Federal enclave.

EXERCISE OF EXCLUSIVE FEDERAL JURISDICTION: *Legislative authority little exercised.*—States do not have authority to legislate for areas under the exclusive legislative jurisdiction of

the United States, but the Congress has not legislated for these areas either, except in some minor particulars.

Exercise as to crimes.—With respect to crimes occurring within Federal enclaves the Federal Congress has enacted the Assimilative Crimes Act,³ which adopts for enclaves, as Federal law, the State law which is in effect at the time the crime is committed. The Federal Government also has specifically defined and provided for the punishment of a number of crimes which may occur in Federal enclaves, and in such cases the specific provision, of course, supersedes the Assimilative Crimes Act.

Exercise as to civil matters.—Federal legislation has been enacted authorizing the extension to Federal enclaves of the workmen's compensation ⁴ and unemployment compensation ⁵ laws of the States within the boundaries of which the enclaves are located. The Federal Government also has provided that State law shall apply in suits arising out of the death or injury of any person by the neglect or wrongful act of another in an enclave.⁶ It has granted to the States the right to impose taxes on motor fuels sold on Government reservations, and sales, use, and income taxes on transactions or uses occurring or services performed on such reservations;⁷ it has allowed taxation of leasehold interests in Federal property including property located on Federal enclaves;⁸ and it has retroceded to the States

³ Section 13 of title 18, United States Code, enacted into law June 25, 1948, is the latest in a series of somewhat similar statutes. However, earlier statutes adopted State law existing at the time of enactment of the particular Assimilative Crimes Act, so that later amendments of law by the States were ineffective in Federal areas.

⁴ Act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290.

⁵ 26 U. S. C. 1606 (d).

⁶ Act of Feb. 1, 1928, 45 Stat. 54, 16 U. S. C. 457.

⁷ 4 U. S. C. 104-110, as amended.

⁸ Act of Aug. 5, 1947, 61 Stat. 775, formerly 10 U. S. C. 1270d, 5 U. S. C. 626s-6, 34 U. S. C. 522c, but recodified in 1956 as 10 U. S. C. 2667 (e), as positive law; and see *Offutt Housing Co. v. Sarpy County*, 351 U. S. 253 (1956).

jurisdiction pertaining to the administration of estates of residents of Veterans' Administration facilities.⁹ This is the extent of Federal legislation enacted to meet the special problems existing on areas under the exclusive legislative jurisdiction of the United States.

RULE OF INTERNATIONAL LAW: *Extended by courts to provide civil law.*—The vacuum which would exist because of the absence of State law or Federal legislation with respect to civil matters in areas under Federal exclusive legislative jurisdiction has been partially filled by the courts, through extension to these areas of a rule of international law that when one sovereign takes over territory of another the laws of the original sovereign in effect at the time of the taking which are not inconsistent with the laws or policies of the second continue in effect, as laws of the succeeding sovereign, until changed by that sovereign.

Problems arising under rule.—While application of this rule to Federal enclaves does provide a code of laws for each enclave, the law varies from enclave to enclave, and sometimes in different parts of the same enclave, according to the changes in State law which occurred in the periods between Federal acquisition of legislative jurisdiction over the several enclaves or parts. The variances are multiplied, of course, by the number of States. And Federal failure to keep up to date the laws effective in these enclaves renders such laws increasingly obsolete with passage of time, so that business and other relations of persons on these enclaves may be controlled by legal concepts long elsewhere discarded. Further, many former State laws become wholly or partially inoperative immediately upon the transfer of jurisdiction, since the Federal Government does not furnish the machinery, formerly furnished by the States or under State authority, necessary to their operation. The Federal Government makes no provision, by way of example, for executing the former State laws relating to notaries public,

⁹ Act of June 25, 1938, 52 Stat. 1192, 38 U. S. C. 16-16j.

coroners, and law enforcement inspectors concerned with matters related to public health and safety.

ACTION TO MITIGATE HARDSHIPS INCIDENT TO EXCLUSIVE JURISDICTION: *By Federal—State arrangement.*—The requirement for access of resident children to schools has been met by financial arrangements between the Federal Government and the State and local authorities; as a result, for the moment, at least, no children resident on exclusive jurisdiction areas are being denied a primary and secondary public school education.¹⁰ No provision, however, has been made to enable residents to have access to State institutions of higher learning on the same basis as State residents.

Federal efforts limited; State efforts restricted.—While the steps taken by the Federal Government have served to eliminate some small number of the problems peculiar to areas of exclusive jurisdiction, Congress has not enacted legislation governing probate of wills, administration of estates, adoption, marriage, divorce, and many other matters which need to be regulated or provided for in a civilized community. Residents of such areas are dependent upon the willingness of the State to make available to them its processes relating to such matters. Where the authority of the State to act in these matters requires jurisdiction over the property involved, or requires that the persons affected be domiciled within the State, the State's proceedings are of doubtful validity. Once a State has, by one means or another, transferred jurisdiction to the United States, it is, of course, powerless to control many of the consequences; without jurisdiction, it is without the authority to deal with many of the problems, and having transferred jurisdiction to the United States, it cannot unilaterally recapture any of the transferred jurisdiction. The efforts of the State to ameliorate the consequences of exclusive jurisdiction are, therefore, severely restricted.

¹⁰ *Report*, part I, p. 55.

By State statute or informal action, and State reservations.—One of the methods adopted by some States to soften the effects of exclusive Federal legislative jurisdiction has consisted of granting various rights and privileges and rendering various services to residents of areas of exclusive jurisdiction, either by statute or by informal action; so, residents of certain enclaves enjoy the right to vote, attend schools, and use the State's judicial processes in probate and divorce matters; they frequently have vital statistics maintained for them and are rendered other services. The second method has consisted of not transferring to the Federal Government all of the State's jurisdiction over the federally owned property, or of reserving the right to exercise, in varying degrees, concurrent jurisdiction with the Federal Government as to the matters specified in a reservation. For example, a State, in ceding jurisdiction to the United States, might reserve exclusive or concurrent jurisdiction as to criminal matters, or more commonly, concurrent jurisdiction to tax private property located within the Federal area.

RESERVATION OF JURISDICTION BY STATES: *Development of reservations.*—In recent years, such reservations and withholdings have constituted the rule rather than the exception. In large part, this is accounted for by the sharp increase, in the 1930's, in the rate of Federal land acquisition, with a consequent deepening awareness of the practical effects of exclusive Federal jurisdiction. In earlier years, however, serious doubts had been entertained as to whether article I, section 8, clause 17, of the Constitution, permitted the State to make any reservations of jurisdiction, other than the right to serve civil and criminal process in an area, which right was not regarded as in derogation of the exclusive jurisdiction of the United States. Not until relatively recent years (1885) did the Supreme Court recognize as valid a reservation of jurisdiction in a State cession statute, and not until 1937 did it approve a similar reservation where jurisdiction is transferred by a consent under clause 17, rather than by a cession. It is

clear that today a State has complete discretion as to the reservations it may wish to include in its cession of jurisdiction to the United States or in its consent to the purchase of land by the United States. The only over-all limitation is that the reservation must not be one that will interfere with the performance of Federal functions.

Early requirement, of R. S. 355, for exclusive Federal jurisdiction.—The extent of the acquisition of legislative jurisdiction by the United States was influenced to an extreme degree by the enactment, in 1841, of a Federal statute prohibiting the expenditure of public money for the erection of public works until there had been received from the appropriate State the consent to the acquisition by the United States of the site upon which the structure was to be placed.¹¹ The giving of such consent resulted, of course, in the transfer of legislative jurisdiction to the United States by operation of clause 17. Not until 1940 was this statute amended to make Federal acquisition of legislative jurisdiction optional rather than mandatory.¹²

¹¹ Portion of the act of September 11, 1841, which became section 355 of the Revised Statutes of the United States (33 U. S. C. 733, 34 U. S. C. 520, 40 U. S. C. 255, 50 U. S. C. 175), as codified prior to amendment of February 1, 1940 (quoted from 40 U. S. C. 255) :

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given."

¹² Portion of section 355 of the Revised Statutes of the United States, as amended by the act of February 1, 1940, 54 Stat. 19 (33 U. S. C. 733, 40 U. S. C. 255, 50 U. S. C. 175) :

• • • • •

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required ; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or

The intervening 100-year period saw Federal acquisition of exclusive legislative jurisdiction over several thousand areas acquired for Federal purposes, since in the interest of facilitating the carrying on of Federal activities on areas within their boundaries each of the States consented to the acquisition of land by the United States within the State. Areas acquired with such consent continue under the exclusive legislative jurisdiction of the United States, since only with respect to a very few areas has the Federal Government retroceded to a State jurisdiction previously acquired.

Present variety of jurisdictional situations.—Removal of the Federal statutory requirement for acquisition of exclusive legislative jurisdiction has resulted in amendment by many States of their consent and cession statutes so as to reserve to the State the right to exercise various powers and authority. The variety of the reservations in these amended statutes¹³ has created an almost infinite number of jurisdictional situations.

JURISDICTIONAL STATUTES DEFINED: *Exclusive legislative jurisdiction.*—In this part II, as in part I, the term “exclusive legislative jurisdiction” is applied to situations wherein the Federal Government has received, by whatever method, all the authority of the State, with no reservation made to the State except of the right to serve process resulting from activities which occurred off the land involved. This term is applied notwithstanding that the State may exercise certain authority over the land, as may other States over land similarly situated, in consonance with the several Federal statutes which have been mentioned above.

control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands, hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.”

¹³ *Report*, part I, pp. 28-32, 127-225.

Concurrent legislative jurisdiction.—The term “concurrent legislative jurisdiction” is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

Partial legislative jurisdiction.—The term “partial legislative jurisdiction” is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State’s authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than the right to serve civil or criminal process in the area (*e. g.*, the right to tax private property).

Proprietary interest only.—The term “proprietary interest only” is applied in those instances where the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State’s authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and powers under various provisions of the Constitution, has many powers and immunities with respect to areas in which it acquires an interest which are not possessed by ordinary landholders, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary (private) capacity.

OTHER FEDERAL RIGHTS IN FEDERALLY OWNED AREAS:
To carry out constitutional duties.—The fact that the United States has only a “proprietary interest” in any particular federally owned area does not mean that agencies of the Federal Government are without power to carry out in that area the functions and duties assigned to them under the Constitution and statutes of the United States. On the contrary, the authority and responsibility vested in the Federal Government by various provisions of the Constitution, such

as the power to regulate commerce with foreign nations and among the several States (art. I, sec. 8, cl. 3), to establish Post Offices and post roads (art. I, sec. 8, cl. 7), and to provide and maintain a Navy (art. I, sec. 8, cl. 13) are independent of the clause 17 authority, and carry, certainly as supplemented by article I, section 8, clause 18, of the Constitution,¹⁴ self-sufficient power for their own execution.

To make needful rules, and necessary and proper laws, and effect of Federal supremacy clause.—There is also applicable to all federally owned land the constitutional power (art. IV, sec. 3, cl. 2) given to Congress, completely independent of the existence of any clause 17 authority, “to * * * make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.” The power of Congress (art. I, sec. 8, cl. 18), “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof,” is, of course, another important factor in the Federal Government’s freedom to use its real property in such manner as it may deem necessary in carrying out Federal functions. And any impact of State or local laws upon the exercise of Federal authority under the Constitution is always subject to the limitations of what has been termed the Federal supremacy clause of the Constitution, article VI, clause 2.¹⁵

¹⁴ Article I, section 8, clause 18:

“The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

¹⁵ Article VI, clause 2: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

GENERAL BOUNDARIES OF THE WORK: The following pages deal, within the bounds generally outlined above, with the law—the constitutional and statutory provisions, the court decisions, and the written opinions of legal officers, Federal and State—relating to Federal exercise, or non-exercise, of legislative jurisdiction as to areas within the several States.¹⁶ They are not purported to deal with the law applicable to Territories or to Indian lands, as to which the law cited may, or may not, be applicable. Opinions are those of the authorities by whom they were rendered, and unless otherwise clearly indicated do not necessarily coincide with those of the Committee.

¹⁶ See also Twitty, *The Respective Powers of the Federal and Local Governments within Lands Owned or Occupied by the United States* (G. P. O., 1944), and Laurent, *Federal Areas within the Exterior Boundaries of the States*, 17 Tenn. L. Rev. 328 (1942).

Origin and Development of Legislative Jurisdiction

ORIGIN OF ARTICLE I, SECTION 8, CLAUSE 17, OF THE CONSTITUTION: *Harassment of the Continental Congress*.—While the Continental Congress was meeting in Philadelphia on June 20, 1783, soldiers from Lancaster, Pennsylvania, arrived "to obtain a settlement of accounts, which they supposed they had a better chance for at Philadelphia than at Lancaster."¹ On the next day, June 21, 1783:

The mutinous soldiers presented themselves, drawn up in the street before the state-house, where Congress had assembled. The executive council of the state, sitting under the same roof, was called on for the proper interposition. President Dickinson came in [to the hall of Congress], and explained the difficulty, under actual circumstances, of bringing out the militia of the place for the suppression of the mutiny. He thought that, without some outrages on persons or property, the militia could not be relied on. General St. Clair, then in Philadelphia, was sent for, and desired to use his interposition, in order to prevail on the troops to return to the barracks. His report gave no encouragement.

* * * * *

¹ Elliot, *Madison Papers containing Debates on the Confederation and Constitution*, vol. 5, p. 92 (Washington, D. C., 1845). See also: Hart, *Epochs of American History—Formation of the Union—1750–1829*, p. 106; Washington, *The National Capital*, S. Doc. No. 332, 71st Cong., 3d Sess., p. 4; *Journals of the Continental Congress, 1774–1789*, vol. xxv, p. 973 (Library of Congress, G. P. O., 1922); Morris, *Alexander Hamilton and the Founding of the Nation*, p. 66 et. seq. (1957).

In the mean time, the soldiers remained in their position, without offering any violence, individuals only, occasionally, uttering offensive words, and, wantonly pointing their muskets to the windows of the hall of Congress. No danger from premeditated violence was apprehended, but it was observed that spirituous drink, from the tippling-houses adjoining, began to be liberally served out to the soldiers, and might lead to hasty excesses. None were committed, however, and, about three o'clock, the usual hour, Congress adjourned; the soldiers, though in some instances offering a mock obstruction, permitting the members to pass through their ranks. They soon afterwards retired themselves to the barracks.

* * * * *

The [subsequent] conference with the executive [of Pennsylvania] produced nothing but a repetition of doubts concerning the disposition of the militia to act unless some actual outrage were offered to persons or property. It was even doubted whether a repetition of the insult to Congress would be a sufficient provocation.

During the deliberations of the executive, and the suspense of the committee, reports from the barracks were in constant vibration. At one moment, the mutineers were penitent and preparing submissions; the next, they were meditating more violent measures. Sometimes, the bank was their object; then the seizure of the members of Congress, with whom they imagined an indemnity for their offence might be stipulated.²

The harassment by the soldiers which began on June 20, 1783, continued through June 24, 1783. On the latter date, the members of Congress abandoned hope that the State authorities would disperse the soldiers, and the Congress removed itself from Philadelphia. General George Washington had learned of the uprising only on the same date at his head-

² Elliot, *op. cit.*, pp. 93-94.

quarters at Newburgh, and, reacting promptly and vigorously, had dispatched a large portion of his whole force to suppress this "infamous and outrageous Mutiny" (27 Writings of Washington (George Washington Bicentennial Commission, G. P. O., 1938) 32), but news of his action undoubtedly arrived too late. The Congress then met in Princeton, and thereafter in Trenton, New Jersey, Annapolis, Maryland, and New York City. There was apparently no repetition of the experience which led to Congress' removal from Philadelphia, and apparently at no time during the remaining life of the Confederacy was the safety of the members of Congress similarly threatened or the deliberations of the Congress in any way hampered.

However, the members of the Continental Congress did not lightly dismiss the Philadelphia incident from their minds. On October 7, 1783, the Congress, while meeting in Princeton, New Jersey, adopted the following resolution:

That buildings for the use of Congress be erected on or near the banks of the Delaware, provided a suitable district can be procured on or near the banks of the said river, for a federal town; and that the right of soil, and an exclusive or such other jurisdiction as Congress may direct, shall be vested in the United States.³

Available records fail to disclose what action, if any, was taken to implement this resolution. In view of the absence of a repetition of the experience which gave rise to the resolution, it may be that the feelings of urgency for the acquisition of exclusive jurisdiction diminished.

³ See *Journals of Congress*, vol. 8, p. 295. See also report of a committee of the Continental Congress on "exclusive jurisdiction" considered on Sept. 22, 1783, and undated Madison and Lee motions, in *Journals of the Continental Congress* (G. P. O., 1922), vol. xxv, pp. 603-604. But the possibility of extending some special jurisdiction for the area which was to be the seat of the national government had occurred, before the Philadelphia incident, with respect to at least three areas which were offered for this purpose, in New York, Maryland, and Virginia. Bryan, *A History of the National Capital* 4-5, 15-16 (1914).

Debates in Constitutional Convention concerning clause 17.—Early in the deliberations of the Constitutional Convention, on May 29, 1787, Mr. Charles Pinckney, of South Carolina, submitted a draft of a proposed constitution, which authorized the national legislature to “provide such dockyards and arsenals, and erect such fortifications, as may be necessary for the United States, and to exercise exclusive jurisdiction therein.” This proposed constitution authorized, in addition, the establishment of a seat of government for the United States “in which they shall have exclusive jurisdiction.”⁴ No further proposals concerning exclusive jurisdiction were made in the Constitutional Convention until August 18, 1787.

In the intervening period, however, a variety of considerations were advanced in the Constitutional Convention affecting the establishment of the seat of the new government, and a number of them were concerned with the problem of assuring the security and integrity of the new government against interference by any of the States. Thus, on July 26, 1787, Mason, of Virginia, urged that some provision be made in the Constitution “against choosing for the seat of the general government the city or place at which the seat of any state government might be fixed,” because the establishment of the seat of government in a State capital would tend “to produce disputes concerning jurisdiction” and because the intermixture of the two legislatures would tend to give “a provincial tincture” to the national deliberations.⁵ Subsequently, in the course of the debates concerning a proposed provision which, it was suggested, would have permitted the two houses of Congress to meet at places chosen by them from time to time, Madison, on August 11, 1787, urged the desirability of a permanent seat of government on the ground, among others, that “it was more necessary that the government should be in that position from

⁴For the text of these two provisions in Pinckney's draft, see Elliot, *op. cit.*, vol. 5, p. 130.

⁵See Elliot, *op. cit.*, vol. 5, p. 374.

which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation.”⁶

The genesis of article I, section 8, clause 17, of the Constitution, is to be found in proposals made by Madison and Pinckney on August 18, 1787. For the purpose of having considered by the committee of detail whether a permanent seat of government should be established, Madison proposed that the Congress be authorized:

To exercise, exclusively, legislative authority at the seat of the general government, and over a district around the same not exceeding _____ square miles, the consent of the legislature of the state or states, comprising the same, being first obtained.

* * * * *

To authorize the executive to procure, and hold, for the use of the United States, landed property, for the erection of forts, magazines, and other necessary buildings.⁷

Pinckney's proposal of the same day, likewise made for the purpose of reference to the committee of detail, authorized Congress:

To fix, and permanently establish, the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.⁸

It may be noted that Madison's proposal made no provision for Federal exercise of jurisdiction except at the seat of Government, and Pinckney's new proposal included no reference whatever to areas other than the seat of Government.

On September 5, 1787, the committee of eleven, to whom the proposals of Madison and Pinckney had been referred, proposed that the following power be granted to Congress:

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance

⁶ See Elliot, *op. cit.*, vol. 5, p. 409.

⁷ Elliot, *op. cit.*, vol. 5, pp. 439-440.

⁸ Elliot, *op. cit.*, vol. 5, p. 440.

of the legislature, become the seat of government of the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.⁹

Although neither the convention debates, nor the proposals made by Madison and Pinckney on August 18, 1787, had made any reference to Federal exercise of jurisdiction over areas purchased for forts, etc., the committee presumably included in its deliberations on this subject the related provision contained in the proposed constitution which had been submitted by Pinckney on May 29, 1787, which provided for such exclusive jurisdiction.

The debate concerning the proposal of the committee of eleven was brief, and agreement concerning it was reached quickly, on the day of the submission of the proposal to the Convention. The substance of the debate concerning this provision was reported by Madison as follows:

So much of the fourth clause as related to the seat of government was agreed to, *nem. con.*

On the residue, to wit, "to exercise like authority over all places purchased for forts, & c."—

MR. GERRY contended that this power might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government.

MR. KING thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make the power safe.

MR. GOUVERNEUR MORRIS seconded the motion, which was agreed to, *nem. con.*; as was then the residue of the clause, as amended.¹⁰

⁹ Elliot, *op. cit.*, vol. 5, pp. 510-511.

¹⁰ Elliot, *op. cit.*, vol. 5, pp. 511-512.

On September 12, 1787,¹¹ the committee of eleven submitted to the Convention a final draft of the Constitution. The committee had made only minor changes in the clause agreed to by the Convention on September 5, 1787, in matters of style, and article I, section 8, clause 17, was contained in the draft in the form in which it appears in the Constitution today.

Aside from disclosing the relatively little interest manifested by the Convention in that portion of clause 17 which makes provision for securing exclusive legislative jurisdiction over areas within the States, the debates in the Constitutional Convention relating to operation of Federal areas, as reported by Madison, are notable in several other respects. Somewhat surprising is the fact that consideration apparently was not given to the powers embraced in article I, section 8, clause 18,¹² and the supremacy clause in article VI,¹³ as a means for securing the integrity and independence of the geographical nerve center of the new government, and, more particularly, of other areas on which the functions of the government would in various aspects be performed. In view of the authority contained in the two last-mentioned provisions, the provision for exclusive jurisdiction appears to represent, to considerable extent, an attempt to resolve by the adoption of a legal concept a problem stemming primarily from a lack of physical power.

The debates in the Constitutional Convention are also of interest in the light they cast on the purpose of the consent requirement of clause 17. There appears to be no question but that the requirement was added simply to foreclose the possibility that a State might be destroyed by the purchase by the Federal Government of all of the property within that State. Could the Federal Government acquire exclusive jurisdiction over all property purchased by it within a State, without the consent of that State, the latter would have no means of preserving its integrity. Neither in the debates of the Constitu-

¹¹ Elliot, *op. cit.*, vol. 5, p. 535.

¹² The "necessary and proper" clause, set forth in footnote 14 (p. 12).

¹³ See footnote 15 (p. 12), for the text of this clause.

tional Convention, as reported by Madison, nor in the context in which the consent requirement was added, is there any suggestion that the consent requirement had the additional object of enabling a State to preserve the civil rights of persons resident in areas over which the Federal Government received legislative jurisdiction. As will be developed more fully below, in the course of the Virginia ratifying conventions and elsewhere, Madison suggested that the consent requirement might be employed by a State to accomplish such objective.

Debates in State ratifying conventions.—Following the conclusion of the work of the Constitutional Convention in Philadelphia, article I, section 8, clause 17, received the attention of a number of State ratifying conventions. The chief public defense of its provisions is to be found in the *Federalist*, #42, by Madison (Dawson, 1863). In that paper, Madison described the purpose and scope of clause 17 as follows:

The indispensable necessity of complete authority at the seat of Government, carries its own evidence with it. It is a power exercised by every Legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings be interrupted with impunity; ¹⁴ but a dependence of the members of the General Government on the State comprehending the seat of the Government, for protection in the exercise of their duty, might bring on the National Councils an imputation of awe or influence, equally dishonorable to the Government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the Government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the Government, as still fur-

¹⁴ The allusion is presumably to the Philadelphia incident of 1783.

ther to abridge its necessary independence. The extent of this Federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the Government, which is to exercise authority over them; as a municipal Legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the Legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole People of the State, in their adoption of the Constitution, every imaginable objection seems to be obviated. The necessity of a like authority over forts, magazines, etc., established by the General Government, is not less evident. The public money expended on such places, and the public property deposited in them, require, that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment.

In both the North Carolina and Virginia ratifying conventions, clause 17 was subjected to severe criticism. The principal criticism levied against it in both conventions was that it was destructive of the civil rights of the residents of the areas subject to its provisions. In the North Carolina convention, James Iredell (subsequently a United States Supreme Court justice, 1790-1799) defended the clause against this criticism,

and at the same time urged the desirability of its inclusion in the Constitution, as follows:

They are to have exclusive power of legislation—but how? Wherever they may have this district, they must possess it from the authority of the state within which it lies; and that state may stipulate the conditions of the cession. Will not such state take care of the liberties of its own people? What would be the consequence if the seat of the government of the United States, with all the archives of America, was in the power of any one particular state? Would not this be most unsafe and humiliating? Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? The sovereignty of the United States was treated with indignity. They applied for protection to the state they resided in, but could obtain none. It is to be hoped that such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself. * * * ¹⁵

In the Virginia convention, Patrick Henry voiced a number of objections to clause 17. Madison undertook to defend it against these objections:

He [Henry] next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any other member of the Union? If any state had the power of legislation over the place where Congress should fix the general government, this would impair the dignity, and hazard the safety, of Congress. If the safety of the Union were under the control of any particular state, would not foreign corruption probably prevail, in such a state, to induce it to exert its controlling influence over the members of the general govern-

¹⁵ Elliot, *op. cit.*, vol. 4, pp. 219-220.

ment? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago. When we also reflect that the previous cession of particular states is necessary before Congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.¹⁶

Patrick Henry specifically raised a question as to the fate of the civil rights of inhabitants of the seat of the government, and further suggested that residents of that area might be the recipients of exclusive emoluments from Congress and might be excused from the burdens imposed on the rest of society.¹⁷ Mason also raised the question of civil rights of the inhabitants, and, in addition, suggested that the seat of government might become a sanctuary for criminals.¹⁸ Madison answered some of these objections as follows:

I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers he apprehends. If there be any knowledge in my mind of the nature of man, I should think that it would be the last thing that would enter into the mind of any man to grant exclusive advantages, in a very circumscribed district, to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, & c., will concur to sacrifice

¹⁶ Elliot, *op. cit.*, vol. 3, p. 89.

¹⁷ Elliot, *op. cit.*, vol. 3, pp. 436-438.

¹⁸ Elliot, *op. cit.*, vol. 3, pp. 431-432.

the privileges of their friends? I believe that, whatever state may become the seat of the general government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and, if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power?

If it were at the pleasure of a particular state to control the session and deliberations, of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? * * * We must limit our apprehensions to certain degrees of probability. The evils which they urge might result from this clause are extremely improbable; nay, almost impossible.¹⁹

The other objections raised in the Virginia convention to clause 17 were answered by Lee. His remarks have been summarized as follows:

Mr. Lee strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, ten miles square would subjugate a country of eight hundred miles

¹⁹ Elliot, *op. cit.*, vol. 3, pp. 432-433.

square. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for the members of the general government, who were freely chosen by the people and the state governments. Would the people be so lost to honor and virtue as to select men who would willingly associate with the most abandoned characters? He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and palpable usurpation, to protect them.²⁰

In the ratifying conventions, no express consideration, it seems, was given to those provisions of clause 17 permitting the establishment of exclusive legislative jurisdiction over areas within the States. Attention apparently was directed solely to the establishment of exclusive legislative jurisdiction over the seat of government. However, the arguments in support of, and criticisms against, the establishment of exclusive legislative jurisdiction over the seat of government are in nearly all instances equally applicable to the establishment of such jurisdiction over areas within the States. The difference between the two cases is principally one of degree, and in this fact in all probability lies the explanation why areas within the States were not treated as a separate problem in the ratifying conventions. Because of the similarity between the two, the arguments concerning the seat of government are relevant in tracing the historical background of exclusive legislative jurisdiction over areas within the States.

²⁰ Elliot, *op. cit.*, vol. 3, pp. 435-436.

Federal legislation prior to 1885.—The matter of exclusive legislative jurisdiction received the attention of the first Congress in its first session. It provided that the United States, after the expiration of one year following the enactment of the act, would not defray the expenses of maintaining light-houses, beacons, buoys and public piers unless the respective States in which they were situated should cede them to the United States, "together with the jurisdiction of the same."²¹ The same act also authorized the construction of a lighthouse near the entrance of Chesapeake Bay "when ceded to the United States in the manner aforesaid, as the President of the United States shall direct." The policy of requiring cession of jurisdiction as a condition precedent to the establishment and maintenance of lighthouses was followed by other early Congresses,²² and it subsequently became a general requirement.²³

Unlike the legislation relating to the maintenance and acquisition of lighthouses, the legislation of the very early Congresses authorizing the acquisition by the United States of land for other purposes did not contain any express jurisdictional requirements. The only exceptions consist of legislation enacted in 1794, which authorized the establishment of "three or four arsenals," provided that "none of the said arsenals [shall] be erected, until purchases of the land necessary for their accommodation be made with the consent of the legislature of the

²¹ 1 Stat. 53, 1st Cong., 1st Sess., ch. 9, approved August 7, 1789. For summary of State acts and attitudes responsive to this statute, see *History of the Formation of the Union under the Constitution*, U. S. Constitution Sesquicentennial Commission (G. P. O., 1941), pp. 451-453.

²² See 1 Stat. 452 (1796); 1 Stat. 540 (1798); 1 Stat. 553 (1798); 1 Stat. 607 (1798); 2 Stat. 57 (1800); 2 Stat. 88 (1801); 2 Stat. 125 (1801); 2 Stat. 150 (1802); 2 Stat. 228 (1803); 2 Stat. 270 (1804); 2 Stat. 294 (1804); 2 Stat. 349 (1806); 2 Stat. 406 (1806); 2 Stat. 414 (1807); 2 Stat. 476 (1808); 2 Stat. 611 (1810); 2 Stat. 659 (1811); 3 Stat. 316 (1816); 3 Stat. 360 (1817); 3 Stat. 598 (1820); 3 Stat. 643 (1821); 3 Stat. 698 (1822); 3 Stat. 780 (1823).

²³ R. S. 4661 provides that, "No light-house, beacon, public piers, or land-mark, shall be built or erected on any site until cession of jurisdiction over the same has been made to the United States." See also sec. 7, act of May 15, 1820, 3 Stat. 598, 600.

state, in which the same is intended to be erected," and legislation in 1826 authorizing the acquisition of land for purposes of an arsenal.²⁴ Express jurisdictional requirements were not, however, contained in other early acts of Congress providing for the purchase of land at West Point, New York, for purposes of fortifications and garrisons,²⁵ the erection of docks,²⁶ the establishment of Navy hospitals,²⁷ the exchange of one parcel of property for another for purposes of a fortification,²⁸ and the establishment of an arsenal at Plattsburg, New York.²⁹ An examination of the early Federal statutes discloses that in various other instances the consent of the State was not made a prerequisite to the acquisition of land for fortifications and a customhouse.³⁰

The absence of express jurisdictional requirements in Federal statutes did not necessarily result in the United States acquiring a proprietorial interest only in properties. In numerous instances, apparently, jurisdiction over the acquired properties was ceded by the States even without an express Federal statutory requirement therefor.

In other instances, however, as in the case of the property at Plattsburg, New York, the United States has never acquired any degree of legislative jurisdiction. In at least one instance, a condition imposed in a State cession statute proved fatal to the acquisition by the United States of legislative jurisdiction; thus, in *United States v. Hopkins*, 26 Fed. Cas. 371, No. 15,387a (C. C. D. Ga., 1830), it was held that a State statute which ceded jurisdiction for "forts or fortifications" did not serve to vest in the United States legislative jurisdiction over an area used for an arsenal.

²⁴ See 1 Stat. 352 (1794) ; 4 Stat. 178 (1826).

²⁵ See 1 Stat. 129 (1790).

²⁶ See 1 Stat. 622 (1799).

²⁷ See 2 Stat. 650 (1811).

²⁸ See 2 Stat. 496 (1808).

²⁹ See 3 Stat. 205 (1815).

³⁰ See 4 Stat. 127 (1825) ; 4 Stat. 179 (1826) ; 4 Stat. 241 (1827) ; 4 Stat. 641, 642 (1833) ; 4 Stat. 673 (1834) ; 5 Stat. 47 (1836) ; 5 Stat. 148 (1837).

In 1828, Congress sought to achieve a uniformity in Federal jurisdiction over areas owned by the United States by authorizing the President to procure the assent of the legislature of any State, within which any purchase of land had been made for the erection of forts, magazines, arsenals, dockyards and other needful buildings without such consent having been obtained, and by authorizing him to obtain exclusive jurisdiction over future such purchases. Objections were raised in the course of the debates concerning this 1828 statute as to the efficacy of the exercise by the United States of legislative jurisdiction over widely scattered areas throughout the United States. The remarks of Representative Marvin, of New York, who questioned the practicality of legislative jurisdiction, were summarized as follows:

MR. MARVIN, of New York, said, that the present discussion which had arisen on the amendment, had, for the first time, brought the general character of the bill under his observation. Indeed, no discussion until now had been had of the merits of the bill; and, while it seemed in its general objects, to meet with almost universal assent, from the few moments his attention had been turned to the subject, he was led to doubt whether the bill was one that should be passed at all. One of the prominent provisions of the bill, made it the duty of the Executive to obtain the assent of the respective States to all grants of land made within them, to the General Government, for the purposes of forts, dockyards, &c. and the like assent to all future purchases for similar objects, with a view to vest in the United States exclusive jurisdiction over the lands so granted. The practice of the Government hitherto had been, in most cases, though not in all, to purchase the right of soil, and to enter into the occupancy for the purpose intended, without also acquiring exclusive jurisdiction, which, in all cases, could be done, where such exclusive powers were deemed important. The

National Government were exclusively vested with the power to provide for the common defence; and, in the exercise of this power, the right to acquire land, on which to erect fortifications, was not to be questioned. While the National Government held jurisdiction under the Constitution for all legitimate objects, the respective States had also a concurrent jurisdiction. As no inconvenience, except, perhaps, from the exercise of the right of taxation, in a few instances, under the State authorities, had hitherto been experienced from a want of exclusive jurisdiction, he was not, at this moment, prepared to give his sanction to the policy of the bill. Mr. M. said, he could see most clearly, cases might arise, where, for purposes of criminal jurisdiction, a concurrent power on the part of the State might be of vital importance. Your public fortresses may become places of refuge from State authority. Indeed, they may themselves be made the theatres where the most foul and dark deeds may be committed. The situation of your fortifications must, of necessity, be remote. In times of peace, they were often left with, perhaps, no more than a mere agent, to look to the public property remaining in them; thus rendered places too well befitting dark conspiracies and acts of blood. Their remote situation, and almost deserted condition, would retard the arm of the General Government in overtaking the offender, should crimes be committed. While no inconvenience could result from a concurrent jurisdiction on the part of the State and National tribunals, the public peace would seem to be thereby better secured. Mr. M. instanced a case of murder committed in Fort Niagara, some years ago, where, after trial and conviction in the State courts, an exception was taken to the proceedings, from an alleged exclusive jurisdiction in the courts of the United States. The question thus raised, was decided, after argument in the Supreme Court of the State

of New York, sustaining a concurrent jurisdiction in the State tribunals. Mr. M. regarded the right claimed, and exercised by the State, on that occasion, important. If important then, there were reasons, he thought, why it should not be less so now.³¹

The legislation was nevertheless enacted, and a provision thereof has existed as section 1838 of the Revised Statutes of the United States.³² Following the enactment of this statute, Congress did not take any decisive action with respect to legislative jurisdiction until September 11, 1841, when it passed a joint resolution, which subsequently became R. S. 355,³³ requiring consent by a State to Federal acquisition of land (and therefore a cession of jurisdiction by the State by operation of article I, section 8, clause 17, of the Constitution), as a condition precedent to the expenditure of money by the Federal Government for the erection of structures on the land. As in the case of R. S. 1838, the Congressional debates do not indicate the considerations prompting the enactment of R. S. 355. There had, however, been a controversy between the United States and the State of New York concerning title to (not jurisdiction over) a tract of land on Staten Island, upon which fortifications had been maintained at Federal expense, and the same Congress which enacted the joint resolution of 1841 refused to appropriate funds for the repair of these fortifications until the question of title had been settled.³⁴ The 1841 joint resolution also required the Attorney General to approve the validity of title before expenditure of public funds for building on land. By these two means the Congress pre-

³¹ Cong. Deb. (part 2) 2052-2053 (1828).

³² R. S. 1838 read as follows: "The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained." This language has been enacted into positive law as section 103 of title 4 of U. S. C., 1952 Ed.

³³ The text of R. S. 355 prior to its amendment in 1940 is quoted in footnote 11 (p. 9).

³⁴ Cong. Globe, 27th Cong., 1st Sess. 440 (1841).

sumably sought to avoid a repetition of the Staten Island incident, and to avoid all conflict with States over title to land. While these suggested considerations underlying the enactment of the 1841 joint resolution are based entirely upon historical circumstances surrounding its adoption, the available records do not offer any other explanation, and there has not been discovered any means for ascertaining definitely whether Congress was aware, in enacting the joint resolution, that it was thereby requiring States to transfer jurisdiction to the Federal Government over most areas thereafter acquired by it. Debate had in the Senate in 1850 (Cong. Globe, 31st Cong., 1st sess. 70), indicates that as of that time it was not understood that the joint resolution required such transfer.

Thirty years after the adoption of the 1841 joint resolution, the effects of exclusive legislative jurisdiction on the civil rights of residents of areas subject to such jurisdiction were forcibly brought to the attention of Congress. In 1869, the Supreme Court of Ohio, in *Sinks v. Reese*, 19 Ohio St. 306, held that inmates of a soldiers' home located in an area of exclusive legislative jurisdiction in that State were not entitled to vote in State and local elections, notwithstanding the reservation of such rights in the Ohio statute transferring legislative jurisdiction to the United States. As a consequence of this decision, Congress retroceded jurisdiction over the soldiers' home to the State of Ohio.³⁵ The enactment of this retrocession statute was preceded by extensive debates in the Senate.³⁶ In the course of the debates, questions were raised as to the constitutional authority of Congress to retrocede jurisdiction which had been vested in the United States pursuant to article I, section 8, clause 17, of the Constitution, and it was also suggested that exclusive legislative jurisdiction was essential to enforce discipline on a military reservation.³⁷ The

³⁵ Act of January 21, 1871, 16 Stat. 399.

³⁶ Cong. Globe, 41st Cong., 3d Sess. 512-524, 541-548 (1870-1871).

³⁷ In the latter matter, the senators appear not to have taken cognizance of article I, section 8, clause 14, of the Constitution, which authorizes the Congress, "To make Rules for the Government and Regulation of the land

constitutional objections to retrocession of jurisdiction did not prevail, and, whatever the views of the senators may have been at that time as to the necessity for Federal exercise of legislative jurisdiction over military areas, the views expressed by Senator Morton, of Indiana, prevailed:

Mr. President, there might be a reason for a more extended jurisdiction in the case of an arsenal or a fort than in the case of an asylum. I admit that there is no necessity at all for exclusive jurisdiction or an extended jurisdiction in the case of an asylum. Now, take the case of a fort. Congress, of course, would require the jurisdiction necessary to punish a soldier for drunkenness, which is the case put by the Senator, or to punish any violation of military law or discipline; but is it necessary that this Government should have jurisdiction to punish a man who happens to stroll upon the ground and commit a larceny, or that it shall have jurisdiction if two of the hands engaged in plowing or gardening should get into a fight? Such cases do not come within the reasoning of the rule at all. It so happens, however, that exclusive jurisdiction has been given in those cases, but I contend that it has always been an inconvenience and was unnecessary. * * *

In addition to providing for, and subsequently requiring, the acquisition of legislative jurisdiction, the early Congresses enacted legislation designed to meet, at least to an extent, some of the problems resulting from the acquisition of legislative jurisdiction. In attempting to cope with some of these problems, the efforts of some of the States antedated legislation passed by Congress for the same purposes. When granting consent pursuant to article I, section 8, clause 17, with respect to lighthouses and lighthouse sites some of the States from earliest times reserved the right to serve criminal and civil

and naval Forces," or of clause 16 of the same section, which authorizes it, "To provide for organizing, arming, and disciplining, the Militia, * * *."

* Cong. Globe, 41st Cong., 3d Sess. 546 (1870-1871).

process in the affected areas. Recognizing the fact of the existence of these reservations, together with the adverse consequences which would result from an inability on the part of the States to serve process in areas over which jurisdiction had passed to the Federal Government, Congress in 1795 enacted a statute providing that such reservations by a State would be deemed to be within a Federal statutory requirement that legislative jurisdiction be acquired by the United States, and, in addition, Congress provided that regardless of whether a State had reserved the right to serve process in places where light-houses, beacons, buoys or public piers had been or were authorized to be erected or fixed as to which the State had ceded legislative jurisdiction to the United States, it would nevertheless have the right to do so.³⁹

While the right thus reserved to the States to serve criminal and civil process served to prevent exclusive legislative jurisdiction areas from becoming a haven for persons charged with offenses under State law, R. S. 4662 did not serve to enlarge the jurisdiction of the State to enforce its criminal laws within

³⁹ Act of March 2, 1795, ch. 40, 1 Stat. 426, read substantially as indicated in the text, above. In codification into the Revised Statutes (R. S. 4662), the provision was made applicable to any "site of a light-house, or other structure or work of the Light-House Establishment." Subsequently, in codification into title 33 (section 728) of the United States Code, the provision had deleted from it the words, "of the Light-House Establishment," following the words "or other structure or work," so that it now appears in the code as follows: "A cession by a State of jurisdiction over a place selected as the site of a lighthouse, or other structure or work, shall be deemed sufficient within section 727 of this title [R. S. 4661], notwithstanding it contains a reservation that process issued under authority of such State may continue to be served within such place. And notwithstanding any such cession of jurisdiction contains no such reservation, all process may be served and executed within the place ceded, in the same manner as if no cession had been made."

It would appear that, notwithstanding the apparent broad application of the provision as it is set out in the United States Code, the provision actually is applicable only to light-houses and other structures and works formerly under the Light-House Establishment, since title 33 of the code is not positive law.

such areas. Only Congress could define offenses in such areas and provide for their punishment.

At an early date, Congress initiated a series of legislative enactments to cope with the problem of crimes within Federal areas. In 1790, it provided for the punishment of murder, larceny and certain other crimes,⁴⁰ and complete criminal sanctions were provided for by the enactment of the first Assimilative Crimes Act in 1825. This latter enactment adopted as Federal law for areas subject to exclusive legislative jurisdiction the criminal laws of the State in which a given area was located.⁴¹

While making provision for punishment for criminal offenses in areas subject to exclusive legislative jurisdiction, and authorizing the States to serve criminal and civil process in certain of such areas, Congress did not give corresponding attention to civil matters arising in the areas. Although Congress retroceded jurisdiction in order to restore the voting rights of residents of the soldiers' home in Ohio,⁴² no other steps were taken to preserve generally the civil rights of residents of areas of exclusive legislative jurisdiction. The confident predictions in the State ratifying conventions that civil rights would be preserved by means of appropriate conditions in State consent statutes did not materialize. Only in the case of the cession of jurisdiction to the United States for the establishment of the District of Columbia was even a gesture made in a State consent statute towards preserving the rights of its citizens. Thus, in its act of cession, Virginia included the following proviso:

And provided also, That the jurisdiction of the laws of this commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress,

⁴⁰ 1 Stat. 112 (1790).

⁴¹ 4 Stat. 115 (1825). Because the Assimilative Crimes Act adopted only the laws in effect at the time of its enactment, it was reenacted in 1868 (14 Stat. 12) and 1898 (30 Stat. 717), and revised at various subsequent dates, as will hereinafter appear.

⁴² See footnote 35 (p. 33), and related textual matter.

having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in the manner provided by the article of the Constitution before recited [article I, section 8].⁴³

In 1790, Congress accepted this cession, and in its acceptance included the following corresponding proviso:

* * * Provided nevertheless, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.⁴⁴

The constitutionality of these provisos in the Virginia cession statute and the Federal acceptance statute was sustained in *Young v. Bank of Alexandria*, 4 Cranch 384 (1808).

Early court decisions. The decisions of the courts prior to 1885 relating to matters of exclusive legislative jurisdiction are relatively few and of varying importance.⁴⁵

It was held at an early date that the term "exclusive legislation," as it appears in article I, section 8, clause 17, of the Constitution, is synonymous with "exclusive jurisdiction." *United States v. Bevans*, 3 Wheat. 336, 388 (1818); *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819). Where jurisdiction has been acquired by the United States, "the national and municipal powers of government, of every description, are united in the government of the Union." *Pollard v. Hagan*, 3 How. 212, 223 (1845). Reservation by a State of the right to serve criminal and civil process in a Federal area is, it was held, in no way inconsistent with the exercise by the United States of exclusive jurisdiction over the area. *United States v. Travers*, 28 Fed. Cas. 204, No. 16,537 (C. C. D. Mass., 1814); *United States v. Davis*, 25 Fed. Cas.

⁴³ The text of the Virginia cession statute is republished in the District of Columbia Code, 1951 ed., p. XXII.

⁴⁴ Act of July 16, 1790, 1 Stat. 130, ch. 28, 1st Cong., 2d Sess.

⁴⁵ The subjects covered by these cases will receive detailed discussion *infra*.

781, No. 14,930 (C. C. D. Mass., 1829); *United States v. Cornell*, *supra*; *United States v. Knapp*, 26 Fed. Cas. 792, No. 15,538 (S. D. N. Y., 1849).

Justice Story, in *United States v. Cornell*, *supra*, expressed doubts, however, as to "whether congress are by the terms of the constitution, at liberty to purchase lands for forts, dock-yards, etc., with the consent of a State Legislature, where such consent is so qualified that it will not justify the 'exclusive legislation' of congress there." This view has not prevailed. In *United States v. Hopkins*, 26 Fed. Cas. 371, No. 15,387a (C. C. D. Ga., 1830), it was, on the other hand, held that a State may limit its consent with the condition that the area in question be used for fortifications; if used as an arsenal, the United States would not have exclusive jurisdiction.

In considering the application of the Assimilative Crimes Act of 1825, the United States Supreme Court held that it related only to the criminal laws of the State which were in effect at the time of its enactment and not to criminal laws subsequently enacted by the State. *United States v. Paul*, 6 Pet. 141 (1832). In *United States v. Wright*, 28 Fed. Cas. 791, No. 16,774 (D. Mass., 1871), it was held that the Assimilative Crimes Act adopted not only the statutory criminal laws of the State but also the common law of the State as to criminal offenses.

The power of exclusive legislation, it was said by the United States Supreme Court in an early case, is not limited to the exercise of powers by the Federal Government in the specific area acquired with the consent of the State, but includes incidental powers necessary to the complete and effectual execution of the power of exclusive jurisdiction; thus, the United States may punish a person, not resident on the Federal area, for concealment of his knowledge concerning a felony committed within the Federal area. *Cohens v. Virginia*, 6 Wheat. 264, 426-429 (1821).

Article I, section 8, clause 17, it was held at an early date, does not extend to places rented by the United States. *United*

States v. Tierney, 28 Fed. Cas. 159, No. 16,517 (C. C. S. D. Ohio, 1864). The consent specified therein must be given by the State legislature, not by a constitutional convention, it was held in an early opinion of the United States Attorney General. 12 *Ops. A. G.* 428 (1868). But, it will be seen, it was later decided that the United States may acquire exclusive legislative jurisdiction by means other than under clause 17.* In *Ex parte Tatem*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877), it was held that the term "navy yard," as it appeared in a Virginia cession statute, "meant not merely the land on which the government does work connected with ships of the navy, but the waters contiguous necessary to float the vessels of the navy while at the navy yard." The consent provided for by article I, section 8, clause 17, of the Constitution, may be given either before or after the purchase of land by the United States. *Ex parte Hebard*, 11 Fed. Cas. 1010, No. 6312 (C. C. D. Kan., 1877). The United States may, if it so chooses, purchase land within a State without the latter's consent, but, if it does so, it does not have any legislative jurisdiction over the area purchased. *United States v. Stahl*, 27 Fed. Cas. 1288, No. 16,373 (C. C. D. Kan., 1868).

In an early New York case, the court expressed the view that State jurisdiction over an area purchased by the United States with the consent of the State continues until such time as the United States undertakes to exercise jurisdiction. *People v. Lent*, 2 Wheel. 548 (N. Y., 1819). This view has not prevailed. In a State case frequently cited in connection with matters relating to the civil rights of residents of areas of exclusive legislative jurisdiction, the Massachusetts Supreme Court, in *Commonwealth v. Clary*, 8 Mass. 72 (1811), said (p. 77):

An objection occurred to the minds of some members of the Court, that if the laws of the commonwealth have no force within this territory, the inhabitants thereof cannot exercise any civil or political privileges. * * *

* *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885).

We are agreed that such consequence necessarily follows; and we think that no hardship is thereby imposed on those inhabitants; because they are not interested in any elections made within the state, or held to pay any taxes imposed by its authority, nor bound by any of its laws.—And it might be very inconvenient to the *United States* to have their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the commonwealth of the inhabitants of the several towns.

In *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), the Supreme Court of Massachusetts in essence restated this view. Thus, although the fears expressed in the Virginia and North Carolina ratifying conventions as to the effects of legislative jurisdiction on the civil rights of inhabitants of areas subject to such jurisdiction were completely borne out, these effects were at the same time interpreted as distinct advantages for the parties concerned.

Acquisition of Legislative Jurisdiction

THREE METHODS FOR FEDERAL ACQUISITION OF JURISDICTION:
Constitutional consent.—The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction—by State consent under article I, section 8, clause 17. The debates in the Constitutional Convention and State ratifying conventions leave little doubt that both the opponents and proponents of Federal exercise of exclusive legislative jurisdiction over the seat of government were of the view that a constitutional provision such as clause 17 was essential if the Federal Government was to have such jurisdiction. At no time was it suggested that such a provision was unessential to secure exclusive legislative jurisdiction to the Federal Government over the seat of government. While, as has been indicated in the preceding chapter, little attention was given in the course of the debates to Federal exercise of exclusive legislative jurisdiction over areas other than the seat of government, it is reasonable to assume that it was the general view that a special constitutional provision was essential to enable the United States to acquire exclusive legislative jurisdiction over any area. Hence, the proponents of exclusive legislative jurisdiction over the seat of government and over federally owned areas within the States defended the inclusion in the Constitution of a provision such as article I, section 8, clause 17. And in *United States v. Railroad Bridge Co.*, 27 Fed. Cas. 686, 693, No. 16,114 (C. C. N. D. Ill., 1855), Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued no transfer of jurisdiction can take place.

State cession.—However, in *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885), the United States Supreme Court sustained the validity of an act of Kansas ceding to the United States legislative jurisdiction over the Fort Leavenworth military reservation, but reserving to itself the right to serve criminal and civil process in the reservation and the right to tax railroad, bridge, and other corporations, and their franchises and property on the reservation. In the course of its opinion sustaining the cession of legislative jurisdiction, the Supreme Court said (p. 540):

We are here met with the objection that the Legislature of a State has no power to cede away her jurisdiction and legislative power over any portion of her territory, except as such cession follows under the Constitution from her consent to a purchase by the United States for some one of the purposes mentioned. If this were so, it would not aid the railroad company; the jurisdiction of the State would then remain as it previously existed. But aside from this consideration, it is undoubtedly true that the State, whether represented by her Legislature, or through a convention specially called for that purpose, is incompetent to cede her political jurisdiction and legislative authority over any part of her territory to a foreign country, without the concurrence of the general government. The jurisdiction of the United States extends over all the territory within the States, and, therefore, their authority must be obtained, as well as that of the State within which the territory is situated, before any cession of sovereignty or political jurisdiction can be made to a foreign country. * * *

In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State

and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States.¹

Had the doctrine thus announced in *Fort Leavenworth R. R. v. Lowe*, *supra*, been known at the time of the Constitutional Convention, it is not improbable that article I, section 8, clause 17, at least insofar as it applies to areas other than the seat of government, would not have been adopted. Cession as a method for transfer of jurisdiction by a State to the United States is now well established, and quite possibly has been the method of transfer in the majority of instances in which the Federal

Federal reservation.—In *Fort Leavenworth R. R. v. Lowe*, *supra*, the Supreme Court approved a second method not specified in the Constitution of securing legislative jurisdiction in

¹ The cession method given judicial sanction in this case has been recognized in numerous subsequent decisions, *e. g.*: *Benson v. United States*, 148 U. S. 325 (1892); *Battle v. United States*, 209 U. S. 36 (1908); *Standard Oil Co. of California v. California*, 291 U. S. 242 (1934); *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938); *Bowen v. Johnston*, 306 U. S. 19 (1939).

the United States. Although the matter was not in issue in the case, the Supreme Court said (p. 526):

The land constituting the Reservation was part of the territory acquired in 1803 by cession from France, and, until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount. But in 1861 Kansas was admitted into the Union upon an equal footing with the original States, that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States. *Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation, so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government.* But from some cause, inadvertence perhaps, or over-confidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. * * * [*Emphasis added.*]

Almost the same language was used by the Supreme Court of Kansas in *Clay v. State*, 4 Kan. 49 (1866), and another suggestion of judicial recognition of this doctrine is to be found in an earlier case in the Supreme Court of the United States, *Langford v. Monteith*, 102 U. S. 145 (1880), in which it was held that when an act of Congress admitting a State into the Union provides, in accordance with a treaty, that the lands of

an Indian tribe shall not be a part of such State or Territory, the new State government has no jurisdiction over them. The enabling acts governing the admission of several of the States provided that exclusive jurisdiction over certain areas was to be reserved to the United States.² In view of these developments, an earlier opinion of the United States Attorney General indicating that a State legislature, as distinguished from a State constitutional convention, had to give the consent to transfer jurisdiction specified in the Federal Constitution (12 *Ops. A. G.* 428 (1868)), would seem inapplicable to a Federal reservation of jurisdiction.

Since Congress has the power to create States out of Territories and to prescribe the boundaries of the new States, the retention of exclusive legislative jurisdiction over a federally owned area within the State at the time the State is admitted into the Union would not appear to pose any serious constitutional difficulties.

No Federal legislative jurisdiction without consent, cession, or reservation.—It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights

² *E. g.*: *Wyoming* (act of July 10, 1890, 26 Stat. 222, ch. 664, 51st Cong., 1st Sess.); *Oklahoma* (act of June 16, 1906, 34 Stat. 267, 272, ch. 3335, 59th Cong., 1st Sess.); see 17 *Tenn. L. Rev.* 328 (1942); and see *Scott v. United States*, 1 Wyo. 40 (1871), and *contra*, *Franklin v. United States*, 1 Colo. 35 (1867); *Reynolds v. People*, 1 Colo. 179 (1869); *Burgess v. Territory of Montana*, 8 Mont. 57, 19 Pac. 558 (1888), as to the status of federally owned lands in a Territory.

with respect to the use, protection, and disposition of its property.*

NECESSITY OF STATE ASSENT TO TRANSFER OF JURISDICTION TO FEDERAL GOVERNMENT: *Constitutional consent.*—The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State. Article I, section 8, clause 17, of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms only with the consent of the legislature of the State in which is located the area subject to the jurisdictional transfer.⁴ As was indicated in chapter II, the consent requirement of article I, section 8, clause 17, was

* *Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937); *Springfield v. Kenney*, 62 Ohio L. Abst. 123, 104 N. E. 2d 65 (1951); *Renner v. Bennett*, 21 Ohio St. 431 (1871); *Ottinger Bros. v. Clark*, 191 Okla. 488, 131 P. 2d 94 (1942); *Beaufort County v. Jasper County*, 220 S. C. 469, 68 S. E. 2d 421 (1951); *State v. Shepard*, 239 Wis. 345, 300 N. W. 905 (1941); 7 *Ops. A. G.* 571 (1855). See also chapters V, VI, VII, and IX, *infra*.

⁴ See report, part I, p. 231. This constitutional provision relates only to the transfer of jurisdiction; the consent of the State is unnecessary to the acquisition of title to land within its boundaries by the United States. *United States v. Mayor and Council of City of Hoboken, N. J.*, 29 F. 2d 932 (D. N. J., 1928); *Op. A. G., Cal.*, No. LB 164/189 (Feb. 28, 1938); 38 *Ops. A. G.* 341 (1935). And the consent of the State is legally effective to transfer jurisdiction even though not given until after the purchase by the United States. *Ex parte Hebard*, 11 Fed. Cas. 1010, No. 6312 (C. C. D. Kan., 1877); *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); 13 *Ops. A. G.* 411 (1871); 15 *Ops. A. G.* 480 (1878); cf. *St. Louis-San Francisco Ry. v. Satterfield*, 27 F. 2d 586 (C. A. 8, 1928). No particular phraseology is necessary to express such consent. 39 *Ops. A. G.* 99 (1937); cf. *McConnell v. Wilcox*, 2 Ill. 344, 357 (1837). But a consent statute of general application will not be given retroactive effect. *St. Louis-San Francisco Ry. v. Satterfield*, *supra*. The legislature of a State has unlimited power to transfer jurisdiction to the United States except as it may be restricted by State or Federal constitutions. *United States v. Crary*, 1 F. Supp. 406 (W. D. Va., 1932). Consent must be given by a State legislature, not by a constitutional convention. 12 *Ops. A. G.* 428 (1868).

intended by the framers of the Constitution to preserve the States' jurisdictional integrity against Federal encroachment.

State cession or Federal reservation.—The transfer of legislative jurisdiction pursuant to either of the two means not spelled out in the Constitution likewise requires the assent of the State in which is located the area subject to the jurisdictional transfer. Where legislative jurisdiction is transferred pursuant to a State cession statute, the State has quite clearly assented to the transfer of legislative jurisdiction to the Federal Government, since the enactment of a State cession statute is a voluntary act on the part of the legislature of the State.

The second method not spelled out in the Constitution of vesting legislative jurisdiction in the Federal Government, namely, the reservation of legislative jurisdiction by the Federal Government at the time statehood is granted to a Territory, does not involve a transfer of legislative jurisdiction to the Federal Government by a State, since the latter never had jurisdiction over the area with respect to which legislative jurisdiction is reserved. While, under the second method of vesting legislative jurisdiction in the Federal Government, the latter may reserve such jurisdiction without inquiring as to the wishes or desires of the people of the Territory to which statehood has been granted, nevertheless, the people of the Territory involved have approved, in at least a technical sense, such reservation. Thus, the reservation of legislative jurisdiction constitutes, in the normal case, one of the terms and conditions for granting statehood, and only if all of the terms and conditions are approved by a majority of the voters of the Territory, or by a majority of the Territorial legislature, is statehood granted.*

* While the Federal Government may acquire exclusive jurisdiction by purchase of land with the State's consent, by cession from the State, or by reservation in the enabling act granting statehood, such jurisdiction cannot be acquired by mere occupancy for the State's protection or tortiously or by disseisin of the State. *People v. Godfrey*, 17 Johns. 225 (N. Y., 1819).

NECESSITY OF FEDERAL ASSENT: *Express consent required by R. S. 355.*—Acquiescence, or acceptance, by the Federal Government, as well as by the State, is essential to the transfer of legislative jurisdiction to the Federal Government.* When legislative jurisdiction is reserved by the Federal Government at the time statehood is granted to a Territory, it is, of course, obvious that the possession of legislative jurisdiction meets with the approval of the Federal Government. When legislative jurisdiction is to be transferred by a State to the Federal Government either pursuant to article I, section 8, clause 17, of the Constitution, or by means of a State cession statute, the necessity of Federal assent to such transfer of legislative jurisdiction has been firmly established by the enactment of the February 1, 1940, amendment to R. S. 355.¹ While this amendment in terms specifies requirement for formal Federal acceptance prior to the transfer of exclusive or partial legislative jurisdiction, it also applies to the transfer of concurrent jurisdiction. The United States Supreme Court, in *Adams v. United States*, 319 U. S. 312 (1943), in the course of its opinion said (pp. 314-315):

Both the Judge Advocate General of the Army and the Solicitor of the Department of Agriculture have con-

* *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885); *Mason Co. v. Tax Commission*, 302 U. S. 186, 207 (1937); *Atkinson v. State Tax Comm'n*, 303 U. S. 20, 23 (1938).

¹ The text of this amendment is set forth in footnote 12 (p. 9). In *People v. Brown*, 69 Cal. App. 2d 602, 159 P. 2d 686 (1945), which was decided subsequent to the enactment of this amendment, it was held that the United States must accept exclusive jurisdiction before the State will recognize same; and until the United States does so there is a conclusive presumption against such acceptance. However, this amendment is not applicable to land acquired by the Federal Government prior to its enactment. *Markham v. United States*, 215 F. 2d 56 (C. A. 4, 1954), *cert. den.*, 348 U. S. 939. In the absence, in the State statute proffering jurisdiction, of specification of a manner for acceptance of such jurisdiction, a letter of acceptance from the proper Federal agency is the operative document. 1 *Ops. A. G. Cal.* 76 (Jan. 27, 1943). It has been held that such acceptance may be in general terms, without specific identification of the tracts of land involved. 1 *Ops. A. G. Cal.* 410 (Apr. 28, 1943).

strued the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the Act. These agencies coöperated in developing the Act, and their views are entitled to great weight in its interpretation. * * * Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.

Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.

Former presumption of Federal acquiescence in absence of dissent.—Even before the enactment of the 1940 amendment to R. S. 355, it was clear that a State could not transfer, either pursuant to article I, section 8, clause 17, of the Constitution, or by means of a cession statute, legislative jurisdiction to the Federal Government without the latter's consent.⁸ Prior to the 1940 amendment to R. S. 355, however, it was not essential that the consent of the Federal Government be expressed formally or in accordance with any prescribed procedure. Instead, it was presumed that the Federal Government accepted the benefits of a State enactment providing for the transfer of legislative jurisdiction. As discussed more fully below, this presumption of acceptance was to the effect that once a State

⁸ *Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937); *People v. Lent*, 2 Wheel. 548 (N. Y., 1819); *Gill v. State*, 141 Tenn. 379, 210 S. W. 637 (1919); *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875); *O'Pry Heating & Plumbing Co. v. State*, 241 Ala. 507, 3 So. 2d 316 (1941). Cf. *Herken v. Glynn*, 151 Kan. 855, 101 P. 2d 946 (1940).

legislatively indicated a willingness to transfer exclusive jurisdiction such jurisdiction passed automatically to the Federal Government without any action having to be taken by the United States. However, the presumption would not operate where Federal action was taken demonstrating dissent from the acceptance of proffered jurisdiction.

Presumption in transfers by cession.—In *Fort Leavenworth R. R. v. Lowe*, *supra*, in which a transfer of legislative jurisdiction by means of a State cession statute was approved for the first time, the court said (p. 528) that although the Federal Government had not in that case requested a cession of jurisdiction, nevertheless, “as it conferred a benefit, the acceptance of the act is to be presumed in the absence of any dissent on their part.” See also *United States v. Johnston*, 58 F. Supp. 208, *aff’d.*, 146 F. 2d 268 (C. A. 9, 1944), *cert. den.*, 324 U. S. 876; 38 Ops. A. G. 341 (1935). A similar view has been expressed by a number of courts to transfers of jurisdiction by cession.⁹ In some instances, however, the courts have indicated the existence of affirmative grounds supporting Federal acceptance of such transfers.¹⁰ In *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F. 2d 644 (C. A. 9, 1929), *cert. den.*, 280 U. S. 555, it was stated that acceptance by the United

⁹ *Benson v. United States*, 146 U. S. 325 (1892); *United States v. Holt*, 168 Fed. 141 (C. C. W. D. Wash., 1909), *aff’d.*, *sub nom. Holt v. United States*, 218 U. S. 245; *Robbins v. United States*, 284 Fed. 39 (C. A. 8, 1922); *United States v. Watkins*, 22 F. 2d 437 (N. D. Cal., 1927); *Pound v. Gaulding*, 237 Ala. 387, 187 So. 468 (1939); *People v. Mouse*, 203 Cal. 782, 265 Pac. 944 (1928), *app. dism.*, 278 U. S. 662; *Lowe v. Lowe*, *infra*; *State v. Seymour*, 78 Miss. 134, 28 So. 799 (1900); *La Duke v. Melin*, 45 N. D. 349, 177 N. W. 673 (1920). Courts have taken judicial notice of transfers of legislative jurisdiction (see p. 80 *et seq.*, *infra*).

¹⁰ In *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729 (1926), the view was expressed that acceptance might be evidenced by the purchase of the property, and the opinion was stated in *Ex parte Hebard*, 11 Fed. Cas. 1010, No. 6,312 (C. C. D. Kan., 1877), that user constitutes acceptance. For other cases, indicating that the conduct of the United States supports the position that the United States has become vested with exclusive jurisdiction, see *In re Ladd*, 74 Fed. 31 (C. C. D. Neb., 1896); *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916).

States of a cession of jurisdiction by a State over a national park area within the State may be implied from acts of Congress providing for exclusive jurisdiction in national parks. See also *Columbia River Packers' Ass'n v. United States*, 29 F. 2d 91 (C. A. 9, 1928); *United States v. Unzeuta*, 281 U. S. 138 (1930).

Presumption in transfers by constitutional consent.—Until recent years, it was not clear but that the consent granted by a State pursuant to article I, section 8, clause 17, of the Constitution, would under all circumstances serve to transfer legislative jurisdiction to the Federal Government where the latter had “purchased” the area and was using it for one of the purposes enumerated in clause 17. In *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819), Justice Story expressed the view that clause 17 is self-executing, and acceptance by the United States of the “benefits” of a State consent statute was not mentioned as an essential ingredient to the transfer of legislative jurisdiction under clause 17. In the course of his opinion in that case, Justice Story said (p. 648):

The constitution of the United States declares that congress shall have power to exercise “exclusive legislation” in all “cases whatsoever” over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. When therefore a purchase of land for any of these purposes is made by the national government, and the state legislature has given its consent to the purchase, the land so purchased *by the very terms of the constitution ipso facto* falls within the exclusive legislation of congress, and the state jurisdiction is completely ousted. * * *

[Italics added.]

As late as 1930, it was stated in *Surplus Trading Co. v. Cook*, 281 U. S. 647, that (p. 652):

It long has been settled that where lands for such a purpose [one of those mentioned in clause 17] are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, *in virtue of the constitutional provision*, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction. [Italics added.]

The italicized portions of the quoted excerpts suggest that article I, section 8, clause 17, of the Constitution, may be self-executing where the conditions specified in that clause for the transfer of jurisdiction have been satisfied.¹¹

In *Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937), however, the Supreme Court clearly extended the acceptance doctrine, first applied to transfers of legislative jurisdiction by State cession statutes in *Fort Leavenworth R. R. v. Lowe*, *supra*, to transfers pursuant to article I, section 8, clause 17, of the Constitution. The court said (p. 207):

Even if it were assumed that the state statute should be construed to apply to the federal acquisitions here involved, we should still be met by the contention of the Government that it was not compelled to accept, and has not accepted, a transfer of exclusive jurisdiction. As such a transfer rests upon a grant by the State, through consent or cession, it follows, in accordance with familiar principles applicable to grants, that the grant may be accepted or declined. Acceptance may be presumed in the absence of evidence of a contrary intent, but we know of no constitutional principle which com-

¹¹ *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); *Commonwealth v. Clary*, 8 Mass. 72 (1811); *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 Atl. 889 (1911); *Baker v. State*, 47 Tex. Cr. App. 482, 83 S. W. 1122 (1904); *Curry v. State*, 111 Tex. Cr. App. 264, 12 S. W. 2d 796 (1928); *State ex. rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897).

pels acceptance by the United States of an exclusive jurisdiction contrary to its own conception of its interests. * * *¹²

What constitutes dissent.—Only in a few instances have the courts indicated what may constitute a “dissent” (see *Fort Leavenworth R. R. v. Lowe, supra*) by the Federal Government from a State’s proffer of legislative jurisdiction.¹³ In *Mason Co. v. Tax Comm’n, supra*, the court concluded that a validation by Congress of contracts entered into by Federal administrative officials granting to State officials certain authority with respect to schools, police protection, etc., reflected a Congressional intent not to accept the legislative jurisdiction offered to the Federal Government by the State by the latter’s enactment of a consent statute. In a State case (*International Business Machines Corporation v. Ott*, 230 La. 666, 89 So. 2d 193 (1956)), use by the Federal installation of similar State services, with no indication of Congressional knowledge in the matter, was held to have negated Federal acceptance of jurisdiction proffered under a general consent and cession statute of the State. It may be noted that extension of this

¹² See also *State v. Blair*, 238 Ala. 377, 191 So. 237 (1939), wherein it was held that a subsequent request by a Federal officer for a deed of cession did not overcome the presumption that jurisdiction passed with Federal acquisition of land, under a consent statute.

¹³ In legislation relating to the acquisition of land, Congress has in certain acts expressly rejected jurisdiction where it was not desired. For example, the Weeks Forestry Act (*report*, part I, p. 234), which relates to the acquisition of land for national forest purposes, provides that the State shall not, by reason of the establishment of the national forest, “* * * lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State.” See *State v. Allman*, 167 Tenn. 240, 68 S. W. 2d 478 (1934), *cert. den., sub nom. Van Deventer v. Tennessee*, 293 U. S. 581; *Wilson v. Cook*, 327 U. S. 474 (1946); and citations in footnote 30 (p. 114). To the same effect are the Migratory Bird Conservation Act and other Federal statutes (*report*, part I, pp. 233–238). The Attorney General of California has held that whether there has been a Federal acceptance (or dissent), prior to February 1, 1940, should be determined from all the facts. 1 *Ops. A. G. Cal.* 397 (Apr. 21, 1943).

decision would put in doubt the status of many, if not most, Federal areas now considered to be under the legislative jurisdiction of the United States.¹⁴ In *Atkinson v. State Tax Commission*, 303 U. S. 20 (1938), the court indicated that the enforcement of the Oregon workmen's compensation law in the Federal area was incompatible with exclusive Federal legislative jurisdiction, and, since the Federal Government did not seek to prevent the enforcement of this law, the presumption of Federal acceptance of legislative jurisdiction was effectively rebutted.¹⁵

NECESSITY OF STATE ASSENT TO RETRANSFER OF JURISDICTION TO STATE: *In general.*—In three decisions by State courts,¹⁶ it was concluded that a Federal retrocession of legislative jurisdiction is effective without the consent of the State to such retrocession. In *Renner v. Bennett*, 21 Ohio St. 431 (1871), it was held that the Federal retrocession of legislative jurisdiction over the soldiers' home involved in *Sinks v. Reese*, *supra*, p. 33, did not require the consent of the State, and that such retrocession was effective notwithstanding the rejection by the Ohio legislature of a resolution accepting the retrocession. The Ohio Supreme Court expressed the opinion that the resolution was defeated because it was the view of the legislature that acceptance was not necessary, and the Ohio court indicated its agreement with this view. It should be noted that this decision was rendered prior to the decision in *Fort Leavenworth R. R. v. Lowe*, *supra*, in which the United States Supreme Court

¹⁴ See report, part I, p. 49 *et seq.*

¹⁵ Cf. *Seerman v. Lustig & Weil, Inc.*, 252 App. Div. 906, 299 N. Y. Supp. 920 (1937), where an award under a State workmen's compensation act for an injury received on an exclusive Federal jurisdiction area was sustained on the ground that the employer in its contract with the United States bound itself to provide adequate workmen's compensation, there then being no Federal statute which gave employees the benefit of workmen's compensation. See also p. 207 *et seq.*, *infra*.

¹⁶ *Renner v. Bennett*, 21 Ohio St. 431 (1871); *Ottinger Bros. v. Clark*, 191 Okla. 488, 131 P. 2d 94 (1942); *McDonnell & Murphy v. Lunday*, 191 Okla. 611, 132 P. 2d 322 (1942).

indicated that transfers of legislative jurisdiction between the Federal Government and a State are matters of arrangement between the two governments. Although in that case the United States Supreme Court did not consider the question of whether State consent is essential to a Federal retrocession of jurisdiction, the reasoning leading to its conclusion that Federal consent is essential to a State cession of legislative jurisdiction would, if applied to Federal retrocessions to the State, lead to the conclusion that the latter's consent is essential in order for the retrocession to be effective. The presumption of consent, suggested in the *Fort Leavenworth* case, would likewise appear to apply to a State to which the Federal Government has retroceded jurisdiction.

While the reasoning of the *Fort Leavenworth* decision casts substantial doubt on the soundness of the view expressed in *Renner v. Bennett*, *supra*, it should be noted that the Oklahoma Supreme Court, in two cases, adopted the conclusions reached by the Ohio Supreme Court. In the later of the two Oklahoma cases, *McDonnell & Murphy v. Lunday*, 191 Okla. 611, 132 P. 2d 322 (1942), the court, in its syllabus to its opinion, stated that consent of the State is not essential to a retrocession of legislative jurisdiction by the Federal Government. The matter was not discussed in the opinion, however, and the similarity in the wording of the court's syllabus with that of the syllabus to the Ohio court's opinion suggests that the Oklahoma court merely accepted the Ohio court's conclusion without any extended consideration of the matter. In the earlier of the two cases, which were decided in the same year, the Oklahoma Supreme Court also stated that the effectiveness of Federal retrocession of legislative jurisdiction was not dependent upon the acceptance of the State. In that case, *Ottinger Bros. v. Clark*, 191 Okla. 488, 131 P. 2d 94 (1942), the court said (p. 96 of 131 P. 2d):

If an acceptance was necessary, then it would have been equally necessary that the Congress of the United States accept the act of the legislature of 1913 ceding jurisdic-

tion to the United States. That was never done. But as shown in *Fort Leavenworth R. Co. v. Lowe*, *supra*, and *St. Louis-San Francisco R. Company v. Satterfield*, *supra*, said act was effective without any acceptance by Congress. The Act of Congress of 1936, *supra*, therefore became effective immediately after its final passage.

The Oklahoma court's reliance on the *Fort Leavenworth* decision suggests that its statement that acceptance by the State is not necessary means that there need not be any express acceptance. As was indicated above, the United States Supreme Court in *Fort Leavenworth R. R. v. Lowe*, *supra*, stated that there was a presumption of acceptance; it clearly indicated, however, that while it might not be necessary to have an express acceptance, nevertheless, the Federal Government could reject a State's offer of legislative jurisdiction.

While the decision of the Ohio court in *Renner v. Bennett*, *supra*, provides some authority for the proposition that a Federal retrocession of legislative jurisdiction is effective irrespective of the State's wishes in the matter, the later decision of the United States Supreme Court in *Fort Leavenworth R. R. v. Lowe*, *supra*, appears to support the contrary conclusion; for if, as the United States Supreme Court there indicated, transfers of legislative jurisdiction other than under clause 17 are matters of arrangement between the Federal Government and a State, and if the former may reject a State's offer of legislative jurisdiction, the same reasoning would support the conclusion that a State might likewise reject the Federal Government's offer of a retrocession of legislative jurisdiction. The Oklahoma Supreme Court's decisions do not, for the reasons indicated above, appear to be reliable authority for a contrary conclusion. The reasoning in the *Fort Leavenworth R. R.* case further suggests, however, that in the absence of a rejection the State's acceptance of the retrocession would be presumed."

Exception.—A possible exception to the rule that a State

" *Davis v. Howard*, 306 Ky. 149, 206 S. W. 2d 467 (1947).

may reject a retrocession of legislative jurisdiction may consist of cases in which, as is indicated below, changed circumstances no longer permit the Federal Government to exercise legislative jurisdiction, as for example, where the Federal Government has disposed of the property.¹⁸

DEVELOPMENT OF RESERVATIONS IN CONSENT AND CESSION STATUTES: *Former Federal requirement (R. S. 355) for exclusive jurisdiction.*—Under the act of September 11, 1841 (and subsequently under section 355 of the Revised Statutes of the United States, prior to its amendment by the act of February 1, 1940), the expenditure of public money for the erection of public buildings on any site or land purchased by the United States was prohibited until the State had consented to the acquisition by the United States of the site upon which the structure was to be erected.¹⁹ An unqualified State consent, it has been seen, transfers exclusive legislative jurisdiction to the United States. But State statutes often contained conditions or reservations which resulted in a qualified consent inconsistent with the former requirements of R. S. 355. In construing State statutes during the 1841–1940 period, the Attorneys General of the United States consistently held that the consent required by clause 17 to transfer exclusive legislative jurisdiction to the United States was essential in order to meet the requirements of R. S. 355. Attorneys General expressed differing views, however, as to what constitutes such a consent.

In at least two opinions, the Attorney General held that State consent given subject to the condition that the State retain concurrent jurisdiction with the United States granted

¹⁸ This problem is more fully treated in the succeeding chapter, on termination of legislative jurisdiction.

¹⁹ See footnote 11 (p. 9), for the text of former R. S. 355. The Comptroller of the Treasury ruled that this law did not prohibit payment of the purchase price for land prior to State consent. 3 *Comp. Dec.* 530 (1897).

the requisite consent of the State to a proposed purchase.²⁰ Also, the Attorney General in other opinions held that, if an act of a State legislature amounted to a "consent," then any attempted exceptions, reservations or qualifications in the act were void, since, consent being given by the legislature, the Constitution vested exclusive jurisdiction over the place, beyond the reach of both Congress and the State legislature.²¹

The view was also expressed, on the other hand, that State statutes granting the "right of exclusive legislation and concurrent jurisdiction" failed to transfer the requisite jurisdiction.²² And statutes consenting to the purchase of land by the United States which provided that the State should retain concurrent jurisdiction for the trial and punishment of offenses against the laws of the State did not satisfy the requirements of section 355 of the Revised Statutes.²³ State statutes consenting to the purchase of lands with reservation of (1) the right to administer criminal laws on lands acquired by the United States for Federal building sites,²⁴ (2) the right to punish offenses against State laws committed on sites for United States buildings²⁵ or (3) civil and criminal jurisdiction over persons in territory ceded to the United States for Federal buildings²⁶ were found not compatible with the requirements of R. S. 355.

In addition, the Attorney General expressed the view that a State statute ceding jurisdiction to the United States was insufficient to meet the requirements of R. S. 355 because express reservations therein imposing State taxation, labor, safety and

²⁰ 7 *Ops. A. G.* 628 (1856), (and see *Reddall v. Bryan*, 14 Md. 444 (1859), *app. dism.*, 24 How. 420 (1860)); 24 *Ops. A. G.* 617 (1903).

²¹ 28 *Ops. A. G.* 289 (1907), 10 *Ops. A. G.* 34 (1861).

²² 20 *Ops. A. G.* 242 (1891), 298 (1892). A cession conditioned by the retention of criminal jurisdiction had been held to be inadequate to transfer exclusive jurisdiction. 8 *Ops. A. G.* 418 (1857). See *United States v. Watkins*, 22 F. 2d 437 (N. D. Cal., 1927).

²³ 20 *Ops. A. G.* 242 (1891); *id.* p. 298 (1892); *id.* p. 611 (1893).

²⁴ 31 *Ops. A. G.* 265 (1918); *id.* p. 294 (1918); *cf. United States v. Andem*, 158 Fed. 996 (D. N. J., 1908).

²⁵ 31 *Ops. A. G.* 263 (1918).

²⁶ *Id.* p. 282 (1918).

health laws are inconsistent with exclusive jurisdiction; ²⁷ and statutes expressing qualified consent to acquisitions of land by the United States, it was held by the Attorney General, did not meet the requirements of R. S. 355.²⁸

Therefore, it may well be said that, until the 1940 amendment to R. S. 355 was enacted, it was the view of Attorneys General of the United States that cessions by a State had to be free from conditions or reservations inconsistent with Federal exercise of exclusive legislative jurisdiction.

This view is compatible with an opinion of the Attorney General of Illinois,²⁹ who ruled that under section 355 of the Revised Statutes a State in ceding land to the United States with a transfer of exclusive jurisdiction may only reserve the right to serve criminal and civil process, including the right to arrest criminals and fugitives from justice who have committed crimes and fled to such ceded territory to the same extent as might be done if the criminal or fugitive had fled to another part of the State.

Earlier theory that no reservations by State possible.—It was at one time thought that article I, section 8, clause 17, did not permit the reservation by a State of any jurisdiction over an area falling within the purview of that clause except the right to serve criminal and civil process. Thus, as was indicated in chapter II, in 1819, Justice Story, in *United States v. Cornell*, *supra*, expressed doubts as to "whether congress are by the terms of the constitution, at liberty to purchase lands for forts, dockyards, &c., with the consent of a state legislature, where such consent is so qualified that it will not justify the 'exclusive jurisdiction,' of congress there."

In support of Justice Story's view, it may be noted that clause 17 does not, by its terms, suggest the possibility of concurrent

²⁷ 38 *Ops. A. G.*, 341 (1935).

²⁸ 39 *Ops. A. G.* 285, 291 (1939).

²⁹ *Op. A. G.*, III., No. 8685 (February 19, 1919).

or partial jurisdiction.³⁰ Moreover, the considerations³¹ cited by Madison and others in support of clause 17 suggest that the framers of the Constitution sought to provide a method of enabling the Federal Government to obtain complete and sole jurisdiction over certain areas within the States. Whatever the merits of Justice Story's suggestion may be, however, it is clear that his views do not represent the law today.

State authority to make reservations in cession statutes recognized.—The principle that Federal legislative jurisdiction over an area within a State might be concurrent or partial, as well as exclusive, was not judicially established until 1885, and it was approved by the Supreme Court in a case involving the acquisition of a degree of legislative jurisdiction less than exclusive pursuant to a State cession statute instead of under article I, section 8, clause 17, of the Constitution. In that year, the Supreme Court, in *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525, said (p. 539):

As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post.

In the *Fort Leavenworth R. R.* case the State of Kansas had reserved the right not only to serve criminal and civil process

³⁰ In *Commonwealth v. Young*, 1 Journ. Juris. (Hall's, Phila.) 47 (Pa., 1818), it was suggested that a concurrent jurisdiction was an impossibility.

³¹ Although Madison did indicate a possibility for State retention of civil rights for residents of Federal areas by stipulations at the time the States made cessions, see p. 23, *supra*.

but also the right to tax railroad, bridge, and other corporations, and their franchises and property in the military reservation. As a result of this reservation, the Federal Government was granted only partial legislative jurisdiction, and such limited legislative jurisdiction, provided for by a State cession statute, was held to be valid. This view has prevailed since 1885, but not until 1937 did the Supreme Court adopt a similar view as to transfers of legislative jurisdiction pursuant to article I, section 8, clause 17, of the Constitution.³²

In a case decided after the *Fort Leavenworth R. R. case*, *Crook, Horner & Co. v. Old Point Comfort Hotel Co.*, 54 Fed. 604 (C. C. E. D. Va., 1893), the court implied the same doubts that had been expressed in the *Cornell* case concerning the inability of the Federal Government to acquire through a State consent statute less than exclusive jurisdiction provided for in clause 17. Again, the same view appears to have been expressed by the Supreme Court in *United States v. Unzeuta*, 281 U. S. 138 (1930), in which it was said (p. 142):

When the United States acquires title to lands, which are purchased by the consent of the legislature of the State within which they are situated "for the erection of forts, magazines, arsenals, dockyards and other needful buildings," (Const. Art. I, sec. 8) the Federal jurisdiction is exclusive of all State authority. With reference to land otherwise acquired, this Court said in *Ft. Leavenworth Railroad Company v. Lowe*, 114 U. S. 525, 539, 541, that a different rule applies, that is, that the land and the buildings erected thereon for the uses of the national government will be free from any such interference and jurisdiction of the State as would impair their effective use for the purposes for which the prop-

³² In *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934), the State court said that the consent of the legislature may be conditioned. Cf. *Curry v. State*, 111 Tex. Cr. App. 264, 12 S. W. 2d 796 (1928). In *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), the court expressly reserved opinion on the subject.

perty was acquired. When, in such cases, a State cedes jurisdiction to the United States, the State may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition. * * *

A distinction was thus drawn, insofar as the reservation by the State of legislative jurisdiction is concerned, between transfers of legislative jurisdiction pursuant to article I, section 8, clause 17, of the Constitution, and transfers pursuant to a State cession statute.³³

State authority to make reservations in consent statutes recognized.—In 1937 the Supreme Court for the first time sanctioned a reservation of jurisdiction by a State in granting consent pursuant to article I, section 8, clause 17, of the Constitution, although an examination of the State consent statutes set forth in appendix B of part I of this report discloses that such reservations had not, as a matter of practice, been uncommon prior to that date. In 1937, the Supreme Court, in *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937), sustained the validity of a reservation by the State of West Virginia, in a consent statute, of the right to levy a gross sales tax with respect to work done in a federally owned area to which the consent statute was applicable. In sustaining the reservation of jurisdiction in a State consent statute, the Supreme Court said (pp. 147–149):

It is not questioned that the State may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired.

³³ In many instances, both cession and consent are present and either is effective to transfer jurisdiction. In view of the constitutional basis for exclusive jurisdiction, the courts, in decisions rendered prior to the judicial breaking down of certain differences between transfers of jurisdiction by "consent" and "cession" in the *Dravo* case, *supra*, have regarded the combined provisions as a "consent." *Martin v. House*, 39 Fed. 694 (C. C. E. D. Ark., 1888); *Kelly v. United States*, 27 Fed. 616 (C. C. D. Me., 1885); *State v. Kelly*, 76 Me. 331 (1884); *Foley v. Shriver*, 81 Va. 568 (1886). Cf. *United States v. Davis*, 25 Fed. Cas. 781, No. 14,930 (C. C. D. Mass., 1829).

The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders. *Kohl v. United States*, 91 U. S. 367, 371, 372. In that event, as in cases of acquisition by purchase without consent of the State, jurisdiction is dependent upon cession by the State and the State may qualify its cession by reservations not inconsistent with the governmental uses. * * * The result to the Federal Government is the same whether consent is refused and cession is qualified by a reservation of concurrent jurisdiction, or consent to the acquisition is granted with a like qualification. As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interest both of the national government and of the State, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant it in giving its consent to purchases. Normally, where governmental consent is essential, the consent may be granted upon terms appropriate to the subject and transgressing no constitutional limitation.

* * * * *

Clause 17 contains no express stipulation that the consent of the State must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the

freedom of the State and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation. In the present case the reservation by West Virginia of concurrent jurisdiction did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired, and we are of the opinion that the reservation was applicable and effective.

Retention by Federal Government of less than exclusive jurisdiction on admission of State.—The courts have not had occasion to rule on the question of whether the Federal Government, at the time statehood is granted to a Territory, may retain partial or concurrent jurisdiction, instead of exclusive jurisdiction, over an area within the exterior boundaries of the new State. There appears to be no reason, however, why a degree of legislative jurisdiction less than exclusive might not be retained, and it is highly unlikely that after sustaining a degree of legislative jurisdiction less than exclusive in *Fort Leavenworth R. R. v. Lowe*, *supra*, and *James v. Dravo Contracting Co.*, *supra*, the Supreme Court would conclude that partial or concurrent legislative jurisdiction may not be retained.

Non-interference with Federal use now sole limitation on reservations by States.—At this time the quantum of jurisdiction which may be reserved in a State cession or consent statute is almost completely within the discretion of the State, subject always, of course, to Federal acceptance of the quantum tendered by the State, and subject also to non-impingement of the reservation upon any power or authority vested in the Federal Government by various provisions of the Constitution. In *Fort Leavenworth R. R. v. Lowe*, *supra*, the Supreme Court indicated (p. 539) that a cession might be accompanied with such conditions as the State might see fit to annex “not inconsistent with the free and effective use of the

fort as a military post." In *Arlington Hotel Company v. Fant*, 278 U. S. 439 (1929), the Supreme Court likewise indicated (p. 451) that the State had complete discretion in determining what conditions, if any, should be attached to a cession of legislative jurisdiction, provided that it "saved enough jurisdiction for the United States to enable it to carry out the purpose of the acquisition of jurisdiction." In *United States v. Unzeuta*, 281 U. S. 138 (1930), the Supreme Court stated (p. 142) that in the cession statute the State "may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition." While, it will be noted, these limitations on State reservations of jurisdiction over Federal property all related to reservations in cession statutes, no basis for the application of a different rule to reservations in a consent statute would seem to exist under the decision in *James v. Dravo Contracting Co.*, *supra*. And it should be further noted that the Supreme Court in the *Dravo* case implied a similar limitation as to the discretion of a State in withholding jurisdiction under a consent statute by stating (p. 149) that the reservation involved in that case "did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired."³⁴

Specific reservations approved.—While the general limitation of non-interference with Federal use has been stated to apply to the exercise by a State of its right to reserve a quantum of jurisdiction in its cession or consent statute, apparently in no case to date has a court had occasion to invalidate a reservation by a State as violative of that general limitation. State jurisdictional reservations which have been sustained by the

³⁴ See also *St. Louis-San Francisco Ry. v. Satterfield*, 27 F. 2d 586 (C. A. 8, 1928) ; *Valverde v. Valverde*, 121 Fla. 576, 164 So. 287 (1935) ; *Chicago, R. I. & P. Ry. v. Satterfield*, 135 Okla. 183, 185, 275 Pac. 303, 305, 306 (1929) ; *Rainier Nat. Park Co. v. Martin*, 18 F. Supp. 481 (W. D. Wash., 1937), *aff'd.*, 23 F. Supp. 60, *aff'd.*, 302 U. S. 661 ; *State v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937), 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577 ; *cf. Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939) ; *Buttery v. Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941) ; 38 *Ops. A. G.* 216 (1935) ; 24 *Calif. L. Rev.* 573 (1938).

courts include the reservation of the right to tax privately owned railroad property in a military reservation (*Fort Leavenworth R. R. v. Lowe, supra*; *United States v. Unzeuta, supra*); to levy a gross sales tax with respect to work done in an area of legislative jurisdiction (*James v. Dravo Contracting Co., supra*); to tax the sale of liquor in a national park subject to legislative jurisdiction (*Collins v. Yosemite Park*, 304 U. S. 518 (1938)); to permit residents to exercise the right of suffrage (*Arapojolu v. McMenamin*, 113 Cal. App. 2d 824, 249 P. 2d 318 (1952)); and to have criminal jurisdiction as to any malicious, etc., injury to the buildings of the Government within the area over which jurisdiction had been ceded to the United States (*United States v. Andem*, 158 Fed. 996 (D. N. J., 1908)). And, of course, there are numerous areas, used by the Federal Government for nearly all of its many purposes, as to which the several States retain all legislative jurisdiction, solely or concurrently with the United States, or as to which they have reserved a variety of rights while granting legislative jurisdiction as to other matters to the Federal Government,³⁵ and as to which no question concerning the State-retained jurisdiction has been raised.

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE ACQUIRED BY CONSENT OF STATE UNDER CLAUSE 17: *In general.*—Article I, section 8, clause 17, of the Constitution, provides that the Congress shall have the power to exercise exclusive legislation over “Places” which have been “purchased” by the Federal Government, with the consent of the legislature of the State, “for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.” The quoted words serve to limit the scope of clause 17 (but do not apply, since the decision in the *Fort Leavenworth R. R.* case, *supra*, to transfers of jurisdiction by other means). They exclude from its purview places which were not “purchased” by the

³⁵ See report, part I, p. 81 *et seq.* For construction of statutes making reservations see also *infra* pp. 117 *et seq.* (service of process in general), 147 (service of civil process), and 187 *et seq.* (in general).

Federal Government, and, if the rule of *ejusdem generis* is applied, places which, though purchased by the Federal Government, are for use for purposes not enumerated in the clause.³⁶

Area required to be "purchased" by Federal Government.—The "purchase" requirement contained in clause 17 serves to exclude from its operation places which had been part of the public domain and have been reserved from sale. See *Fort Leavenworth R. R. v. Lowe*, *supra*; *United States v. Unzeuta*, *supra*; *Six Cos., Inc. v. De Vinney*, 2 F. Supp. 693 (D. Nev., 1933); *St. Louis-San Francisco Ry. v. Satterfield*, 27 F. 2d 586 (C. A. 8, 1928). It likewise serves to exclude places which have been rented to the United States Government. *United States v. Tierney*, 28 Fed. Cas. 159, No. 16,517 (C. C. S. D. Ohio, 1864); *Mayor and City Council of Baltimore v. Linthicum*, 170 Md. 245, 183 Atl. 531 (1936); *People v. Bondman*, 161 Misc. Rep. 145, 291 N. Y. S. 213 (1936). Acquisition by the United States of less than the fee is insufficient for the acquisition of exclusive jurisdiction under clause 17. *Ex Parte Hebard*, 11

³⁶ In *Wills v. State*, 3 Heisk. 141 (Tenn., 1871), where grounds occupied only temporarily by Government soldiers, workers, etc., in connection with the establishment of a national cemetery, were held to be within the exclusive jurisdiction of the United States because of the broad designation of lands and buildings contained in the statute ceding jurisdiction, this constitutional objection was not raised. And in *Six Cos., Inc. v. De Vinney*, 2 F. Supp. 693 (D. Nev., 1933), it was held that the consent and cession statute of Nevada, patterned on the language of clause 17, did not cover 100 square miles of territory adjacent to the Boulder Canyon Project which would be useful only during the construction of the dam. See also *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939).

Where, under State law, a fee interest in land extends to the center of abutting streets, the jurisdiction of the Federal Government extends to the center of the street. *Op. J. A. G., Army*, 600.931 (June 7, 1937); *cf. State v. Chin Ping*, 91 Ore. 593, 176 Pac. 188 (1918). But it has been the practice of the Department of the Treasury to exclude in conveyances of land made to it any and all interest in sidewalk and street space. *Op. Sol. Dept. of the Treasury*, CWM No. 14045 (July 12, 1913). A deed of land to the high water mark served to transfer to the United States title and jurisdiction to the low water mark, in view of a general State law carrying grants by a water boundary to low water mark. *French v. Bankhead*, 52 Va. 136 (1854).

Fed. Cas. 1010, No. 6312 (C. C. D. Kan., 1877); *United States v. Schwalby*, 8 Tex. Civ. App. 679, 29 S. W. 90 (1894), *writ of error refused*, 87 Tex. 604, 30 S. W. 435, *rev'd. on other grounds*, 162 U. S. 255. And Federal purchase of property at a tax sale has been held not to transfer jurisdiction. *United States v. Penn*, 48 Fed. 669 (C. C. E. D. Va., 1880).

The term "purchased" does, however, include acquisitions by means of condemnation proceedings,³⁷ as well as acquisitions pursuant to negotiated agreements. See *James v. Dravo Contracting Co.*, *supra*; *Mason Co. v. Tax Comm'n*, *supra*; *Holt v. United States*, 218 U. S. 245 (1910); *Chaney v. Chaney*, 53 N. M. 66, 201 P. 2d 782 (1949); *Arledge v. Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948); *People v. Collins*, 105 Cal. 504, 39 Pac. 16, 17 (1895). The term also includes cessions of title by a State to the Federal Government. *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903).³⁸ A conveyance of land to the United States for a consideration of \$1 has likewise been regarded as a purchase within the meaning of clause 17. 39 *Ops. A. G.* 99 (1937). Acquisition of property by a corporation created by a special act of Congress as an instrumentality of the United States for the purpose of operating a soldiers' home constitutes a purchase by the Federal Government for purposes of clause 17. *Sinks v. Reese*, *supra*; *People v. Mouse*, 203 Cal. 782, 265 Pac. 944, *app. dism., sub nom. California v. Mouse*, 278 U. S. 662, *cert. den.*, 278 U. S. 614 (1928); *State v. Intoxicating Liquors*, 78 Me. 401, 6 Atl. 4 (1886); *State ex rel.*

³⁷ Many State legislatures assume that a consent to condemnation has the same effect as an assent to purchase, for the statutes usually consent to both (*report*, part I, pp. 127-225), and, to be sure, the reasons for vesting exclusive jurisdiction in the Federal Government would seem equally applicable regardless of which method is used.

A cession of exclusive jurisdiction does not constitute a waiver of any rights to compensation that may arise upon the taking of the land. *United States v. Prince William County*, 9 F. Supp. 219, 221 (E. D. Va., 1934) *aff'd.*, 79 F. 2d 1007 (C. A. 4, 1935), *cert. den.*, 297 U. S. 714; such a cession affects merely political status, not title. *United States v. Schwalby*, *supra*.

³⁸ But *cf. Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937); *State ex rel. Russell v. Callvert*, 33 Wash. 380, 74 Pac. 573 (1903).

Lyle v. Willett, 117 Tenn. 334, 97 S. W. 299 (1906); *Foley v. Shriver*, 81 Va. 568 (1886). However, it has been held that a purchase by such a corporation does not constitute a purchase by the Federal Government. *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875); *In re Kelly*, 71 Fed. 545 (C. C. E. D. Wis., 1895); *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 Atl. 889 (1911), (question was left open); see also *Tagge v. Gulzow*, 132 Neb. 276, 271 N. W. 803 (1937). Since acquisitions by condemnation are construed as purchases under article I, section 8, clause 17, of the Constitution, it seems that donations would also be interpreted as purchases. See *Pothier v. Rodman*, 285 Fed. 632 (D. R. I., 1923), *aff'd.*, 264 U. S. 399 (1924); question raised but decision based on other grounds in *Mississippi River Fuel Corporation v. Fontenot*, 234 F. 2d 898 (C. A. 5, 1956), *cert. den.*, 352 U. S. 916.

In *State ex rel. Board of Commissioners v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937), the court considered the question when a purchase is completed. Originally, Montana had a combined cession and consent statute, reserving to the State only the right to serve process. Another statute was enacted in 1934 consenting to the acquisition of and ceding jurisdiction over lands around Fort Peck Dam, but reserving to the State certain rights, including the right to tax within the territory. The Government, prior to the passage of the second act, secured options to purchase land from individuals, entered into possession and made improvements under agreements with the owners. Contracts of sale and deeds were not executed until after the passage of the second act. The court held that by going into possession and making improvements the United States accepted the option and completed a binding obligation which was a "purchase" under the Constitution, and that the State had no right to tax within the ceded territory. The case came up again on the same facts in light of several Supreme Court decisions. The Supreme Court of Montana reached the same decision. *State ex rel. Board of Commissioners v. Bruce*, 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577. But

in *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939), the Montana court came to a contrary conclusion, specifically overruling the *Bruce* cases.³⁹

Term "needful Buildings" construed. The words "Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," as they appear in article I, section 8, clause 17, of the Constitution, generally have not been construed according to the rule of *ejusdem generis*; the words "other needful Buildings" ⁴⁰ have been construed as including structures not of a military character and any buildings or works necessary for governmental purposes. 28 *Ops. A. G.* 185 (1935).⁴¹ Thus, post offices, courthouses and customs houses all have been held to constitute "needful Buildings." ⁴² The term "needful Buildings" in

³⁹ In *Scribner v. Wikstrom*, 93 N. H. 17, 34 A. 2d 658 (1943), it was held that title (and jurisdiction, under a consent statute) did not pass to the United States in a condemnation action upon a taking under 33 U. S. C. 594, since compensation had not then been ascertained or paid. The court distinguished 33 U. S. C. 594 from 40 U. S. C. 258a, which makes specific provision for transfer of title, and acknowledged that the first statute had not been uniformly construed.

⁴⁰ The opinion in *Newcomb v. Rockport*, 183 Mass. 74, 66 N. E. 587 (1903), involving cessions of jurisdiction as to certain lighthouses, contains a discussion of the interpretation to be given "other needful Buildings."

⁴¹ However, in *New Orleans v. United States*, 10 Pet. 662 (1836), it was suggested that the Federal Government could exercise legislative jurisdiction only over forts or other military works. See also *United States v. Bevans*, 3 Wheat. 336 (1818); *Valley County v. Thomas*, *supra*; *In re Kelly*, 71 Fed. 545, 549 (C. C. E. D. Wis., 1895); *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875). And in *Tagge v. Gulzow*, 132 Neb. 276, 271 N. W. 803 (1937), it was decided that land acquired for settlement as a farmstead project was not within the purview of clause 17.

⁴² *Battle v. United States*, 209 U. S. 36 (1908); *United States v. Barney*, 24 Fed. Cas. 1011, No. 14,524 (C. C. S. D. N. Y., 1866); *Martin v. House*, 39 Fed. 694 (C. C. E. D. Ark., 1888); *Bannon v. Burnes*, 39 Fed. 892 (C. C. W. D. Mo., 1889); *United States v. Andem*, 158 Fed. 996 (D. N. J., 1908); *United States v. Pierce County*, 193 Fed. 529 (W. D. Wash., 1912); *Brown v. United States*, 257 Fed. 46 (C. A. 5, 1919), *rev'd. on other grounds*, 256 U. S. 335 (1921); *Sharon v. Hill*, 24 Fed. 726 (C. C. D. Cal., 1885), *app. dism.*, 131 U. S. 438; *Fagan v. Chicago*, 84 Ill. 227, 234 (1876); *State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897), ("cession" treated like a "consent"); *Dibble v. Clapp*, 31 How. Pr. 420 (Buffalo Super. Ct., 1866); *People v. Marra*, 4 N. Y. Cr. Rep. 304 (1886); *People v. Vendome Service, Inc.*, 12

clause 17 has also been held to include national cemeteries,⁴³ penitentiaries,⁴⁴ steamship piers,⁴⁵ waters adjoining Federal lands,⁴⁶ aeroplane stations,⁴⁷ Indian schools,⁴⁸ canal locks and dams,⁴⁹ National Homes for Disabled Volunteer Soldiers,⁵⁰ res-

N. Y. S. 2d 183, *aff'd.*, 284 N. Y. 738, 31 N. E. 2d 508 (1940); *State v. DeBerry*, 224 N. C. 834, 32 S. E. 2d 617 (1945). *The New York Post Office Site*, 10 Ops. A. G. 34 (1861).

⁴³ 13 Ops. A. G. 131 (1869); *Willis v. State*, 3 Heisk. 141 (Tenn., 1871).

⁴⁴ *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916).

⁴⁵ *United States v. Mayor & Council of City of Hoboken, N. J.*, 29 F. 2d 932 (D. N. J., 1928).

⁴⁶ *Ex parte Tatum*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877); *United States v. Carter*, 84 Fed. 622 (C. C. S. D. N. Y., 1897); but *cf. Hamburg American Steamship Co. v. Grude*, 196 U. S. 407 (1905); *Winston Bros. v. Galloway*, 168 Ore. 109, 121 P. 2d 457 (1942); and *Middleton v. La Compagnie Generale Transatlantique*, 100 Fed. 866 (C. A. 2, 1900), *cert. den.*, 177 U. S. 649.

⁴⁷ *United States v. Buffalo*, 54 F. 2d 471 (C. A. 2, 1931), *cert. den.*, 285 U. S. 550 (1932); 38 Ops. A. G. 185 (1935).

⁴⁸ *United States v. Wurtzburger*, 276 Fed. 753 (D. Ore., 1921); *School District v. Steele*, 46 S. D. 589, 195 N. W. 448 (1923).

⁴⁹ *James v. Dravo Contracting Co.*, 302 U. S. 134, 142-143 (1937); *Mason Co. v. Taz Comm'n*, 302 U. S. 186, 203 (1937); *State ex rel. Board of Commissioners v. Bruce*, 104 Mont. 500, 77 P. 2d 403, 408 (1938), *aff'd.*, 305 U. S. 577 (but see *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939)); *United States v. Tucker*, 122 Fed. 518, 522 (W. D. Ky., 1903); *cf. Oscar Daniels Co. v. Sault Ste. Marie*, 208 Mich. 363, 175 N. W. 160 (1919), (a cession statute); 20 Ops. A. G. 611 (1893), (lock-tender's house); *Scribner v. Wikstrom*, 93 N. H. 17, 34 A. 2d 658 (1943); but in *Ohio River Contract Co. v. Gordon*, 244 U. S. 68, 71 (1917), the court expressly refused to pass on the question; in an earlier instance the Comptroller of the Treasury had held these not to be within the purview of R. S. 355 (6 *Comp. Dec.* 843 (1900)). See also *Henry Bickle Co. v. Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918).

⁵⁰ *State v. Intoxicating Liquors*, 78 Me. 401, 6 Atl. 4 (1886); *Sinks v. Reese*, *supra* ("cession" regarded as "consent"), cited with approval in *Surplus Trading Co. v. Cook*, 281 U. S. 647, 654-55 (1930); *State ex rel. Lyle v. Willett*, 117 Tenn. 334, 97 S. W. 299 (1906); *Foley v. Shriver*, 81 Va. 568 (1886), (but holding based on alternative ground). *Contra: In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875), ("cession" treated like "consent"). *Cf. In re Kelly*, 71 Fed. 545, 549 (C. C. E. D. Wis., 1895), where the court expressed the view that the consent provision of the Constitution is applicable only to objects specified therein, and cannot be held to operate, *ipso facto*, for objects not expressly included therein ("cession" regarded as a "consent"). See also *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 Atl. 889 (1911).

ervoirs and aqueducts,⁵¹ and a relocation center.⁵² In *Nikis v. Commonwealth*, 144 Va. 618, 131 S. E. 236 (1926), it was held that the abutment and approaches connected with a bridge did not come within the term "buildings," but a cession statute additionally reciting consent rather than a simple consent statute was there involved.

The Attorney General has said (26 *Ops. A. G.* 289 (1907), (p. 297)):

There can be no question and, so far as I am aware, none has been raised that the word "buildings" in this passage [of the Constitution] is used in a sense sufficiently broad to include public works of any kind * * *.

The most recent, and most comprehensive, definition of the term "needful Buildings," as it appears in clause 17, is to be found in *James v. Dravo Contracting Co.*, 302 U. S. 134, in which the court said (pp. 142-143):

Are the locks and dams in the instant case "needful buildings" within the purview of Clause 17? The State contends that they are not. If the clause were construed according to the rule of *ejusdem generis*, it could be plausibly contended that "needful buildings" are those of the same sort as forts, magazines, arsenals and dock-yards, that is, structures for military purposes. And it may be that the thought of such "strongholds" was uppermost in the minds of the framers. Elliot's Debates, Vol. 5, pp. 130, 440, 511; Cf. Story on the Constitution,

⁵¹ 26 *Ops. A. G.* 289, 297 (1907); In *State ex rel. Board of Commissioners v. Bruce*, *supra*, it was unsuccessfully contended that since buildings were erected only on part of an area which had been acquired with the State's consent, exclusive jurisdiction occurred only over a correspondingly small area. In *Valley County v. Thomas*, *supra*, it was decided with respect to the same lands as were involved in the *Bruce* case that neither a lake nor an earth dam were buildings, and that buildings erected incident to the construction of the dam did not serve to transfer jurisdiction under a consent and cession statute worded similarly to the "needful Buildings" phrase of clause 17. See also *Benson v. United States*, *supra*.

⁵² *Lynch v. Hammock*, 204 Ark. 911, 165 S. W. 2d 369 (1942).

Vol. 2, § 1224. But such a narrow construction has been found not to be absolutely required and to be unsupported by sound reason in view of the nature and functions of the national government which the Constitution established.

* * * We construe the phrase "other needful buildings" as embracing whatever structures are found to be necessary in the performance of the functions of the Federal Government.

In this decision, the Supreme Court expressed its sanction to the conclusion theretofore generally reached by other authorities, that the rule of *ejusdem generis* had been renounced, and that acquisition by the United States for any purpose might be held to fall within the Constitution,⁵³ where a structure is involved.

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE ACQUIRED BY CESSION OF STATE: *Early view*.—Until the *Fort Leavenworth R. R.* case, the courts had made no distinction between consents and cessions, and had treated cessions as the "consent" referred to in the Constitution.⁵⁴ *United States v. Davis*, 25 Fed. Cas. 781, No. 14,930 (C. C. D. Mass., 1829); *Ex parte Hebard*, 11 Fed. Cas. 1010, No. 6,312 (C. C. D. Kan.,

⁵³ Before the decision in the *Dravo* case, the position of the authorities was thus summarized by the Attorney General (38 *Ops. A. G.* 185 (1935)):

"The term 'other needful buildings' used in the constitutional provision and in the acts of cession of the various states has been given liberal interpretation by the courts and has been defined as the buildings or works necessary for governmental purposes and has not been limited to the class specifically designated in the constitutional provision or in the statutes."

But see *In re U. S. Housing Authority*, 26 Ohio Op. 133, 39 Ohio Abs. 371 (1943), in which the Ohio Board of Tax Appeals ruled (dictum in view of the provisions of 40 U. S. C. 421, in which the United States dissents to acceptance, and retrocedes jurisdiction over housing projects), that housing is not an essential governmental function and therefore is not within the purview of article I, section 8, clause 17.

⁵⁴ It is possible, as indicated by *Curry v. State*, 111 Tex. Cr. App. 264, 12 S. W. 2d 796 (1928), that under a State statute transfer of jurisdiction under clause 17 may be construed as dependent upon a cession.

1877). In the case of *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875), decided before *Fort Leavenworth R. R. v. Lowe*, *supra*, the court stated (p. 387):

For it is not competent for the legislature to abdicate its jurisdiction over its territory, except where the lands are purchased by the United States, for the specific purposes contemplated by the constitution. When that is done, the state may cede its jurisdiction over them to the United States.

Present view.—After the *Fort Leavenworth R. R.* case, it was held that either a purchase with the consent of the State or an express cession of jurisdiction could accomplish a transfer of legislative jurisdiction. *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); *State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897); *Curry v. State*, 111 Tex. Cr. App. 264, 12 S. W. 2d 796 (1928); 9 *Ops. A. G.* 263 (1858); 13 *Ops. A. G.* 411 (1871); 15 *Ops. A. G.* 480 (1878); *cf. United States v. Andem*, 158 Fed. 996 (D. N. J., 1908).

By means of a cession of legislative jurisdiction by a State, the Federal Government may acquire legislative jurisdiction not only over areas which fall within the purview of article I, section 8, clause 17, of the Constitution, but also over areas not within the scope of that clause.⁵⁵ While a State *may* cede to the Federal Government legislative jurisdiction over a "place" which was "purchased" by the Federal Government for the "Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," it is not *essential* that an area be "purchased" by the Federal Government in order to be the subject of a State cession statute.⁵⁶ Thus, the transfer of legislative jurisdiction pursuant to a State cession statute has

⁵⁵ In *Oscar Daniels Co. v. Saull Ste. Marie*, *supra*, the trial court, an excerpt from the opinion of which appears in 178 N. W. at p. 162, expressed the view, not affected by a reversal of its decision, that in the case of a State cession statute the Federal Government acquires jurisdiction solely from the cession and not from the Constitution.

⁵⁶ *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *Concessions Co. v. Morris*, 100 Wash. 46, 186 Pac. 655 (1919).

been sustained with respect to areas which were part of the public domain and which have been reserved from sale or other disposition. *Fort Leavenworth R. R. v. Lowe, supra*; *Chicago, Rock Island & Pacific Railway v. McGlinn*, 114 U. S. 542 (1885); *Benson v. United States*, 146 U. S. 325 (1892). It is not even essential that the Federal Government own an area in order to exercise with respect to it legislative jurisdiction ceded by a State. Thus, a privately owned railroad line running through a military reservation may be subject to Federal legislative jurisdiction as the result of a cession. *Fort Leavenworth R. R. v. Lowe, supra*; *Chicago, etc., Ry. v. McGlinn, supra*; *United States v. Unzeuta, supra*. Similarly, a privately operated hotel or bath house leased from the Federal Government and located on a military reservation may, as a result of a State cession statute, be subject to Federal legislative jurisdiction. *Arlington Hotel Company v. Fant*, 278 U. S. 439 (1929); *Buckstaff Bath House Co. v. McKinley*, 308 U. S. 358 (1939); *Superior Bath House Co. v. McCarroll*, 312 U. S. 176 (1941). Legislative jurisdiction acquired pursuant to a State cession statute may extend to privately owned land within the confines of a national park. *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885. It will not so extend if the State's cession statute limits cession to lands owned by the Government. *Op. A. G., Cal.*, No. NS3019 (Oct. 22, 1940). In *United States v. Unzeuta, supra*, the extension of Federal legislative jurisdiction over a privately owned railroad right-of-way located within an area which was owned by the Federal Government and subject to the legislative jurisdiction of the Federal Government was justified as follows (pp. 143-145):

* * * There was no express exception of jurisdiction over this right of way, and it can not be said that there

¹¹ This is the strongest case in support of the proposition that the constitutional enumeration of purposes is applicable to cessions, but in *Collins v. Yosemite Park Co.*, 304 U. S. 518, 529 (1938), the court states that the question was not decided in the *Arlington Hotel* case.

was any necessary implication creating such an exception. The proviso that the jurisdiction ceded should continue no longer than the United States shall own and occupy the reservation had reference to the future and cannot be regarded as limiting the cession of the entire reservation as it was known and described. As the right of way to be located with the approval of the Secretary of War ran across the reservation, it would appear to be impracticable for the State to attempt to police it, and the Federal jurisdiction may be considered to be essential to the appropriate enjoyment of the reservation for the purposes to which it was devoted.

* * * * *

The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, pipe lines, telegraph and telephone lines across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. * * * While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation.

This excerpt from the court's opinion appears to indicate that the practicalities of a given situation will be highly persuasive, if not conclusive, on the issue of whether Federal legislative jurisdiction may be exercised over privately owned areas used for non-governmental purposes.

Cessions of legislative jurisdiction are free not only from the requirements of article I, section 8, clause 17, as to purchase—and, with it, ownership—but they are also free from the requirement that the property be used for one of the purposes enumerated in clause 17, assuming that however broad

those purposes are under modern decisions the term "other needful Buildings" used therein may have some limitation. In *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938), in which the Supreme Court sustained the exercise of Federal legislative jurisdiction acquired pursuant to a State cession statute, it was said (pp. 529-530):

* * * There is no question about the power of the United States to exercise jurisdiction secured by cession, though this is not provided for by Clause 17. And it has been held that such a cession may be qualified. It has never been necessary, heretofore, for this Court to determine whether or not the United States has the constitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in *Arlington Hotel v. Fant*, 278 U. S. 439, 454. It was assumed without discussion in *Yellowstone Park Transportation Co. v. Gallatin County*, 31 F. 2d 644.

On account of the regulatory phases of the Alcoholic Beverage Control Act of California, it is necessary to determine that question here. The United States has large bodies of public lands. These properties are used for forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by Clause 17. In *Silas Mason Co. v. Tax Commission of Washington*, 302 U. S. 186, we upheld in accordance with the arrangements of the State and National Governments the right of the United States to acquire private property for use in "the reclamation of arid and semiarid lands" and to hold its purchases subject to state jurisdiction. In other instances, it may be deemed important or desirable by the National Government and the State Government in which the particular property is located that exclusive jurisdiction be vested in the United States by cession or consent. No ques-

tion is raised as to the authority to acquire land or provide for national parks. As the National Government may, "by virtue of its sovereignty" acquire lands within the borders of states by eminent domain and without their consent, the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights. * * *

This quoted excerpt suggests that the Federal Government may exercise legislative jurisdiction, ceded to it by a State, over any area which it might own, acquire, or use for Federal purposes.⁵⁸ In *Bowen v. Johnston*, 306 U. S. 19 (1939), the Supreme Court again indicated that it was constitutionally permissible for the Federal Government to exercise over a national park area legislative jurisdiction which might be ceded to it by a State.

Specific purposes for which cessions approved.—While the *Collins* case, *supra*, indicates the current absence of limitations, with respect to use or purpose for which the Federal Government acquires land, on the authority to transfer legislative jurisdiction to that Government by cession, it is of interest to note something of the variety of specific uses and purposes for which cessions had been deemed effective: postoffices, court-houses and custom houses: *United States v. Andem*, 158 Fed. 996 (D. N. J., 1908); *Brown v. United States*, 257 Fed. 46 (C. A. 5, 1919), *rev'd. on other grounds*, 256 U. S. 335 (1921); *State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897), (cession statute treated as a consent); *Sauer v. Steinbauer*, 14 Wis. 70 (1861); lighthouses: *Newcomb v. Rockport*, 183

⁵⁸ Even earlier a Federal court had expressed the view that a State may cede jurisdiction to the Federal Government for any of the Government's purposes. *Robbins v. United States*, 284 Fed. 39 (C. A. 8, 1922). But in 1937 the Attorney General of California held that California's statute transferring jurisdiction was ineffectual as to national parks because the Federal Government could not accept jurisdiction over an area to be used for other than a "constitutional purpose." *Op. A. G., Cal.*, No. NS409 (June 30, 1937).

Mass. 74, 66 N. E. 587 (1903); national penitentiary: *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); national home for disabled volunteer soldiers: *People v. Mouse*, 203 Cal. 782, 265 Pac. 944, *app. dism.*, 278 U. S. 662 (1928); bridge for military purposes: 13 *Ops. A. G.* 418 (1871); national parks: *Robbins v. United States*, 284 Fed. 39 (C. A. 8, 1922); *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F. 2d 644 (C. A. 9, 1929), *cert. den.*, 280 U. S. 555; *State ex rel. Grays Harbor Construction Co. v. Department of Labor and Industries*, 167 Wash. 507, 10 P. 2d 213 (1932). *Cf. Via v. State Commission on Conservation, etc.*, 9 F. Supp. 556 (W. D. Va., 1935), *aff'd.*, 296 U. S. 549 (1935); waters contiguous to navy yard: *Ex parte Tatem*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877).⁵⁸

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE RETAINED BY FEDERAL RESERVATION: The courts have not, apparently, had occasion to consider whether any limitations exist with respect to the types of areas in which the Federal Government may exercise legislative jurisdiction by reservation at the time of granting statehood. There appears, however, to be no reason for concluding that Federal legislative jurisdiction may not be thus retained with respect to all the variety of areas over which Federal legislative jurisdiction may be ceded by a State.

PROCEDURAL PROVISIONS IN STATE CONSENT OR CESSION STATUTES: A number of State statutes providing for transfer of legislative jurisdiction to the Federal Government contain provisions for the filing of a deed, map, plat, or description pertaining to the land involved in the transfer, or for other action by Federal or State authorities, as an incident of such transfer.⁵⁹ Such provisions have been variously held to constitute conditions precedent to a transfer of jurisdiction, or as

⁵⁸ *Cf. Hamburg American Steamship Co. v. Grube*, 196 U. S. 407 (1905).

⁵⁹ See report, part I, p. 28 *et seq.*

pertaining to matters of form noncompliance with which will not defeat an otherwise proper transfer.^a It has also been held that there is a presumption of Federal compliance with State procedural requirements. *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916).

JUDICIAL NOTICE OF FEDERAL EXCLUSIVE JURISDICTION: Conflict of decisions.—There is a conflict between decisions of several State courts with respect to the question whether the court will take judicial notice of the acquisition by the Federal Government of exclusive jurisdiction. In *Baker v. State*, 47 Tex. Cr. App. 482, 83 S. W. 1122 (1904), the court took judicial notice that a certain parcel of land was owned by the United States and was under its exclusive jurisdiction. And in *Lasher v. State*, 30 Tex. Cr. App. 387, 17 S. W. 1064 (1891), it was stated that the courts of Texas would take judicial notice of the fact that Fort McIntosh is a military post, ceded to the United States, and that crimes committed within such fort are beyond the jurisdiction of the State courts.

A number of States uphold the contrary view, however. In *People v. Collins*, 105 Cal. 504, 39 Pac. 16 (1895), the court

^a *Brown v. United States*, 257 Fed. 46 (C. A. 5, 1919), *rev'd on other grounds*, 256 U. S. 335; *United States v. Watkins*, 22 F. 2d 437 (N. D. Cal., 1927); *Six Cos. Inc. v. De Vinney*, 2 F. Supp. 693 (D. Nev., 1933); *State ex rel. Board of Commissioners v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937), 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577, *contra: Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939); *State v. Mendez*, 57 Nev. 192, 61 P. 2d 300 (1936); *Pothier v. Rodman*, 291 Fed. 311 (C. A. 1, 1923), *rev'd on other grounds*, 264 U. S. 399 (1924); *Gill v. State*, 141 Tenn. 379, 210 S. W. 637 (1919); *Buttery v. Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); *People v. Vendome Service, Inc.*, 12 N. Y. S. 2d 183, *aff'd.*, 284 N. Y. 738, 31 N. E. 2d 508 (1940); *State ex rel. Grays Harbor Const. Co. v. Dept. of Labor & Industries*, 167 Wash. 507, 10 P. 2d 213 (1932); *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937). *Op. A. G., Cal.*, No. NS3188 (Jan. 16, 1941), (filing of plat required by statute held condition precedent), *cf.* 23 *Ops. A. G. Cal.* 14 (Jan 8, 1954).

took the view that Federal jurisdiction involves a question of fact and that the courts would not take judicial notice of such questions.⁶²

In *United States v. Carr*, 25 Fed. Cas. 306, No. 14,732 (C. C. S. D. Ga., 1872), the court held that allegation of exclusive Federal jurisdiction in the indictment, without a denial by the defendant during the trial, was sufficient to establish Federal jurisdiction over the crime alleged. As to lands acquired by the Federal Government since the amendment of section 355 of the Revised Statutes of the United States on February 1, 1940, which provided for formal acceptance of legislative jurisdiction, it would appear necessary to establish the fact

⁶² See also: *Webb v. J. G. White Engineering Corp.*, 204 Ala. 429, 85 So. 729 (1920); *People v. Godfrey*, 17 Johns. 225 (N. Y., 1819); *People v. Brown*, 60 Cal. App. 2d 602, 159 P. 2d 686 (1945); *People v. Kobryn*, 294 N. Y. 192, 61 N. E. 2d 441 (1945); *Kitchens v. Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101 (1947), *aff'd*, 149 Ohio St. 500, 70 N. E. 2d 906 (1948); *Gill v. State*, 141 Tenn. 379, 210 S. W. 637 (1919); *Nikis v. Commonwealth*, 144 Va. 618, 131 S. E. 236 (1926); *Buttery v. Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941). In *People v. Hillman*, 246 N. Y. 467, 159 N. E. 400 (1927), it was held that where the limits of States' political dominion depend solely on the construction of deeds and statutes a question of law is presented. In *Henry Bickel Co. v. Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918), the court stated a view that jurisdiction in the State would be presumed unless established to be in the Federal Government as a matter of fact. To the same effect was the holding in *State v. Mendez*, 57 Nev. 192, 61 P. 2d 300 (1936). In *Allen v. Industrial Acc. Com.*, 3 Cal. 2d 214, 43 P. 2d 787 (1935), the court held that judicial notice should be taken of records establishing the exclusive Federal jurisdiction status of an area. In *Holt v. United States*, 218 U. S. 245 (1910), the Supreme Court queried whether *de facto* Federal exercise of authority was not sufficient to establish its possession of exclusive jurisdiction, and in *Colorado v. Toll*, 268 U. S. 228 (1925), the court remanded a case for ascertainment of further facts in the absence of proof of a State cession of jurisdiction. On the basis of *Holt v. United States*, *supra*, the court stated in *Hudspeth v. United States*, 223 F. 2d 848 (C. A. 5, 1955), that if a place were sufficiently described the court would take judicial notice of facts which vest the United States with jurisdiction. It was held to the same effect in *Brown v. United States*, 257 Fed. 46 (C. A. 5, 1919), *rev'd, on other grounds*, 256 U. S. 335 (1921), and in *Krull v. United States*, 240 F. 2d 122 (C. A. 5, 1957). See also p. 49 *et seq.*, *supra*.

of such acceptance in order to establish Federal jurisdiction. In any event, whether the United States has legislative jurisdiction over an area, and the extent of any such jurisdiction, involve Federal questions, and a decision on these questions by a State court will not be binding on Federal courts.⁴³

⁴³ *Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937) ; *United States v. Tully*, 140 Fed. 899 (C. C. D. Mont., 1905) ; *Op. J. A. G., Army*, 1949/1729 (Mar. 10, 1949).

Termination of Legislative Jurisdiction

UNILATERAL RETROCESSION OR RECAPTURE OF JURISDICTION:
Retrocession.—There has been discussed in the preceding chapter¹ whether the United States, while continuing in ownership and possession of land, may unilaterally retrocede to the State legislative jurisdiction it has held with respect to such land. It was concluded that, while there is opinion to the contrary, by analogy to the decision in the case of *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885), acceptance of such retrocession by a State is essential, although it seems probable that such acceptance may be presumed in the absence of—to use the term employed in the *Fort Leavenworth R. R.* case, *supra*—a “dis-sent” on the part of the State.

Recapture.—In *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F. 2d 644 (C. A. 9, 1929), *cert. den.*, 280 U. S. 555, it was stated that a State cannot unilaterally recapture jurisdiction which had previously been ceded by it to the Federal Government.² A similar rule must apply, for lack of any basis on which to rest any different legal reasoning, where Federal legislative jurisdiction over an area is derived from a reservation of such jurisdiction by the Federal Government at the time the State was admitted into the Union, or where it is derived

¹ See p. 54, *supra*.

² See also: *United States v. Unzeuta*, 281 U. S. 138 (1930); *Rogers v. Squier*, 157 F. 2d 948 (C. A. 9, 1946), *cert. den.*, 330 U. S. 840; *In re Ladd*, 74 Fed. 31 (C. C. D. Neb., 1896); *State v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937), 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577, overruled on other grounds by *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939); *Buttery v. Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941).

from the provisions of article I, section 8, clause 17, of the Constitution. In any case, therefore, it would appear clear that a State cannot unilaterally recapture legislative jurisdiction once it is vested in the Federal Government.

MEANS OF TERMINATION OF FEDERAL JURISDICTION: *In general.*—Federal legislative jurisdiction over an area within a State will, however, terminate under any of the following three sets of circumstances:

1. Where the Federal Government, by or pursuant to an act of Congress, retrocedes jurisdiction and such retrocession is accepted by the State;
2. Upon the occurrence of the circumstances specified in a State cession or consent statute for the reversion of legislative jurisdiction to the State; or
3. When the property is no longer used for a Federal purpose.

FEDERAL STATUTORY RETROCESSION OF JURISDICTION: *In general.*—Over the years the United States Government has, in the natural course of events, acquired legislative jurisdiction over land when such jurisdiction obviously was neither needed nor exercised. In some such cases where hardship has been worked on the Federal Government, on State and local governments, or on individuals, statutes have been enacted by the Congress returning jurisdiction to the States. These statutes can be grouped into two categories:

1. Those enacted to give the inhabitants of federally owned property the normal incidents of civil government enjoyed by the residents of the State in which the property is located, such as voting and access to the local courts in cases where residence within a State is a factor.
2. Those enacted to give State or local governments authority for policing highways traversing federally owned property.

A small number of other somewhat similar statutes cannot easily be categorized.

This chapter deals only with general retrocessions of legislative jurisdiction possessed by the United States. Retrocessions relating to particular matters, such as taxation, will be dealt with in chapter VII.

Right to retrocede not early apparent.—The right of Congress to retrocede jurisdiction over lands which are within the exclusive legislative jurisdiction of the United States has not always been apparent. Justice Story, it has already been noted,³ had expressed the view in 1819 that the Federal Government was required by clause 17 to assume jurisdiction over areas within the purview of the clause which were acquired by it. The debate⁴ preceding the enactment in 1871 of a statute retroceding jurisdiction over a disabled soldiers' home in Ohio demonstrates the conflicting views that continued to exist on the subject of retrocession even at that late date. Both the senators who favored the bill and those who opposed it were desirous of finding a means of negating or avoiding a decision of the Supreme Court of Ohio,⁵ which had held that the residents of the home could not vote because of Federal possession of legislative jurisdiction over the area on which the home was located. Contemplating Justice Story's decision on the one hand, and the Ohio decision on the other, Senator Thurman of Ohio said, "the dilemma, therefore, is one out of which you cannot get."⁶

Out of the dilemma, however, Congress did get, but not without much debate. Without detailing the arguments, pro and con, advanced during Senate debate, a few quotations will suffice to point out the reasoning in favor of and against the measure.

³ *Supra*, p. 59.

⁴ Cong. Globe, 41st Cong., 3d Sess. 512-524, 541-548 (1871).

⁵ *Sinks v. Reese*, 19 Ohio St. 306 (1869).

⁶ Cong. Globe, 41st Cong., *supra*, at p. 517.

During the debate Senator Thurman also said:

It [the bill] provides, that "the jurisdiction over the place" shall be ceded to the State of Ohio. Is it necessary for me to say to any lawyer that that is an unconstitutional bill? The Constitution of the United States says in so many words that the Congress shall have power "to exercise exclusive jurisdiction in all cases whatsoever over" such territory. Can Congress cede away one of its powers? We might as well undertake to cede away the power to make war, the power to make peace, to maintain an Army or a Navy, or to provide a civil list, as to undertake to cede away that power.⁷

and:

* * * As was read to the Senate yesterday from a decision made by Judge Story, it is not competent for Congress to take a cession of land for one of the purposes mentioned in the clause of the Constitution which I read yesterday, to wit, for the seat of the national capital, for forts, arsenals, hospitals, or the like; it is not competent for Congress to take any such cession limited by a qualification that the State shall have even concurrent jurisdiction with the Federal Government over that territory, much less that the State can have exclusive jurisdiction over it; because the Constitution of the United States, the supreme law of the land, declares that over all territory owned by the United States for such a purpose Congress shall have exclusive jurisdiction. Then, obviously, if it is not competent for Congress to accept from a State a grant of territory, the State reserving jurisdiction over it, or even a qualified jurisdiction over it, where the territory is used for one of these purposes, as a matter of course Congress cannot cede away the jurisdiction of the United States.⁸

⁷ *Id.* at p. 516.

⁸ *Id.* at p. 541.

In discussing whether it was necessary that exclusive jurisdiction be in the United States, Senator Morton of Indiana, one of the proponents of the bill, said:

It [clause 17] does not say it shall have; but the language is, "and to exercise like authority;" that is, it may acquire complete jurisdiction; but may it not acquire less? Now, I undertake to say that the rule and the legislation heretofore by which the Government has had exclusive jurisdiction over arsenals in the States has been without good reason. It has always been a difficulty. There is not any sense in it. It would have been a matter of more convenience from the beginning, both to the Federal Government and the States, if the ordinary jurisdiction to punish crimes and enforce ordinary contracts had been reserved over arsenal grounds and in forts. There never was any reason in that. It has always been a blunder and has always been an inconvenience.

But the question is now presented whether the Government may not, by agreement with the State, take jurisdiction just so far as she needs it, and leave the rest to the State, where it was in the first place. It seems to me that reason says that that may be done, because the greater always includes the less. It seems, too, that convenience would say that it should be done. * * *

The bill was passed.¹⁰ The Supreme Court of the State of Ohio, in another contested election case,¹¹ thereafter upheld the right of the inmates of the home to vote. In the course of the court's opinion the authority of Congress to retrocede jurisdiction was likewise upheld.

Right to retrocede established.—That the Federal Government may retrocede to a State legislative jurisdiction over an

¹⁰ *Id.* at pp. 545-546.

¹¹ Act of January 21, 1871, 16 Stat. 399.

¹² *Renner v. Bennett*, 21 Ohio St. 431 (1871).

area and that a State may accept such retrocession would appear to be fully established by the reasoning adopted by the Supreme Court in *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885), in which it was stated that the rearrangement of legislative jurisdiction over a Federal area within the exterior boundaries of a State is a matter of agreement by the Federal Government and the particular State in which the federally owned area is located. While this reasoning was employed to sustain a cession of legislative jurisdiction by a State to the Federal Government, it would appear to be equally applicable to a retrocession of legislative jurisdiction to a State.

Some 27 years after enactment of the legislation retroceding jurisdiction over the disabled soldiers' home in Ohio, Congress enacted a statute¹² similarly retroceding jurisdiction over such homes in Indiana and Illinois. The Supreme Court of Indiana, in a case contesting the inmates' right to vote, upheld this right and the right of Congress to retrocede jurisdiction.¹³ An additional such retrocession statute, involving a home in Kansas, was enacted in 1901.¹⁴

Construction of retrocession statutes.—It has been held that statutes retroceding jurisdiction to a State must be strictly construed.¹⁵ This view was not followed, on the other hand, in *Offutt Housing Company v. Sarpy County*, 351 U. S. 253 (1956). There, the Supreme Court said (p. 260):

* * * We could regard Art. I, § 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit and unambiguous legislative enactment. We have not here-

¹² Act of July 7, 1898, 30 Stat. 668.

¹³ *State ex rel. Cashman, et al. v. Board of Commissioners of Grant County*, 153 Ind. 302, 54 N. E. 809 (1899).

¹⁴ Act of Mar. 3, 1901, 31 Stat. 1175.

¹⁵ *Oklahoma City v. Sanders*, 94 F. 2d 323, 328 (C. A. 10, 1938). See also p. 188, *infra*, for rule on construction of State statutes making reservations.

tofore so regarded it, see *S. R. A., Inc. v. Minnesota*, 327 U. S. 558; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of those cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, is that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case.

It is difficult to follow the reasoning in the *Offutt* case that the Congress did not relinquish the Federal power of "exclusive Legislation" over the areas involved, but merely permitted State taxation, since imposition of taxes requires "jurisdiction" in the State over the subject matter, aside from any "consent" of the Federal Government, as will be more fully developed hereinafter.¹⁶

SUMMARY OF RETROCESSION STATUTES: *Retrocessions few.*—There have been relatively few instances, however, in which the Federal Government has retroceded all legislative jurisdiction over an area that is normally exercised by a State. The

¹⁶ *Infra*, p. 245, *et seq.*

instances mentioned below are all which were found in a diligent search of Federal statutes.

Statutes enacted to afford civil rights to inhabitants of Federal enclaves.—One of the earliest retrocession statutes enacted by the Congress of the United States involved a portion of the District of Columbia.¹⁷ The seat of the general government had been established on territory received in part from the State of Maryland and in part from the State of Virginia, embracing the maximum ten miles square permitted by clause 17. By the act of February 27, 1801, 2 Stat. 103, that portion of the District of Columbia which had been ceded by Maryland was designated the county of Washington, and that portion which had been ceded by Virginia was denominated the county of Alexandria. A report¹⁸ on the bill providing for retrocession to Virginia of Alexandria County stated:

* * * The people of the county and town of Alexandria have been subjected not only to their full share of those evils which affect the District generally, but they have enjoyed none of those benefits which serve to mitigate their disadvantages in the county of Washington. The advantages which flow from the location of the seat of government are almost entirely confined to the latter county, whose people, as far as your committee are advised, are entirely content to remain under the exclusive legislation of Congress. But the people of the county and town of Alexandria, who enjoy few of those advantages, are (as your committee believe) justly impatient of a state of things which subjects them not only to all the evils of inefficient legislation, but also to political disfranchisement. To enlarge on the immense value of the elective franchise would be unnecessary before an American Congress, or in the present state of public opinion. The condition of

¹⁷ Act of July 9, 1846, 9 Stat. 35.

¹⁸ H. Rept. No. 325, 29th Cong., 1st Sess. 489 (1846).

thousands of our fellow-citizens who, without any equivalent, (if equivalent there could be,) are thus denied a vote in the local or general legislation by which they are governed, who, to a great extent, are under the operation of old English and Virginia statutes, long since repealed in the counties where they originated, and whose sons are cut off from many of the most highly valued privileges of life, except upon the condition of leaving the soil of their birth, is such as most deeply move the sympathies of those who enjoy those rights themselves, and regard them as inestimable. * * *

It has been noted ¹⁹ that other statutes, the acts of January 21, 1871, 16 Stat. 399, July 7, 1898, 30 Stat. 668, and March 3, 1901, 31 Stat. 1175, were thereafter enacted by the Congress in concern over voting rights. During the debate on the 1871 bill much was said, pro and con, concerning the "right" of the inhabitants of the disabled soldiers' home to vote.²⁰

Other statutes of "special" application have been passed which involved additional fields of civil rights. One such statute is the act of March 4, 1921.²¹ During World War I the United States Housing Corporation acquired exclusive jurisdiction over a site on which a town was to be built for the purpose of housing Government employees. After the war, according to the report ²² which accompanied the bill to the House of Representatives, the Federal Government desired:

* * * that the property [jurisdiction] be retroceded to the State of Virginia in order that that State may exercise political power, so that taxes may be levied and the town may be incorporated. As it is now, the town of Cradock, consisting of 2,000 people, is without the protection of any civil government, as the National Government is no longer in charge there.

¹⁹ *Supra*, at pp. 87, 88.

²⁰ Cong. Globe, 41st Cong., 3d Sess. 517 *et seq.* (1871).

²¹ 41 Stat. 1439.

²² H. Rept. No. 1311, 66th Cong., 3d Sess. 7777 (1921).

The bill passed both the Senate and House without discussion or debate.

Another statute of "special" application which deals with the problem of normal civil rights for inhabitants of Federal enclaves is the act of March 4, 1949,²³ known as the Los Alamos Retrocession Bill. Identical bills were introduced in the House and Senate to cover the problems arising at the Atomic Energy Commission area at Los Alamos.²⁴ The House bill was finally enacted. The following extract from the Senate report²⁵ on the bill indicates the problems desired to be eliminated by the legislation:

The need for establishing uniformity of jurisdiction in the administration of civil functions of the Los Alamos area, and the further need for assuring the people of the area the right of franchise and the right to be heard in the courts of New Mexico, was emphasized by two recent decisions of the Supreme Court of the State of New Mexico.²⁶ These decisions declared that those persons residing on territory subject to exclusive Federal jurisdiction are not citizens of the State of New Mexico and, therefore, have neither the right to vote nor the right to sue in courts of that State for divorce. However, under an act of Congress approved October 9, 1940 (Buck Act), the State of New Mexico is authorized to require such noncitizens to pay sales, use, and income taxes just as do those persons enjoying full State citizenship.

The effect of this bill will be to remove disabilities inherent in the noncitizen status of persons residing on the areas now under exclusive Federal jurisdiction. It will give them the same rights and privileges which those persons residing on lands at Los Alamos under State jurisdiction now enjoy. It will give them the right to

²³ 63 Stat. 11.

²⁴ H. R. 54, 81st Cong., 1st Sess.; S. 152, 81st Cong., 1st Sess.

²⁵ S. Rept. No. 76, 81st Cong., 1st Sess. 11291 (1949).

²⁶ Ed. note: *Arledge v. Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948); *Chaney v. Chaney*, 53 N. M. 66, 201 P. 2d 782 (1949).

vote in State and Federal elections. It will give them the right to have full effect given to their wills and to have their estates administered. It will give them rights to adopt children, to secure valid divorces in appropriate cases, and to secure licenses to enjoy the land for hunting and fishing.

The Atomic Energy Act of 1954²⁷ included a section which similarly retroceded jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque, to the State of New Mexico.

Statutes enacted to give State or local governments authority for policing highways.—These statutes may be divided into two groupings, "general" and "special." There are two in the "general" category, one authorizing the Attorney General,²⁸ and the other the Administrator of Veterans' Affairs,²⁹ in very similar language, to grant to States or political subdivisions of States easements in or rights-of-way over lands under the supervision of the Federal officer granted the power, and to cede to the receiving State partial, concurrent, or exclusive jurisdiction over the area involved in the grant. Both these statutes, it is indicated by information in official records, were enacted to resolve problems arising out of the desirability of State, rather than Federal, policing of highways. Efforts of the Department of Defense to acquire authority similar to that given by these statutes to the Attorney General and the Administrator of Veterans' Affairs have not been successful to this time,³⁰ notwithstanding that apparently all the "special" statutes enacted to provide State authority for policing highways have involved military installations.

²⁷ Act of Aug. 30, 1954, 68 Stat. 961, retroceding jurisdiction over housing area.

²⁸ Act of May 9, 1941, 55 Stat. 183, 43 U. S. C. 931a.

²⁹ Act of May 31, 1947, 61 Stat. 124, 38 U. S. C. 111; see also *Hearings before the Committee on Veterans' Affairs*, H. of R., March 25, 1947, 80th Cong., 1st Sess., on H. R. 1844; H. Rept. No. 187, 80th Cong., 1st Sess. 11118 (1947); and S. Rept. No. 177, 80th Cong., 1st Sess. 11115 (1947).

³⁰ H. R. 7111, 83d Cong., 2d Sess. (1954), and S. 1260, 84th Cong., 1st Sess. (1955).

The first of the statutes of "special" application in the field of jurisdiction over highways concerned the Golden Gate Bridge and the California State highways, which crossed the Presidio of San Francisco Military Reservation and the Fort Baker Military Reservation.³¹ On February 13, 1931, the Secretary of War, exercising a congressional delegation of authority,³² granted to the Golden Gate Bridge and Highway District of California certain rights-of-way to extend, maintain and operate State roads across these military reservations. The grant from the Secretary of War was subject to the condition that the State of California would assume responsibility for managing, controlling, policing and regulating traffic. A subsequent statute retroceded to the State of California the jurisdiction necessary for the State to carry out its responsibility for policing the highways.

The next statute³³ related to another approach to the Golden Gate Bridge. Statutes enacted thereafter have related to highways occupying areas at Vancouver Barracks Military Reservation, Washington,³⁴ Fort Devens Military Reservation, Massachusetts,³⁵ Fort Bragg, North Carolina,³⁶ Fort Sill, Oklahoma,³⁷ Fort Belvoir, Virginia,³⁸ and Wright-Patterson Air Force Base, Ohio.³⁹

³¹ Act of February 11, 1936, 49 Stat. 1108.

³² Act of July 5, 1884, 23 Stat. 104, formerly 10 U. S. C. 1348, 43 U. S. C. 933, now re-enacted as sections 4777 and 9777 of title 10 (positive law) U. S. Code.

³³ Act of July 26, 1939, 53 Stat. 1120.

³⁴ Act of July 30, 1941, 55 Stat. 608; see also H. Rept. No. 887, 77th Cong., 1st Sess. 10555 (1941), and S. Rept. No. 563, 77th Cong., 1st Sess. 10545 (1941).

³⁵ Act of May 23, 1950, 64 Stat. 187, and act of June 15, 1955, 69 Stat. 132; see also S. Rept. No. 1433, 81st Cong., 2d Sess. 11367 (1950).

³⁶ Act of April 15, 1952, 66 Stat. 60; see also H. Rept. No. 1385, 82d Cong., 2d Sess. 11575 (1952), and S. Rept. No. 1397, 82d Cong., 2d Sess. 11567 (1952).

³⁷ Act of May 27, 1953, 67 Stat. 39; see also H. Rept. No. 349, 83d Cong., 1st Sess. 11665 (1953), and S. Rept. No. 166, 83d Cong., 1st Sess. 11659 (1953).

³⁸ Act of May 27, 1953, 67 Stat. 37; see also H. Rept. No. 347, 83d Cong., 1st Sess. 11665 (1953), and S. Rept. No. 165, 83d Cong., 1st Sess. 11659 (1953).

³⁹ Act of Feb. 27, 1954, 68 Stat. 18; see also *Report of Hearing before a Subcommittee of the Committee on Armed Services, United States Senate*,

Miscellaneous statutes retroceding jurisdiction.—Six statutes appear to have been enacted by the Federal Government retroceding jurisdiction for reasons not demonstrably connected with civil rights of inhabitants or State policing of highways. The first of these in point of time was enacted in 1869,⁴⁰ to permit the State of Vermont to exercise jurisdiction over a State court building which was permitted to be constructed on federally owned land. A 1914 statute⁴¹ temporarily retroceded to the State of California jurisdiction over portions of the Presidio of San Francisco and Fort Mason, so that city and State authorities could police these areas during a period when the Panama-Pacific International Exposition was to be held thereon.

A 1927 statute⁴² ceded to the Commonwealth of Virginia jurisdiction over an area known as Battery Cove, for the purpose of transferring from Federal to Virginia officials authority to police the area. The cove, which was on the Potomac River abutting Virginia, had been transformed into dry land during dredging operations in the Potomac. It was part of the territory originally ceded to the United States by Maryland for the seat of government.

In 1939, the Congress enacted a statute⁴³ retroceding to the Commonwealth of Massachusetts jurisdiction over a bridge in Springfield. The reason for this retrocession was that, while

83d Cong., 2d Sess., titled "*Miscellaneous Bills*," including S. 2689, pp. 1-5 (Feb. 2, 1954).

⁴⁰ Act of Feb. 22, 1869, 15 Stat. 274; see also Cong. Globe, 40th Cong., 3d Sess. 1201-1202 (1869).

⁴¹ Public Resolution No. 57, Oct. 22, 1914, 38 Stat. 783; see also H. Rept. No. 1167, 63d Cong., 2d Sess. 6560 (1914), and S. Rept. No. 803, 63d Cong., 2d Sess. 6553 (1914).

⁴² Act of Feb. 23, 1927, 44 Stat. 1176; see also S. Rept. No. 598, 79th Cong., 1st Sess., p. 7 (letter Dec. 9, 1943, of National Capital Park and Planning Commission), 10927 (1945).

⁴³ Act of July 27, 1939, 53 Stat. 1127; see also H. Rept. No. 973, 76th Cong., 1st Sess. 10300 (1939), S. Rept. No. 804, 76th Cong., 1st Sess. 10294 (1939), and 84 Cong. Rec. 8727 and 9379 (1939).

the bridge spanned a pond located on territory over which the United States exercised exclusive legislative jurisdiction, both ends of the bridge were located on land controlled by the city.

In 1945, long existing disputes and confusion over the boundary line between the District of Columbia and the Commonwealth of Virginia led to the enactment of a statute⁴⁴ by the Federal Government ceding concurrent jurisdiction to the Commonwealth over territory to a line fixed as a boundary.

The only remaining instance found of the Federal enactment of a retrocession statute for a miscellaneous purpose relates to the Chain of Rocks Canal in Madison County, Wisconsin.⁴⁵ That statute was enacted, it seems, simply because the United States had no further requirement for jurisdiction over the area involved.⁴⁶

REVERSION OF JURISDICTION UNDER TERMS OF STATE CESSION STATUTE: *In general.*—Most State statutes providing for cession of legislative jurisdiction to the United States further provide for reversion of the ceded jurisdiction to the State upon termination of Federal ownership of the property.⁴⁷ Some of these, and other State statutes, contain various provisions otherwise limiting the duration of Federal exercise of ceded jurisdiction. The Attorney General has since an early date approved such limitations.⁴⁸

Leading cases.—In two important Federal court cases consideration was given to the effect of provisions in a State cession statute that the legislative jurisdiction transferred by such statute to the Federal Government shall cease or revert

⁴⁴ Act of Oct. 31, 1945, 59 Stat. 552; see also H. Rept. No. 595, 79th Cong., 1st Sess. 10933 (1945); and S. Rept. No. 598, 79th Cong., 1st Sess. 10927 (1945).

⁴⁵ Act of May 21, 1952, 66 Stat. 81.

⁴⁶ H. Rept. No. 1075, 82d Cong., 1st Sess. 11499 (1951), and S. Rept. No. 1504, 82d Cong., 2d Sess. 11567 (1952).

⁴⁷ See report, part I, pp. 28–32, 127 *et seq.*

⁴⁸ 7 *Ops. A. G.* 628 (1856); 8 *Ops. A. G.* 387 (1857); 13 *Ops. A. G.* 418 (1871); 39 *Ops. A. G.* 155 (1938).

to the State upon the occurrence of the conditions specified in the statute. In each of these cases, the legal validity of such provision was fully sustained although in one instance the Supreme Court indicated that Federal legislative jurisdiction might merely be "suspended" while the circumstances specified in the State statute prevailed.

In *Crook, Horner & Co. v. Old Point Comfort Hotel Co., et al.*, 54 Fed. 604 (C. C. E. D. Va., 1893), the court gave effect to the provisions in a Virginia cession statute that legislative jurisdiction shall exist in the United States only so long as the area is used for fortifications and other objects of national defense, and that such jurisdiction shall revert to Virginia in the event the property is abandoned or used for some purpose not specified in the Virginia cession statute.

In *Palmer v. Barrett*, 162 U. S. 399 (1896), New York had ceded to the United States jurisdiction over the Brooklyn Navy Yard subject to the condition that it be used for a navy yard and hospital purposes. Part of the area in question was subsequently leased to the city of Brooklyn for use by market wagons. The lease was terminable by the United States on thirty days' notice; it provided that the city of Brooklyn would patrol the premises, that no permanent buildings would be erected on the premises, and that during the period of the lease the water tax for water consumed by the Navy Yard would be reduced to that charged to manufacturing establishments in Brooklyn. The plaintiff brought suit in the State courts to recover damages for his alleged unlawful ouster from two market stands which had been in his possession. One of the defenses was that the State court had no jurisdiction. The United States Supreme Court disposed of this contention as follows (p. 403): "9

⁹ *Lotterle v. Murphy*, 67 Hun 76, 21 N. Y. Supp. 1120 (N. Y., 1893), was based on *Palmer v. Barrett*, and it was held to the same general effect in *People v. Vendome Service, Inc.*, 12 N. Y. S. 2d 183, *aff'd.*, 284 N. Y. 738, 31 N. E. 2d 508 (1940).

* * * The power of the State to impose this condition [that the land be used for purposes of a navy yard and hospital] is clear. In speaking of a condition placed by the State of Kansas on a cession of jurisdiction made by that State to the United States over land held by the United States for the purposes of a military reservation, this court said in *Fort Leavenworth Railroad v. Lowe*, (p. 539), *supra*: "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post."

As to the question of jurisdiction, the court said (p. 404):

* * * In the absence of any proof to the contrary, it is to be considered that the lease was valid, and that both parties to it received the benefits stipulated in the contract. This being true, the case then presents the very contingency contemplated by the act of cession, that is, the exclusion from the jurisdiction of the United States of such portion of the ceded land not used for the governmental purposes of the United States therein specified. Assuming, without deciding, that, if the cession of jurisdiction to the United States had been free from condition or limitation, the land should be treated and considered as within the sole jurisdiction of the United States, it is clear that under the circumstances here existing, in view of the reservation made by the State of New York in the act ceding jurisdiction, the exclusive authority of the United States over the land covered by the lease was at least suspended whilst the lease remained in force.

Had the Federal Government, instead of leasing the property to the city of Brooklyn on a short-term lease, devoted it to Federal purposes other than those specified in the New York cession statute, legislative jurisdiction would presumably have

reverted to the State of New York.⁵⁰ Although the court in the case before it spoke of the suspension of jurisdiction, instead of termination of jurisdiction, it presumably took into account the fact that the lease was of short duration and that there was no evidence that the Federal Government had abandoned all plans for the future use of the leased area for the purposes specified in the New York statute. It must be assumed that a permanent reversion, instead of a temporary suspension, of Federal legislative jurisdiction would occur where the evidence indicates that it is no longer the intention of the Federal Government to use the property for the purposes specified in the State cession statute.

REVERSION OF JURISDICTION BY TERMINATION OF FEDERAL USE OF PROPERTY: *Doctrine announced.*—In the case of *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885), when considering a cession statute which did not contain a reverter provision the court nevertheless said of the ceded jurisdiction (p. 542):

* * * It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.

Discussion of doctrine.—Only in one case, however, has the Supreme Court concluded that reversion for such reasons had occurred. In *S. R. A., Inc. v. Minnesota*, 327 U. S. 558 (1946), the question presented was whether the State of Minnesota had jurisdiction to tax realty sold by the United States to a private party under an installment contract, the tax being assessed "subject to fee title remaining in the United States," where such realty had been purchased by the United States with the consent of the State. After stating that a State must have jurisdiction in order to tax, the court said (pp. 563-564):

⁵⁰ See *Fay v. Locke*, 201 Mass. 387, 87 N. E. 753 (1909); *La Duke v. Melin*, 45 N. D. 349, 177 N. W. 673 (1920).

In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs. There was no requirement in the act of cession for return of sovereignty to the State when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, § 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the States. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power. Recognition has been given to this result as a rule of necessity. If such a step is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property. Under these assumptions the existence of territorial jurisdiction in Minnesota so as to permit state taxation depends upon whether there was a transfer of the property by the contract of sale.

The court concluded that under its contract of sale with the United States, the vendee acquired the equitable title to the land, and that therefore the Federal legislative jurisdiction over the property reverted to the State.⁵¹

⁵¹ See also *Bancroft Inv. Corporation v. Jacksonville*, 157 Fla. 546, 27 So.

Of interest in the above-quoted excerpt from the Supreme Court's opinion is the reference to the State's acceptance of the reversion of legislative jurisdiction. As has been indicated in the preceding chapter, the consent of the State and Federal Government is ordinarily essential to effect transfers of legislative jurisdiction from one to the other. However, where—as is suggested in the *S. R. A.* opinion—the termination of Federal ownership and use of the property results in a termination of Federal legislative jurisdiction, it would seem that to add to this rule a proviso that a State must accept such jurisdiction would result, in the event of a State's refusal to accept the reversion, either in the continuance of Federal legislative jurisdiction over an area not owned or used by the Federal Government, or in the creation of a "no-man's land" over which neither the Federal Government nor the State has jurisdiction. It seems highly doubtful in view of these practical results, and barring special circumstances,⁵² that the State's acceptance is essential. Moreover, in the *S. R. A.* opinion, the court seemed to imply that the termination of Federal legislative jurisdiction over an area no longer owned or used by the Federal Government rests on constitutional principles. If so, Federal legislative jurisdiction over such area would appear to revert to the State irrespective of the latter's wishes in the matter. In any event the Congress could, for example, expressly provide for reversion of jurisdiction to the State upon cessation of Federal ownership of property, although the *S. R. A.* decision would seem to make such express provision unnecessary.

2d 162 (1946), wherein the matter of reversion of legislative jurisdiction to the State apparently was involved although not specifically discussed. The Comptroller General has ruled that payments in lieu of taxes might be made under the Lanham Act on an area, transferred from the War Dept. to the Housing and Home Finance Agency for use for Lanham Act housing, notwithstanding that the War Department had procured jurisdiction over the area, since upon the transfer the land was held under the Lanham Act, which reserves jurisdiction to the States, and the area had received full services from the State and local governments. *Comp. Gen. Dec.*, No. B-111783 (Dec. 11, 1952).

⁵² See *State v. Lohnes*, 69 N. W. 2d 508 (Sup. Ct. N. D., 1955).

An early Federal statute⁵³ granting authority for the sale of surplus military sites contained a provision that upon sale of any such site jurisdiction thereover which had been ceded to the Federal Government by a State was to cease. The statute made no provision for State acceptance of the retrocession. The modern counterpart of this statute, providing for disposition of surplus Federal property,⁵⁴ makes no reference whatever to termination of jurisdiction had by the United States over property disposed of thereunder, but the General Services Administration, which administers the existing statute, has no information of any exception to full acceptance by agencies of the Federal and State governments of the theory that all jurisdiction reverts to the State upon Federal disposition of real property under this statute.

While the case of *S. R. A., Inc. v. Minnesota*, *supra*, is the only case in which the Supreme Court concluded that on the facts presented Federal legislative jurisdiction reverted to the State, the court in several earlier cases indicated that changed circumstances might result in a reversion of legislative jurisdiction. In *Benson v. United States*, 146 U. S. 325 (1892), the intervening factor was an action of the Executive branch. In that case it was contended that jurisdiction passed to the United States only over such portions of the military reservation as were actually used for military purposes, and that the United States therefore had no jurisdiction over a homicide which was committed on a part of the reservation used for farming purposes. In rejecting this contention, the court said (p. 331):

* * * But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. * * * The character and purposes of its occupation having been officially and legally established

⁵³ Act of March 3, 1819, 3 Stat. 520.

⁵⁴ Federal Property and Administrative Services Act of 1949 (act of June 30, 1949, 63 Stat. 377), sec. 203, as amended, 40 U. S. C. 484.

by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. * * *

The views expressed by the court in the *Benson* case, which presumably would be applicable to a retrocession as well as a cession, narrow substantially the rule as stated in the excerpt from the *Fort Leavenworth* case quoted earlier in this chapter.

The *Benson* case was followed in *Arlington Hotel Co. v. Fant*, 278 U. S. 439 (1929),⁵⁵ in overruling an argument that jurisdiction was not lodged in the United States over an area leased to a private hotel operator within a reservation over which jurisdiction had been ceded to the United States, and it was again followed in the case of *United States v. Unzeuta*, 281 U. S. 138 (1930), where the Federal Government was held to have jurisdiction over an area (on which a crime had been committed) constituting a right-of-way over a Federal enclave. The same rule has been applied in other cases.⁵⁶

The reluctance of the court to ignore jurisdictional determinations by the Executive branch is further illustrated by its opinion in *Phillips v. Payne*, 92 U. S. 130 (1876), in which was presented the question of the legal validity of the retrocession by the Federal Government to Virginia of that portion of the District of Columbia which had previously been ceded by Virginia to the Federal Government. In the course of its opinion, the court stated (p. 131) the position of the plaintiff in error that the Federal legislative procedures leading to the

⁵⁵ See also *Williams v. Arlington Hotel Co.*, 22 F. 2d 669 (C. A. 8, 1927).

⁵⁶ *Chicago, etc. Ry. v. McGlinn*, 114 U. S. 542 (1885); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); *United States v. Holt*, 168 Fed. 141 (C. C. W. D. Wash., 1909), *aff'd. sub nom. Holt v. United States*, 218 U. S. 245; *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); and see also *State v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937); 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577; *rev'd. on other grounds, Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939).

retrocession were "in violation of the Constitution" but it held that (p. 134):

The plaintiff in error is estopped from raising the point which he seeks to have decided. He cannot, under the circumstances, vicariously raise a question, nor force upon the parties [*i. e.*, the Federal Government and Virginia] to the compact an issue which neither of them desires to make.

In this litigation we are constrained to regard the *de facto* condition of things which exists with reference to the county of Alexandria as conclusive of the rights of the parties before us.

The position taken by the court in the *Benson*, *Arlington Hotel*, *Unzeuta*, and *Phillips* cases suggests that the rule announced in the *Fort Leavenworth* case would not apply in any situation in which the Executive branch has indicated that the area involved, though presently used for non-Federal purposes, is intended to be used for Federal purposes. Where, of course, a condition in a State cession or consent statute pursuant to which legislative jurisdiction was obtained by the Federal Government provides that jurisdiction shall revert to the State if the area, or any portion of it, is used, even temporarily, for purposes other than those specified in the State consent or cession statute, full effect would be given to such condition. Absent such express condition in the State consent or cession statute, it seems probable that the courts would conclude that Federal legislative jurisdiction has terminated only upon a clear showing that the area is not only not being used for the purposes for which it was acquired but also that there appears to be no plan to use it for such purpose in the future.⁵⁷

⁵⁷ See *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934), where in the absence of a reverter clause land leased to a bank was held to remain under the exclusive legislative jurisdiction of the United States; *cf. Springfield v. United States*, 99 F. 2d 860 (C. A. 1, 1938), *cert. den.*, 306 U. S. 650, where it was indicated that jurisdiction reverted to the States under similar circumstances; and *State v. Oliver*, 162 Tenn. 100, 35 S. W. 2d 396 (1931).

Criminal Jurisdiction

RIGHT OF DEFINING AND PUNISHING FOR CRIMES: *Exclusive Federal jurisdiction.*—Areas over which the Federal Government has acquired exclusive legislative jurisdiction are subject to the exclusive criminal jurisdiction of the United States. *Bowen v. Johnston*, 306 U. S. 19 (1939); *United States v. Unzueta*, 281 U. S. 138 (1930); *United States v. Watkins*, 22 F. 2d 437 (N. D. Cal., 1927).¹ That the States can neither define nor punish for crimes in such areas² is made clear in the

¹ *Battle v. United States*, 209 U. S. 36 (1908); *Ex parte Tatem*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877); *Kelly v. United States*, 27 Fed. 616 (C. C. D. Me., 1885); *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *United States v. Holt*, 168 Fed. 141 (C. C. W. D. Wash., 1909), *aff'd*, *sub nom. Holt v. United States*, 218 U. S. 245; *Bowen v. United States*, 134 F. 2d 845 (C. A. 5, 1943), *cert. den.*, 319 U. S. 764; *Mannix v. United States*, 140 F. 2d 250 (C. A. 4, 1944); *England v. United States*, 174 F. 2d 466 (C. A. 5, 1949); 22 *Calif. L. Rev.* 152 (1934).

The Attorney General of Missouri has held that the State is divested, by its statute giving general consent to Federal acquisition of land, of jurisdiction over violations of criminal law occurring on an area acquired by the Federal Government. *Ops. A. G., Mo.* (Jan. 19, 1953, and Feb. 20, 1953). The Attorney General of Illinois has held to the same effect, *Op. A. G., Ill.*, No. 469 (Oct. 9, 1946), as has the Attorney General of Florida, *Ops. A. G., Fla.*, No. 044-210 (July 21, 1944), No. 046-442 (Oct. 18, 1946), and No. 053-203 (Aug. 19, 1953), and the Attorney General of Utah, *Op. A. G., Utah*, No. 1291. These opinions all assume Federal acceptance of the proffered jurisdiction. The date of Federal acceptance of jurisdiction, not the date of Federal acquisition of title to the land, is the date when State criminal jurisdiction terminates. *Op. A. G., Cal.*, No. NS4842 (Apr. 9, 1943).

² *Commonwealth v. King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); *State v. DeBerry*, 224 N. C. 834, 32 S. E. 2d 617 (1945); *People v. Hillman*, 246 N. Y. 467, 159 N. E. 400 (1927); *People v. Kraus*, 212 App. Div. 397, 207 N. Y. Supp. 87 (1924); *State v. Kelly*, 76 Me. 331 (1884); *State v. Tully*, 31 Mont. 365, 78 Pac. 760 (1904); *People v. Mouse*, 203 Cal. 782, 265 Pac. 944 (1928), *app. dism.*, 278 U. S. 662; *Baker v. State*, 47 Tex. Cr. App. 482, 83 S. W. 1122 (1904); *State v. Morris*, 76 N. J. L. 222, 68 Atl. 1103 (1908); *People v. Marra*, 4 N. Y. Cr. Rep. 304 (1886); *Lasher v. State*, 30 Tex. Cr. App. 387,

case of *In re Ladd*, 74 Fed. 31 (C. C. N. D. Neb., 1896), (p. 40):

* * * The cession of jurisdiction over a given territory takes the latter from within, and places it without, the jurisdiction of the ceding sovereignty. After a state has parted with its political jurisdiction over a given tract of land, it cannot be said that acts done thereon are against the peace and dignity of the state, or are violations of its laws; and the state certainly cannot claim jurisdiction criminally by reason of acts done at places beyond, or not within, its territorial jurisdiction, unless by treaty or statute it may have retained jurisdiction over its own citizens, and even then the jurisdiction is only over the person as a citizen. * * *

The criminal jurisdiction of the Federal Government extends to private lands over which legislative jurisdiction has been vested in the Government, as well as to federally owned lands. *United States v. Unzeuta*, *supra*; see also *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885.³ Indeed, the Federal Government's power derived from exclusive legislative jurisdiction over an area may extend beyond

17 S. W. 1064 (1891); *Op. A. G., Pa.* (July 15, 1940); but *cf. Ezum v. State*, 90 Tenn. 501, 17 S. W. 107 (1891); *In re O'Connor*, 37 Wis. 379, 19 Am. Rep. 765 (1875); *County of Allegheny v. McClung*, 53 Pa. 482 (1867).

However, the Attorney General of Ohio has ruled that motor vehicle accidents occurring on federally owned lands within the State, whether or not the Federal Government had acquired exclusive jurisdiction over such lands, must be reported to the Registrar of Motor Vehicles in compliance with State law. *Op. A. G., Ohio*, No. 4704 (1955). On the other hand, he has ruled that where the State has, under Federal permit, constructed a highway through exclusive Federal jurisdiction lands, only Federal authorities may enforce traffic laws on such highway. *Id.* No. 1877 (1952), p. 720. See also p. 185, *infra*.

³ It has been held that an owner of an area within a national park under the exclusive legislative jurisdiction of the United States may not kill or take game contrary to Federal regulation, even on his own land. *Ops. Sol., Dept. of the Interior*, M-27284 (1932), and M-28689 (1938). See also *United States v. Ames*, 24 Fed. Cas. 784, No. 14,441 (C. C. D. Mass., 1845); *Stoutenburgh v. Hennick*, 129 U. S. 141, 147 (1889); and see p. 184, *infra*, re enforcement of State game laws.

the boundaries of the area, as may be necessary to make exercise of the Government's jurisdiction effective; thus, the Federal Government may punish a person not in the exclusive jurisdiction area for concealment of his knowledge concerning the commission of a felony within the area. *Cohens v. Virginia*, 6 Wheat. 264, 426-429 (1821).

In *Hollister v. United States*, 145 Fed. 773 (C. A. 8, 1906), the court said (p. 777):

Instances of relinquishment and acceptance of criminal jurisdiction by state Legislatures and the national Congress, respectively, over forts, arsenals, public buildings, and other property of the United States situated within the states, are common, and their legality has never, so far as we know, been questioned.

On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States,⁴ it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crimes occur on areas as to which legislative jurisdiction has been vested in the Federal Government.⁵ The absence of jurisdiction in a State, or in the Federal Government, over a criminal act occurring in an area as to which only the other of these governments has legislative jurisdiction is demonstrated by the case of *United States v. Tully*, 140 Fed. 899 (C. C. D. Mont.,

⁴ *E. g.*: Espionage, sabotage, interference with the mails, destruction of Federal property, frauds on the Federal Government, etc.

⁵ *Adams v. United States*, 319 U. S. 312 (1943); *United States v. Hopkins*, 26 Fed. Cas. 371, No. 15,387a (C. C. D. Ga., 1830); *United States v. Bateman*, 34 Fed. 86 (C. C. N. D. Cal., 1888); *United States v. Penn*, 48 Fed. 669 (C. C. E. D. Va., 1880); *In re Kelly*, 71 Fed. 545 (C. C. E. D. Wis., 1895); *Pothier v. Rodman*, 291 Fed. 311 (C. A. 1, 1923), *rev'd. on other grounds*, 264 U. S. 399 (1924); *Ex parte Sloan*, 22 Fed. Cas. 324, No. 12,944 (D. Nev., 1877); *United States v. San Francisco Bridge Co.*, 88 Fed. 891 (N. D. Cal., 1898); *United States v. Lewis*, 253 Fed. 469 (S. D. Cal., 1918); *State v. Chin Ping*, 91 Ore. 593, 176 Pac. 188 (1918); *Sandel v. State*, 158 Tex. Cr. R. 101, 253 S. W. 2d 283 (1952).

1905). Tully had been convicted by a State court in Montana of first degree murder, and sentenced to be hanged. The Supreme Court of the State reversed the conviction on the ground that the homicide had occurred on a military reservation over which exclusive jurisdiction was vested in the Federal Government.⁶ The defendant was promptly indicted in the Federal court, but went free as the result of a finding that the Federal Government did not have legislative jurisdiction over the particular land on which the homicide had occurred. The Federal court said (*id.* p. 905):

It is unfortunate that a murderer should go unwhipped of justice, but it would be yet more unfortunate if any court should assume to try one charged with a crime without jurisdiction over the offense. In this case, in the light of the verdict of the jury in the state court, we may assume that justice would be done the defendant were he tried and convicted by any court and executed pursuant to its judgment. But in this court it would be the justice of the vigilance committee wholly without the pale of the law. The fact that the defendant is to be discharged may furnish a text for the thoughtless or uninformed to say that a murderer has been turned loose upon a technicality; but this is not a technicality. It goes to the very right to sit in judgment. * * * These sentiments no doubt appealed with equal force to the Supreme Court of Montana, and it is to its credit that it refused to lend its aid to the execution of one for the commission of an act which, in its judgment, was not cognizable under the laws of its state; but I cannot bring myself to the conclusion reached by that able court, and it is upon the judgment and conscience of this court that the matter of jurisdiction here must be decided.

The United States and each State are in many respects separate sovereigns,⁷ and ordinarily one cannot enforce the laws of the other.

⁶ *State v. Tully*, 31 Mont. 365, 78 Pac. 760 (1904).

⁷ *The Antelope*, 10 Wheat. 66, 123 (1825).

State and local police have no authority to enter an exclusive Federal area to make investigations,⁸ or arrests,⁹ for crimes committed within such areas since Federal, not State, offenses are involved.¹⁰ Only Federal law enforcement officials, such as representatives of the Federal Bureau of Investigation and United States marshals and their deputies, would be authorized to investigate such offenses and make arrests in connection with them. The policing of Federal exclusive jurisdiction areas must be accomplished by Federal personnel, and an offer of a municipality to police a portion of a road on such an area could not be accepted by the Federal official in charge of the area,¹¹ as police protection by a municipality to such an area would be inconsistent with Federal exclusive jurisdiction.¹²

Concurrent Federal and State criminal jurisdiction.—There are, of course, Federal areas as to which a State, in ceding legislative jurisdiction to the United States, has reserved some measure of jurisdiction, including criminal jurisdiction, concurrently to itself.¹³ In general, where a crime has been committed in an area over which the United States and a State have concurrent criminal jurisdiction, both governments may try the accused without violating the double jeopardy clause of the Fifth Amendment.¹⁴ *Grafton v. United States*, 206 U. S.

⁸ See also p. 111 *et seq.*, *infra*.

⁹ *Op. A. G., Tex.*, No. 0-4211. But where California fish and game deputies were deputized by the Federal Government to enforce Federal fish and game laws, they might make arrests under such laws on areas under Federal jurisdiction, for trials to be held in Federal courts. *Op. A. G., Cal.*, No. 10,034 (July 1, 1935). See also footnotes 20 and 24, *infra*, and related textual matter.

¹⁰ With respect to investigations and arrests within such areas for crimes committed outside the areas, see p. 122, *infra*.

¹¹ *Op. J. A. G., Army*, 680.2 (June 7, 1938).

¹² *Id.* 1948/9016 (Dec. 23, 1948); *id.* 1948/8751 (Dec. 7, 1948); *id.* May 26, 1926).

¹³ *Report*, part I, p. 28 *et seq.*, and see 17 *Tenn. L. Rev.* 342 (1942).

¹⁴ In State prosecutions admission of evidence would be under State rules, including the Massachusetts rule (effective in a large number of States), permitting admission of evidence illegally seized. *Commonwealth v. Dana*, 2 Metc. 329 (Mass., 1841); see also 8 *Wigmore on Evidence*, 5 (sec. 2183).

333 (1907), held that the same acts constituting a crime cannot, after a defendant's acquittal or conviction in a court of competent jurisdiction of the Federal Government, be made the basis of a second trial of the defendant for that crime in the same or in another court, civil or military, of the same government. However, where the same act is a crime under both State and Federal law, the defendant may be punished under each of them. *Hebert v. Louisiana*, 272 U. S. 312 (1926).²⁸ It was stated by the court in *United States v. Lanza*, 260 U. S. 377 (1922), (p. 382):

It follows that an act denounced as a crime by both national and state sovereignties is an offence against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal Government, *Barron v. Baltimore*, 7 Pet. 243, and the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority. * * *

It is well settled, of course, that where two tribunals have concurrent jurisdiction that which first takes cognizance of a matter has the right, in general, to retain it to a conclusion, to the exclusion of the other. The rule seems well stated in *Mail v. Maxwell*, 107 Ill. 554 (1883), (p. 561):

Where one court has acquired jurisdiction, no other court, State or Federal, will, in the absence of supervising or appellate jurisdiction, interfere, unless in pursuance of some statute, State or Federal, providing for such interference.

²⁸ See also: *Sexton v. California*, 189 U. S. 319 (1903); *Pettibone v. United States*, 148 U. S. 197 (1893); *Cross v. North Carolina*, 132 U. S. 131 (1899); *Vandell v. United States*, 6 F. 2d 188 (C. A. 2, 1925); *McKelvey v. United States*, 260 U. S. 353 (1922); *Moore v. Illinois*, 14 How. 13 (1852); *Jolley v. United States*, 232 F. 2d 83 (C. A. 5, 1956); 6 Ops. A. G. 413, 414 (1854); *id.* 506 (1854); but cf. *United States v. Mason*, 213 U. S. 115 (1909).

Other courts have held similarly.¹⁶ There appears to be some doubt concerning the status of a court-martial as a court, within the meaning of the Judicial Code,¹⁷ however.

Law enforcement on areas of exclusive or concurrent jurisdiction.—The General Services Administration is authorized by statute to appoint its uniformed guards as special policemen, with the same powers as sheriffs and constables to enforce Federal laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce rules made by the General Services Administration for properties under its jurisdiction; but the policing powers of such special policemen are restricted to Federal property over which the United States has acquired exclusive or concurrent jurisdiction.¹⁸ Upon the application of the head of any Federal department or agency having property of the United States under its administration or control and over which the United States has exclusive or concurrent jurisdiction, the General Services Administration is authorized by statute¹⁹ to detail any such special policeman for the protection of such property and, if it is deemed desirable, to extend to such property the applicability of regulations governing property promulgated by the General Services Administration. The General Services Administration is authorized by the same statute to utilize the facilities of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law enforcement agencies.

Although the Department of the Interior required protection for an installation housing important secret work, the General

¹⁶ *Gould v. Hayes*, 19 Ala. 438 (1851); *Ex parte Robinson*, 20 Fed. Cas. 969, No. 11,935 (C. C. S. D. Ohio, 1855); *Taylor v. Fort Wayne*, 47 Ind. 274 (1874); *Wabash Railroad v. Adelbert College*, 208 U. S. 38 (1908); *Toucey v. New York Life Insurance Co.*, 314 U. S. 118 (1941); *Gillis v. Keystone Mut. Casualty Co.*, 172 F. 2d 826 (C. A. 6, 1949), *cert. den.*, 338 U. S. 822. See also: 6 Ops A. G. 413, 414 (1854); *id.* 506 (1854).

¹⁷ See: *United States ex rel. Toth v. Quarles*, 350 U. S. 11 (1955).

¹⁸ Sec. 103, act of June 1, 1948, 62 Stat. 281, as amended, 40 U. S. C. 318.

¹⁹ Sec. 103, act of June 1, 1948, 62 Stat. 281, as amended, 40 U. S. C. 318b.

Services Administration was without authority to place uniformed guards on the premises in the absence in the United States of exclusive or concurrent jurisdiction over the property, and notwithstanding the impropriety of permitting the policing of the property by local officials, if they were willing,²⁰ without necessary security clearances.²¹

Civilian Federal employees may be assigned to guard duty on Federal installations, but there is no Federal statute (other than that appertaining to General Services Administration and three statutes of even less effect—16 U. S. C. 559 (Forest Service), and 16 U. S. C. 10 and 10a (National Park Service)) conferring any special authority on such guards. They are not peace officers with the usual powers of arrest; and have no greater powers of arrest than private citizens. As citizens, they may protect their own lives and property and the safety of others, and as agents of the Government they have a special right to protect the property of the Government. For both these purposes they may use reasonable force, and for the latter purpose they may bear arms irrespective of State law against bearing arms.²² Such guards, unless appointed as deputy sheriffs (where the State has at least concurrent criminal jurisdiction), or deputy marshals (where the United States has at least concurrent criminal jurisdiction), have no

²⁰ At least one municipality has indicated that it was deterred from furnishing police services in a Federal enclave because police officers injured in rendering such services might not be covered by State compensation laws, aside from the legal limitations on the activities of local police officers in such enclaves and suits which might consequently arise. HEW, Report of Public Health Service Hospital, Norfolk, Va.

On the other hand, it was ruled that the Secretary of War was not authorized to accept the offer of a municipality to police a portion of a road over which the United States had exclusive jurisdiction. *Op. J. A. G., Army*, 680.2 (June 7, 1938).

See also chapter IX, *infra*, p. 277 *et seq.*

²¹ Letter dated Aug. 24, 1955, from J. Reuel Armstrong, Solicitor, Department of the Interior, to Perry W. Morton, Assistant Attorney General, Chairman, Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States.

²² *Ops. J. A. G., Navy*, JAG: J: JL: ac (Dec. 22, 1942); *id.* JAG: II: JCB (Jan. 17, 1950). But appropriate authority must be had to carry arms, *e. g.* 18 U. S. C. 3050, 3052, 3053, 3056.

more authority than other private individuals so far as making arrests is concerned.²⁵

State and local officers may, by special Federal statute,²⁶ preserve the peace and make arrests for crimes under the laws of States, upon immigrant stations, and the jurisdiction of such officers and of State and local courts has been extended to such stations for the purposes of the statute.

Partial jurisdiction.—In some instances States in granting to the Federal Government a measure of exclusive legislative jurisdiction over an area have reserved the right to exercise, only by themselves, or concurrently by themselves as well as by the Federal Government, criminal jurisdiction over the area. In instances of complete State retention of criminal jurisdiction, whether with respect to all matters²⁵ or with respect to a specified category of matters,²⁶ the rights of the States, of the United States, and of any defendants, with respect to crimes as to which State jurisdiction is so retained are as indicated in this chapter for areas as to which the Federal Government has no criminal jurisdiction. In instances of concurrent State and Federal criminal jurisdiction with respect to any matters²⁷ the rights of all parties are, of course, determined with respect to such matters according to the rules of law generally applicable in areas of concurrent jurisdiction. Accordingly, there is no

²⁵ *Id.* JAG : II : RT : eo (Dec. 2, 1948).

²⁶ Sec. 288, act of June 27, 1952, 66 Stat. 234, 8 U. S. C. 1358.

²⁷ *E. g.*—Iowa : "This state * * * reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon [on land acquired by the United States, as to which the State authorizes Federal exercise of jurisdiction] * * *." Code of Iowa, 1954, title 1, chapter 1, section 1.4 (*report*, part I, p. 149).

²⁸ *E. g.*—Virginia : " * * * There is further expressly reserved in the Commonwealth the jurisdiction and power * * * to license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands * * *." Code of Virginia, 1950, Ann., title 7, chapter 3, section 7-19 (*report*, part I, p. 213).

²⁹ *E. g.*—Minnesota : "Except as otherwise expressly provided, the jurisdiction of the United States over any land or other property within this state * * * is concurrent with and subject to the jurisdiction and right of the state * * * to punish offenses against its laws committed therein * * *." Minnesota Statutes Annotated, section 1.041 (*report*, part I, p. 164).

body of law specially applicable to criminal activities in areas under the partial legislative jurisdiction of the United States.

State criminal jurisdiction retained.—State criminal jurisdiction extends into areas owned or occupied by the Federal Government, but as to which the Government has not acquired exclusive legislative jurisdiction with respect to crimes.²⁸ And as to many areas owned by the Federal Government for its various purposes it has not acquired legislative jurisdiction.²⁹ The Forest Service of the Department of Agriculture, for example, in accordance with a provision of Federal law (16 U. S. C. 480), has not accepted the jurisdiction proffered by the statutes of many States, and the vast majority of Federal forest lands are held by the Federal Government in a proprietary status only.³⁰

The Federal Government may not prosecute for ordinary crimes committed in such areas.³¹ Federal civilians who may

²⁸ *Brooke v. State*, 155 Ala. 78, 46 So. 491 (1908); *Op. A. G., Fla.* (Oct. 18, 1946), 046-442; *Clay v. State*, 4 Kan. 49 (1866); *People v. Hammond*, 1 Ill. 2d 65, 115 N. E. 2d 331 (1953), *cert. den.*, 346 U. S. 940; *Commonwealth v. Trott*, 331 Mass. 491, 120 N. E. 2d 289 (1954); *People v. Burke*, 161 Mich. 397, 126 N. W. 446 (1910); *In re Van Dyke*, 276 Mich. 32, 267 N. W. 778 (1936), *cert. den.*, 299 U. S. 608; *People v. Lane*, 1 Edmonds' Select Cases 116 (N. Y., 1834-53); *People v. Kobryn*, 294 N. Y. 192, 61 N. E. 2d 441 (1945); *People v. Bondman*, 291 N. Y. Supp. 213 (1936); *Commonwealth v. Cain*, 1 Legal Op. (Seig & Morgan, Harrisburg, Pa.) 25 (Ct. of Quarter Sessions, Cumberland County, Pa., 1870); *Commonwealth v. Hutchinson*, 2 Parsons Eq. Cas. 384 (Pa., 1848); *Gill v. State*, 141 Tenn. 379, 210 S. W. 637 (1919); *Curry v. State*, 111 Tex. Cr. App. 264, 12 S. W. 2d 796 (1928); *Nikis v. Commonwealth*, 144 Va. 618, 131 S. E. 236 (1926); *Waltrip v. Commonwealth*, 189 Va. 365, 53 S. E. 2d 14 (1949); and see 7 N. C. L. Rev. 299 (1928-29); *Bowen v. Johnston*, 306 U. S. 19 (1939); *Ex parte Sloan*, 22 Fed. Cas. 324, No. 12,944 (D. Nev., 1877).

²⁹ *Report*, part I, p. 81 *et seq.*

³⁰ *Report*, part I, p. 101; and see p. 53, *supra*. See also: *Garrison v. State*, 22 Ala. App. 444, 116 So. 706 (1928); *Hagood v. State*, 23 Ala. App. 138, 122 So. 299 (1929); *Oldham v. State*, 37 Ala. App. 251, 67 So. 2d 52 (1953), *cert. den.*, 259 Ala. 507, 67 So. 2d 55; *Op. A. G., Ill.*, No. 102 (Dec. 29, 1941).

³¹ *United States v. Tully*, 140 Fed. 899 (C. C. D. Mont., 1905). California may enforce its Fish and Game Code on lands acquired by the Federal Government under the Migratory Bird Conservation Act in view of the provisions of that act that the jurisdiction of the State shall not be affected. *Op. A. G., Cal.*, No. NS2238 (Dec. 30, 1939).

be appointed as guards in the areas do not have police powers, but possess only the powers of arrest normally had by any citizen³² unless they receive appointments as State or local police officers.³³

Acts committed partly in area under State jurisdiction.—Where a crime has been in part committed in a Federal exclusive legislative jurisdiction area, the States in some instances have asserted jurisdiction. It was held in *Commonwealth v. Rohrer*, 37 Pa. D. and C. 410 (1937), that a dealer furnishing milk for use at a veterans' hospital was subject to the provisions of the Milk Control Board Law. The court was of the opinion that while the State had no jurisdiction with respect to a crime committed wholly within the area over which legislative jurisdiction had been ceded to the Federal Government for the hospital, it did have jurisdiction of a crime the essential elements of which were committed within the State, even though other elements thereof were committed within the ceded territory. Two more recent decisions of the Supreme Court (*i. e.*, *Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania*, 318 U. S. 261 (1943), and *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U. S. 285 (1943)) suggest that only where the Federal Government does not have exclusive legislative jurisdiction would a State have such authority.³⁴ It has been held, however, that even where acts are done wholly on Federal property, a State prosecution is proper where the effects of the acts are felt in an area under State jurisdiction. *People v. Commonwealth Sanitation Co.*, 107 N. Y. S. 2d 982 (1951); *cf. State v. Kelly*, 76 Me. 331 (1884).

On the other hand, transportation through a State for delivery to an area, within the boundaries of the State, which is

³² See pp. 112-113, *supra*.

³³ Memo 8/2/35 from General Solicitor, T. V. A., to Director, Personnel Division, T. V. A.

³⁴ For a discussion of the two last mentioned cases see chapter VII, *infra*, p. 169 *et seq.*

under the exclusive jurisdiction of the United States has been held not to be a violation of laws prohibiting the importation into the State of the matter transported.³⁵

Retrial on change in jurisdiction.—Where a person is convicted of a crime in a State court and the territory in which the crime was committed is subsequently ceded to the United States, he may be properly retried or sentenced in the State court, it was held in *Commonwealth v. Vaughn*, 64 Pa. D. & C. 320 (1948). The court said (p. 322):

* * * The act when done was a violation of the law of this Commonwealth which is still in full force and effect, done within its territorial jurisdiction; the Commonwealth had jurisdiction of the subject matter and obtained jurisdiction of the person by proper process, and its proper officer proceeded with legal action in the proper court, which court has never relinquished its jurisdiction, so obtained. * * * When the jurisdiction of a court has legally and properly attached to the person and subject matter in a legal proceeding, such jurisdiction continues until the cause is fully and completely disposed of * * *.

The court points out that if the subject matter (in this case, the *crime*) is wiped out the court loses its jurisdiction. The crime would no longer exist and no one can be punished for a crime which does not exist at the time of trial therefor, or of meting out punishment.

SERVICE OF STATE CRIMINAL PROCESS: *In general.*—That State criminal process may extend into areas owned or occupied by the United States but not under its legislative jurisdiction is well set out in the case of *Cockburn v. Willman*, 301 Mo. 575, 257 S. W. 458 (1923), (p. 587):

³⁵ *Johnson v. Yellow Cab Transit Co.*, 321 U. S. 383 (1944); *State v. Coughlin*, 78 Me. 401 (1886); see also *Mitchell v. Tibbets*, 17 Pick. 298 (Mass., 1836); and see other authorities cited on p. 183 *et seq.*, *infra*.

The mere fact that he was territorially within the confines of a Government reservation at the time the warrant was served upon him did not render him immune from arrest upon a state warrant. Such immunity exists only when it appears in the cession by the State to the National Government that the former has divested itself of all power over the place or territory in regard to the execution of process or the arrest and detention of persons found thereon who are charged with crime.

Right by Federal grant.—The immunity of persons in areas under the exclusive jurisdiction of the Federal Government from service upon them of State process occasioned great concern at the constitutional ratifying conventions that such areas might become havens for felons.³⁶ At an early date,³⁷ Congress provided that in lighthouse and certain related areas criminal and civil process might be served by the States notwithstanding the acquisition of exclusive jurisdiction by the Federal Government over such sites.

Right by State reservation.—States have commonly included in their consent and cession statutes a reservation of the power to serve civil and criminal process in the areas to which such statutes relate, and all such State statutes which are currently in effect contain such reservations.³⁸ The words of reservation vary, but usually are contained in a clause following the cession language and are worded approximately as follows:

* * * this state, however, reserving the right to execute

³⁶ See *supra*, pp. 25, 26; *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885); *Commonwealth v. Clary*, 8 Mass. 72 (1811).

³⁷ 1 Stat. 426 (1795), see p. 35, *supra*.

³⁸ See *report*, part I, p. 127 *et seq.*; for probable consequences of absence of a reservation, see p. 187, *infra*. The Attorney General of California has noted that the numerous statutes of the State ceding jurisdiction to the United States all contain reservations of the right to serve process. *Op. A. G., Cal.*, No. LB 219/57a (June 19, 1942).

its process, both criminal and civil, within such territory.³⁹

Reservations to serve process not inconsistent with exclusive jurisdiction.—The reservation by a State of the right to serve criminal and civil process in an area over which such Federal jurisdiction exists is not, however, inconsistent with the exercise by the Federal Government of exclusive jurisdiction over the area, and a State does not by such a reservation acquire jurisdiction to punish for a crime committed within a ceded area. *United States v. Travers*, 28 Fed. Cas. 204, No. 16,537 (C. C. D. Mass., 1814); *United States v. Davis*, 25 Fed. Cas. 781, No. 14,930 (C. C. D. Mass., 1829); *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819).⁴⁰ Indeed, it has been said that process served under a reservation becomes, *quoad hoc*, process of the United States,⁴¹ and that when a State officer acts to execute process on a Federal enclave he acts under the authority of the United States,⁴² but these statements appear inconsistent with the generally prevailing view of reservations to serve process as retentions by the State of its sovereign authority. Even, as is often the case, where a State retains "concurrent jurisdiction," to serve civil

³⁹ Utah Code Annotated, 1953, title 63, chapter 8, section 1.

⁴⁰ See also: *United States v. Knapp*, 26 Fed. Cas. 792, No. 15,538 (S. D. N. Y., 1849); *United States v. Meagher*, 37 Fed. 875 (C. C. W. D. Tex., 1888); *Northwestern Cas. & Sur. Co. v. Conaway*, 210 Iowa 126, 230 N. W. 548 (1930); *In re Ladd*, 74 Fed. 31 (C. C. D. Neb., 1896); *People v. Kraus*, 212 App. Div. 397, 207 N. Y. Supp. 87 (1924); *People v. Hillman*, 246 N. Y. 467, 159 N. E. 400 (1927); *Commonwealth v. Clary*, 8 Mass. 72 (1811); *Willis v. Oscar Daniels Co.*, 200 Mich. 19, 166 N. W. 496 (1918); *Foley v. Shriver*, 81 Va. 568 (1886); 6 *Ops. A. G.* 577 (1854); 7 *Ops. A. G.* 628 (1856); 38 *Ops. A. G.* 341 (1935); 39 *Ops. A. G.* 155 (1938); 24 *Calif. L. Rev.* 573 (1936); *Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937); *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937); *Underhill v. State*, 31 Okla. Crim. App. 149, 237 P. 628 (1925); but cf. *County of Cherry v. Thatcher*, 32 Neb. 350, 49 N. W. 351 (1891).

⁴¹ Story, *Commentaries on the Constitution*, 5th ed., vol. II, sec. 1225.

⁴² Rawle, *A View of the Constitution*, ch. 27, p. 238 (2d ed., 1829).

and criminal process, or the right to serve such process as if jurisdiction over lands "had not been ceded," the quoted words have been construed not to give the State jurisdiction to punish persons for offenses committed within the ceded territory. *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819); *Lasher v. State*, 30 Tex. Cr. App. 387, 17 S. W. 1064 (1891); *Commonwealth v. Clary*, 8 Mass. 72 (1811).⁴³ In the *Cornell* case, *supra*, the United States purchased certain lands in Rhode Island for military purposes. The State gave its consent to these purchases, reserving, however, the right to execute all civil and criminal processes on the ceded lands, in the same way as if they had not been ceded. The question was raised as to whether there had been a reservation of concurrent jurisdiction by the State. The court answered this in the negative as follows (pp. 648-649):

In its terms it certainly does not contain any reservation of concurrent jurisdiction or legislation. It provides only that civil and criminal processes, issued under the authority of the state, which must of course be for acts done within, and cognizable by, the state, may be executed within the ceded lands, notwithstanding the cession. Not a word is said from which we can infer that it was intended that the state should have a right to punish for acts done within the ceded lands. The whole apparent object is answered by considering the clause as meant to prevent these lands from becoming a sanc-

⁴³ See also: *Mitchell v. Tibbetts*, 17 Pick. 298 (Mass., 1836); *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841); *Op. J. A. G., Navy* (July 15, 1936); *id.* JAG: NR103/N1-13 (Dec. 7, 1938); *id.* JAG: 5267-1116:2 (Jan. 24, 1923); *People v. Kraus*, 212 App. Div. 397, 207 N. Y. Supp. 87 (1924); *People v. Mouse*, 203 Cal. 782, 265 Pac. 944 (1928), *app. dismissed*, 278 U. S. 662; *State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897); *State v. Codaugh*, 78 Me. 401 (1886); *State v. Seymour*, 78 Miss. 134, 28 So. 799 (1900); *Underhill v. State*, 31 Okla. Crim. App. 149, 237 Pac. 628 (1925); *United States v. Meagher*, 37 Fed. 875 (C. C. W. D. Tex., 1888); *Foley v. Shriver*, 81 Va. 568 (1886).

tuary for fugitives from justice, for acts done within the acknowledged jurisdiction of the state. Now there is nothing incompatible with the exclusive sovereignty or jurisdiction of one state, that it should permit another state, in such cases, to execute its processes within its limits * * *.

And reservation of a right to "execute" process, it has been held, retains no more authority in the State than a reservation to "serve" process, even in the absence of the word "exclusive" in the description of the quantum of jurisdiction ceded to the United States. *Rogers v. Squier*, 157 F. 2d 948 (C. A. 9, 1946), *cert. den.*, 330 U. S. 840.

The Supreme Court of Nevada has held (*State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897)) that exception from a cession of the "administration of the criminal laws" reserved to the State only the right to serve process, and a similar holding with respect to a similar California statute was once made by a Federal court; "but at least on five occasions" Attorneys General of the United States have ruled that such language gave a State cognizance of criminal offenses against its laws in the place ceded. It has also been held "that a reservation to serve process for "any cause there [in the ceded area] or elsewhere in the state arising, where such cause comes properly under the jurisdiction of the laws of this state," merely reserved the right to serve process, and was not inconsistent with a transfer of exclusive jurisdiction.

In *People v. Hillman*, 246 N. Y. 467, 159 N. E. 400 (1927). it was held that the courts of the State of New York had no jurisdiction over a robbery committed on a highway which passed through the West Point Military Reservation. Ownership of the land had been acquired by the United States, and the State had ceded jurisdiction over the land, reserving the

" *United States v. Watkins*, 22 F. 2d 437 (N. D. Cal., 1927).

" 8 *Ops. A. G.* 418 (1857) ; 20 *Ops. A. G.* 611 (1893) ; 24 *Ops. A. G.* 617 (1903) ; 31 *Ops. A. G.* 263 (1918) ; 31 *Ops. A. G.* 282 (1918).

" 38 *Ops. A. G.* 341 (1935).

right to serve civil and criminal process thereon and the right of occupancy of the highways. The latter reservation, the court said, should not be construed as a reservation of political dominion and legislative authority over the highways but meant merely that the State reserved the right to appropriate for highway purposes the customary proportion of land embraced in the tract.

Warrant of arrest deemed process.—By the very nature of the purpose which the State reservations to serve criminal and civil process were intended to carry out,⁴⁷ such reservations include the right to execute a warrant of arrest, including a warrant issued on a request for extradition.⁴⁸ Such warrants are a form of legal process.⁴⁹ However, various Federal instrumentalities have regulations governing the manner in which such process shall be served,⁵⁰ and even in the absence of formal regulations on the subject, the service of process may

⁴⁷ See *supra*, pp. 25–27.

⁴⁸ *Cockburn v. Willman*, 301 Mo. 575, 257 S. W. 458 (1923). And in some States, such as Maryland, a warrant may issue for the arrest of an out-of-State fugitive prior to the receipt of a request for extradition. *Memo Gen. Counsel, Dept. of Health, Education, and Welfare*, to National Institutes of Health (May 16, 1955).

⁴⁹ *Randolph v. Commonwealth*, 145 Va. 883, 134 S. E. 544 (1926); see also *Tubbs v. Tukey*, 3 Cushing (Mass.) 438, 50 Am. Dec. 744 (1849).

⁵⁰ *E. g.*: Art. 14 (a) of the Uniform Code of Military Justice (10 U. S. C. 814) provides, "Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial." For regulations issued pursuant to this authority, see: *Manual for Courts-Martial, United States*, 1951 (p. 16, par. 12); *Supplemental Regulations, Navy*, 1955 Naval Supp. to MCM 1951, sec. 0701 *et seq.*; *Supplemental Regulations, Army*, AR 600–320, par. 6.

It has been held that, whatever the status of (now superseded) naval regulations which required the permission of a commanding officer for the service of process upon a subordinate, a right to serve process reserved by a State permitted service of (civil) process with the permission of the commanding officer of the Navy Yard within which service was made, notwithstanding lack of permission from the commanding officer of the vessel to which the person upon whom service was made was attached. *Manlove v. McDermott*, 308 Pa. 384, 162 Atl. 278 (1932).

not be accomplished in a manner such as to constitute an interference with an instrumentality of the Federal Government.⁵¹

Arrest without warrant not deemed service of process.—It has been held⁵² that an arrest without a warrant may not be effected by a State police officer in an area under exclusive Federal jurisdiction, for a crime committed off the area, since such an arrest does not involve service of process. A reservation to make such arrests might, of course, be made.⁵³ State officials may enter an exclusive Federal jurisdiction area, to make an investigation related to an offense committed off the area, only in a manner such as will not interfere with an instrumentality of the Federal Government, and in accordance with any Federal regulations for this purpose.⁵⁴

Coroner's inquest.—Various authorities have held that a State cannot render coroner service in an area under exclusive Federal jurisdiction,⁵⁵ but in an early case (*County of Allegheny v. McClung*, 53 Pa. 482 (1867)), it was suggested that a coroner's inquest might constitute criminal process.

⁵¹ See: *Johnson v. Maryland*, 254 U. S. 51 (1920); *Jacobson v. Massachusetts*, 197 U. S. 11 (1905); *Lima v. Lawler*, 63 F. Supp. 446 (E. D. Va., 1945). To the same effect as *Lima v. Lawler* is *Op. J. A. G., Navy*, File No. QL/A3-1 (370519), (Aug. 10 and 27, 1937). A person in the military service who is charged with the commission of an offense under State law may, if he is not being held in custody under the Articles of War, be taken into custody by the sheriff by presenting a warrant to the commanding officer of the installation. *Op. A. G., Ill.*, No. 11752 (Feb. 9, 1924). The State does not have an unlimited right to enter a military reservation for service of process. *Op. A. G., Utah*, No. 55-067.

⁵² *Op. J. A. G., Navy* (Jan. 12, 1923); *Op. J. A. G., Navy*, JAG: II: FW: nb (July 15, 1946); *Op. A. G., Me.* (Dec. 9, 1954). In *Bennett v. Ahrens*, 57 F. 2d 948 (C. A. 7, 1932), where there was overruled an objection to an arrest on Federal property, it had not been established that the property was under exclusive Federal jurisdiction.

⁵³ *Op. A. G., Ill.*, 8685 (1919); *Op. A. G., Ill.*, 9885 (1920).

⁵⁴ *Op. J. A. G., Navy*, JAG: 5267-1116: 2 (Jan. 24, 1923); 7 *Court-Martial Orders* 43 (1946). It has also been held that a State officer in pursuit of an individual for violation of a State law should endeavor to obtain the consent of the installation commander prior to entering a Federal installation to make an arrest. *Op. Deputy A. G., Me.* (August 12, 1954).

⁵⁵ See p. 181, footnote 10, *infra*.

Writ of habeas corpus.—In three early cases a reservation of the right to serve process was construed as giving authority to a State to serve a writ of habeas corpus upon a Federal military officer with respect to his alleged illegal detention, under color of Federal authority, of a person upon a Federal enclave (*State v. Dimick*, 12 N. H. 194 (1841); *In re Carlton*, 7 Cow. 471 (N. Y., 1827); and *Commonwealth v. Cushing*, 11 Mass. 67 (1814)). The lack of jurisdiction in State courts to inquire by habeas corpus into the propriety of the confinement of persons held under the authority or color of authority of the United States has since been firmly fixed and confirmed. *Ableman v. Booth*, 21 How. 506 (1859), *In re Tarble*, 13 Wall. 397 (1871), *Johnson v. Eisentrager*, 339 U. S. 763 (1950). Nor, it would seem, may a writ of habeas corpus out of a State court in any case lie under the usual State reservation to serve process with reference to a person held in an area under exclusive Federal jurisdiction, although his holding be not under Federal authority (*e. g.*, the holding of a child by an adult claiming parental authority), since such a reservation permits service only with respect to matters arising outside the exclusive jurisdiction area.⁵⁶

It has been held, on the other hand, that a writ of habeas corpus properly might issue from a Federal court to discharge from the custody of a State official a prisoner held for a crime indicated to have been committed in an area which, while within the State, was under the exclusive legislative jurisdiction of the United States. *Ex parte Tatem*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877). The court issued the writ reluctantly in the *Tatem* case, however, and in *In re Bradley*, 96 Fed. 969 (C. C. S. D. Cal., 1898), the court said (p. 970):

Unquestionably, the circuit and district courts of the United States may, on habeas corpus, discharge from custody one who is restrained of his liberty in violation of the constitution of the United States, even though

⁵⁶ But see *In re Kernan*, 247 App. Div. 664, 288 N. Y. Supp. 329, *aff'd.*, 272 N. Y. 560, 4 N. E. 2d 737 (1938).

he is so restrained under state process to answer for an alleged crime against the state. Rev. St. § 753. This power, however, in the federal judiciary, "to arrest the arm of the state authorities, and to discharge a person held by them, is one of great delicacy" (Ex parte Thompson, 23 Fed. Cas. p. 1016), and ought not to be exercised in any case where suitable relief can be had through the regular procedure of the state tribunals * * *.

The court said further (p. 971):

Assuming—without, however, deciding—that the allegations of the petition, in the case at bar, show, that the imprisonment of the petitioner is without due process of law, and violative of the federal constitution, they do not, as held in Ex parte Royall, supra, "suggest any reason why the state court of original jurisdiction may not, without interference upon the part of the courts of the United States, pass upon the question which is raised," as to the lack of jurisdiction in the state government over the land or place in question.

The Supreme Court has ruled that whether the United States had exclusive legislative jurisdiction over land where an alleged crime was committed is to be determined by the court to which the indictment was returned, and not by writ of habeas corpus in connection with proceedings for the removal of the accused from another jurisdiction for trial. *Rodman v. Pothier*, 264 U. S. 399 (1924). Presumably this rule would apply to extradition as well as to removal proceedings.

FEDERAL CRIMES ACT OF 1790: *Effects limited*.—Among the problems which early resulted from the creation of Federal enclaves was that of the administration of criminal law over these areas. Once these areas were withdrawn from State jurisdiction, in the absence of congressional legislation they were left without criminal law. Congress, in order to correct this situ-

ation, passed the first Federal Crimes Act, in 1790.⁵⁷ However, this act defined only the more serious crimes, such as murder, manslaughter, maiming, etc., punishing their commission in areas under the "sole and exclusive jurisdiction of the United States." Persons who committed other offenses in these areas escaped unpunished.

The gravity of the situation was indicated by Joseph Story in his comment on a bill which he wrote in 1816 "to extend the judicial system of the United States."⁵⁸ He stated, in part, as follows:

* * * Few, very few of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question,) they are wholly dispunishable. The State Courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these places be now committed with impunity. Surely, in naval yards, arsenals, forts, and dockyards, and on the high seas, a common law jurisdiction is indispensable. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress have power to provide for all crimes against the United States, is incontestable. * * *⁵⁹

⁵⁷ 1 Stat. 112, April 30, 1790. This statute, it was held in *Franklin v. United States*, 1 Colo. 35 (1867), was not applicable in a Territory, a Territory not being under the "sole and exclusive jurisdiction of the United States" within the meaning of the statute.

⁵⁸ *Life and Letters of Joseph Story*, 1851, vol. 1, p. 297.

⁵⁹ Rapes (18 U. S. C. 2031), arsons (18 U. S. C. 81), batteries (18 U. S. C. 113), and certain other crimes now are punishable under modern derivatives of the Federal Crimes Act of 1790 set out in the United States Code (see 18 U. S. C. 114, 661, 662, 1025, 1111, 1112, 1113, 1363, 2032, 2111, 2192, and 2993).

These Federal areas within the States over which Congress had exclusive jurisdiction had become, it would seem from Story's comment, a criminals' paradise. The act of 1790, *supra*, defining and punishing for certain crimes on such areas left many grossly reprehensible acts undefined and unpunished, the States no longer had jurisdiction over these areas, and the Federal courts had no common law jurisdiction.⁶⁰

ASSIMILATIVE CRIMES STATUTES: *Assimilative Crimes Act of 1825*.—In order, therefore, to provide a system of criminal law for ceded areas, Congress, in 1825, passed the first assimilative crimes statute.⁶¹ This was section 3 of the act of March 3, 1825, 4 Stat. 115, which provided:

AND BE IT FURTHER ENACTED, That, if any offence shall be committed in any of the places aforesaid, the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognisance thereof, be liable to, and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence when committed within the body of any county of such state.

Mr. Webster, who sponsored this bill, is indicated to have explained the purpose of its third section as follows (*Register of Debates in Congress*, 18th Cong., 2d Sess., Jan. 24, 1825, Gales & Seaton, Vol. I, p. 338):

⁶⁰ *United States v. Hudson and Goodwin*, 7 Cranch 32 (1812); but since the Federal statute which provided punishment for murder on an exclusive Federal jurisdiction area did not define the crime, it was held proper to look to the common law for a definition. *United States v. King*, 34 Fed. 302 (C. C. E. D. N. Y., 1888); *United States v. Lewis*, 111 Fed. 630 (C. C. W. D. Tex., 1901).

⁶¹ For a discussion of assimilative crimes acts, see also note, 70 *Harv. L. Rev.* 685 (1957).

* * * it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offences; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the state in which the yard, &c. might be. He [Webster] was persuaded that the people would not view it as any hardship, that the great class of minor offences should continue to be punished in the same manner as they had been before the cession.

In *United States v. Davis*,⁶² decided in 1829, the court stated the purpose of the act of 1825, at page 784:

The object of the act of 1825 was to provide for the punishment of offences committed in places under the jurisdiction of the United States, where the offence was not before punishable by the courts of the United States under the actual circumstances of its commission. * * *

The act of 1825 was construed by the Supreme Court in *United States v. Paul*, 6 Pet. 141 (1832). An act of 1829 of the New York legislature was held not to apply under the Assimilative Crimes Act to the West Point Military Reservation, situated in the State of New York. Chief Justice Marshall ruled that the act of 1825 was to be limited to the adoption of State laws in effect *at the time of its enactment*. Any State laws enacted after March 3, 1825, could not be adopted by the act and would therefore be of no effect in a Federal enclave. It appeared, therefore, that the assimilative crimes statute would have to be re-enacted periodically in order to keep the criminal laws of Federal enclaves abreast with State criminal laws.⁶³

⁶² 25 Fed. Cas. 781, No. 14,930 (C. C. D. Mass., 1829).

⁶³ In *United States v. Tucker*, 122 Fed. 518 (W. D. Ky., 1903), it was held that re-enactment of the assimilative crimes statute obviated requirement

In *United States v. Barney*, 24 Fed. Cas. 1011, No. 14,524 (C. C. S. D. N. Y., 1866), the court held that the act of 1825 applied only to those places which were under the exclusive jurisdiction of the United States at the time the act was passed. Therefore, the act would not apply to any areas ceded to the Federal Government by the States after March 3, 1825. It was similarly apparent then that any areas ceded by the States to the Federal Government after the date of the act of 1825 were left without criminal law except as to those few offenses defined in the Federal Crimes Act of 1790, *supra*.

Assimilative Crimes Act of 1866.—The *Paul* case limited the act as to time, and the *Barney* case as to place. The Congress completely remedied the situation brought about by the *Barney* case, and alleviated the problems raised by the *Paul* case, by the act of April 5, 1866 (14 Stat. 12, 13), re-enacting an Assimilative Crimes Act. This law extended the act to "any place which has been or shall hereafter be ceded" to the United States. It also spelled out what had in any event probably been the law—that no subsequent repeal of any State penal law should affect any prosecution for such offense in any United States court. Accordingly, though a State penal law was repealed that law still remained as part of the Federal criminal code for the Federal area.

Re-enactments of Assimilative Crimes Act, 1898–1940.—The next re-enactment of the Assimilative Crimes Act came on July 7, 1898 (30 Stat. 717). This did not change the fundamental object of the existing act, although it effected a change in phraseology. The constitutionality of the 1898 act was sustained in *Franklin v. United States*, 216 U. S. 559 (1910), *writ of error dismissed*, 220 U. S. 624. This case held that the act did not delegate to the States authority in any way to change the criminal laws applicable to places over which the United States had jurisdiction, adopting only the State law in exist-

for ascertaining the state of the criminal law at the time (1825) of its original enactment.

ence at the time the 1898 act was enacted, and that the act was not an unconstitutional delegation of authority by Congress.

The following statements were made by Chief Justice White in *United States v. Press Publishing Company*, 219 U. S. 1 (1911), referring to the 1898 statute (page 9):

It is certain, on the face of the quoted section, that it exclusively relates to offenses committed on United States reservations, etc., which are "not provided for by any law of the United States," and that as to such offenses the state law, when they are by that law defined and punished, is adopted and made applicable. That is to say, while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling, yet, on the other hand, where no law of the United States has expressly provided for the punishment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the two-fold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United States, adopted and wrote in the state law, with the single difference that the offense,

although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the State. * * *

The Assimilative Crimes Act of 1898 became section 289 of the Criminal Code by the act of March 4, 1909 (35 Stat. 1088). In referring to section 289 the court, in *Puerto Rico v. Shell Co.*, 302 U. S. 253 (1937), said (page 266):

Prosecutions under that section, however, are not to enforce the laws of the state, territory or district, but to enforce the federal law, the details of which, instead of being recited, are adopted by reference.

The constitutionality of the act was upheld in *Washington, P. and C. Ry. v. Magruder*, 198 F. 218 (D. Md., 1912). The court said (p. 222):

Congress may not empower a state Legislature to create offenses against the United States or to fix their punishment. Congress may lawfully declare the criminal law of a state as it exists at the time Congress speaks shall be the law of the United States in force on particular portions of the territory of the United States subject to the latter's exclusive criminal jurisdiction. * * *

Section 289 of the Criminal Code was subsequently re-enacted on three occasions:

1. Act of June 15, 1933, 48 Stat. 152, adopting State laws in effect on June 1, 1933.⁶⁴
2. Act of June 20, 1935, 49 Stat. 394, adopting State laws in effect on April 1, 1935.⁶⁵
3. Act of June 6, 1940, 54 Stat. 234, adopting State laws in effect on February 1, 1940.⁶⁶

⁶⁴ See also H. Rept. No. 56, 73d Cong., 1st Sess.

⁶⁵ See also H. Rept. No. 1022, 74th Cong., 1st Sess.

⁶⁶ See also H. Rept. No. 1584, 76th Cong., 3d Sess.; and 77 Cong. Rec. 5531-5532.

Subsequently the act of June 11, 1940 (54 Stat. 304), extended the scope and operation of the assimilative crimes statute by amending section 272 of the Criminal Code so that the criminal statutes set forth in chapter 11, title 18, United States Code, including the assimilative crimes statute, applied to lands under the *concurrent* as well as the *exclusive* jurisdiction of the United States.

Assimilative Crimes Act of 1948.—The present assimilative crimes statute was enacted on June 25, 1948, in the revision and codification into positive law of title 18 of the United States Code.⁶⁷ It now constitutes section 13 of title 18 of the Code, and reads as follows:

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Section 7 of title 18, United States Code, referred to in section 13, merely defines the term "special maritime and territorial jurisdiction of the United States," in pertinent part as follows:

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

⁶⁷ 62 Stat. 686.

The language of the present assimilative crimes statute, it may be noted, does away with the requirement for further periodic re-enactment of the law to keep abreast with changes in State penal laws. The words "by the laws thereof in force at the time of such act or omission" make such re-enactments unnecessary. The previously existing section 289 of the Criminal Code, through its several re-enactments, *supra*, read, "by the laws thereof, now in force." Accordingly, under the language of the present statute the State law in force *at the time of the act or omission* governs if there was no pertinent Federal law. All changes, modifications and repeals of State penal laws are adopted by the Federal Criminal Code, keeping the act up to date at all times.⁶⁸

INTERPRETATIONS OF ASSIMILATIVE CRIMES ACT: *Adopts State law.*—It is emphasized that the Assimilative Crimes Act *adopts* the State law. The Federal courts apply *not* State penal laws, but Federal criminal laws which have been adopted by reference.⁶⁹

Operates only when offense is not otherwise defined.—The Assimilative Crimes Act operates only when the Federal Criminal Code has not defined a certain offense or provided for its punishment.⁷⁰ Furthermore, when an offense has been defined and prohibited by the Federal code the assimilative crimes statute cannot be used to redefine and enlarge or narrow the scope of the Federal offense. The law applicable in this

⁶⁸ Cf. sec. 4 of the Outer Continental Shelf Lands Act (act of Aug. 7, 1953, 67 Stat. 462, 43 U. S. C. 1333), which adopts laws of adjacent States effective on the effective date of the act as the Federal laws for the areas there involved. In the case of *United States v. Sharpnack*, 352 U. S. 962 (1957), arising in the Western District of Texas, in which the Supreme Court of the United States noted probable jurisdiction on Jan. 14, 1957, there has been raised the question whether an unconstitutional delegation of legislative power is involved in the present Assimilative Crimes Act. See also 70 *Harv. L. Rev.* 685 (1957).

⁶⁹ *Puerto Rico v. Shell Co.*, 302 U. S. 253 (1937).

⁷⁰ *United States v. Press Publishing Company*, 219 U. S. 1 (1911); see also *United States v. Dolan*, 25 Fed. Cas. 887, No. 14,978 (C. C. E. D. N. Y., 1885).

matter is clearly set out in *Williams v. United States*, 327 U. S. 711 (1946), (p. 717):

We hold that the Assimilative Crimes Act does not make the Arizona statute applicable in the present case because (1) the precise acts upon which the conviction depends have been made penal by the laws of Congress defining adultery and (2) the offense known to Arizona as that of "statutory rape" has been defined and prohibited by the Federal Criminal Code, and is not to be redefined and enlarged by application to it of the Assimilative Crimes Act. The fact that the definition of this offense as enacted by Congress results in a narrower scope for the offense than that given to it by the State, does not mean that the congressional definition must give way to the State definition. * * * The interesting legislative history of the Assimilative Crimes Act discloses nothing to indicate that, after Congress has once defined a penal offense, it has authorized such definition to be enlarged by the application to it of a State's definition of it. It has not even been suggested that a conflicting State definition could give a narrower scope to the offense than that given to it by Congress. We believe that, similarly, a conflicting State definition does not enlarge the scope of the offense defined by Congress. The Assimilative Crimes Act has a natural place to fill through its supplementation of the Federal Criminal Code, without giving it the added effect of modifying or repealing existing provisions of the Federal Code.

The Assimilative Crimes Act has a certain purpose to fulfill and its application should be strictly limited to that purpose. On the other hand, it has been applied when there has been the slightest gap in Federal law. In *Ex parte Hart*, 157 Fed. 130 (D. Ore., 1907) the court, in interpreting the act of July 7, 1898, said (p. 133):

When, therefore, section 2 declares that when any offense is committed in any place, the punishment for which is not provided for by any law of the United States, it comprehends offenses created by Congress where no punishment is prescribed, as well as offenses created by state law, where none such is inhibited by Congress. So that the latter section is as comprehensive and far-reaching as the former, and is in practical effect the same legislation.

Includes common law.—It has also been held that the Assimilative Crimes Act adopted not only the statutory laws of a State, but also the common law of the State as to criminal offenses. *United States v. Wright*, 28 Fed. Cas. 791, No. 16,774 (D. Mass., 1871).

Excludes statute of limitations.—The Assimilative Crimes Act does not, however, incorporate into the Federal law the general statute of limitations of a State relating to crimes; question on this matter arose in *United States v. Andem*, 158 Fed. 996 (D. N. J., 1908), where the court held that the Federal statute of limitations would apply, the State statute of limitations being a different statute from that which defined the offense.

Excludes law on sufficiency of indictments.—In *McCoy v. Pescor*, 145 F. 2d 260 (C. A. 8, 1944), *cert. den.*, 324 U. S. 868 (1945), question arose as to the sufficiency of Federal indictments under a Texas statute adopted by the Assimilative Crimes Act. The court held (p. 262):

Petitioner argues that the question here is controlled by the decisions of the Texas courts regarding the sufficiency of indictments under the adopted Texas statute. * * * The Texas decisions, however, are not controlling. Prosecutions under 18 U. S. C. A. § 468, "are not to enforce the laws of the state, territory, or district,

but to enforce the federal law, the details of which, instead of being recited, are adopted by reference." * * *

This is amplified in a discussion concerning the Assimilative Crimes Act in 22 *Calif. L. Rev.* 152 (1934).

Offenses included.—The overwhelming majority of offenses committed by civilians on areas under the exclusive criminal jurisdiction of the United States are petty misdemeanors (*e. g.*, traffic violations, drunkenness). Since these are not defined in Federal statutory law, and since the authority to define them by regulations is limited to a few Federal administrators,⁷¹ their commission usually can be punished only under the Assimilative Crimes Act.⁷² The act also has been invoked to cover a number of serious offenses defined by State, but not Federal law.⁷³

Offenses not included.—The Assimilative Crimes Act will not operate to adopt any State penal statutes which are in conflict with Federal policy as expressed by acts of Congress or by valid administrative regulations. In *Air Terminal Services, Inc. v. Rentzel*, 81 F. Supp. 611 (E. D. Va., 1949), a Virginia statute provided for segregation of white and colored races in places of public assemblage and entertainment. A regulation of the Civil Aeronautics Administrator prohibited segregation at the Washington National Airport located in Virginia. The airport was under the exclusive criminal jurisdiction of the United States. The question presented was whether the Virginia statute was adopted by the Assimilative Crimes Act, thus rendering the Administrator's regulation invalid. The court held, at page 612:

⁷¹ Report, part I, p. 52, and see *infra*, p. 137 *et seq.*

⁷² *E. g.*: reckless driving: *United States v. Watson*, 80 F. Supp. 649 (E. D. Va., 1948) ; possession of slot machines: *United States v. Sosseur*, 181 F. 2d 873 (C. A. 7, 1950).

⁷³ *E. g.*: Burglary: *Dunaway v. United States*, 170 F. 2d 11 (C. A. 10, 1948) ; sodomy: *United States v. Gill*, 204 F. 2d 740 (C. A. 7, 1953) ; embezzlement: *United States v. Titus*, 64 F. Supp. 55 (D. N. J., 1946) ; criminal syndicalism: *Burns v. United States*, 274 U. S. 328 (1927).

The fundamental purpose of the assimilative crimes act was to provide each Federal reservation a criminal code for its local government; it was intended "to use local statutes to fill in gaps in the Federal Criminal Code." It is not to be allowed to override other "federal policies as expressed by Acts of Congress" or by valid administrative orders, *Johnson v. Yellow Cab Co.*, 321 U. S. 383, * * * and one of those "federal policies" has been the avoidance of race distinction in Federal matters. *Hurd v. Hodge*, 334 U. S. 24, 34, 68 S. Ct. 847. The regulation of the Administrator, who was authorized by statute, Act of June 29, 1940, 54 Stat. 686, to promulgate rules for the Airport, is but an additional declaration and effectuation of that policy, and therefore its issuance is not barred by the assimilative crimes statute.

In *Nash v. Air Terminal Services, Inc.*, 85 F. Supp. 545 (E. D. Va., 1949), decided on the basis of facts existing before the Administrator's regulation was issued, it was held that the Virginia segregation statute had been adopted by the Assimilative Crimes Act, and did apply to the National Airport. However, it was held that once the regulation was promulgated the State statute was no longer enforceable at the airport. The court said (p. 548):

Too, the Court is of the opinion that the Virginia statute already cited was then applicable to the restaurants and compelled under criminal penalties the separation of the races. The latter became a requirement of the federal law prevailing on the airport, by virtue of the Assimilative Crimes Act, *supra*, and continued in force until the promulgation, on December 27, 1948, by the Administrator of Civil Aeronautics of his regulation expressing a different policy. * * *

When lands are acquired by the United States in a State for a Federal purpose, such as the erection of forts, arsenals or other public buildings, these lands are free, regardless of their

legislative jurisdictional status, from such interference of the State as would destroy or impair the effective use of the land for the Federal purpose. Such is the law with reference to all instrumentalities created by the Federal Government.⁷⁴ Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of its delegated powers. *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885); *James v. Dravo Contracting Company*, 302 U. S. 134 (1937).

In providing for the carrying out of the functions and purposes of the Federal government, Congress on numerous occasions has authorized administrative officers or boards to adopt regulations to effect the will of Congress as expressed by Federal statutes. For example, the Secretary of the Interior is authorized to make rules and regulations for the management of parks, monuments and reservations under the jurisdiction of the National Park Service⁷⁵ (16 U. S. C. 3); the Secretary of Agriculture is authorized to make regulations for the use and preservation of national forests (16 U. S. C. 551); the Administrator of General Services is authorized to make regulations governing the use of Federal property under his control (40 U. S. C. 318a); and the head of each Department of the Government is authorized to prescribe regulations, not inconsistent with laws, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it (5 U. S. C. 22). The law is well settled that any such regulation must meet two fundamental tests: (1) it must be reasonable and appropriate (*Manhattan Co. v. Commissioner*, 297 U. S. 129, 134 (1936); *International Ry. v. Davidson*, 257 U. S. 506, 514 (1922); *Commissioner of Internal*

⁷⁴ See chapter IX, *infra*, p. 249.

⁷⁵ In *Robbins v. United States*, 284 Fed. 39 (C. A. 8, 1922), there were upheld such regulations issued by the Secretary of the Interior; in *Colorado v. Toll*, 268 U. S. 228, 231 (1925), it was stated that the *Robbins* decision was based on Federal possession of legislative jurisdiction.

Revenue v. Clark, 202 F. 2d 94, 98 (C. A. 7, 1953); *Krill v. Arma Corporation*, 76 F. Supp. 14, 17 (E. D. N. Y., 1948)), and (2) it must be consistent not only with the statutory source of authority, but with the other Federal statutes and policies (*Manhattan Co. v. Commissioner*, *supra*; *International Ry. v. Davidson*, *supra*; *Johnson v. Keating*, 17 F. 2d 50, 52 (C. A. 1, 1926); *In re Merchant Mariners Documents*, 91 F. Supp. 426, 429 (N. D. Cal., 1949); *Peoples Bank v. Eccles*, 161 F. 2d 636, 640 (D. C. App., 1947), *rev'd. on other grounds*, 333 U. S. 426 (1948)).

It may be assumed that a Federal regulation in conflict with a State law will nevertheless fail to prevent the adoption of the State law under the Assimilative Crimes Act, or to terminate the effectiveness of the law, unless the regulation meets the fundamental tests indicated above. However, there appear to be no judicial decisions other than the *Rentzel* and *Nash* cases, *supra*, which both indicated a regulation to be valid, that touch upon the subject.⁷⁸

No reported judicial decision appears to exist upholding the effectiveness, under the Assimilative Crimes Act, of a primarily regulatory statute containing criminal provisions. Liquor licensing laws, zoning laws, building codes, and laws controlling insurance solicitation, when these provide criminal penalties for violations, are such as are under consideration.

On the other hand, no judicial decision has been discovered in which it has been held that a regulatory statute of the State which was the former sovereign was ineffective in an area under the exclusive jurisdiction of the Federal Government for the

⁷⁸ However, the Criminal Division, U. S. Dept. of Justice, has ruled that military regulations purporting to sanction bingo and similar games would be ineffective to prevent the adoption of State laws prohibiting gambling (Letter dated Apr. 29, 1955, from Asst. Atty. Gen., Crim. Div., to Secy. of Defense). The Judge Advocate General of the Navy has held that the Assimilative Crimes Act adopted State statutes and thereby prohibited the operation of punch boards (*Op. J. A. G., Navy*, JAG:II:1:JGMR:mac (Feb. 17, 1955)), and slot machines (*ibid.*, JAG:II:NLM:jlr (July 5, 1949)), on exclusive Federal jurisdiction areas. (See also 15 U. S. C. 1175; and *United States v. Sossecur*, 181 F. 2d 873 (C. A. 7, 1950).)

reason that the Assimilative Crimes Act did not apply to federalize such statutes. Several cases⁷ have from time to time been cited in support of the theory that the act does not apply to criminal provisions of regulatory State statutes, but in each case the decision of the court actually was based on other grounds, whatever the dicta in which the court may have indulged.

Collins v. Yosemite Park Co., 304 U. S. 518 (1938), involved an attempt by a State body to license and control importation and sale of liquor in an area under partial (denominated "exclusive" in the opinion) Federal jurisdiction, where a right to impose taxes had been reserved by the State. While the court found unenforceable by the State the regulatory provisions of State law attempted to be enforced, it seems clear that it did so on the ground that the State's reservation to tax did not reserve to it authority to regulate, taxation and regulation being essentially different; there was no question involved as to whether the same regulatory statutes might have been enforced as Federal law by a Federal agency under the Assimilative Crimes Act.

Petersen v. United States, 191 F. 2d 154 (C. A. 9, 1951), cert. den., 342 U. S. 885, decided that legislative jurisdiction had been transferred from a State to the United States with respect to a privately owned area within a national park, and on this basis the court held invalid a license issued by the State, contrary to Federal policy, for sale of liquor on the area. As in the *Collins* case, this was a disapproval of a State attempt to exercise State authority in a matter jurisdiction over which had been ceded to the Federal Government.

In *Crater Lake Nat. Park Co. v. Oregon Liquor Control Com'n*, 26 F. Supp. 363 (D. Ore., 1939), the court interpreted the *Collins* case as holding that "the regulatory features of the

⁷ *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938); *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), cert. den., 342 U. S. 885; *Crater Lake Nat. Park Co. v. Oregon Liquor Control Com'n*, 26 F. Supp. 363 (D. Ore., 1939); *Birmingham v. Thompson*, 200 F. 2d 505 (C. A. 5, 1912); *Johnson v. Yellow Cab Transit Co.*, 321 U. S. 383 (1944).

California Liquor Act are not applicable to Yosemite National Park," and called attention to the similarity in the facts involved in the two cases. But in the *Crater Lake Nat. Park Co.* case there was raised for the first time, by motion for issuance of an injunction, the question whether the Assimilative Crimes Act effects the federalization of regulatory provisions of State law; this question the court *did not answer*, holding that its resolution should occur through a criminal proceeding and that there was no ground for injunctive relief.

The case of *Birmingham v. Thompson*, 200 F. 2d 505 (C. A. 5, 1952), like the *Collins* and *Petersen* cases, resulted in a court's disapproval of a State's attempt to exercise State regulatory authority in a matter jurisdiction as to which had been transferred to the Federal Government. Here it was a municipality (under State-derived authority, of course) which sought to impose the provisions of a building code, particularly the requirement for a building permit and its incidental fee, upon a Federal contractor, and the court held that a State reservation of taxing power did not extend to permit State control of building. Again, there was involved no question as to whether the Assimilative Crimes Act federalized State regulatory statutes.

In the case of *Johnson v. Yellow Cab Transit Co.*, 321 U. S. 383 (1944), there was involved a State seizure of liquor in transit through State territory to an area under exclusive Federal jurisdiction. The court's decision invalidating the seizure was based on the fact that no State law purported to prohibit or regulate a shipment into or through the State to an area under exclusive Federal jurisdiction. In connection with a collateral matter, as to whether a Federal court properly ordered a surrender of the liquor by the State, there was raised the question whether the Assimilative Crimes Act effected an adoption of State law in the Federal enclave, which might have had the effect of making illegal the transactions involved. The court made clear that it was avoiding this question (p. 391):

Were we to decide that the assimilative crimes statute is not applicable to this shipment of liquors, we would, in effect, be construing a federal criminal statute against the United States in a proceeding in which the United States has never been represented. And, on the other hand, should we decide the statute outlaws the shipment, such a decision would be equivalent to a holding that more than 200 Army Officers, sworn to support the Constitution, had participated in a conspiracy to violate federal law. Not only that, it would for practical purposes be accepted as an authoritative determination that all army reservations in the State of Oklahoma must conduct their activities in accordance with numerous Oklahoma liquor regulations, some of which, at least, are of doubtful adaptability. And all of this would be decided in a case wherein neither the Army Officers nor the War Department nor the Attorney General of the United States have been represented, and upon a record consisting of stipulations between a private carrier and the legal representatives of Oklahoma.

While two justices of the Supreme Court rendered a minority opinion expressing the view that the Assimilative Crimes Act adopted State regulatory statutes for the Federal enclave and made illegal the transactions involved, the majority opinion cannot thereby be construed, in view of the plain language with which it expresses the court's avoidance of a ruling on the question, as holding that the Assimilative Crimes Act does not adopt regulatory statutes.

The absence of decisions on the point whether the Assimilative Crimes Act is applicable to regulatory statutes containing criminal provisions may well long continue, in the general absence of Federal machinery to administer and enforce such statutes. In any event, it seems clear that portions of such statutes providing for administrative machinery are inapplicable in Federal enclaves; and in numerous instances

such portions will, in falling, bring down penal provisions from which they are inseparable.⁷⁸

UNITED STATES COMMISSIONERS ACT OF 1940: The act of October 9, 1940 (now 18 U. S. C. 3401), granted to United States commissioners the authority to make final disposition of petty offenses committed on lands under the exclusive or concurrent jurisdiction of the United States, thus providing an expeditious method of disposing of many cases instituted under the assimilative crimes statute. By 28 U. S. C. 632, national park commissioners (see 28 U. S. C. 631), have had extended to them the jurisdiction and powers had by United States commissioners under 18 U. S. C. 3401.

The view has been expressed that under this act United States commissioners are not authorized to try persons charged with petty offenses committed within a national monument,⁷⁹ a national memorial park,⁸⁰ or a national wildlife refuge,⁸¹ because of the fact that the United States held the particular lands in a proprietorial interest status, in accordance with its usual practice respecting lands held for these purposes, and the act authorizes specially designated commissioners to act only with respect to lands over which the United States exercises either exclusive or concurrent jurisdiction.

It is interesting to note that the act of October 9, 1940 (54 Stat. 1058), of which the present code section is a re-enactment by the act of June 25, 1948, was introduced as H. R. 1999, 76th Congress. A similar bill (H. R. 4011) without the phraseology

⁷⁸ See p. 161 *et seq.*, *infra*, for a related discussion of adoption under the international law rule of State statutes requiring administrative action.

⁷⁹ Memo Aug. 23, 1945, from Acting Director, National Park Service, Department of the Interior, to Regional Director, National Park Service, Department of the Interior.

⁸⁰ Memo Sept. 24, 1948, from Acting Assistant Director, National Park Service, Department of the Interior, to Regional Director, Region 2, National Park Service, Department of the Interior.

⁸¹ Letter dated Sept. 1, 1954, from Director, Fish and Wildlife Service, Department of the Interior, to United States Commissioner, St. Joseph, Missouri.

"or over which the United States has concurrent jurisdiction" was passed by the House of Representatives in the 75th Congress. When the bill was reintroduced in the 76th Congress, the above-quoted words were included at the special request of the National Park Service, since only a small number of national park areas were under the exclusive jurisdiction of the United States, and without some language to provide for the trial jurisdiction of commissioners over petty offenses committed in the other areas the benefits of the proposed legislation could not be realized in many national parks.

The words "concurrent jurisdiction" were suggested because they were understood as including partial (or proprietary) jurisdiction and as consisting essentially of that jurisdiction of the Federal Government which is provided by the Constitution, article IV, section 3. In fact, for a number of years, a proprietary interest status as exercised over permanent reservations by the United States was understood among attorneys in the Department of the Interior as "concurrent jurisdiction."⁸² This construction has never been placed on the term "concurrent jurisdiction" either by the courts or by Government agencies generally, and at least in recent years the Department of the Interior has not so interpreted the term.

In this connection, it should be noted that the Department of the Interior in the past considered obtaining, in collaboration with other interested Federal agencies, legislation which would authorize United States commissioners to try petty offenses against the United States, regardless of the status of the jurisdiction over the Federal area involved.⁸³

⁸² Memo June 12, 1951, from Regional Counsel, Region Three, National Park Service, Department of the Interior, to Regional Director, Region Three, National Park Service, Department of the Interior.

Letter dated Dec. 27, 1951, from Regional Counsel, Region 3, National Park Service, Department of the Interior, to Chief Judge, Court of Appeals for the Third Circuit, Wilmington, Del.

⁸³ Memo Sept. 24, 1948, from Acting Assistant Director, National Park Service, Department of the Interior, to Regional Director, Region 2, National Park Service, Department of the Interior.

The Committee has given consideration to broadening the powers of United States commissioners by authorizing them to act additionally on lands over which the Government has a proprietorial interest only. In the Committee's conclusions and recommendations,⁸⁴ it was recommended that the powers of commissioners also extend to any place "* * *" which is under the charge and control of the United States."

⁸⁴ *Report*, part I, p. 75.

Civil Jurisdiction

RIGHT OF DEFINING CIVIL LAW LODGED IN FEDERAL GOVERNMENT: *In general.*—Once an area has been brought under the exclusive legislative jurisdiction of the Federal Government, in general only Federal civil laws, as well as Federal criminal laws,¹ are applicable in such area, to the exclusion of State laws.² In *Western Union Tel. Co. v. Chiles*, 214 U. S. 274 (1909), suit had been brought under a law of the State of Virginia imposing a statutory civil penalty for nondelivery of a telegram, the telegram in this instance having been addressed to the Norfolk Navy Yard. The court said (p. 278):

It is apparent from the history of the establishment of the Norfolk Navy Yard, already given, that it is one of the places where the Congress possesses exclusive legislative power. It follows that the laws of the State of Virginia, with the exception referred to in the acts of Assembly, [right to execute civil and criminal process] cannot be allowed any operation or effect within the limits of the yard. The exclusive power of legislation necessarily includes the exclusive jurisdiction. The subject is so fully discussed by Mr. Justice Field, delivering the opinion of the court in *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525, that we need do no more than refer to that case and the cases cited in the opinion. It is of the highest public importance that the jurisdiction of the State should be resisted at the borders of those

¹ See chapter V, p. 105 *et seq.*, *supra*.

² A suit by a State against a Federal officer exercising authority, without joining his superiors or the United States as defendants, held proper for test of question whether State ceded authority for exercise by the United States. *Colorado v. Toll*, 268 U. S. 228 (1925).

places where the power of exclusive legislation is vested in the Congress by the Constitution. Congress already, with the design that the places under the exclusive jurisdiction of the United States shall not be freed from the restraints of the law, has enacted for them (Revised Statutes, LXX, chapter 3) an extensive criminal code ending with the provision (§ 5391) that where an offense is not specially provided for by any law of the United States, it shall be prosecuted in the courts of the United States and receive the same punishment prescribed by the laws of the State in which the place is situated for like offenses committed within its jurisdiction. We do not mean to suggest that the statute before us creates a crime in the technical sense. If it is desirable that penalties should be inflicted for a default in the delivery of a telegram occurring within the jurisdiction of the United States, Congress only has the power to establish them.³

The civil authority of a State is extinguished over privately owned areas⁴ and privately operated areas⁵ to the same extent as over federally owned and operated areas⁶ when such areas are placed under the exclusive legislative jurisdiction of the United States.⁷

³ See also *Western Union Tel. Co. v. Brown*, 234 U. S. 542 (1914).

⁴ *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885; and it has been held that an owner of an area within a national park under the exclusive jurisdiction of the United States may not kill game contrary to Federal regulation, even on his own land. *Op. Sol., Dept. of the Interior*, M-27284 (Dec. 27, 1932).

⁵ *Chicago, Rock Island & Pacific Ry. v. McGlinn*, 114 U. S. 542 (1885); *Arlington Hotel Company v. Fant*, 278 U. S. 439 (1929).

⁶ *United States v. Ames*, 24 Fed. Cas. 784, No. 14,441 (C. C. D. Mass., 1845).

⁷ The authority that Federal agencies may exercise in exclusive Federal jurisdiction areas which are under their supervision has been the subject of many opinions and legal memoranda by chief law officers of a number of such agencies. However, the questions of law discussed in such writings

State reservations of authority.—State reservation of authority to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area.⁸ It has been held, however, that a reservation of the right to serve process does not permit a State to serve a writ of attachment against either public or private property located on an area under exclusive Federal jurisdiction,⁹ and, it would seem,¹⁰ it does not permit State service of a writ of habeas corpus with respect to a person held on such an area. It has also been held, on the other hand, that a reservation to serve process enables service, under a statute appointing the Secretary of State to receive service for foreign corporations doing business within the State, upon a corporation doing business within the boundaries of the State only upon an exclusive Federal jurisdiction area.¹¹ And residence of a person on an exclusive Federal jurisdiction area does not toll application of the State statute of limitations where there has been a reservation of the right to serve proc-

involve essentially the powers available to the agencies, as distinguished from those available to the United States Government (including the Congress), and except as the opinions or memoranda directly concern matters of legislative jurisdiction they will not be referred to in this work.

⁸ See p. 118 *et seq.*, *supra*, and p. 187, *infra*.

⁹ *Op. J. A. G., Navy*, 5267-1116: 3 (Mar. 26, 1923) ; see also *Foley v. Shriver*, 81 Va. 568 (1886) ; but in *Sauer v. Steinbauer*, 14 Wis. 70 (1861), an order of a State court directing sale of property of a judgment debtor was held to be process and its execution on an area under Federal legislative jurisdiction was upheld under a State reservation of the right of service or execution of process on the area. Further, the Judge Advocate General of the Navy has more recently reversed his position as to private property: *Op. J. A. G., Navy*, JAG: II: WRN: mnc (Sept. 27, 1955). Also upholding the attachment of private property as service of process are: 14 *Ops. A. G.* 426 (1874), and *Op. J. A. G., Army*, JAG 680.2 (Feb. 25, 1939).

¹⁰ See p. 123 *et seq.*, *supra*.

¹¹ *Knott Corp. v. Furman*, 163 F. 2d 199 (C. A. 4, 1947), *cert. den.*, 332 U. S. 809 ; but see *Hercules Powder Co. v. Ruben*, 188 Va. 694, 51 S. E. 2d 149 (1949) ; *Neidig v. Century Sprinkler Corp.*, 60 Dauph. 585 (Pa. C. P., 1950) ; see also *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 Atl. 889 (1911) ; *Camden v. Harris*, 109 F. Supp. 311 (W. D. Ark., 1953) ; *Ohio River Contract Co. v. Gordon*, 244 U. S. 68 (1917) ; *United Services Automobile Ass'n v. Harman*, 151 S. W. 2d 609 (Tex., 1941), *cert. den.*, 315 U. S. 807.

ess.¹² While a State may reserve various authority of a civil character other than the right to serve process in transferring legislative jurisdiction over an area to the Federal Government,¹³ such reservations result in Federal possession of something less than exclusive jurisdiction, and the rights of States with respect to the exercise of reserved authority in a Federal area will be discussed in a subsequent chapter.¹⁴

Congressional exercise of right—statute relating to death or injury by wrongful act.—While the Congress has, through the Assimilative Crimes Act and Federal law defining various specific crimes, established a comprehensive system of Federal laws for the punishment of crimes committed in areas over which it has legislative jurisdiction,¹⁵ it has not made similar provision for civil laws in such areas. Indeed, the only legislative action of the Federal Government toward providing Federal civil law in these areas has been the adoption (in the general manner accomplished by the Assimilative Crimes Act), for areas under the exclusive legislative jurisdiction of the United States, of the laws of the several States relating to right of action for the death or injury of a person by the wrongful act or neglect of another.¹⁶

The act of February 1, 1928, has a history relating back to 1919. In that year Senator Walsh of Montana first introduced a bill (S. 206, 66th Cong., 1st Sess.), which was debated and passed by the Senate, but on which the House took no action, having substantially the language of the statute finally enacted. Nearly identical bills were introduced by the same senator and

¹² *Maurice v. Worden*, 52 Md. 283 (1879).

¹³ See p. 60 *et seq.*, *supra*.

¹⁴ See chapter VII, *infra*.

¹⁵ See chapter V, *supra*.

¹⁶ Act of February 1, 1928, 45 Stat. 54, 16 U. S. C. 457; and see *Stewart & Co. v. Sadrakula*, 309 U. S. 94 (1940); *Misner v. Cleveland Wrecking Company of Cincinnati, et al.*, 25 F. Supp. 763 (W. D. Mo., 1938); *Whitmore v. French*, 37 Cal. 2d 744, 235 P. 2d 3 (1951); *Kitchens v. Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101 (1947), *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948); *Puleo v. H. E. Moss & Co.*, 159 F. 2d 842 (C. A. 2, 1947), (admiralty jurisdiction).

passed by the Senate, without the filing of a report and without debate, in the three succeeding Congresses.¹⁷ However, not until a fifth bill was presented by the senator (S. 1798, 70th Cong., 1st Sess.) did favorable action ensue in the House,¹⁸ as well as in the Senate, and the bill became law.

On but two occasions were these bills debated. When the first bill (S. 206, 66th Cong., 1st Sess.) came up for consideration, on June 30, 1919, Senator Walsh said with respect to it: ¹⁹

The acts creating the various national parks give to the United States exclusive jurisdiction over those territories, so that a question has frequently arisen as to whether, in case one suffers death by the default or willful act of another within those jurisdictions, there is any law whatever under which the dependents of the deceased may recover against the person answerable for his death. For instance, in the Yellowstone National Park quite a number of deaths have occurred in connection with the transportation of passengers through the park, and a very serious question arises as to whether, in a case of that character, there is any law whatever under which the widow of a man who was killed by the neglect, for instance, of the transportation company handling the passengers in the park could recover.

The purpose of this proposed statute is to give a right of action in all such cases exactly the same as is given by the law of the State within which the reservation or other place within the exclusive jurisdiction of the United States may be located.

* * * * *

This is merely to give the same right of action in a case within a district which is within the exclusive jurisdic-

¹⁷ S. 258, 67th Cong., 1st Sess., 61 Cong. Rec. 2131; S. 314, 68th Cong., 1st Sess., 65 Cong. Rec. 4138; and S. 104, 69th Cong., 1st Sess., 67 Cong. Rec. 4759.

¹⁸ H. Rept. 369, 70th Cong., 1st Sess., passed House (without debate), 69 Cong. Rec. 2039.

¹⁹ 58 Cong. Rec. 2052.

tion of the United States as is given by the law of the State within which it is located should the occurrence happen outside of the region within the exclusive jurisdiction of the United States.

Senator Smoot interjected:

I understand from the Senator's statement what is desired to be accomplished, but I was wondering whether it was a wise thing to do that at this time. An act of Congress authorizes the payment of a certain amount of money to the widow or the heirs of an employee killed or injured in the public service. It is true that those amounts are usually paid by special bills by way of claims against the Government when there is no objection to them. I do not know just how this bill, if enacted into law, will affect the existing law.

To which Senator Walsh replied:

Let me say to the Senator that we are required to take care of the cases to which he has referred, because they touch the rights of persons in the employ of the United States, and their cause of action is against the United States. This bill does not touch cases of that kind at all. It merely touches cases of injury inflicted by some one other than the Government. Under this bill the Government will be in no wise liable at all.²⁰

During Senate consideration of the fifth of the series of bills (S. 1798, 70th Cong., 1st Sess.), on January 14, 1928, the following discussion was had: ²¹

Mr. WALSH of Montana. A similar bill has passed the Senate many times, at least three or four, but for some reason or other it has not succeeded in securing the approbation of the House. It is intended practically to

²⁰ Liability does attach to the Federal Government under this act at the present time, pursuant to the provisions of the Federal Tort Claims Act (28 U. S. C. 1346 (b) *et seq.*, and 2671 *et seq.*).

²¹ 69 Cong. Rec. 1486.

make the application of what is known as Lord Campbell's Act to places within the exclusive jurisdiction of the United States.

Practically every State now has given a right of action to the legal representatives of the dependent relatives of one who has suffered a death by reason of the neglect or wrongful act of another, there being no such recovery, it will be recalled, at common law.

There are a great many places in the United States under the exclusive jurisdiction of the United States—the national parks, for instance. If a death should occur within those places, within the exclusive jurisdiction of the United States, there would be no right of recovery on the part of the representatives or dependents of the person who thus suffered death as a result of the wrongful act or neglect of another.

In the State of the Senator I suppose a right of action is given by the act of the Legislature of the State of Arkansas to the representatives of one who thus suffers, but if the death occur within the Hot Springs Reservation, being entirely within the jurisdiction of the United States, no recovery could be had, because recovery can be had there only by virtue of the laws of Congress. The same applies to the Yellowstone National Park in Wyoming and the Glacier National Park in Montana.

Mr. ROBINSON of Arkansas. This act would make the State law applicable?

Mr. WALSH of Montana. It would; so that if under the law of Arkansas a right of recovery could be had if the death occurred outside of the national park, the same right of action would exist if it occurred in the national park.

Mr. BRUCE. In other words, as I understand it, it is intended to meet the common-law principle that a personal action dies with the death of the person?

Mr. WALSH of Montana. Exactly.

Only a single written report was submitted (by the House Committee on the Judiciary, on S. 1798)²² on any of the bills related to the act of February 1, 1928. In this it was stated:

This bill has passed the Senate on three or four occasions, but has never been reached for action in the House. This bill gives a right of action in the case of death of any person by neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States within the exterior boundaries of any State.

It provides that a right of action shall exist as though the place were under the jurisdiction of the State and that the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which the national park or other Government reservation may be. Under the common law no right of action survived to the legal representatives in case of death of a person by wrongful act or neglect of another. This was remedied in England by what is known as Lord Campbell's Act, and the States have almost without exception passed legislation giving a right of action to the legal representatives or dependent relatives of one who has suffered death by reason of the wrongful act of another. This bill will provide a similar remedy for places under the exclusive jurisdiction of the United States.

It may be noted that neither the language of the 1928 act,²³ nor the legislative history of the act, set out above, cast much light on whether the act constitutes a retrocession of a measure of jurisdiction to the States, or an adoption of State law as Federal law. But a retrocession, it has been seen,²⁴ requires State consent, and no consent is provided for under this statute,

²² H. Rept. No. 369, 70th Cong., 1st Sess. (8835).

²³ See *report*, part I, p. 242.

²⁴ P. 54 *et seq.*, *supra*.

unlike the case with respect to Federal statutes providing for application of State laws relating to workmen's compensation, unemployment compensation, and other matters,²⁵ where the Federal statute cannot be implemented without some action by the State. It is largely on this basis that the 1928 statute is here classified as a Federal adoption of State law, rather than a retrocession.

It may also be noted that the debate on the bills, and the House report, set out in pertinent part above, indicate that the purpose of the bill was to furnish a remedy to survivors in the nature of that provided by Lord Campbell's Act, and no reference is made to language in the title of the bill, and in its text, suggesting that the bill applied to personal injuries, as well as deaths, by wrongful act. While the question whether the act applies to personal injuries, as well as deaths, appears not to have been squarely presented to the courts, for purposes of convenience, only, the act is herein referred to as providing a remedy in both cases.²⁶ In any event, however, it would clearly seem not to apply to cases of damage to personal or real property.

The statute adopting for exclusive jurisdiction areas State laws giving a right of action for death or injury by wrongful act or neglect did not, it was held by a case which led to further Federal legislation, adopt a State's workmen's compensation

²⁵ See p. 190 *et seq.*, *infra*.

²⁶ In *Murray v. Gerrick & Co., et al.*, which is more fully discussed in the text, *infra*, the Supreme Court said (291 U. S. 315, 319) that the 1928 statute gave an individual no right to sue if he survived his injury. The issue was not before the court, however. See also *Pound v. Gaulding*, 237 Ala. 387, 187 So. 468 (1939), wherein a former State employers' liability act was applied under the international law rule, discussed *infra*, in the case of an injury, which suggests a view in the court that the 1928 statute was not applicable to injuries. On the other hand, in at least three State cases (*Whitmore v. French*, 37 Cal. 2d 744, 235 P. 2d 3 (1951), *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937), and *Kitchens v. Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101, *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948)), the courts assumed that the 1928 statute applied to personal injuries as well as deaths.

law. *Murray v. Gerrick & Co., et al.*, 291 U. S. 315 (1934).²⁷ An argument to the contrary was answered by the court as follows (p. 318):

* * * This argument overlooks the fact that the federal statute referred only to actions at law, whereas the state act abolished all actions at law for negligence and substituted a system by which employers contribute to a fund to which injured workmen must look for compensation. The right of action given upon default of the employer in respect of his obligation to contribute to the fund is conferred as a part of the scheme of state insurance and not otherwise. The Act of Congress vested in Murray no right to sue the respondents, had he survived his injury. Nor did it authorize the State of Washington to collect assessments for its state fund from an employer conducting work in the Navy Yard. If it were held that beneficiaries may sue, pursuant to the compensation law, we should have the incongruous situation that this law is in part effective and in part ineffective within the area under the jurisdiction of the federal government. Congress did not intend such a result. On the contrary, the purpose was only to authorize suits under a state statute abolishing the common law rule that the death of the injured person abates the action for negligence.

It was also held in the *Murray* case that the 1928 Federal statute served to make effective in Federal areas the law as revised from time to time by the State, not merely the law in effect as of the date of transfer of legislative jurisdiction to

²⁷ See also: *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *Employers' Liability Assur. Corp. v. DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); *Utley v. Phelan*, 168 Okla. 411, 33 P. 2d 498 (1934); *Utley v. State Industrial Comm.*, 176 Okla. 255, 55 P. 2d 762 (1936); *Utley v. State Industrial Comm.*, 176 Okla. 257, 55 P. 2d 764 (1936); *Pound v. Gaulding*, 237 Ala. 387, 187 So. 468 (1939); *Martin v. Clinton Const. Co.*, 41 Cal. App. 2d 35, 105 P. 2d 1029 (1940).

the United States. The issue was not presented, however, whether a State statute enacted after the 1928 Federal statute would apply.²⁸

State unemployment compensation and workmen's compensation laws may be made applicable in such areas by authority of the Congress. But while the application of these laws has been made possible by Federal statutes,²⁹ these statutes, discussed more fully in chapter VII, *infra*, did not provide *Federal* laws covering unemployment compensation; rather, they effect a retrocession of sufficient jurisdiction to the States to enable them to enforce and administer in Federal enclaves their State laws relating to unemployment compensation and workmen's compensation. The Federal Government has similarly granted powers to the States for exercise in Federal enclaves with respect to taxation,³⁰ and these also will be discussed in a subsequent chapter.

Early apparent absence of civil law.—A careful search of the authorities has failed to disclose recognition prior to 1885 of any civil law as existing in areas under the exclusive legislative jurisdiction of the United States. Debates and other parts of the legislative history of the Assimilative Crimes Act, indicating prevalence of a belief that in the absence of Federal statutory law providing for punishment of criminal acts such acts in exclusive jurisdiction areas could not be punished,³¹ suggest the existence in that time of a similar belief that in the absence of appropriate Federal statutes no civil law existed in such areas.³²

²⁸ In *Kitchens v. Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101 (1947), *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948), this question was answered in the affirmative.

²⁹ Unemployment compensation: 26 U. S. C. 3305; workmen's compensation: act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290; both are further discussed in chapter VII, *infra*.

³⁰ See p. 190 *et seq.*, *infra*.

³¹ See p. 124 *et seq.*, *supra*.

³² A single possible exception to this suggestion is a statement by Kent (1 *Commentaries*, Kent (7th Ed., 1851), footnote c to marginal p. 431), that "if Congress have not provided any adequate and exclusive remedy for

INTERNATIONAL LAW RULE: *Adopted for areas under Federal legislative jurisdiction.*—In 1885 the United States Supreme Court had occasion to consider the case of *Chicago, Rock Island & Pacific Ry. v. McGlinn*, 114 U. S. 542, involving a cow which became a casualty on a railroad right-of-way traversing Fort Leavenworth reservation. At the time that the Federal Government had acquired legislative jurisdiction over the reservation²² a Kansas law required railroad companies whose roads were not enclosed by a fence to pay damages to the owners of all animals killed or wounded by the engines or cars of the companies without reference to the existence of any negligence. A State court had held the law applicable to the casualty involved in the *McGlinn* case. The United States Supreme Court, in affirming the judgment of the State court, explained as follows its reasons for so doing (p. 546):

It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction

injuries to public property, then the common law or laws of the states apply." But Kent may have been referring to the application of criminal, rather than civil, law, following an apparently isolated decision (*People v. Lent*, 2 Wheel. 548 (N. Y., 1819)) holding to the same effect.

²² Transfer of jurisdiction was effective as to railroad right-of-way as well as to rest of reservation. *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885).

and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general, that a change of government leaves them in force until, by direct action by the new government, they are altered or repealed. *American Insurance Co. v. Canter*, 1 Pet. 542; Halleck, *International Law*, ch. 34, § 14.

The rule thus defined by the court had been applied previously to foreign territories acquired by the United States³⁴ (*American Insurance Company v. Canter*, 1 Pet. 511 (1828)), but not until the *McGlinn* case was it extended to areas within the States over which the Federal Government acquired exclusive legislative jurisdiction. The *McGlinn* case has been followed many times, of course;³⁵ adoption of the international

³⁴ "Law once established continues until changed by some competent legislative power. It is not changed merely by change of sovereignty * * *." III Beale, *Cases on Conflict of Laws*, Summary, sec. 9 (1902). "This principle has been recognized by American tribunals in its application to laws protecting the private rights of the inhabitants of the territory concerned." I Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, sec. 122 (2d Rev. Ed., 1945).

³⁵ *E. g.*: *Stewart & Co. v. Sadrakula*, 309 U. S. 94 (1940); *Crook, Horner & Co. v. Old Point Comfort Hotel Co.*, 54 Fed. 604 (C. C. E. D. Va., 1893); *Seerman v. Lustig & Weil, Inc.*, 252 App. Div. 906, 299 N. Y. Supp. 920 (1937); *In re Chavez, et al.*, 149 Fed. 73 (C. A. 8, 1906); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); *Williams v. Arlington Hotel Co.*, 22 F. 2d 669 (C. A. 8, 1927); *Danielson v. Donmopray*, 57 F. 2d 565 (D. Wyo., 1932), but it appears that the act of February 1, 1928, 45 Stat. 54 (see p. 148, *supra*),

law rule for areas under exclusive legislative jurisdiction has filled a vacuum which would otherwise exist in the absence of Federal legislation, and furnishes a code of civil law for Federal enclaves.

Federalizes State civil law, including common law.—The rule serves to federalize not only the statutory but the common law of a State. *Kniffen v. Hercules Powder Co.*, 164 Kan. 196, 188 P. 2d 980 (1948); *Kaufman v. Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *Norfolk & P. B. L. R. v. Parker*, 152 Va. 484, 147 S. E. 461 (1929); *Henry Bickel Co. v. Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918). But it applies merely to the civil law, not the criminal law, of a State. *In re Ladd*, 74 Fed. 31 (C. C. D. Neb., 1896). See also 22 *Calif. L. Rev.* 152, 164 (1934).

Only laws existing at time of jurisdictional transfer federalized.—It should be noted, however, that the international law rule brings into force only the State laws in effect at the time the transfer of legislative jurisdiction occurred, and later State enactments are not effective in the Federal enclave. So, in

rather than the international law rule, was for application here; *Coffman v. Cleveland Wrecking Co. of Cincinnati*, 24 F. Supp. 581 (W. D. Mo., 1938); *Hoffman, et al. v. Leavenworth Light, Heat & Power Co.*, 91 Kan. 450, 138 Pac. 632 (1914); *Craig v. Craig*, 143 Kan. 624, 56 P. 2d 464 (1936); *Kaufman v. Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *State ex rel. Grays Harbor Const. Co. v. Dept. of Labor & Industries*, 167 Wash. 507, 10 P. 2d 213 (1932), but it appears that the court here upheld State administration of a law—*cf. Atkinson v. State Tax Commission*, 303 U. S. 20 (1938); *Employers' Liability Assur. Corp. v. DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); and *Willis v. Oscar Daniels Co.*, 200 Mich. 19, 166 N. W. 496 (1918). And in *United States v. Chicago, R. I. & P. Ry.*, 171 F. 2d 377 (C. A. 10, 1948) the court chose, without explanation, to apply "Federal common law" (see footnote 1 in *St. Louis-San Francisco Ry. v. United States*, 187 F. 2d 925 (C. A. 5, 1951)), instead of law applicable under the international law rule, in a case under the Federal Tort Claims Act. See also *Dicks v. Dicks*, 177 Ga. 379, 170 S. E. 245 (1933).

Arlington Hotel Company v. Fant, 278 U. S. 439 (1929), the court charged an innkeeper on a Federal reservation at Hot Springs, Arkansas, with liability as an insurer of his guests' personal property against fire, under the common law rule, which was in effect in that State at the time legislative jurisdiction had passed to the United States over the area involved, although Arkansas, like most or all States, had subsequently modified this rule by statute so as to require a showing of negligence.³⁶ The non-applicability to areas under exclusive Federal legislative jurisdiction of State statutes enacted subsequent to the transfer of jurisdiction to the Federal Government has the effect that the civil law applicable in such areas gradually becomes obsolete, as demonstrated by the *Arlington Hotel Co.* case, since the Federal Government has not legislated for such areas except in the minor particulars already mentioned.³⁷

CIRCUMSTANCES WHEREIN FORMER STATE LAWS INOPERATIVE: (a). *By action of the Federal Government.*—That an act of Congress may constitute the "direct action of the new government" mentioned in the *McGlinn* case which will invalidate former State laws in an area over which exclusive legislative jurisdiction has been transferred to the Federal Government apparently has not been the subject of litigation, undoubtedly because the matter is so fundamental and self-evi-

³⁶ See also: *Stewart & Co. v. Sudrakula*, 309 U. S. 94 (1940); *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); *Williams v. United States*, 145 F. Supp. 4 (W. D. Wis., 1956); *School District No. 20 v. Steele, et al.*, 46 S. D. 589, 195 N. W. 448 (1923); *Employers' Liability Assur. Corp. v. DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); *McCarthy v. R. G. Packard Co.*, 105 App. Div. 436, 94 N. Y. Supp. 203 (1905), *aff'd.*, 182 N. Y. 555, 75 N. E. 1130; *Kaufman v. Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *Henry Bickel Co. v. Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918); *Willis v. Oscar Daniels Co.*, 200 Mich. 19, 166 N. W. 496 (1918); *Utley v. State Industrial Comm.*, 176 Okla., 255, 55 P. 2d 762 (1936); *Utley v. State Industrial Comm.*, 176 Okla. 257, 55 P. 2d 764 (1936); *State v. Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *Op. A. G., Fla.*, No. 054-105 (1954).

³⁷ See also report, part I, p. 11.

dent. In *Webb v. J. G. White Engineering Corp.*, 204 Ala. 429, 85 So. 729 (1920), State laws relating to recovery for injury were held inapplicable to an employee of a Federal contractor on an exclusive Federal jurisdiction area on the ground that Federal legislation had pre-empted the field. It is not clear whether the same result would have obtained in the absence of exclusive jurisdiction in the Federal Government over the area in which the injury occurred.³⁸

The "direct action of the new government" apparently may be action of the Executive branch as well as of the Congress. In the case of *Anderson v. Chicago and Northwestern R. R.*, 102 Neb. 578, 168 N. W. 196 (1918), the facts were almost precisely as in the *McGlinn* case. However, the War Department had ordered the railroad not to fence the railroad right-of-way on the ground that such fencing would interfere with the drilling and maneuver of troops. The defendant railroad was held not liable in the absence of a showing of negligence. The court said (102 Neb. 584):

The war department has decided that the fencing of the right of way would impair the effectiveness of the territory for the purpose for which the cession was made. That department possesses peculiar and technical skill and knowledge of the needs of the nation in the training of its defenders, and of the necessary conditions to make the ceded territory fit for the purpose for which it was acquired. It is not for the state or its citizens to interfere with the purposes for which control of the territory was ceded, and, when the defendant was forbidden to erect the fences by that department of the United States government lawfully in control of the

³⁸ Cf. *Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania*, 318 U. S. 261 (1943), wherein the Supreme Court suggested that Federal legislation could eliminate the applicability to contractors with the Government of State laws setting minimum prices for milk notwithstanding that the Federal Government did not have exclusive legislative jurisdiction over the area on which the Federal installation was situated.

reservation, no other citizen can complain of non-performance or hold defendant guilty of a violation of law.

(b) *Where activity by State officials required.*—An apparent exception to the international law rule is concerned with State laws which require administrative activity on the part of State officials. In *Stewart & Co. v. Sadrakula*, 309 U. S. 94 (1940), the question was presented as to whether certain safety requirements prescribed by the New York Labor Law applied to a post office building which was being constructed in an area over which the Federal Government had exclusive legislative jurisdiction. An employee of a contractor engaged in the construction of the New York City Post Office fell from the building and was killed. His administratrix, in an action of tort against the contractor, narrowed the scope of the charges of negligence until there finally was alleged only the violation of a subsection of the New York Labor Law which required the planking of floor beams. The Supreme Court of the United States, in upholding a judgment for the administratrix based upon a finding that the Labor Law was applicable, said (pp. 101–103):

It is urged that the provisions of the Labor Law contain numerous administrative and other provisions which cannot be relevant to the federal territory. The Labor Law does have a number of articles. Obviously much of their language is directed at situations that cannot arise in the territory. With the domestication in the excised area of the entire applicable body of state municipal law much of the state law must necessarily be inappropriate. Some sections authorize quasi-judicial proceedings or administrative action and may well have no validity in the federal area. It is not a question here of the exercise of state administrative authority in federal territory. We do not agree, however, that because the Labor Law is not applicable as a whole, it follows that none of its sections are. We have held in *Collins v. Yosemite Park Company* that the sections of a Cali-

fornia statute which levied excises on sales of liquor in Yosemite National Park were enforceable in the Park, while sections of the same statute providing regulation of the Park liquor traffic through licenses were unenforceable.

In view of the decisions in the *Sadrakula* and *Gerrick* cases, the conclusion is inescapable that State laws which contemplate or require administrative action are not effective under the international law rule. Clearly, the States receive no authority to operate administrative machinery within areas under exclusive Federal legislative jurisdiction through the adoption of State law as Federal law for the areas.³⁹ Therefore, adoption as Federal law of a State law requiring administrative action would be of little effect unless the Federal Government also established administrative machinery paralleling that of the State. Instead of providing for the execution of such State laws as Federal law, the Federal Government has authorized the States to extend the application of certain such laws to areas of exclusive Federal legislative jurisdiction. Thus, as has been indicated, the States have been authorized to extend their workmen's compensation and unemployment compensation laws to such Federal areas. However, little or no provision has been made for either State or Federal administration of laws in various other fields.⁴⁰

³⁹ See p. 138 *et seq.*, *supra*, for related discussion whether State regulatory statutes are adopted under the Assimilative Crimes Act, and p. 169 *et seq.*, *infra*, for discussion of relation of the States to Federal enclaves. The Attorney General of California has held that the regulatory provisions of the State workmen's compensation laws did not continue in force in a Federal enclave upon the creation of such enclave, a question of State administration of such provisions being involved. 24 *Ops. A. G. Cal.* 103 (Sept. 13, 1954).

⁴⁰ *E. g.*: marriage—see 101 *U. of Pa. L. Rev.* 124, 131 *et seq.* (1952-1953); 22 *Calif. L. Rev.* 152, 168 (1933); *Ops. J. A. G., Army*—250 and 938 (1912), (State has no power to license or regulate marriage ceremonies on Federal enclaves, but such marriages should be entered into in accordance with State laws so as to be made a matter of public record); *id.* 13754 (1943), (marriages solemnized in a Federal enclave are valid provided the statutes of the State from which the license was obtained contain no contrary provi-

(c) *Inconsistency with Federal law.*—In *Hill v. Ring Construction Co., et al.*, 19 F. Supp. 434 (W. D. Mo., 1937), which involved a contract question, the court refused to give effect under the international law rule to a statute which had been in effect in the State involved at the time legislative jurisdiction was transferred to the Federal Government. This statute provided that thirteen and one-half cubic feet (rather than the mathematically provable 27 cubic feet) constituted a cubic yard. In refusing to apply the statute, the court stated it was inconsistent with the “national common law” which, according to the court, provides that “two added to two were always four and a cubic yard was a cubic yard.” The court makes clear, however, that it strained to this conclusion.

There appears to be no reported decision except that in the *Hill* case, *supra*, wherein a State civil law has been declared inapplicable as Federal law under the international law rule in an area under exclusive Federal jurisdiction because of its inconsistency with other law of the new Federal sovereign.⁴¹ There are similarly no cases holding State law applicable notwithstanding such inconsistency. The rule, as it was defined in the *McGlinn* case, is very clear on this subject, however, and State civil laws inconsistent with Federal laws would fall under the international law rule as State criminal laws inconsistent with Federal laws fall under the Assimilative Crimes Act.⁴²

sion); *id. Digest*, 1912-1930, p. 227 (May 23, 1918), (a chaplain has no legal authority to perform marriages except as obtained in conformity with local law where the ceremonies are to be performed); *Op. A. G., N. Mex.*, 1094 (Aug. 17, 1913), (laws relating to marriage continue effective in Federal enclaves, under the international law rule). While practical problems have arisen and questions been raised concerning such matters as notarization of documents, and licensing and inspection of activities affecting public health or safety, on Federal enclaves, under the international law rule, no legal opinion or court decision dealing with such matters has been located except as indicated in chapter VII, *infra*.

⁴¹ The case of *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885, and other similar cases, seem not in point in that they involve an attempted State exercise of authority in an exclusive Federal jurisdiction area, although there may have been involved an inconsistent Federal law.

⁴² See p. 135 *et seq.*, *supra*.

INTERNATIONAL LAW RULE IN RETROCESSION OF CONCURRENT JURISDICTION: A question which has not as yet been considered by the courts is the extent to which, if to any, the international law rule is applicable to areas which had been subject to exclusive legislative jurisdiction, and over which concurrent jurisdiction has been retroceded to the State.

The fact that concurrent jurisdiction only is retroceded would, as a matter of statutory construction, suggest that Federal law currently in effect in the area is unaffected. The applicable Federal criminal laws would not, presumably, be repealed or suspended by a retrocession of concurrent jurisdiction, nor any other Federal statutes which were enacted for areas under Federal legislative jurisdiction. Similarly, it might be argued, such retrocession of concurrent jurisdiction does not serve to repeal Federal laws which were adopted pursuant to the international law rule. While it is a seeming anomaly to have two sets of laws governing civil matters, it seems no more anomalous than to have two sets of criminal laws applicable to the same crime, and that, it has been seen, is a state of fact, to which reasonably satisfactory adjustment appears to have been made. However, an adjustment to two sets of civil laws would seem more difficult, and, indeed, perhaps it would not be entirely possible.

The considerations supporting a conclusion that laws federalized under the international law rule would not survive a retrocession of concurrent jurisdiction to the State have their bases in the fact that the international law rule is applied as a matter of necessity, in order to avoid a vacuum in the area which has been the subject of the jurisdictional transfer. When the need for the application of the rule no longer exists, it is logical to assume, the laws which have been adopted thereunder are no longer effective. The merit of this conclusion rests on practical considerations as well as logic, and these considerations would seem to make the conclusion outweigh the contrary position, based solely on considerations of logic.

STATE AND FEDERAL VENUE DISCUSSED: The civil laws effective in an area of exclusive Federal jurisdiction are Federal laws, notwithstanding their derivation from State laws, and a cause arising under such laws may be brought in or removed to a Federal district court under sections 24 or 28 of the former Judicial Code (now sections 1331 and 1441 of title 28, United States Code), giving jurisdiction to such courts of civil actions arising under the " * * * laws * * * of the United States" where the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. *Steele v. Halligan*, 229 Fed. 1011 (W. D. Wash., 1916). To the same effect as the holding in the *Steele* case, and following the decisions in the *McGlinn* and *Arlington Hotel Co.* cases, were those in *Coffman v. Cleveland Wrecking Co., et al.*, 24 F. Supp. 581 (W. D. Mo., 1938), and in *Jewell v. Cleveland Wrecking Co. of Cincinnati, et al.*, 28 F. Supp. 366 (W. D. Mo., 1938), *rev'd. on other grounds*, 111 F. 2d 305 (C. A. 8, 1940). In each of these it was decided that laws of the State (Missouri) existing at the time of Federal acquisition of legislative jurisdiction over an area became "laws of the United States" within that area. However, in a related case in the same district (*Jewell v. Cleveland Wrecking Co.*, 28 F. Supp. 364 (W. D. Mo., 1938)), another judge appears to have rejected this view of the law on grounds not entirely clear but having their bases in the fact that the trial in the *McGlinn* case, *supra*, occurred in a State court (it involved a transitory action).⁴³

Transitory actions may be brought in State courts notwithstanding that they arise out of events occurring in an exclusive Federal jurisdiction area. *Ohio River Contract Co. v. Gordon*, 244 U. S. 68 (1917).⁴⁴ Indeed, unless there is involved one of

⁴³ See also *Misner v. Cleveland Wrecking Co. of Cincinnati, et al.*, 25 F. Supp. 763 (W. D. Mo., 1938) which, however, was concerned with the construction of the Federal statute relating to death or injury of a person by wrongful act or neglect of another (see p. 148, *supra*), and see *Mater v. Holley*, 200 F. 2d 123 (C. A. 5, 1952); *Olsen v. McPartlin*, 105 F. Supp. 561 (D. Minn., 1952).

⁴⁴ See also: *Chicago, Rock Island & Pacific Ry. v. McGlinn, supra*; *Arlington Hotel Co. v. Fant*, 278 U. S. 439 (1929); *Danielson v. Donmopray, supra*;

the special situations (admiralty, maritime, and prize cases, bankruptcy matters and proceedings, etc.), as to which Federal district courts are given original jurisdiction by chapter 85 of title 18, United States Code, only State courts, and not Federal district courts, may take cognizance of an action arising out of events occurring in an exclusive Federal jurisdiction area unless the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs.⁴⁵ But State authority to serve process in exclusive Federal jurisdiction areas is limited to process relating to activities occurring outside of the areas,⁴⁶ although a number of States now reserve broader authority relating to service of process,⁴⁷ so that unless process can be served on the defendant outside the exclusive Federal jurisdiction area it appears that even a transitory action arising in such an area could not be maintained in a State court.⁴⁸ In such a case it appears that no remedy whatever exists, even with

Armstrong v. Foote, 11 Abb. Pr. 384 (Brooklyn City Ct., 1860); *Delamater v. Folz*, 50 Hun 528, 3 N. Y. Supp. 711 (Sup. Ct., 1889); *Madden v. Arnold*, 22 App. Div. 240, 47 N. Y. Supp. 757 (1897), *aff'd.*, 162 N. Y. 638, 57 N. E. 1116; *McCarthy v. R. G. Packard Co.*, 105 App. Div. 436, 94 N. Y. Supp. 203 (1905), *aff'd.*, 182 N. Y. 555, 75 N. E. 1130; *Norfolk & P. B. L. R. v. Parker*, 152 Va. 484, 147 S. E. 461 (1929); but *cf. Webb v. J. G. White Engineering Corp.*, 204 Ala. 429, 85 So. 729 (1920), where it was held that Congress had pre-empted, through the Federal Employees' Compensation Act of 1916, the remedy available for injury to employees of one of its contractors. See also 32 *Am. L. Rev.* 78 (1898); 22 *Va. L. Rev.* 791 (1936), and 38 *Col. L. Rev.* 128, 139 (1938).

⁴⁵ 28 U. S. C. 1331; 28 U. S. C. 1441; and see *Jewell v. Cleveland Wrecking Co.*, 28 F. Supp. 364 (W. D. Mo., 1938).

⁴⁶ See p. 10, *supra*.

⁴⁷ *Report*, part I, p. 127 *et seq.*, and see *Goldberger Const. Corp. v. Rappoli Co., Inc.*, 169 Misc. 40, 6 N. Y. S. 2d 472 (1938), *aff'd.*, 255 App. Div. 769, 7 N. Y. S. 2d 571 (1938).

⁴⁸ See *Buttery v. Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941); *Ohio River Contract Co. v. Gordon*, *supra*. In *Knott Corporation v. Furman*, 163 F. 2d 199 (C. A. 4, 1947), *cert. den.*, 322 U. S. 826, it was held that the doing of business by a corporation upon an exclusive Federal jurisdiction area within the boundaries of a State constituted the doing of business within the State for the purpose of a State statute designating the Secretary of the Commonwealth as an agent of foreign corporations doing business within the State for service of process; but see cases *contra* cited in footnote 11, *supra* (p. 147).

respect to a transitory cause of action, where the matter in controversy does not involve the Federal jurisdictional amount.

A local action, as distinguished from a transitory action, having rise in an exclusive Federal jurisdiction area, generally is held as not cognizable in State courts.⁵⁰ So, except, as local actions may come within the purview of the limited (except in the District of Columbia) authority of Federal district courts to entertain them, no remedy is available in many types of such actions arising in Federal exclusive jurisdiction areas. Divorce actions and actions for probate of wills, it will be seen,⁵⁰ have constituted a special problem in this respect.

Local actions pending in the State courts at the time of transfer of legislative jurisdiction from a State to the Federal Government should be proceeded in to a conclusion, it has been held. *Van Ness v. Bank of the United States*, 13 Pet. 15 (1839).⁵¹

FEDERAL STATUTES AUTHORIZING APPLICATION OF STATE LAW: As has been indicated, the Federal Government has authorized the extension of State workmen's compensation and unemployment compensation laws to areas of exclusive legislative jurisdiction. In addition, the States have been authorized to extend certain of their tax laws to such areas. As a consequence, areas of exclusive legislative jurisdiction are as completely subject to certain State laws as areas in which the Federal Government has only a proprietorial interest. The operation and effect of the extension of these State laws is considered more fully in chapter VII.

⁵⁰ *Woodfin v. Phoebus*, 30 Fed. 289 (C. C. E. D. Va., 1887); *Martin v. House*, 39 Fed. 694 (C. C. E. D. Ark., 1888); *United States v. McIntosh*, 57 F. 2d 573, & 2 Fed. Supp. 244 (E. D. Va., 1932), *app. dism.*, 70 F. 2d 507 (C. A. 4, 1934), *cert. den.*, 293 U. S. 586; *In re Town of Highlands*, 48 N. Y. St. Rep. 795, 22 N. Y. Supp. 137 (Sup. Ct., 1892); *Dibble v. Clapp*, 31 How. Pr. 420 (Buffalo Super. Ct., 1886); but *cf. Lotterle v. Murphy*, 67 Hun 76, 21 N. Y. Supp. 1120 (Sup. Ct., 1893); see also 38 *Col. L. Rev.* 128 (1938).

⁵¹ See p. 225 *et seq.*, *infra*.

⁵² See also *McLaughlin v. Bank of Potomac*, 48 Va. (Grat.) 68 (1850).

Relation of States to Federal Enclaves

EXCLUSIVE FEDERAL JURISDICTION: *States basically without authority.*—When the Federal Government has acquired exclusive legislative jurisdiction over an area, by any of the three methods of acquiring such jurisdiction,¹ it is clear that the State in which the area is located is without authority to legislate for the area or to enforce any of its laws within the area.² All the powers of government with respect to the area are vested in the United States. *Pollard v. Hagan*, 3 How. 212, 223 (1845).

Exclusion of State authority illustrated.—A classic illustration of the exclusion of State authority from areas of exclusive legislative jurisdiction is to be found in two cases which were decided by the United States Supreme Court on the same day, *Penn Dairies, Inc. v. Milk Control Commission of Pennsylvania*, 318 U. S. 261 (1943), and *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U. S. 285 (1943), *reh. den.*, 318 U. S. 801. In each of these cases the State officials had sought to enforce regulations governing the price of milk sold to the Army. In the California case, the milk was delivered by the dealer to an area of exclusive Federal jurisdiction; in the Pennsylvania case, the United States had

¹ See chapter III, p. 41 *et seq.*, *supra*.

² See pp. 105 *et seq.*, and 145 *et seq.*, *supra*; but a municipality is not prevented from annexing, pursuant to State-granted authority, an area which is under exclusive Federal jurisdiction, and imposing therein a State (municipal) tax authorized for imposition by Federal law, the annexation being not inconsistent with Federal exercise of exclusive jurisdiction. *Howard v. Commissioners*, 344 U. S. 624 (1953).

no legislative jurisdiction over the area to which the milk was delivered. In holding that California could not enforce its regulations, the court said (pp. 294-295):

The exclusive character of the jurisdiction of the United States on Moffett Field is conceded. Article I, § 8, clause 17 of the Constitution of the United States declares the Congress shall have power "To exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia, "and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *."

When the federal government acquired the tract, local law not inconsistent with federal policy remained in force until altered by national legislation. The state statute involved was adopted long after the transfer of sovereignty and was without force in the enclave. It follows that contracts to sell and sales consummated within the enclave cannot be regulated by the California law. To hold otherwise would be to affirm that California may ignore the Constitutional provision that "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; * * *." It would be a denial of the federal power "to exercise exclusive Legislation." As respects such federal territory Congress has the combined powers of a general and a state government.

The answer of the State and of the court below is one of confession and avoidance,—confession that the law in fact operates to affect action by the appellant within federal territory, but avoidance of the conclusion of invalidity by the assertion that the law in essence is the regulation of conduct wholly within the state's jurisdiction.

The court below points out that the statute regulates only the conduct of California's citizens within its own territory; that it is the purchasing, handling, and processing by the appellant in California of milk to be sold below the fixed price—not the sale on Moffett Field—which is prohibited, and entails the penalties prescribed by the statute. And reliance is placed upon the settled doctrine that a state is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders. We think, however, that it is without application here, because of the authority granted the federal government over Moffett Field.

In the light of the history of the legislation, we are constrained to find that the true purpose was to punish California's own citizens for doing in exclusively federal territory what by the law of the United States was there lawful, under the guise of penalizing preparatory conduct occurring in the State, to punish the appellant for a transaction carried on under sovereignty conferred by Art. I, § 8, clause 17 of the Constitution, and under authority superior to that of California by virtue of the supremacy clause.^a

In the *Pennsylvania* case, which involved an area not subject to exclusive legislative jurisdiction, a contrary conclusion was reached. The court said (p. 269):

^aIn *Consolidated Milk Producers v. Parker*, 19 Cal. 2d 815, 123 P. 2d 440 (1942), the court held a sale of milk within an exclusive Federal jurisdiction area not subject to State price regulation. The Attorney General of California ruled similarly even earlier. *Op. A. G., Cal.*, No. NS1905 (Aug. 28, 1939). But in *Commonwealth v. Rohrer*, 37 Pa. D. & C. 410 (1937), which involved similar facts, the court held that while the State has no jurisdiction with respect to crime committed wholly within an exclusive Federal area it does have jurisdiction over a crime, the essential elements of which were committed within the State, even though other elements thereof were committed in the ceded territory.

We may assume that Congress, in aid of its granted power to raise and support armies, Article I, § 8, cl. 12, and with the support of the supremacy clause, Article VI, § 2, could declare State regulations like the present inapplicable to sales to the government. * * * But there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit such regulations, and the question with which we are now concerned is whether such a prohibition is to be implied from the relationship of the two governments established by the Constitution.

We may assume also that, in this absence of Congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. * * * But those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions, * * * and the mere fact that non-discriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation.⁴

⁴ In *Paterson Milk and Cream Co., Inc. v. Milk Control Board*, 118 N. J. L. 383, 192 Atl. 838 (1937), milk was sold to the United States Government but the jurisdictional status of the reservation was not indicated. Without considering the status of the Government land, the court held that the fact that it was the United States to which a dealer sold milk below the fixed price would be no justification for disregard of the reasonable regulations of the board. To the same effect is *Milk Control Board v. Gosselin's Dairy, Inc.*, 301 Mass. 174, 16 N. E. 2d 641 (1938). It may be noted that the Comptroller General, before and since the decision of the Supreme Court in the *Penn Dairies* case, has held that bids may not be rejected because they are below the minimum price fixed by State law, and that a contractor is obligated to furnish milk and cream at the bid price, or is liable for any excess cost in case of default, notwithstanding his violation of State law. 17 *Comp. Gen.* 287 (1937); *Comp. Gen. Dec.*, No. A-89192 (Jan. 31, 1939); *id.* B-67786 (Aug. 26, 1947).

In each of the *Dairy* cases there were dissents. A dissent in the *Pennsylvania* case was based on the ground that, in the view of the dissenting justice, Congressional policy contemplated securing milk at a price freely determined by competitive forces, and that, since the Pennsylvania regulation prevented the fruition of that policy, it was invalid. In two dissents in the *California* case, views were expressed which, if adopted, would require congressional action undertaking the exercise of jurisdiction over an area purchased with the consent of the State before the jurisdiction of the State would be ousted. It is emphasized that these views do not represent the state of the law. In one dissent it was said (pp. 305-306):

The "exclusive legislation" clause has not been regarded as absolutely exclusory, and no convincing reason has been advanced why the nature of the federal power is such that it demands that all state legislation adopted subsequent to the acquisition of an enclave must have no application in the area. * * *

If Congress exercises its paramount legislative power over Moffett Field to deny California the right to do as it has sought to do here, the matter is of course at an end. But until Congress does so, it should be the aim of the federal military procurement officers to observe statutes such as this established by state action in furtherance of the public health and welfare, and otherwise so conduct their affairs as to promote public confidence and good will.

The evident suggestion in this statement that the Federal Government must exercise its exclusive jurisdiction before State jurisdiction is ousted apparently is without Federal judicial precedent. Moreover, this view would, if carried to its logical conclusion, undermine the basis for the international law rule and render unnecessary the application of the rule to areas subject to exclusive legislative jurisdiction,⁵ since it would

⁵ See p. 156 *et seq.*, *supra*.

seem that, under this view, the laws of the State governing matters on which the Federal Government had not legislated would be fully effective in such areas. Finally, in view of the opinion expressed by the majority of the Court in the *Pennsylvania* case that Congress could direct noncompliance with the State regulation involved in that case, the dissenting justice's suggestion that noncompliance in areas of exclusive legislative jurisdiction must be based on a similar congressional direction would, it seems, serve to nullify legal distinctions between the two types of areas.

In a second dissent in the *California* case, there were expressed views somewhat similar to those indicated above. The other dissenting justice stated (p. 300):

Enough has been said to show that the doctrine of "exclusive jurisdiction" over federal enclaves is not an imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state—problems calling not for a single, simple answer but for disposition in the light of the national purposes which an enclave serves. If Congress speaks, state power is of course determined by what Congress says. If Congress makes the law of the state in which there is a federal site as foreign there as is the law of China, then federal jurisdiction would really be exclusive. But short of such Congressional assertion of overriding authority, the phrase "exclusive jurisdiction" more often confounds than solves problems due to our federal system.

This suggestion that congressional action is an imperative to establish exclusive Federal legislative jurisdiction is, of course, subject to the same comment as is applicable to similar views expressed by the other dissenting justice. However, the second dissenting justice also deplored the varied results which are effected by different degrees of Federal jurisdiction, and

after citing some incongruities which might arise, he stated (p. 302):

These are not far-fetched suppositions. They are the inevitable practical consequences of making decision here depend upon technicalities of "exclusive jurisdiction"—legal subtleties which may become relevant in dealing with prosecution for crime, devolution of property, liability for torts, and the like, but which as a matter of good sense surely are wholly irrelevant in defining the duty of contracting officers of the United States in making contracts in the various States of the Union, where neither Congress nor the authoritative voice of the Army has spoken. In the absence of such assertion of superior authority, state laws such as those here under consideration appear, as a matter of sound public policy, equally appropriate whether the federal territory encysted within a state be held on long or short term lease or be owned by the Government on whatever terms of cession may have been imposed.

The majority opinion in the *California* case anticipated the dissents and alluded to the suggestions contained in them as follows (pp. 295-296):

We have this day held in *Penn Dairies v. Milk Control Commission*, ante, p. 261, that a different decision is required when the contract and the sales occur within a state's jurisdiction, absent specific national legislation excluding the operation of the state's regulatory laws. The conclusions may seem contradictory; but in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results. This must be so, if we are to accord to various provisions of fundamental law their natural effect in the circumstances disclosed. So to do is not to make subtle or technical distinctions or to deal in legal refinements. Here we are bound to respect the relevant

constitutional provision with respect to the exclusive power of Congress over federal lands. As Congress may, if it find the national interest so requires, override the state milk law of Pennsylvania as respects purchases for the Army, so it may, if not inimical to the same interest subject its purchasing officers on Moffett Field to the restrictions of the milk law of California. Until it speaks we should enforce the limits of power imposed by the provisions of the fundamental law.

The companion *Dairy* cases are significant in a number of respects. They illustrate sharply the effects of exclusive legislative jurisdiction in curbing the authority of the States. Quite clearly, they establish that the law of the State has no application in an area of exclusive legislative jurisdiction, and that such exclusion of State authority rests on the fact of exclusive legislative jurisdiction; it is unnecessary for Congress to speak to effect that result. Such jurisdiction serves to exclude not only the operation of State laws which constitute an interference with a Federal function, but also the application of State laws which are otherwise not objectionable on constitutional grounds.

The *Dairy* cases are also significant in that they indicate some disposition, as on the part of the justices constituting a minority of the court in the *California* case, to regard exclusive legislative jurisdiction as not constituting a barrier to the application of State law absent an expression by Congress that such barrier shall exist. Such a view constitutes, it seems clear, a sharp departure from overwhelming precedent, and serves to blur the historical legal distinctions between areas of exclusive legislative jurisdiction and areas in which the Federal Government has only a proprietorial interest.

The views of the majority of the Supreme Court in the *California* case are in accord with other decisions which have considered the effects of exclusive legislative jurisdiction on

the authority of the State with respect to the area subject to such jurisdiction.⁶

Authority to tax excluded.—Exclusive Federal legislative jurisdiction, it seems well settled, serves to immunize from State taxation privately owned property located in an area subject to such jurisdiction.⁷ The leading case on this mat-

⁶ See pp. 105 *et seq.*, and 145 *et seq.*, *supra*. Following the decisions in the *Dairy* cases, the Judge Advocate General of the Navy expressed the view that sales of milk to the Federal Government in an area where by State law concurrent jurisdiction only may be acquired might subject a milk dealer to prosecution in the State court if not in accord with local milk control laws. *Op. J. A. G., Navy*, JAG: II: 1: REC: mto (August 14, 1952).

⁷ There should be distinguished, in this regard, cases wherein a court has allowed a tax on the basis that exclusive jurisdiction had not been transferred to the Federal Government. See p. 53 *et seq.*, *supra*. And in *Murphy Corp. v. Fontenot*, 225 La. 379, 73 So. 2d 180 (1954), *cert. den.*, 348 U. S. 831, taxation was allowed on a theory that a change in use for which land had been acquired terminated or suspended exclusive Federal jurisdiction. But in *Mississippi River Fuel Corporation v. Fontenot*, 234 F. 2d 898 (C. A. 5, 1956), *cert. den.*, 352 U. S. 916, imposition of a State tax on severance of gas and oil was allowed on such products severed, by a lessee, from land under exclusive Federal jurisdiction, on the ground that a provision of the lessee's contract with the Federal Government "to pay all taxes lawfully assessed and levied" was effective to prevent avoidance of a non-discriminatory tax such as that which was involved. This case appears novel in attributing to the Executive branch authority to retrocede a measure of legislative jurisdiction unconditionally acquired by the Federal Government.

The Attorney General of Kentucky has ruled that property owned by a public utility company and located in an exclusive Federal jurisdiction area within the State should be included in the franchise assessment of the company, on the grounds that the applicable cession statute in terms excluded from taxation only federally owned property on such area, and that the situs of the general offices of the company within the State made all its property, wherever located, taxable. *Op. A. G., Ky.* (Aug. 21, 1953). The Attorney General of Wyoming has ruled that an insurance company qualified to do business within the State must pay a tax on all premiums collected on risks within the State, including risks located on exclusive Federal jurisdiction areas within the State. *Op. A. G., Wyo.* (June 13, 1949). The Attorney General of California has ruled that an insurance company doing business under a State license may not accept a bail bond negotiated in an exclusive jurisdiction area unless it is negotiated by a person licensed by the State, in view of a provision of the California code prohibiting such companies from doing business except through licensed solicitors. *Op. A. G., Cal.*, No. NS4349 (July 7, 1942).

ter is *Surplus Trading Co. v. Cook*, 281 U. S. 647 (1930), wherein the Supreme Court held that Arkansas was without authority to tax privately owned personal property located on a military reservation which was purchased by the Federal Government with the consent of the legislature of the State in which it was located. The Supreme Court based its conclusion on the following proposition of law (p. 652):

It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision [viz., article I, section 8, clause 17], to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

In reaching its conclusion, the Supreme Court cited early cases such as *Commonwealth v. Clary*, 8 Mass. 72 (1811); *Mitchell v. Tibbetts*, 17 Pick. 298 (Mass., 1836); *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C. C. D. R. I., 1819); and *Sinks v. Reese*, 19 Ohio St. 306 (1869). The Supreme Court also quoted with approval the statement which was made in reliance on these same early cases in *Fort Leavenworth R. R. v. Lowe*, *supra*, at 537:

These authorities are sufficient to support the proposition which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the Constitution operates to exclude all other legislative authority.

In the *Cook* case the area had been purchased by the Federal Government with the consent of the legislature of the State, jurisdiction thereby passing to the United States under clause 17. In *Standard Oil Company of California v. California*, 291 U. S. 242 (1934), the Supreme Court held that a *cession* of

exclusive legislative jurisdiction to the Federal Government by a State also served to deprive the latter of the authority to lay a license tax upon gasoline sold and delivered to an area which was the subject of the jurisdictional cession.* The Supreme Court said (p. 244):

* Other decisions denying State taxing power: *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F. 2d 644 (C. A. 9, 1929), *cert. den.*, 280 U. S. 555 (1929), (personal property tax); *State v. Blair*, 238 Ala. 377, 191 So. 237 (1939), (gasoline excise tax, but the same tax held applicable to withdrawals of gasoline within the State for transportation to an exclusive Federal jurisdiction area: *Pan American Petroleum Corp. v. Alabama*, 67 F. 2d 590 (C. A. 5, 1933)); *O'Pry Heating & Plumbing Co. v. State*, 241 Ala. 507, 3 So. 2d 316 (1941), (tax on privilege of doing business); *Op. A. G., Cal.*, LB 101/381 (Feb. 17, 1930), *id.* LB 107/450 (Jan. 10, 1931), (personal property taxes); *id.* No. 10328 (Nov. 19, 1935), (property tax on motor vehicles); *Op. A. G., Conn.* (Aug. 3, 1944), (old age assistance tax); *Op. A. G., Fla.*, 049-146 (Apr. 4, 1949), (personal property tax); *Moline Water Power Co. v. Cox*, 252 Ill. 348, 96 N. E. 1044 (1911), (real property tax on water power); *Op. A. G. Kan.* (May 4, 1953), (tax on leasehold or similar interest privately held for industrial purposes); *Hardin County Board of Supervisors v. Kentucky Limousines*, 293 S. W. 2d 239 (Ky., 1956), (*ad valorem* tax on autos as personal property); *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), (poll or property taxes, *cf. United States v. Cordy*, 58 F. 2d 1013 (D. Md., 1932), where sales tax held inapplicable because of the terms of the statute); *Op. A. G., Mo.* (Nov. 5, 1937), (tax on athletic show, contrary view reached in *Op. A. G., Mo.* (May 29, 1941), where no exclusive Federal jurisdiction involved); *State ex rel. Board of Commissioners v. Bruce*, 104 Mont. 500, 69 P. 2d 97 (1937), and 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577 (personal property tax), but see *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939), *cf. County of Cherry v. Thacher*, 32 Neb. 350, 49 N. W. 351 (1891), (personal property tax upheld on ground that legislature had not parted with jurisdiction for such taxation, although no taxation reservation contained in cession statute); *Matter of Grant*, 83 Misc. 257, 144 N. Y. Supp. 567 (Sur. Ct., 1913), *aff'd.*, 166 App. Div. 921, 151 N. Y. Supp. 1119 (Sup. Ct. 1st Dept., 1915), (inheritance tax); *Op. A. G., Ohio*, No. 3042 (1925), p. 783 (tax on property); *Winston Bros. Co. v. State Tax Commission*, 156 Ore. 505, 62 P. 2d 7 (1936), *cert. den.*, 301 U. S. 689, *partially rev'd. in Winston Bros. Co. v. Galloway*, 168 Ore. 109, 121 P. 2d 457 (1942), (tax on privilege of a foreign corporation to do business); *Atkinson v. State Tax Comm'n.*, 156 Ore. 461, 62 P. 2d 13 (1936), (tax on privilege of a foreign corporation to do business), *rev'd. on reh.*, and reversal *affirmed* in 303 U. S. 20 (1938), on the ground that the United States had not acquired exclusive jurisdiction; *Op. A. G., Texas*, R-2801 (tax on leased computers); *Concessions Co. v. Morris*, 109 Wash. 46, 186 Pac. 655 (1919), (personal property tax); a

Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; * * *.

In *Coleman Bros. Corporation v. City of Franklin*, 58 F. Supp. 551 (D. N. H., 1945), *aff'd.*, 152 F. 2d 527 (C. A. 1, 1945), *cert. den.*, 328 U. S. 844, the same conclusion was reached with respect to the attempt of a city to tax the personal property used by a contractor in constructing a dam on an area of exclusive Federal legislative jurisdiction,⁹ and in *Winston Bros. Co. v. Galloway*, 168 Ore. 109, 121 P. 2d 457 (1942), there is distinguished the applicability of a tax on net earnings from work done by a Federal contractor on land over which the Federal Government did not have legislative jurisdiction, and that done on land over which it did have jurisdiction.

Other authority excluded.—Attempts on the part of the States to regulate other activities in areas under Federal legislative jurisdiction have met with the same fate as attempts to control milk prices and to levy taxes.¹⁰ Thus, in *In re Ladd*,

State has no authority to collect poll and road taxes from either civilian or military residents of areas of exclusive legislative jurisdiction. *Op. J. A. G., Navy*, KP59N1-13 (360210), (November 3, 1936).

⁹ A contractor performing a contract for the erection of a Government post office on Government land who used the adjoining sidewalk to the exclusion of the public was transacting business in the State, and was subject to the contractor's license tax levied by the State. *Sollitt & Sons Construction Company v. Commonwealth*, 161 Va. 854, 172 S. E. 290 (1934), *app. dism. for want of a substantial Federal question*, 292 U. S. 599.

¹⁰ A State has no authority to require that a vessel carrying stone from one State to an area under exclusive Federal jurisdiction in another be weighed and marked in a specified manner (*Mitchell v. Tibbetts*, 17 Pick. 298 (Mass., 1836)), or to prevent the deposit of stone or other materials on an area under exclusive Federal jurisdiction (9 *Ops. A. G.* 319 (1859)).

In *Hughes Transp., Inc. v. United States*, 128 C. Cls. 221, 121 F. Supp. 212 (1954), (but *rehearing granted*, 132 C. Cls. 804 (1955)), it was found that transportation of goods between two Federal enclaves within the boundaries

74 Fed. 31 (C. C. D. Neb., 1896), it was held that the laws of Nebraska requiring a permit to sell liquor do not apply to areas of exclusive legislative jurisdiction. See also *Farley v. Scherno*,

of a single State constituted intrastate transportation, and as such was subject to State rate regulation. In *United States v. Public Utilities Comm. of Cal.*, 141 F. Supp. 168 (N. D. Cal., 1956), (notice of appeal to U. S. Supreme Court filed, and probable jurisdiction noted by the court on Dec. 3, 1956), the District Court, on June 5, 1956, entered a judgment enjoining rate regulation by the State in such cases, but its judgment extended to prevent regulation of rates as to any Federal contracts of transportation, based on Federal supremacy. But see *Motor Transport Co. v. McCanless*, 182 Tenn. 659, 189 S. W. 2d 200 (1945), and discussion on p. 299, *infra*.

State laws prohibiting the carrying of weapons have no application within naval reservations which are under the exclusive jurisdiction of the United States. *Op. J. A. G., Navy*, NY4/L9-2 (401018), (Nov. 1, 1940).

A State statute relating to horse racing is not applicable in an exclusive Federal jurisdiction area (*Op. A. G., Fla.* (Nov. 27, 1935)), nor is a State law regulating the sale of eggs (*id.* (Apr. 22, 1940), 0-792).

Laws of a State requiring the reporting of fires are not applicable to a military reservation over which the United States has exclusive legislative jurisdiction. *Op. J. A. G., Army*, 000.71 (Mar. 16, 1926).

A State fair trade act was held inapplicable in an exclusive Federal jurisdiction area. *Sunbeam Corp. v. Central Housekeeping Mart, Inc.*, 2 Ill. App. 2d 543, 120 N. E. 2d 362 (1954). (So construed by Atty. Gen. of Illinois, and so interpreted in *Sunbeam Corp. v. Horn*, 149 F. Supp. 423 (S. D. Ohio, 1955)).

No State has the authority to insist upon furnishing coroner service or making investigations as to the cause of death occurring on an exclusive Federal jurisdiction area, or to prohibit the shipment of an unembalmed body from such area into the State. *Memo Oct. 4, 1951, from Director, National Park Service, Department of the Interior, to Regional Director, Region Two, National Park Service, Department of the Interior*. To same general effect: 1 *Ops. A. G. Cal.* 176 (Mar. 18, 1943); *Op. A. G., Ill.*, No. 98 (Nov. 12, 1941); *Op. A. G., Tex.*, No. V. 380; *Ops. J. A. G., Navy*, JAG: II: 1: REC: wln (Sept. 21, 1953); JG: 6769-21 (July 19, 1911); JG: 26250-331 (Feb. 24, 1912); JG: 26283-988.5 (Feb. 18, 1916). It is not necessary for a State permit to be issued by the State of Wyoming for shipment of a body from an exclusive Federal jurisdiction area in Wyoming to a point without the State. *Op. Dep. A. G., Wyo.* (Oct. 4, 1949). See also *County of Allegheny v. McClung*, 53 Pa. 482 (1867).

Insurance license and regulation laws of California are not applicable to persons doing business in Federal enclaves within the State. *Op. A. G. Cal.*, LB286/906 (Apr. 1, 1952), overruling earlier opinions (1 *Ops. A. G. Cal.* 464 (May 21, 1943); 6 *Ops. A. G. Cal.* 57 (Aug. 8, 1945)).

State laws respecting segregation of the races are inapplicable to recreational facilities operated by the Tennessee Valley Authority at reservoirs

208 N. Y. 269, 101 N. E. 891 (1913).¹¹ A State cannot, without an express reservation of authority to do so, enforce in an area under Federal legislative jurisdiction the regulatory features of its Alcoholic Beverage Control Act. *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938).¹² Nor may a State license, under its Alcoholic Beverage Control Act, sale of liquor in an area which is within the exterior boundaries of the State but under exclusive Federal jurisdiction. *Petersen v. United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885.

under the exclusive jurisdiction of the United States. *Memo Apr. 5, 1949 from General Counsel to Manager of Reservoir and Community Relations, Tennessee Valley Authority*. See also *Air Terminal Services, Inc. v. Rentzel*, 81 F. Supp. 611 (E. D. Va., 1949), and *Nash v. Air Terminal Services, Inc.*, 85 F. Supp. 545 (E. D. Va., 1949). Such segregation laws are inapplicable either to patients or personnel of Army treatment facilities irrespective of the jurisdictional status of the installation. *Op. J. A. G., Army*, 1943/19368 (Dec. 23, 1943).

¹¹ But in *State v. Mimms*, 43 N. M. 318, 92 P. 2d 993 (1939), *cert. den.*, 308 U. S. 626 (1940), the State court held that, notwithstanding the transfer of exclusive jurisdiction from the State to the United States (but it is not clear that any transfer occurred), the State's jurisdiction "to tax and regulate the liquor industry within its boundaries will not be presumed to have been legislated away" unless such cession can be clearly found in the statute. The Attorney General of Texas has held, however, that a license to sell beer was necessary only absent a showing of transfer to Federal Government of jurisdiction over the place of sale. *Op. A. G., Tex.*, No. 0-3903.

¹² This ruling has been followed by several Federal Departments. *E. g.*: the Department of the Navy has held that the provisions of the Virginia Beverage Control Act do not apply to sales on lands under the exclusive jurisdiction of the United States. *Op. J. A. G., Navy*, JAG: II: 1: RLB: imz (Nov. 5, 1952). The Department of the Army has expressed the view that State law pertaining to the methods of dispensing liquor and the various restrictions placed on tavern keepers have no application on areas over which the United States exercises exclusive jurisdiction. *Op. J. A. G., Army*, 414.1 (May 17, 1940). The Department of the Interior has expressed the opinion that a State license is not required for sales either on Government-owned or private land within the boundaries of a national park under exclusive Federal jurisdiction. *Undated memo from Acting Director to Regional Director, Region 2, National Park Service, Department of the Interior*. A business privilege tax, being in the nature of a license to do business, may not be imposed by the State on persons doing business in a Federal enclave notwithstanding State reservation of the power of taxation. *Op. A. G., Cal.*, No. 10,467 (Jan. 14, 1936).

And, it appears, a State may not prevent, tax, or regulate the shipment of liquor from outside of the State to an area within the exterior boundaries of the State but under exclusive Federal legislative jurisdiction. *Johnson v. Yellow Cab Transit Co.*, 321 U. S. 383 (1944);¹³ see also *State v. Cobaugh*, 78 Me. 401 (1886); and *Maynard & Child, Inc. v. Shearer*, 290 S. W. 2d 790 (Ky., 1956). But it has been held that a wholesaler may not make a shipment of liquor to an area within the same State which is subject to exclusive Federal jurisdiction under a license from the State to export liquor, nor to an unlicensed purchaser in the area where the wholesaler's license for domestic sales limited such sales to licensed purchasers. *McKesson & Robbins v. Collins*, 18 Cal. App. 2d 648, 64 P. 2d 469 (1937). And an excise tax has been held applicable to liquor sold to (but not by) retailers located on Federal enclaves, where the tax is on sales by wholesalers. *Op. A. G., Cal.*, No. 10,255 (Oct. 8, 1935).

State laws (and local ordinances) which provide for administrative action have no application to areas under exclusive Federal legislative jurisdiction.¹⁴ State and local governments cannot enforce ordinances relating to licenses, bonds, inspections, etc., with respect to construction in areas under exclusive

¹³ On the basis of this ruling of the Supreme Court the Department of the Army has taken the position that a State has no authority to prohibit the importation of liquors destined for military reservations, *Op. J. A. G., Army*, 1954/5868 (July 12, 1954), or to require that the liquors so consigned be channelled through State warehouses and subjected to taxes and other charges, *id.* 1953/7206 (Sept. 15, 1953); and the Department of the Navy has expressed the view that shipment of alcoholic beverages from outside a State to an officers' club on a naval reservation within the State under the exclusive jurisdiction of the United States is not an importation into the State. *Op. J. A. G., Navy*, L14-1 (410108), (May 5, 1941).

The Attorney General of Missouri has ruled that the State has no right to tax or regulate liquors imported into an exclusive legislative jurisdiction area. *Ops. A. G., Mo.* (Apr. 26, 1936; Jan. 15, 1940; and June 12, 1942). The Attorney General of Connecticut has ruled similarly, *Op. A. G., Conn.* (Oct. 26, 1937); as has the Attorney General of Ohio, *Op. A. G., Ohio*, No. 1320 (1937), p. 2255; *id.* No. 3838 (1954), p. 265.

¹⁴ See p. 161 *et seq.*, *supra*.

Federal jurisdiction. *Oklahoma City, et al. v. Sanders*, 94 F. 2d 323 (C. A. 10, 1953); *Op. A. G., N. M.*, No. 5340 (Mar. 6, 1951); *id.* No. 5348 (Mar. 29, 1951);¹⁵ see also *Birmingham v. Thompson*, 200 F. 2d 505 (C. A. 5, 1952). Other State and local licensing provisions are also inapplicable in such areas.¹⁶ A State cannot enforce its game laws in an area where exclusive legislative jurisdiction over wildlife has been ceded to the United States. *Chalk v. United States*, 114 F. 2d 207 (C. A. 4, 1940), *cert. den.*, 312 U. S. 679.¹⁷

¹⁵ A contrary decision would have given States a greater authority in areas under Federal legislative jurisdiction than they have in federally owned areas as to which the Federal Government has merely a proprietorial interest. See chapter IX, *infra*.

¹⁶ A physician who is engaged to render care and medical attention to those constructing a Federal building upon property over which the United States has exclusive jurisdiction is not subject to State law relating to the practice of medicine and surgery. *Lynch v. Hammock*, 204 Ark. 911, 165 S. W. 2d 369 (1942). To the same effect, but involving the practice of massage, is *Ladwig v. Nance*, 223 Ark. 559, 267 S. W. 2d 314 (1954). It has also been held that an optician maintaining his office in a post exchange on a Federal enclave may not be required by the State to obtain a State license, *Op. A. G., Cal.*, No. 3714 (Aug. 14, 1941).

The Judge Advocate General of the Army has expressed the view that generally State licensing laws have no application to persons doing business on a reservation over which the United States has exclusive jurisdiction. *Op. J. A. G., Army*, 004.6 (June 27, 1942).

Neither State nor local authorities may enforce health laws and regulations upon exclusive Federal jurisdiction areas, *Op. A. G., Ohio*, No. 3704 (1941), p. 319; nor may a State regulate the sale of securities in such areas, *Op. A. G., Fla.*, No. 054-109 (May 4, 1954). But the Attorney General of Utah has ruled that State sanitation regulations may be enforced, where the State has retained concurrent jurisdiction, unless they are in conflict with Federal law. *Op. A. G., Utah* (Nov. 13, 1945).

¹⁷ The Judge Advocate General of the Navy before the decision in this case reasoned to a similar view. *Op. J. A. G., Navy*, NR 103/N1-13 (381028), (Dec. 7, 1938).

The Attorney General of Pennsylvania has held that the State has no jurisdiction to arrest or prosecute for violations of its fishing laws committed on areas over which the United States has exclusive legislative jurisdiction. *Op. Dep. A. G., Pa.*, 39 Pa. D. & C. 134 (July 15, 1940). The Attorney General of Ohio has ruled similarly. *Op. A. G., Ohio*, No. 2890 (1940), p. 923. Where the State has retained concurrent jurisdiction, such laws may be enforced by State officials. *Op. A. G., Utah*, No. 54-060. And, of course, this is true where the Federal Government has not acquired any

None of the laws of a State imposing special duties upon its residents are applicable to residents of areas under exclusive Federal legislative jurisdiction. In one of the very earliest cases relating to exclusive Federal legislative jurisdiction, it was stated that inhabitants of such areas are not "held to pay any taxes imposed by its [*i. e. the State's*] authority, nor bound by any of its laws," and it was reasoned that it might be very inconvenient to the United States to have "their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the Commonwealth of the inhabitants of the several towns." *Commonwealth v. Clary*, 8 Mass. 72 (1811). A State statute requiring residents of the State to work on State roads is not applicable to residents of an area subject to exclusive Federal legislative jurisdiction. 16 *Ops. A. G.* 468 (1880); *Pundt v. Pendleton*, 167 Fed. 997 (N. D. Ga., 1909).

But in *Bailey v. Smith*, 40 F. 2d 958 (S. D. Iowa, 1928), it was held that a resident of an exclusive Federal jurisdiction area was not exempt under a State automobile registration law which exempted persons who had complied with registration laws of the State, territory, or Federal district of their residence, the term "Federal district" being construed to apply only to the District of Columbia, and the United States Supreme Court has upheld a requirement for registration with the State under similar circumstances. *Storaasli v. Minnesota*, 283 U. S. 57 (1931). See also *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939).¹⁸

legislative jurisdiction. *Op. A. G., Cal.*, No. 10,715 (May 22, 1936); *id.* No. NS 2238 (Dec. 30, 1939).

¹⁸ A State auto license tax which is a tax for the privilege of using State highways held applicable to residents of Federal enclaves, *Op. A. G., Cal.*, No. 10,417 (Jan. 20, 1936). A resident of an exclusive Federal jurisdiction area may not drive an automobile upon State highways outside of the area without a license; but upon proof of such residence he may be issued a license, notwithstanding that his car has not been returned for taxation. *Op. A. G., Ohio*, No. 3042 (1925), p. 783. See also footnote 2, p. 106, *supra*, and matter on p. 293, *et seq., infra*.

Status of State and municipal services.—The Comptroller General of the United States consistently and on a number of occasions has disapproved proposed payment by the Federal Government to a State or local government of funds for fire-fighting on a Federal installation, either for services already rendered or for services to be rendered on a contractual basis.¹⁹ In support of his position he has maintained that there exists a legal duty upon municipal or other fire-fighting organizations to extinguish fires within the limits of their municipal or other boundaries. He has not, in his decisions on these matters, distinguished between areas which are and those which are not under the legislative jurisdiction of the United States.²⁰

The Comptroller General has indicated that his views relating to fire-fighting extend to other similar services ordinarily rendered by or under the authority of a State. See 6 *Comp. Gen.* 741 (1927); *Comp. Gen. Dec.* B-50348 (July 6, 1945); cf. *id.* B-51630 (Sept. 11, 1945), where estimates and hearings made clear that an appropriation act was to cover cost of police and fire protection under agreements with municipalities. In disapproving a proposed payment to a municipality for fire-fighting services performed on a Federal installation, he said (24 *Comp. Gen.* 599, 603):

* * * if a city may charge the Federal Government for the service of its fire department under the circumstances here involved, would it not follow that a charge could be made for the service of its police department, the services of its street-cleaning department and all similar service usually rendered by a city for the benefit and welfare of its inhabitants.

¹⁹ 24 *Comp. Gen.* 599 (1945); 26 *Comp. Gen.* 382 (1946); 30 *Comp. Gen.* 376 (1951); see also *Comp. Gen. Dec.* B-126228 (Jan. 6, 1956); *id.* B-105602 (Dec. 17, 1951); *id.* B-28369 (Sept. 22, 1942).

²⁰ See discussion in chapter 8, *infra*, particularly p. 238 *et seq.*, *infra*, of a concept of extraterritoriality of areas which are under exclusive Federal jurisdiction as it relates to the status of residents of such areas.

No court decisions dealing directly with questions of obligation for the rendering of State and municipal services to Federal installations have been found. It would appear, however, with respect to Federal areas over which a State exercises legislative jurisdiction, that while the furnishing of fire-fighting and similar services would be a matter for the consideration of officials of the State or a local government, the obligation to furnish them would be a concomitant of the powers exercised by those authorities within such areas (*Comp. Gen. Dec. B-126228* (Jan. 6, 1956)).²¹

It may be noted that the Congress has provided authority for Federal agencies to enter into reciprocal agreements with fire-fighting organizations for mutual aid in furnishing fire protection, and, further, for Federal rendering of emergency fire-fighting assistance in the absence of a reciprocal agreement.²²

Service of process.—It has been held many times that the reservation by a State (or the grant to the States by the United States)²³ of the right to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area.²⁴ In each of the instances in which the consistency with exclusive Federal jurisdiction of a State's right to serve process has been upheld, however, either the State had expressly reserved this right or the Congress had authorized such service. It seems entirely probable that in the absence of either a reservation or a Federal statutory authorization covering the matter a State would have no greater authority to serve process

²¹ See also *report*, part I, p. 50 *et seq.* And the Attorney General of Ohio has ruled that a federally owned area (used by the State under a license agreement) was entitled to the same degree of fire protection as accorded any other areas of the township in which it was located. *Op. A. G., Ohio*, No. 3374 (1953) p. 733.

²² Act of May 27, 1955, 69 Stat. 66, 42 U. S. C. 1856 *et seq.*; see also 32 *Comp. Gen.* 91 (1952). Expenditure, from a general appropriation, of funds for purchase of membership in a voluntary fire organization has been authorized where obligation to furnish protection does not otherwise devolve on organization. 34 *Comp. Gen.* 195 (1954).

²³ See p. 35, *supra*.

²⁴ See p. 118, *et seq.*, *supra*.

in an area of exclusive Federal jurisdiction than it does in an area beyond its boundaries.²⁵ It has been so held by the Attorney General.²⁶

STATE RESERVATIONS OF JURISDICTION: *In general*.—In ceding legislative jurisdiction to the Federal Government, and also in consenting to the purchase of land by the Federal Government pursuant to article I, section 8, clause 17, of the Constitution, it is a common practice of the States to reserve varying quanta of jurisdiction.²⁷

There is now firmly established the legal and constitutional propriety of reservations of jurisdiction in State consent²⁸ and cession²⁹ statutes. Subject to only one general limitation, a State has unlimited discretion in determining the character and scope of the reservations which it desires to include in such statutes. The sum and substance of the limitation appears to be that a State may not by a reservation enlarge its authority with respect to the area in question; or, to put it conversely, that a reservation of jurisdiction by a State may not diminish or detract from the power and authority which the Federal Government possesses in the absence of a transfer to it of legislative jurisdiction.³⁰

Reservations construed.—State reservations of jurisdiction have presented few legal problems. In no instance has a State reservation of jurisdiction been invalidated, or its scope nar-

²⁵ Having reserved or been granted the right to serve process, however, a State must be given access to areas under Federal jurisdiction for the purpose of effecting such service by its officials, subject at most to reasonable Federal regulations designed to prevent interference with Federal functions conducted on such areas. *Op. J. A. G., Navy, JAG:J:JAL; amp* (Aug. 5, 1943); *id. LL/A17-8* (370817), (Aug. 28, 1937). To the same effect is a decision of the Judge Advocate General of the Army. *Op. A. G., Army, 1950/4487* (Aug. 17, 1950).

²⁶ 23 *Ops. A. G.* 254 (1900). See also *People of the State of California v. United States*, 235 F. 2d 647, 655, 661 (C. A. 9, 1956).

²⁷ *Report*, part I, p. 28 *et seq.*, and p. 127 *et seq.*

²⁸ P. 62 *et seq.*, *supra*.

²⁹ P. 60 *et seq.*, *supra*.

³⁰ P. 64, *supra*.

rowed, on the ground that its effect was to enlarge the power of the State or to interfere with the functions of the Federal Government. Instead, the reported cases involving such reservations have presented questions concerning the scope of the reservations actually made. Thus, in *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938), it was held that a reservation by a State of the right to tax the sale of liquor does not include the right to enforce the regulatory features of the State's alcoholic beverage control act in an area in which, except *inter alia* the right to tax, the entire jurisdiction of the State had been ceded to the Federal Government. Similarly, in *Birmingham v. Thompson*, 200 F. 2d 505 (C. A. 5, 1952), it was held that even though the State, in ceding jurisdiction to the Federal Government, reserved the right to tax persons in the area over which jurisdiction had been ceded, a city could not require the payment of a license fee by a contractor operating in the area where issuance of the license was coupled with a variety of regulatory provisions. The results reached in these two cases suggest that State statutes transferring jurisdiction will be construed strictly.³¹ Only those matters expressly mentioned as reserved will remain subject to the jurisdiction of the State.³²

³¹ See also *In re Kelly*, 71 Fed. 545 (C. C. E. D. Wis., 1895); *Six Cos., Inc. v. De Vinney*, 2 F. Supp. 693 (D. Nev., 1933); *People v. Godfrey*, 17 Johns. 225 (N. Y., 1819); *Oscar Daniels Co. v. Sault Ste. Marie*, 208 Mich. 363, 175 N. W. 160 (1919); *State v. Mendez*, 57 Nev. 192, 61 P. 2d 300 (1936); *Ryan v. State*, 188 Wash. 115, 61 P. 2d 1276 (1936), *aff'd.*, *sub nom. Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937), but see *State ex rel. Board of Commissioners v. Bruce*, 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.*, 305 U. S. 577, and *Valley County v. Thomas*, 109 Mont. 345, 97 P. 2d 345 (1939); *Standard Oil Co. of California v. Johnson*, 10 Cal. 2d 758, 76 P. 2d 1184 (1938); *Buckstaff Bath House Co. v. McKinley*, 308 U. S. 358 (1939); *Superior Bath House Co. v. McCarroll*, 312 U. S. 176 (1941); *Collins v. Yosemite Park Co.*, 304 U. S. 518 (1938). See also p. 88, *supra*.

³² State tax laws are enforceable as to private persons and property on areas under the partial legislative jurisdiction of the United States if the reservation of State jurisdiction includes the power to tax. *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937); *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885); *Rainier Nat. Park Co. v. Martin*, 18 F. Supp. 481 (W. D. Wash., 1937), *aff'd.*, 23 F. Supp. 60, *aff'd.*, 302 U. S. 661 (1938); *Yosemite Park & Curry Co. v. Johnson*, 10 Cal. 2d 770, 76 P. 2d 1191 (1938). See also pp. 57 *et seq.*, 117 *et seq.*, & 147, *supra*, for discussions of reservations.

AUTHORITY OF THE STATES UNDER FEDERAL STATUTES: *In general.*—In order to ameliorate some of the practical consequences of exclusive legislative jurisdiction, Congress has enacted legislation permitting the extension and application of certain State laws to areas under Federal legislative jurisdiction. Thus, Congress has authorized the States to extend to such areas certain State taxes on motor fuel (the so-called "Lea Act," 4 U. S. C. 104); to apply sales, use, and income taxes to such areas (the so-called "Buck Act," 4 U. S. C. 105 *et seq.*); to tax certain private leasehold interests on Government owned lands (the so-called "Military Leasing Act of 1947," 61 Stat. 774);³³ and to extend to Federal areas their workmen's compensation and unemployment compensation laws (26 U. S. C. 3305 (formerly 1606), subsec. (d), and act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290, respectively).³⁴ Congress has also enacted a statute retroceding to the States jurisdiction pertaining to the administration of estates of decedent residents of Veterans' Administration facilities,³⁵ and, from time to time, various legislation providing for Federal exercise of less than exclusive jurisdiction in specific areas where conditions in the particular area or the character of the Federal undertaking thereon indicated the desirability of the extension of a measure of the State's jurisdiction to such areas.³⁶

Lea Act.—A 1936 statute,³⁷ variously known as the Lea Act and the Hayden-Cartwright Act, amended the Federal Highway Aid Act of 1916, by providing (section 10):

That all taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor

³³ Formerly 10 U. S. C. 1270 (d), but in 1956 re-enacted as 10 U. S. C. 2667 (e).

³⁴ For the full texts of these statutes, see *report*, part I, pp. 238-244.

³⁵ 38 U. S. C. 16-16j, see p. 235, *infra*.

³⁶ For illustrations of such statutes reference may be had to provisions contained in chapter I of title 16, U. S. C., fixing the jurisdictional status of various national parks.

³⁷ Act of June 16, 1936, 49 Stat. 1521, 4 U. S. C. 104.

vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. * * *

The legislative history of this particular section of the act is meager and appears to be limited to matter contained in the Congressional Record.³⁸ It is indicated that the language of this section was sponsored by organizations of State highway and taxing officials. An amendment comprised of this language was offered by Senator Hayden, of Arizona, and was read and passed by the Senate without question or debate. It is logical to assume that the amendment was inspired by the decision of the Supreme Court in the *Standard Oil Company* case discussed on page 178, above.

Under this section, as it was amended by the Buck Act in 1940,³⁹ States are given the right to levy and collect motor vehicle fuel taxes within Federal areas, regardless of the form of such taxes, to the same extent as though such areas were not Federal, unless the fuel is for the exclusive use of the Federal Government. *Sanders v. Oklahoma Tax Commission*, 197 Okla. 285, 169 P. 2d 748 (1946), *cert. den.*, 329 U. S. 780.⁴⁰ Sales to Government contractors are taxable under the act,⁴¹ but not sales to Army post exchanges, which are arms of the

³⁸ 80 Cong. Rec. 6913 (1936).

³⁹ See p. 200, *infra*.

⁴⁰ See also *Minnesota v. Keeley*, 126 F. 2d 863 (C. A. 8, 1942), reversing *Minnesota v. Ristine*, 36 F. Supp. 3 (D. Minn., 1940), and *cf. State v. Yellowstone Park Co.*, 57 Wyo. 502, 121 P. 2d 170 (1942), *cert. den.*, 316 U. S. 689; the first cited case approved, and the last disapproved, taxes based on use rather than sales under the original form of this statute prior to its amendment by the Buck Act (see p. 200, *infra*).

⁴¹ *Texas Co. v. Siefried*, 60 Wyo. 142, 147 P. 2d 837 (1944), *reh. den.*, 60 Wyo. 174, 150 P. 2d 99.

Federal Government and partake of its immunities under this act.⁴²

Buck Act.—Four years later, in 1940, Congress enacted a retrocession statute of wide effect. This law,⁴³ commonly known as the Buck Act, retroceded to the States partial jurisdiction over Federal areas so as to permit the imposition and collection of State sales and use taxes and income taxes within Federal areas. The Federal Government and its instrumentalities were excepted.

The House of Representatives passed a bill during the first session of the 76th Congress which embodied nearly all of the aspects of the statute finally enacted, except the features relating to the collection of income taxes from Federal employees residing on Federal enclaves and to an amendment of the Hayden-Cartwright Act of 1936. These additional matters were added as amendments to the House bill after Senate hearings were held.⁴⁴ The intent behind the House bill, passed during the first session of the 76th Congress, as stated in the report⁴⁵ accompanying the bill to the floor was:

The purpose of H. R. 6687 is to provide for uniformity in the administration of State sales and use taxes within as well as without Federal areas. It proposes to authorize the levy of State taxes with respect to or measured by sales or purchases of tangible personal property on Federal areas. The taxes would in the vast majority of cases be paid to the State by sellers whose places of business are located off the Federal areas and who make sales of property to be delivered in such areas.

The application of such taxes to the gross receipts of a retailer from sales in which delivery is made to an area

⁴² See *Standard Oil Co. v. Johnson*, 316 U. S. 481 (1942), and other cases cited in footnote 48 (p. 198), *infra*.

⁴³ Act of Oct. 9, 1940, 54 Stat. 1059, 4 U. S. C. 105-110.

⁴⁴ Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940).

⁴⁵ H. Rept. No. 1267, 76th Cong., 1st Sess. 10301 (1939).

over which it is asserted the United States possesses exclusive jurisdiction is being vigorously contested even though the retailer's place of business is located off the Federal area and the negotiations leading to the sale are conducted and the contract of sale is executed at the retailer's place of business. Despite the existence of these facts, which are generally sufficient to give rise to liability for the tax, and which, insofar as the theory of the tax is concerned, should, in the opinion of your committee, be sufficient to impose tax liability, exemption from the tax is asserted upon the ground that title to the property sold passes on the Federal area and, accordingly, the sale occurs on land over which the State lacks authority.

Passage of this bill will clearly establish the authority of the State to impose its sales tax with respect to sales completed by delivery on Federal areas, and except insofar as the State tax might be a prohibited burden upon the United States would not, with the exception hereinafter noted, impose any duty upon any person residing or located upon the Federal area. Such action would merely remove any doubt which now exists concerning the authority of the State to require retailers located within the State and off the Federal areas to report and pay the tax on the gross receipts from their sales in which delivery is made to a Federal area. A minor problem presented with respect to the application of State sales taxes on Federal areas involves the responsibility for such taxes of post exchanges, ship-service stores, commissaries, licensed traders, and other similar agencies operating on Federal areas.

Congress, in the amendment of section 10 of the Hayden-Cartwright Act, provided for the application of motor-vehicle fuel taxes with respect to the sales or distributions of such agencies. It would appear therefore to be entirely proper to provide for the application of sales

taxes with respect to the retail sales of tangible personal property of such agencies.

The States have been extremely generous in granting to the United States exclusive jurisdiction over Federal areas in order that any conflicts between the authority of the United States and a State might be avoided. It would appear to be an equally sound policy for the United States to prevent the avoidance of State sales taxes with respect to sales on Federal areas by specifically authorizing, except insofar as the taxes may constitute a burden upon the United States, the application of such taxes on those areas.

The House bill was amended by the Senate and therefore certain portions of this report must be read in the light of Senate changes in the bill.

The report ⁴⁶ of the Senate Committee on Finance which considered the House bill is also most informative in regard to the intent of Congress in enacting the law. The Senate report gives the reasons for the general provision on the application of State sales and use taxes to Federal enclaves as:

Section 1 (a) of the committee amendment removes the exemption from sales or use taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area. At the present time exemption from such taxes is claimed on the ground that the Federal Government has exclusive jurisdiction over such areas. Such an exemption may be claimed in the following types of cases: First, where the seller's place of business is within the Federal area and a transaction occurs there, and, second, where the seller's place of business is outside the Federal area but delivery is made in Federal area and payment received there.

⁴⁶ S. Rept. No. 1625, 76th Cong., 3d Sess. 10429 (1940).

This section will remove the right to claim an exemption because of the exclusive Federal jurisdiction over the area in both of these situations. The section will not affect any right to claim any exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred.

This section also contains a provision granting the State or taxing authority full jurisdiction and power to levy and collect any such sale or use tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area. This additional authorization was deemed to be necessary so as to make it clear that the State or taxing authority had power to levy or collect any such tax in any Federal area within the State by the ordinary methods employed outside such areas, such as by judgment and execution thereof against any property of the judgment-debtor.

The provision relating to the application of State income taxes to persons residing within a Federal area or receiving income from transactions occurring on or services performed in a Federal area is explained in the Senate report on the rationale that:

Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary Tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees of the United States when such officers and employees reside or are domiciled

in that State but is not permitted to tax the compensation of such officers and employees who reside within the Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption, is that under the doctrine laid down in *James v. Dravo Contracting Co.* (302 U. S. 134, 1937), a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

During the 1940 Senate hearings on the House bill, representatives of the War and Navy Departments expressed opposition to certain features of the bill. Vigorous attack was made on an aspect of the original bill which would have permitted the application of State sales taxes on retail sales of tangible personal property by post exchanges, ship-service stores and

commissaries.⁴⁷ These objections were the apparent cause of an amendment which was explained by the Senate committee as follows:

Section 3 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof. This section also provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser. An authorized purchaser being a person who is permitted, under regulations of the Secretary of War or Navy, to make purchases from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, such as post exchanges, but such person is deemed to be an authorized purchaser only with respect to such purchases and is not deemed to be an authorized purchaser within the meaning of this section when he makes purchases from organizations other than those heretofore mentioned.

For example, tangible personal property purchased from a commissary or ship's store by an Army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. If voluntary unincorporated organizations of Army and Navy personnel, such as post exchanges, are held by the courts to be instrumentalities of the United States, the same rule will apply to similar purchases from such organizations;

⁴⁷ Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940), pp. 24, 28-31. See also letter from Representative Carl Vinson, *id.* pp. 47-48.

but if they are held not to be such instrumentalities, property so purchased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. It may also be noted at this point that if a post exchange is not such an instrumentality, it will also be subject to the State income taxes by virtue of section 2 of the committee amendment.

It may be noted that post exchanges and certain other organizations attached to the armed forces have been judicially determined to be Federal instrumentalities.⁴⁸ It should also be noted that the exemption provision of the Buck Act was amended somewhat by the act of September 3, 1954, 68 Stat. 1227.

⁴⁸ In *Standard Oil Co. v. Johnson*, 316 U. S. 481 (1942), it was held (p. 485) that "post exchanges as now operated are arms of the Government deemed by it essential for the performance of governmental functions. They are integral parts of the War Department, share in fulfilling the duties entrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes." A similar holding in *United States v. Query*, 37 F. Supp. 972 (E. D. S. C., 1941), *aff'd.*, 121 F. 2d 631 (C. A. 4, 1941), *cert. den.*, 314 U. S. 685 (but see 316 U. S. 486), is applicable also to ships' stores and officers' and non-commissioned officers' clubs, because of a stipulation entered into in that case, according to a letter from the Secretary of the Navy to the Secretary of the Treasury dated Nov. 28, 1955 (see also: *Falls City Brewing Co. v. Recves*, 40 F. Supp. 35 (W. D. Ky., 1941); *Edelstein v. South Post Officers Club*, 118 F. Supp. 40 (E. D. Va., 1951); *Maynard & Child, Inc. v. Shearer*, 290 S. W. 2d 790 (Ky., 1956); *Daniels v. Chanute Air Force Base Exchange*, 127 F. Supp. 920 (E. D. Ill., 1955); and *Roger v. Elrod*, 125 F. Supp. 62 (D. Alaska, 1954); *cf. Faleni v. United States*, 125 F. Supp. 630 (E. D. N. Y., 1949), and *Pan American Petroleum Corp. v. Alabama*, 67 F. 2d 590 (C. A. 5, 1933)). The Attorney General of Missouri has applied the decision in the *Standard Oil Co.* case, *Op. A. G., Mo.* (July 12, 1942), as has the Attorney General of Ohio, *Op. A. G., Ohio*, No. 3362 (1941), p. 17, and the Attorney General of Connecticut earlier applied the decision in the *Pan American Petroleum Corp.* case, *Op. A. G., Conn.* (Dec. 30, 1940). The Attorney General of Wyoming has ruled that the Army Motion Picture Service is exempt from State taxation as a Federal instrumentality. *Op. A. G., Wyo.* (July 8, 1947). The Judge Advocate General of the Navy has ruled that Navy commissaries similarly are Federal instrumentalities. *Op. J. A. G., Navy*, JAG: II: 1: JFG: w/n (Dec. 30, 1952).

One of the Navy officers testifying at the Senate hearing raised a question as to the effect on the Federal criminal jurisdiction over Federal areas of a grant to the States of concurrent jurisdiction for tax matters.⁴⁹ The Attorney General of the United States raised the same question in commenting on the bill by letter to the Chairman of the Senate Finance Committee:

From the standpoint of the enforcement of the criminal law, the legislation may result in an embarrassment which is probably unintended. Criminal jurisdiction of the Federal courts is restricted to Federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenals, dock-yards, or other needful buildings (U. S. C., title 18, sec. 451, par. 3d). A question would arise as to whether, by permitting the levy of sales and personal-property taxes on Federal reservations, the Federal Government has ceded back to the States its exclusive jurisdiction over Federal reservations and has retained only concurrent jurisdiction over such areas. The result may be the loss of Federal criminal jurisdiction over numerous reservations, which would be deplorable.⁵⁰

After considerable discussion and deliberation the issue was resolved by a Senate committee amendment to the House bill adding the following provision (54 Stat., at p. 1060):

Section 4. The provisions of this Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

The committee explained that:

⁴⁹ Hearing before a Subcommittee of the Committee on Finance, United States Senate, 76th Cong., 3d Sess., on H. R. 6687 (Apr. 23, 1940), pp. 24-25.

⁵⁰ *Id.* at p. 51.

Section 4 of the committee amendment was inserted to make certain that the criminal jurisdiction of Federal courts with respect to Federal areas over which the United States exercises exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas. The provisions of this section are applicable to all Federal areas over which the United States exercises jurisdiction, including such areas as may be acquired after the date of enactment of this act.

The Buck Act added certain amendments to the Hayden-Cartwright (Lea) Act. The 1940 Senate committee report explained why those changes were considered necessary:

Section 7 (a) of the committee amendment amends section 10 of the Hayden-Cartwright Act so that the authority granted to the States by such section 10 will more nearly conform to the authority granted to them under section 1 of this act. At the present time a State such as Illinois, which has a so-called gallonage tax on gasoline based upon the privilege of using the highways in that State, is prevented from levying such tax under the Hayden-Cartwright Act because it is not a tax upon the "sale" of gasoline. The amendments recommended by your committee will correct this obvious inequity and will permit the levying of any such tax which is levied "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels."

By the Buck Act Congress took a great stride in the direction of removing the tax inequities which had resulted from the existence of Federal "islands" in the various States and, in addition, opened the way for the State and local governments to secure additional revenue.

In *Howard v. Commissioners*, 344 U. S. 624 (1953), the Supreme Court (by a divided court), expressed the view that the

Buck Act authorized State and local taxes measured by the income or earnings of any party "receiving income from transactions occurring or services performed in such area" ⁵¹ * * * to the same extent and with the same effect as though such area was not a Federal area." ⁵² The Court of Appeals of Kentucky had held that this tax was not an "income tax" within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the city of Louisville. The Supreme Court, after stating that the issue was not whether the tax in question was an income tax within the meaning of the Kentucky law, held that the tax in question was a tax "measured by, net income, gross income, or gross receipts," as authorized by the Buck Act. In a dissenting opinion, here quoted in pertinent part to clarify this important issue in this case, it was stated (p. 629):

I have not been able to follow the argument that this tax is an "income tax" within the meaning of the Buck Act. It is by its terms a "license fee" levied on "the privilege" of engaging in certain activities. The tax is narrowly confined to salaries, wages, commissions and to the net profits of businesses, professions, and occupations. Many kinds of income are excluded, e. g., divi-

⁵¹ The area involved in this case was a Government ordnance plant tract over which the United States exercised exclusive jurisdiction and which was annexed by the city without objection by the United States. The court held that notwithstanding the acquisition of the property by the United States with the consent of the State the area could be annexed by the city, since it remained a part of the county and State. To the same effect is the previous ruling in *Wichita Falls v. Bowen*, 143 Tex. 45, 182 S. W. 2d 695 (1944), where the court held that a military base over which the United States has exclusive jurisdiction is a part of the city, just as much as it is a part of the State, even though control over it is curtailed while under the jurisdiction of the United States; see also *County of Norfolk v. Portsmouth*, 186 Va. 1032, 45 S. E. 2d 136 (1947).

⁵² The Judge Advocate General of the Army has had occasion to hold to the same general effect—that the failure of a State to reserve any rights to tax in its cession of jurisdiction to the United States has no effect on the right to tax under the Buck Act. *Op. J. A. G., Army*, 1953/9148 (Jan. 15, 1954), and *id.* 1944/1555 (Feb. 7, 1944).

dends, interest, capital gains. The exclusions emphasize that the tax is on the *privilege* of working or doing business in Louisville. That is the kind of a tax the Kentucky Court of Appeals held it to be. *Louisville v. Sebree*, 308 Ky. 420, 214 S. W. 2d 248. The Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States.

In another case in which a State claimed taxing authority under the Buck Act, a steel company which occupied a plant under lease from the Federal Government was thereby held subject to a State occupation tax under the act. *Carnegie-Illinois Steel Corp. v. Alderson*, 127 W. Va. 807, 34 S. E. 2d 737 (1945), *cert. den.*, 326 U. S. 764. It has also been held that a tax on gasoline received in a State, within a Federal area, was a "sales or use" tax within the purview of the act, and that by the act the Congress retroceded to States sufficient sovereignty over Federal areas within their territorial limits to enable them to levy and collect the taxes described in the act. *Davis v. Howard*, 306 Ky. 149, 206 S. W. 2d 467 (1947). In *Maynard & Child, Inc. v. Shearer*, 290 S. W. 2d 790 (Ky., 1956), it was held that an import tax was not such a tax as Congress had consented to be collected by its enactment of the Buck Act. In *Bowers v. Oklahoma Tax Commission*, 51 F. Supp. 652 (W. D. Okla., 1943), a construction contractor was held to "use" material incorporated into the work, so as to subject him to a State use tax pursuant to the Buck Act. The Attorney General of Wyoming has ruled that the State use tax was not applicable to an auto purchased out of the State for private use on an exclusive Federal jurisdiction area within the State. *Op. A. G., Wyo.* (Dec. 9, 1947).

There appear to be no other instances of general importance in which the character of State taxes as within the purview of the Buck Act has been questioned in the courts.⁵³

⁵³ The Judge Advocate General of the Navy has ruled, however, that a license tax required by a State for the privilege of selling alcoholic beverages

An early, and leading, case relating to the effect of the Buck Act on State taxing authority is *Kiker v. Philadelphia*, 346 Pa. 624, 31 A. 2d 289 (1943), *cert. den.*, 320 U. S. 741.⁵⁴ In that case there was interposed as a defense against application of an income tax of the city of Philadelphia, to a non-resident of the city employed in an area within the city limits but under the exclusive legislative jurisdiction of the United States, the fact that the non-resident received no *quid pro quo* for the tax. The court found the availability of services to be an answer to this defense. The court also appears to have overcome any difficulty, and in these matters its views apparently are sustained by the *Howard* case, *supra*, and other decisions, in objections raised to the application of the tax in a vigorous dissenting opinion in this case that (1) the city, as distinguished from the State, could not impose a tax under the Buck Act, and (2) that a State grant to the Federal Government of legislative jurisdiction over an area placed such area outside the sovereignty (and individuals and property within the area beyond the taxing power) of the State.

Military Leasing Act of 1947.—The Wherry Housing Act of

ages in a Federal area of exclusive jurisdiction is not a "sales or use tax" within the definition of the Buck Act, and the imposition of such a tax is not authorized. *Op. J. A. G., Navy*, JAG: II: JCR: ecw (June 22, 1950).

The Chief Counsel of the National Park Service has ruled that State and county privilege taxes are inapplicable to a concessionaire on an exclusive Federal jurisdiction area in Tennessee, on the ground that such taxes are not within the purview of existing congressional authorization. *Memo* dated Jan. 20, 1954, to Regional Director, Region 1, Nat'l Park Service, Dept. of Interior. The Attorney General of Utah has held that a corporation doing business as a restaurant on an area under exclusive Federal jurisdiction is subject to State sales, use, and income taxes. *Op. A. G., Utah*, No. 51-163. The Attorney General of California has held that under the Buck Act sales by operators, who are not Federal instrumentalities, of vending stands within Federal enclaves are subject to sales taxes. *Op. A. G., Cal.*, No. NS3156 (Dec. 21, 1940). So also subject are sales of liquor consummated by delivery within the enclave. *Id.* NS3578 (June 12, 1941).

⁵⁴ See 17 *Temple U. L. Q.* 275 (1943) for a note on this case. The case was followed in *Philadelphia v. Cline*, 158 Pa. Super. Ct. 179, 44 A. 2d 610 (1945), *cert. den.*, 328 U. S. 848.

1949,⁵⁵ in pertinent part, makes provision for arrangements whereby military areas (including, of course, such areas under the exclusive legislative jurisdiction of the United States) may be leased to private individuals for the construction of housing for rental to military personnel. The authority to lease out military areas for the construction of such housing was supplied by the Military Leasing Act of 1947,⁵⁶ a provision of which (section 6) read as follows:

The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated.

The legislative histories of both the 1947 and the 1949 statutes are devoid of authoritative information for measuring the extent of the taxing authority granted to the States, with the result that ambiguities in the language of the statutes which shortly became apparent led to a number of conflicting court decisions,⁵⁷ and other at least seemingly inconsistent interpre-

⁵⁵ Act of Aug. 8, 1949, 63 Stat. 576, as amended, 12 U. S. C. 1748.

⁵⁶ Act of Aug. 5, 1947, 61 Stat. 774, 10 U. S. C. 1270 (d), the pertinent provision of which appears, in revised form, as section 2667 (e) of title 10, U. S. C., as recodified in 1956.

⁵⁷ *Gay v. Jemison*, 52 So. 2d 137 (Fla., 1951); *Tampa Bay Garden Apartments v. Gay*, 55 So. 2d 739 (Fla., 1951); *Squantum Gardens v. Assessors of Quincy*, 140 N. E. 2d 482 (Mass., 1957); *Meade Heights v. State Tax Commission*, 202 Md. 20, 95 A. 2d 280 (1953); *Bragg Development Co. v. Braxton*, 239 N. C. 427, 79 S. E. 2d 918 (1954); *Dayton Development Fort Hamilton Corp. v. Boyland*, 133 N. Y. S. 2d 831 (Sup. Ct., 1954) *aff'd.*, 1 App. Div. 2d 979, 151 N. Y. S. 2d 928, *app. pending*, 137 N. E. 2d 457 (1956); *Conley Housing Corp. v. Coleman*, 211 Ga. 835, 89 S. E. 2d 482 (1955); *De Luz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 290 P. 2d 544 (1955); *Fairfield Gardens v. County of Solano*, 45 Cal. 2d 575, 290 P. 2d 562 (1955); *Victor Valley Housing Corp. v. County of San Bernardino*, 45 Cal. 2d 580, 290 P. 2d 565 (1955); *El Toro Dev. Co. v. County of Orange*, 45 Cal. 2d 586, 290 P. 2d 569 (1955); *County of Prince William v. Thomason Park*, 197 Va. 861, 91 S. E. 2d 441 (1956).

tations.⁵⁸ The ambiguity as to whether the federally granted tax authority with respect to leasehold interests extended to such interests located on lands under the exclusive legislative jurisdiction of the United States was resolved, however, by the decision of the Supreme Court of the United States in the case of *Offutt Housing Company v. Sarpy County*, 351 U. S. 253 (1956).⁵⁹ The court stated (p. 259):

* * * To be sure, the 1947 Act does not refer specifically to property in an area subject to the power of "exclusive Legislation" by Congress. It does, however, govern the leasing of Government property generally and its permission to tax extends generally to all lessees' interests created by virtue of the Act. The legislative history indicates a concern about loss of revenue to the States and a desire to prevent unfairness toward competitors of the private interests that might otherwise escape taxation. While the latter consideration is not necessarily applicable where military housing is involved, the former is equally relevant to leases for military housing as for any other purpose.

We do not say that this is the only admissible construction of these Acts. We could regard Art. I, § 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit

⁵⁸ Opinions of State Attorneys General on this subject are complicated by variations in State statutes defining properties on which taxes may be levied. Held that Wherry housing was subject to taxation under pertinent State statute: *Op. A. G., Ill.*, p. 78, No. 23 (May 7, 1953); *Op. A. G., Kan.* (Feb. 7, 1952); *Op. A. G., Utah*, No. 52-079; *id.* No. 53-178; *id.* No. 55-035; such housing held not subject to taxation: *Op. A. G., Conn.* (Oct. 15, 1952); *Op. A. G., Ind.*, No. 37 (1952), p. 163; *Op. A. G., N. Mex.*, No. 5463 (Dec. 10, 1951); *Op. Asst. A. G., Wyo.* (Sept. 29, 1955).

⁵⁹ See also *Fort Dix Apartments Corp. v. Borough of Wrightstown*, 225 F. 2d 473 (C. A. 3, 1955), *cert. den.*, 351 U. S. 962; *Brookley Manor v. State*, 90 So. 2d 161 (Ala., 1956); *Bragg Investment Co. v. Cumberland County*, 245 N. C. 492, 96 S. E. 2d 341 (1957).

and unambiguous legislative enactment. We have not heretofore so regarded it, see *S. R. A., Inc. v. Minnesota*, 327 U. S. 558; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of those cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, is that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case.

The opinion of the Supreme Court in the *Offutt* case, it seems clear, was restricted to an interpretation of the statutes involved, with particular reference to the language of the 1947 statute. Otherwise, it may be noted, in the light of the quoted portion of the opinion any Federal statute authorizing a State to exercise power previously denied to it might be construed, in the absence of indication of a positive contrary legislative intent, as authorizing the exercise of such power not only outside of areas under exclusive Federal legislative jurisdiction, but also within such areas. Under this construction the States need not have awaited the enactment of the Buck Act before taxing the income of Federal employees in areas under exclu-

sive Federal legislative jurisdiction, since Congress had previously authorized State taxation of incomes of Federal employees generally.

Workmen's compensation.—In 1936 there was enacted a statute⁶⁰ permitting the application of State workmen's compensation laws to Federal areas. Both House and Senate reports⁶¹ on the bill contained concise explanatory remarks concerning the reasons for the act. The House report, the more extensive of the two, sets forth the circumstances which motivated congressional action. The pertinent portions of the report are:

The Committee on Labor, to whom was referred the bill (H. R. 12599) to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to enter upon and enforce their State workmen's compensation, safety, and insurance laws on all property and premises belonging to the United States of America, having had the bill under consideration, report it back to the House with a recommendation that it do pass.

This bill is absolutely necessary so that protection can be given to men employed on projects as set out in the foregoing paragraph.

As a specific example, the Golden Gate Bridge, now under construction at San Francisco, which is being financed by a district consisting of several counties of the State of California, the men are almost constantly working on property belonging to the Federal Government either on the Presidio Military Reservation on

⁶⁰ Act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290.

⁶¹ H. Rept. No. 2656, 74th Cong., 2nd Sess. 9994 (1936) ; S. Rept. No. 2294, 74th Cong., 2nd Sess. 9989 (1936).

the San Francisco side of the Golden Gate, or the Fort Baker Military Reservation on the Marin County side of the Golden Gate.

A number of injuries have occurred on this project and private insurance companies with whom compensation insurance has been placed by the contractors have recently discovered two decisions—one by the Supreme Court of the United States and one by the Supreme Court of California—which seem to hold that the State Compensation Insurance Acts do not apply, leaving the workers wholly unprotected, except for their common-law right of action for personal injuries which would necessitate action being brought in the Federal courts. In many cases objection to the jurisdiction of the industrial accident commission has been raised over 1 year after the injury occurred and after the statute of limitations has run against a cause of action for personal injuries. This status of the law has made it possible for the compensation insurance companies to negotiate settlement with the workers on a basis far below what they would ordinarily be entitled. The situation existing in this locality is merely an example of the condition that exists throughout the United States wherever work is being performed on Federal property.

The Senate report very briefly states the problem in these words:

The purpose of the amended bill is to fill a conspicuous gap in the workmen's compensation field by furnishing protection against death or disability to laborers and mechanics employed by contractors or other persons on Federal property. The United States Employees' Compensation Act covers only persons directly employed by the Federal Government.

There is no general Federal statute applying the work-

men's compensation principle to laborers and mechanics on Federal projects, and although the right of workmen to recover under State compensation laws for death or disability sustained on Federal property has been recognized by some of the courts, a recent decision of the United States Supreme Court (see *Murray v. Gerrick*, 291 U. S. 315), has thrown some doubts upon the validity of these decisions by holding that a Federal statute giving a right of recovery under State law to persons injured or killed on Federal property refers merely to actions at law. Hence, it was held that this statute (act of Feb. 1, 1928, 45 Stat. 54, U. S. C., ti. 16, sec. 457) did not extend State workmen's compensation acts to places exclusively within the jurisdiction of the Federal Government.

The bill, as passed by the House, contained provisions subjecting Federal property to State safety and insurance regulations and permitting State officers to enter Federal property for certain purposes in connection with the act. The Senate committee suggested changes and deletions in these provisions which were approved by the Senate. The House concurred⁶² in the amendments, with no objections and with only a general explanation of their purpose⁶³ prior to such action.

While in some few instances State workmen's compensation laws had been held applicable in exclusive Federal jurisdiction areas under a 1928 Federal statute or under the international law rule,⁶⁴ the case of *Murray v. Gerrick & Co.*, 291 U. S. 315 (1934), it was noted in the legislative reports on this subject, held workmen's compensation laws inapplicable in such areas.

⁶² 80 Cong. Rec. 9180-1, 9643 (1936).

⁶³ *Id.* at p. 8842.

⁶⁴ See p. 148 *et seq.*, *supra*. In *Alexander v. Movietoneos, Inc.*, 273 N. Y. 511, 6 N. E. 2d 604 (1937), *cert. den.*, 301 U. S. 702; *Loney v. State Industrial Accident Board*, 87 Mont. 191, 286 Pac. 408 (1930); *Lynch's Case*, 281 Mass. 454, 183 N. E. 834 (1933); *Seerman v. Lustig & Weil, Inc.*, 252 App. Div. 906, 299 N. Y. Supp. 920 (1937); and *Walsh v. Apartment Engineering & Contracting Co.*, 267 N. Y. Supp. 872 (App. Div., 3d Dept., 1933), State workmen's compensation laws were held applicable to injuries suffered on exclusive Federal jurisdiction areas because of a nexus between

The 1936 Federal statute authorized States to apply their workmen's compensation laws in these areas, but required legislative action by the States for accomplishment of this purpose;⁶⁵ however, where a State had an appropriate law already in effect, but held in abeyance in an area because of Federal possession of legislative jurisdiction over the area, Federal enactment of this statute activated the State law without the necessity of any action by the State. *Capetola v. Barclay White Co.*, 139 F. 2d 556 (C. A. 3, 1943), *cert. den.*, 321 U. S. 799.⁶⁶ The statute was not applicable to causes of action arising before its passage, however.⁶⁷ State workmen's compensation laws are authorized by this statute to be applied to employees of contractors engaged in work for the Federal Government.⁶⁸ The statute does not, however, permit application of State laws to persons covered by provisions of the Federal Employees' Compensation Law,⁶⁹ or, it has been held, to employees of Federal instrumentalities.⁷⁰

the State and the contract of employment or parties to the contract. In *Allen v. Ind. Acc. Com.*, 3 Cal. 2d 214, 43 P. 2d 787 (1935), *Hand v. Apartment Engineering & Construction Co., Inc.*, 246 App. Div. 874, 285 N. Y. Supp. 67 (1936), and *Employers' Liability Assur. Corp. v. DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937), application of a State statute to an exclusive Federal jurisdiction area was denied. It should be noted that such application, notwithstanding existence of a nexus, substitutes State law for a remedy otherwise available under Federal law. However, the Supreme Court has given approval to such extraterritorial application of State workmen's compensation laws. *Alaska Packers Assn. v. Comm'n.*, 294 U. S. 532 (1935); *Steinmetz v. Sneed & Co.*, 123 N. J. L. 497, 9 A. 2d 801 (1939), *aff'd.*, 311 U. S. 605. See also 8 So. Calif. L. Rev. 61 (1935).

⁶⁵ See *State v. Rainier Nat'l Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937).

⁶⁶ See also *Ottinger Bros. v. Clark*, 191 Okla. 488, 131 P. 2d 94 (1942); *McDonnell & Murphy v. Lunday*, 191 Okla. 611, 132 P. 2d 322 (1942); 12 Geo. Wash. L. Rev. 80 (1943).

⁶⁷ *Employers' Liability Assur. Corp. v. DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937).

⁶⁸ *Young v. G. L. Tarlton, Contractor, Inc.*, 204 Ark. 283, 162 S. W. 2d 477 (1942).

⁶⁹ *Breeding v. Tennessee Valley Authority*, 243 Ala. 240, 9 So. 2d 6 (1942); *Posey v. Tennessee Valley Authority*, 93 F. 2d 726 (C. A. 5, 1937).

⁷⁰ *Op. J. A. G., Navy*, P3-2/P7 (350924-5), (May 18, 1938); *Ops. J. A. G., Army*, 1949/8889 (Feb. 15, 1950); 1949/5319 (Aug. 3, 1949); 1944/6234 (July 5, 1944).

Unemployment compensation.—The provision for application of State unemployment compensation laws in Federal areas was enacted as a portion of the Social Security Act Amendments of 1939: ⁷¹

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

The provision probably was born out of litigation, then pending in Arkansas courts, wherein the United States Supreme Court later upheld imposition of a State unemployment compensation tax upon a person operating in an area under Federal legislative jurisdiction only upon the basis of jurisdiction to tax property retroceded to or reserved by the State with respect to such area. *Buckstaff Bath House Co. v. McKinley*, 308 U. S. 358 (1939). Other provisions require certain Federal instrumentalities to comply with State unemployment compensation laws.

An example of the paucity of information as to Congressional intent and purpose in the provisions of the Social Security Act Amendments of 1939 effecting retrocession of jurisdiction is the brief statement in the House report ⁷² on this section:

Subsection (d) authorizes the States to cover under their unemployment compensation laws services performed upon land held by the Federal Government, such as services for hotels located in national parks.

The Senate report ⁷³ is identical. Although extensive hear-

⁷¹ Act of Aug. 10, 1939, 53 Stat. 1392, 26 U. S. C. 3305 (formerly 1606), (d).

⁷² H. Rept. No. 728, 76th Cong., 1st Sess. 10298 (1939) (p. 72).

⁷³ S. Rept. No. 734, 76th Cong., 1st Sess. 10294 (1939).

ings⁷⁴ covering some 2,500 pages were held on the bill, very few references were made to the purpose of this particular section. The provision was inserted on the recommendation of the Social Security Board in its written report to the President of the United States.⁷⁵ During the latter stages of the hearings the Chairman of the Social Security Board explained that:

Item 8: We suggest that the States be authorized to make their unemployment compensation laws applicable to persons employed upon land held by the Federal Government, such as employees of the hotels in the National Parks. That is the same policy that the Congress has pursued in the past, in making all workmen's compensation laws applicable to such employees, such as the employees of concessionaires in the National Parks and on other Federal properties.⁷⁶

This quotation indicates that the provision was included "to fill a conspicuous gap" in the unemployment compensation field. As it had done before, Congress followed a precedent. Here that precedent was the statute dealing with the application of workmen's compensation laws to Federal enclaves. Coverage was broadened apparently on the basis that if State social security legislation was at all worthy it should protect as many people as possible.

Under this statute, it has been held, a Government contractor is required to make State unemployment insurance contributions with respect to persons employed by him on an area over which the United States exercises exclusive legislative jurisdiction.⁷⁷ And post exchanges, ships' service stores, officers' messes and similar entities are required to pay the unem-

⁷⁴ Hearings before Committee on Ways and Means, House of Representatives, 76th Cong., 1st Sess. (Feb., Mar., and Apr., 1939).

⁷⁵ *Id.* at p. 14.

⁷⁶ *Id.* at p. 2376.

⁷⁷ *Op. J. A. G., Army*, 1943/4064 (Mar. 29, 1943).

ployment taxes, it has been held,⁷⁸ although they are Government instrumentalities,⁷⁹ on the ground that they do not come within an exception for "wholly owned" instrumentalities.

⁷⁸ *Op. J. A. G., Navy* L14-1/L6-2 (411205), (Feb. 3, 1942); *id.* NPI/N4-5 (4111114), (Jan. 29, 1942).

⁷⁹ See footnote 48 (p. 198), *supra*.

Residents of Federal Enclaves

EFFECTS OF TRANSFERS OF LEGISLATIVE JURISDICTION: *In general.*—With the transfer of sovereignty, which is implicit in the transfer of exclusive legislative jurisdiction, from a State to the Federal Government, the latter succeeds to all the authority formerly held by the State with respect to persons within the area as to which jurisdiction was transferred,¹ and such persons are relieved of all their obligations to the State.² Where partial jurisdiction is transferred, the Federal Government succeeds to an exclusive right to exercise some authority formerly possessed by the State, and persons within the area are relieved of their obligations to the State under the transferred authority. And transfer of legislative jurisdiction from a State to the Federal Government has been held to affect the *rights*, or *privileges*, as well as the *obligations*, of persons under State law. Specifically, it has been held to affect the rights of residents of areas over which jurisdiction has been transferred to receive an education in the public schools, to vote and hold public office, to sue for a divorce, and to have their persons, property, or affairs subjected to the probate or lunacy jurisdiction of State courts; it has also been interpreted as affecting the right of such residents to receive various other miscellaneous services ordinarily rendered by or under the authority of the State.

¹ Criminal matters—see p. 105 *et seq.*; civil matters—see p. 145 *et seq.*; in general—see p. 169 *et seq.*

² See p. 185 *et seq.*, *supra*; but it should be noted that the Federal Government has retroceded to the States authority to collect most taxes, and authority with respect to certain other matters, see p. 190 *et seq.*, *supra*.

Education.—The question whether children resident upon areas under the legislative jurisdiction of the Federal Government are entitled to a public school education, as residents of the State within the boundaries of which the area is contained, seems first to have been presented to the Supreme Judicial Court of Massachusetts in a request for an advisory opinion by the Massachusetts House of Representatives. The House sought the view of the court on the question, *inter alia*:

Are persons residing on lands purchased by, or ceded to, the United States, for navy yards, arsenals, dock yards, forts, light houses, hospitals, and armories, in this Commonwealth, entitled to the benefits of the State common schools for their children, in the towns where such lands are located?

The opinion of the court (*Opinion of the Justices*, 1 Metc. 580 (Mass., 1841)), reads in pertinent parts as follows (pp. 581–583):

The constitution of the United States, Art. 1, § 8, provides that congress shall have power to exercise exclusive legislation in all cases whatsoever, over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings. The jurisdiction in such cases is put upon the same ground as that of the district ceded to the United States for the seat of government; and, unless the consent of the several States is expressly made conditional or limited by the act of cession, the exclusive power of legislation implies an exclusive jurisdiction; because the laws of the several States no longer operate within those districts.

* * * * *

and consequently, that no persons are amenable to the laws of the Commonwealth for crimes and offences committed within said territory, and that persons residing

within the same do not acquire the civil and political privileges, nor do they become subject to the civil duties and obligations of inhabitants of the towns within which such territory is situated.

The court then proceeded to apply the general legal principles which it had thus defined to the specific question concerning education (p. 583):³

We are of opinion that persons residing on lands purchased by, or ceded to, the United States for navy yards, forts and arsenals, where there is no other reservation of jurisdiction to the State, than that above mentioned [service of process], are not entitled to the benefits of the common schools for their children, in the towns in which such lands are situated.

The next time the question was discussed by a court it was again in Massachusetts, in the case of *Newcomb v. Rockport*, 183 Mass. 74, 66 N. E. 587 (1903). There, however, while the court explored Federal possession of legislative jurisdiction as a possible defense to a suit filed to require a town to provide school facilities on two island sites of lighthouses, the court's decision adverse to the petitioners actually was based on an absence of authority in the town to construct a school, and the possession of discretion by the town as to whether it would furnish transportation, under Massachusetts law, even conceding that the Federal Government did not have exclusive jurisdiction over the islands in question.

The legal theories underlying the two Massachusetts cases mentioned above have constituted the foundation for all the several decisions on rights to public schooling of children resident on Federal lands.⁴ Where the courts have found that

³ See 17 *Tenn. L. Rev.* 328, 352 (1942) and 14 *Wash. L. Rev.* (pt. 1) 1, 18 (1939), for comment on this matter.

⁴ *Hufford v. Herrold*, 189 Iowa 853, 179 N. W. 53 (1920); *School Dist. No. 20 v. Steele*, 46 S. D. 589, 195 N. W. 448 (1923); *Rockwell v. Independent School District*, 48 S. D. 137, 202 N. W. 478 (1925); *Tagge v. Gulzow*, 132 Neb. 276, 271 N. W. 803 (1937); *Rolland v. School District*, 132 Neb. 281,

legislative jurisdiction over a federally owned area has remained in the State, they have upheld the right of children residing on the area to attend State schools on an equal basis with State children generally; where the courts have found that legislative jurisdiction over an area has been vested in the United States, they have denied the existence of any right in children residing on the area to attend public schools, on the basis, in general, that Federal acquisition of legislative jurisdiction over an area places the area outside the State or the school district, whereby the residents of the area are not residents of the State or of the school district.⁵

Further, where a school building is located on an area of exclusive Federal jurisdiction it has been held (*Op. A. G., Ind.*, p. 259 (1943)) the local school authorities have no jurisdiction over the building, are not required to furnish school facilities for children in such building, and if they do the latter with

271 N. W. 805 (1937), (for comment on this case see 17 *Neb. L. Bul.* 86, and 38 *Colo. L. Rev.* 128, 140); *In re Annexation of Reno Quartermaster Depot*, 180 *Okl.* 274, 69 P. 2d 659 (1937); *State ex rel. Moore v. Board of Education of Euclid City School Dist.*, 41 *Ohio Abs.* 161, 57 N. E. 2d 118 (1944); *McGwinn v. Board of Education*, 33 *Ohio Op.* 433, 69 N. E. 2d 391 (1945), *aff'd.*, 78 *Ohio App.* 405, 69 N. E. 2d 381 (1946), *app. dism'd.*, 147 *Ohio St.* 259, 70 N. E. 2d 776; *Miller v. Hickory Grove School Bd.*, 162 *Kan.* 528, 178 P. 2d 214 (1947); *Independent School Dist. v. Central Education Agency*, 247 S. W. 2d 597 (1952), *aff'd.*, 152 *Tex.* 56, 254 S. W. 2d 357 (1953); and *Schwartz v. O'Hara Township School Dist.*, 375 *Pa.* 440, 100 A. 2d 621 (1953).

⁵ But see p. 238 *et seq.*, *infra*. And the Attorney General of Illinois has ruled that children residing at Ft. Sheridan (an exclusive Federal jurisdiction area) are entitled to the benefits of the school system of Illinois, *Op. A. G., Ill.*, p. 363, No. 2722 (July 22, 1930), apparently overruling an earlier inconsistent decision (*id.* p. 491, No. 1284 (1927)). But the Attorney General of Indiana has held under similar circumstances that such children may not attend without payment of tuition. *Op. A. G., Ind.*, p. 411, No. 66 (1948). Other State Attorneys General have held that children residing on federally owned areas are not entitled to treatment as State residents in relation to public school education where the areas are under exclusive Federal jurisdiction: *Op. A. G., N. J.*, No. 37 (Nov. 26, 1951); 50 *Ops. A. G., Md.*, 129; 27 *id.* 116 (1942); but that they are entitled to treatment as State residents for this purpose where the Federal Government does not have exclusive legislative jurisdiction: 5 *id.* 136; *Op. A. G., N. M.*, Sept. 2, 1914; *Op. A. G., Ohio*, p. 193, No. 479 (1949).

money furnished by the Federal Government they are acting as Federal agents.

There should be noted, however, the small number of instances in which the right of children residing in Federal areas to a public school education has been questioned in the courts. This appears to be due in considerable part to a feeling of responsibility in the States for the education of children within their boundaries, reflected in such statutes as the 1935 act of Texas (Art. 2756b, Vernon's Ann. Civil Statutes), which provides for education of children on military reservations, and section 79-446 of the Revised Statutes of Nebraska (1943), which provides for admission of children of military personnel to public schools without payment of tuition. In recent years a powerful factor in curtailing potential litigation in this field has been the assumption by the Federal Government of a substantial portion of the financial burden of localities in the operation and maintenance of their schools, based on the impact which Federal activities have on local educational agencies, and without regard to the jurisdictional status of the Federal area which is involved.⁶

Voting and office holding.—The *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), anticipated judicial decisions concerning the right of residents of Federal enclaves to vote,⁷

⁶ Act of Sept. 30, 1950, 64 Stat. 1100, as amended, 20 U. S. C. and Supp. 236 *et seq.* (see H. Rept. 2287, 81st Cong., 2d Sess.); and act of Sept. 23, 1950, 64 Stat. 967, as amended, 20 U. S. C. Supp. 271 *et seq.* (see H. Rept. 2810, 81st Cong., 2d Sess.); and see report prepared by Legislative Reference Service, Library of Congress, for the Senate Committee on Appropriations, 81st Cong., 1st Sess., *Education of Children Living on Federal Reservations and in Localities Particularly Affected by Federal Activities* (G. P. O., 1949); and report prepared as Staff Study Number 17 for the Advisory Committee on Education, *Education of Children on Federal Reservations* (G. P. O., 1939). See also report, pt. I, p. 55 *et seq.*

⁷ The case of *Custis v. Lane*, 17 Va. 579 (1813), which involved denial of a right to vote to a resident of that portion of Virginia ceded for establishment of the seat of the Federal Government, antedated the *Opinion of the Justices* by some years, but this earlier case has failed to receive much judicial attention. Decisions contrary to these two appear to have been rendered only in *Arapajolu v. McMenamin*, and *Adams v. Londerree*, discussed at p. 222, *et seq.*, *infra*; and see 34 A. L. R. 2d 1185 *et seq.*

as it anticipated decisions relating to their rights to a public school education and in several other fields. One of the questions propounded to the court was:

Are persons so residing [on lands under the exclusive jurisdiction of the United States] entitled to the elective franchise in such towns [towns in which such lands are located]?

After stating that persons residing in areas under exclusive Federal jurisdiction did not acquire civil and political privileges thereby,^a the court said (p. 584):

We are also of the opinion that persons residing in such territory do not thereby acquire any elective franchise as inhabitants of the towns in which such territory is situated.

The question of the right of residents of a Federal enclave to vote, in a county election, came squarely before the Supreme Court of Ohio, in 1869, in the case of *Sinks v. Reese*, 19 Ohio St. 306 (1869).^b Votes cast by certain residents of an asylum for former military and naval personnel were not counted by election officials, and the failure to count them was assigned as error. The State had consented to the purchase of the lands upon which the asylum was situated, and had ceded jurisdiction over such lands. However, the act of cession provided that nothing therein should be construed to prevent the officers, employees, and inmates of the asylum from exercising the right of suffrage. The court held that under the provisions of the Constitution of the United States and the cession act of the State of Ohio the grounds of the asylum had been detached and set off from the State, that the Constitution of the State of Ohio required that electors be residents of the State, that it was not constitutionally permissible for the general assembly of the State to confer the elective franchise upon

^a See p. 216 *supra*, for a quotation of the pertinent language of the opinion.

^b Noted in 2 A. L. R. 397, and 34 A. L. R. 2d 1199.

non-residents, and that all votes of residents of the area should therefore be rejected.¹⁰

The *Opinion of the Justices* and the decision in *Sinks v. Reese* have been followed, resulting in a denial of the right of suffrage to residents of areas under the legislative jurisdiction of the United States, whatever the permanency of their residence, in nearly all cases where the right of such persons to vote, through qualification by residence on the Federal area, has been questioned in the courts.¹¹ In some other instances, which should be distinguished, the disqualification has been based on a lack of permanency of the residence (lack of domicile) of persons resident on a Federal area, without reference to the jurisdictional status of the area,¹² although in similar instances the courts have held that residence on a Federal area can constitute a residence for voting purposes.¹³ The courts have generally ruled that residents of a federally owned area may qualify as voters where the Federal Government has never

¹⁰ For developments in the aftermath of *Sinks v. Reese*, see p. 85 *et seq.*, *supra*.

¹¹ *In re Town of Highlands*, 48 N. Y. St. Rept. 795, 22 N. Y. Supp. 187 (Sup. Ct., 1892), (see also *Reilly v. Lamar, Beall and Smith*, 2 Cranch 344 (1805)); *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77 (1897); *State ex rel. Lyle v. Willet*, 117 Tenn. 334, 97 S. W. 299 (1906); *Herken v. Glynn*, 151 Kan. 855, 101 P. 2d 946 (1940), (in the opinion in this case it was stated (151 Kan. at p. 864), "No case has been found where it has been held that residents on lands ceded by a state to the United States retained or acquired a right to vote as residents of the ceding state." This statement continues true today with but two exceptions which will be discussed in the text, *infra*); *State ex rel. Parker v. Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); *State ex rel. Wendt v. Smith*, 63 Ohio Abs. 31, 103 N. E. 2d 822 (1951); *Arledge v. Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948); see also *Dibble v. Clapp*, 31 How. Pr. 420 (Buffalo (N. Y.) Super. Ct., 1866).

¹² *Merrill v. Shearston*, 73 Col. 230, 214 Pac. 540 (1923), (noted: 34 A. L. R. 2d 1198); *Kemp v. Heebner*, 77 Col. 177, 234 P. 1068 (1925), (noted: 34 A. L. R. 2d 1198); *Application for the Removal of Names from Registry List*, 133 Misc. 38, 231 N. Y. Supp. 396 (1928), (noted: 34 A. L. R. 2d 1201).

¹³ *Cory v. Spencer*, 67 Kan. 648, 73 Pac. 920 (1903); *State ex rel. Parker v. Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); see also *Lankford v. Gebhart*, 130 Mo. 621, 32 S. W. 1127 (1895); *Schultz, et al. v. Lewallen, et al.*, 188 Tenn. 206, 217 S. W. 2d 944 (1948); and see cases cited in footnotes 14, 15 & 16, *infra*.

acquired legislative jurisdiction over the area,¹⁴ where legislative jurisdiction formerly held by the Federal Government has been retroceded by act of Congress,¹⁵ or where Federal legislative jurisdiction has terminated for some other reason.¹⁶ Attorneys General of several States have had occasion to affirm or deny, on similar grounds, the right of residents of federally owned areas to vote.¹⁷

In *Arapajolu v. McMenamin*, 113 Cal. App. 2d 824, 249 P. 2d 318 (1952), a group of residents, military and civilian, of various military reservations situated in California, sought in an action of mandamus to procure their registration as voters. The court recognized (249 P. 2d at pp. 319-320) that it had been consistently held that when property was acquired by the

¹⁴ *State v. Denoyer*, 6 N. D. 586, 72 N. W. 1014 (1897); *Hankey v. Boucman*, 82 Minn. 328, 84 N. W. 1002 (1901); *State v. Mountrail County*, 28 N. D. 389, 149 N. W. 120 (1914); *State ex rel. Parker v. Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); *Johnson v. Morrill*, 30 Cal. 2d 446, 126 P. 2d 873 (1942). See also H. Rept. No. 43, 42d Cong., 2d Sess. 1528 (1872), or p. 89, H. Misc. Doc. No. 52, 45th Cong., 2d Sess. 1819 (1878).

¹⁵ *Renner v. Bennett*, 21 Ohio St. 431 (1871), (noted: 34 A. L. R. 2d 1202); *State ex rel. Cashman v. Board of Commissioners of Grant County*, 153 Ind. 302, 54 N. E. 809 (1899).

¹⁶ *Stephens v. Naccy*, 49 Mont. 230, 141 Pac. 649 (1914), (jurisdiction had by Federal Government over Indian lands held to have been extinguished by extinguishment of Indian title); *La Duke v. Melin*, 45 N. D. 349, 177 N. W. 673 (1920), (jurisdiction had by Federal Government over military reservations held to have been terminated as to an area by abandonment of its use as a military reservation); *Hammond v. Brinkman*, 173 Kan. 406, 246 P. 2d 345 (1952), (transfer of area over which jurisdiction had by Federal Government to use as housing area under Lanham Act held to restore civil rights to residents).

¹⁷ *Op. A. G., Cal.*, No. LB 129/788 (Dec. 20, 1933); *id.* LB 158/290 (June 25, 1937); *id.* No. NS4278 (May 4, 1942); 3 *Ops. A. G., Cal.* 136 (Mar. 2, 1944); *Op. A. G., Cal.*, No. LB 220/683 (Aug. 11, 1942); *Op. A. G., Fla.*, 052-250 (Aug. 13, 1952); *Op. A. G., Ill.*, p. 144, No. 3820 (Mar. 2, 1932); *id.* p. 226, No. 3898 (Mar. 31, 1932); *Op. A. G., Ind.*, p. 142, No. 35 (1944); 10 *Ops. A. G., Md.* 107, 120; 17 *id.* 139; 21 *id.* 347; 23 *id.* 224; *Op. A. G., Ohio*, p. 594, No. 7201 (1944); *id.* p. 266, No. 1705 (1950). But the Attorney General of Utah has ruled that persons may not qualify as voters by residence on an area as to which the State retained concurrent jurisdiction. *Op. A. G., Utah* (Oct. 29, 1954), overruling earlier opinion, No. 52-089.

United States with the consent of the State and consequent acquisition of legislative jurisdiction by the Federal Government the property "ceases in legal contemplation to be a part of the territory of the State and hence residence thereon is not residence within the State which will qualify the resident to be a voter therein." Reviewing the cases so holding, the court noted that all but one, *Arledge v. Mabry*, *supra*, had been decided before the United States had retroceded to the States, with respect to areas over which it had legislative jurisdiction, the right to apply State unemployment insurance acts, to tax motor fuels, to levy and collect use and sales taxes, and to levy and collect income taxes.¹⁸ In *Arledge v. Mabry*, the court suggested, the retrocessions had not been considered¹⁹ and the case had been decided (erroneously) on the basis that the United States still had and exercised exclusive jurisdiction. The court concluded (249 P. 2d 323):

The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution.²⁰

¹⁸ For discussion of these and certain other retrocessions, see p. 190 *et seq.*, *supra*.

¹⁹ But the opinion in *Arledge v. Mabry* demonstrates that the court was aware of the exercise of authority by the State pursuant to such retrocessions (197 P. 2d 884, 889).

²⁰ The court commended an opinion of the Attorney General of California holding to the same effect (*Op. No. 52-183*, 20 *Ops. A. G., Cal.* 127). In an earlier opinion, which apparently had been superseded by several mentioned in footnote 17, *supra*, the Attorney General had held that residence

The several cases discussed above all related to voting, rather than office-holding, although the grounds upon which they were decided clearly would apply to either situation. The case of *Adams v. Londeree*, 139 W. Va. 748, 83 S. E. 2d 127 (1954), on the other hand, involved directly the question whether residence upon an area under the legislative jurisdiction of the United States qualified a person to run for and hold a political office the incumbent of which was required to have status as a resident of the State. The court said (83 S. E. 2d at p. 140) that "in so far as this record shows, the Federal Government has never accepted, claimed or attempted to exercise, any jurisdiction as to the right of any resident of the reservation [as to which the State had reserved only the right to serve process] to vote." Hence, the majority held, a resident of the reservation, being otherwise qualified, was entitled to vote at a municipal, county, or State election, and to hold a municipal, county, or State office. A minority opinion filed in this case strongly criticizes the decision as contrary to judicial precedents and unsupported by any persuasive text or case authority.²¹

While *Arapajolu v. McMenamin* and *Adams v. Londeree* apparently are the only judicial decisions recognizing the existence of a right to vote or hold office in persons by reason of their residence on what has been defined for the purposes of this text as an exclusive Federal jurisdiction area, reports from Federal agencies indicate that residents of such areas under their supervision in many instances are permitted to vote²² and a few States have by statute granted voting rights to such residents (*e. g.*, California, Nevada (in some instances), New Mex-

within a Federal enclave did not of itself disqualify a person from voting. *Op. A. G., Cal.*, No. LB 64/106.

²¹ In neither of the opinions in this case was note taken of the decisions in *Palmer v. Barrett, Crook, Horner & Co. v. Old Point Comfort Hotel Co.* or *S. R. A., Inc. v. Minnesota* (see p. 96 *et seq.*, *supra*), which might be applied to support the court's decision in the instant case in view of the Federal Government's lease of the premises here for private residential purposes.

²² See report, part I, appendix A, p. 81 *et seq.*

ico, and Ohio (in case of employees and inmates of disabled soldiers' homes)).²³ On the other hand, one State has a constitutional prohibition against voting by such persons,²⁴ decisions cited above demonstrate frequent judicial denial to residents of exclusive Federal jurisdiction areas of the right to vote, and it is clear that many thousand residents of Federal areas are disenfranchised by reason of Federal possession of legislative jurisdiction over such areas.²⁵

Divorce.—The effect upon a person's right to receive a divorce of such person's residence on an area under the exclusive legislative jurisdiction of the United States was the subject of judicial decision for the first time, it appears, in the case of *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729 (1926). The statute of the State of Maryland which provided the right to file proceedings for divorce required residence of at least one of the parties in the State. The parties to this suit resided on an area in Maryland acquired by the Federal Government which was subject to a general consent and cession statute whereby the State reserved only the right to serve process, and were not indicated as being residents of Maryland unless by virtue of their residence on this area. Reviewing judicial decisions and other authorities holding to the general effect that the inhabitants of areas under the exclusive legislative jurisdiction of the Federal Government (133 Atl. at p. 732) "cease to be inhabitants of the state and can no longer exercise any civil or political rights under the laws of the state," and that such areas themselves (*ibid.*, p. 733) "cease to be a part of the state," the court held that residents of areas under exclusive Federal jurisdiction are not such residents of the State as would entitle them to file a bill for divorce.²⁶

The case of *Chaney v. Chaney*, 53 N. M. 66, 201 P. 2d 782

²³ *Ibid.*, appendix B, p. 127 *et seq.*

²⁴ Rhode Island: *Constitution*, art. II, sec. 5.

²⁵ See *report*, part I, appendix A, p. 81 *et seq.*

²⁶ See notes: 40 *Harv. L. Rev.* 130 (1926-27); 11 *Minn. L. Rev.* 74 (1926); 36 *Yale L. J.* 146 (1926-27); see also: 12 *Geo. Wash. L. Rev.* 80, 82 (1943-44); 22 *Calif. L. Rev.* 152, 167 (1934).

(1949), involved a suit for divorce, with the parties being persons living at Los Alamos, New Mexico, on lands acquired by the Federal Government which were subject to a general consent statute whereby the State of New Mexico reserved only the right to serve process. The State divorce statute provided that the plaintiff "must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint * * *."²⁷ The court, applying *Arledge v. Mabry*,²⁸ held concerning the area under Federal legislative jurisdiction that "such land is not deemed a part of the State of New Mexico," and that "persons living thereon do not thereby acquire legal residence in New Mexico." Accordingly, following *Lowe v. Lowe*, *supra*, it found that residence on such area did not suffice to supply the residence requirement of the State divorce statute.

The *Lowe* and *Chaney* cases appear to be the only cases in which a divorce was denied because of the exclusive Federal jurisdiction status of an area upon which the parties resided.²⁹ However, in a number of cases, some involving Federal enclaves, it has been held that personnel of the armed forces (and their wives) are unable, because of the temporary nature of their residence on a Government reservation to which they have been ordered, to establish on such reservation the residence or domicile required for divorce under State statutes.³⁰ One such case is *Pendleton v. Pendleton*, 109 Kan. 600, 201 Pac. 62 (1921), where the court deemed it unnecessary to discuss the impact of the exclusive Federal jurisdiction status of Fort Riley, Kansas, upon the right of a resident of the post to get a divorce. Another is *Dicks v. Dicks*, 177 Ga. 379, 170 S. E. 245

²⁷ Sec. 25-704, N. Mex. Stat. (1941) Ann.

²⁸ See footnote 11, *supra*.

²⁹ It may be noted (see *Valverde v. Valverde*, 121 Fla. 576, 164 So. 287 (1935)), that venue in a suit merely for maintenance may be based on grounds different from those deemed necessary for venue in a divorce action.

³⁰ See 21 A. L. R. 2d 1163 *et seq.*, and Schouler, *Marriage, Divorce, Separation and Domestic Relations*, vol. II, p. 1750 *et seq.*, for discussions of divorce domicile of military personnel.

(1933), where the court suggested the existence of substantive divorce law as to Fort Benning, Georgia, under the international law rule,³¹ since the United States had exclusive legislative jurisdiction over the area, but held that there were absent in the State a domicile of the parties and a forum for applying the law.

The *Lowe*, *Chaney*, *Pendleton*, and *Dicks* decisions had an influence on the enactment, in the several States involved, of amendments to their divorce laws variously providing a venue in courts of the respective States to grant divorces to persons resident on Federal areas.³² Similar statutes have been enacted in a few other States.³³

The case of *Craig v. Craig*, 143 Kan. 624, 56 P. 2d 464 (1936), *clarification denied*, 144 Kan. 155, 58 P. 2d 1101 (1936), brought after amendment of the Kansas law, provides a sequel to the decision in the *Pendleton* case. The court ruled in the *Craig* case that the Kansas amendment, which provided that any person who had resided for one year on a Federal military reservation within the State might bring an action for divorce in any county adjacent to the reservation, required mere "residence" for this purpose, not "actual residence" or "domicile," with their connotations of permanence. The amendment, the court said in directing the entry of a decree of divorce affecting an Army officer and his wife residing on Fort Riley, provided a forum for applying the law of divorce which had existed at the time of cession of jurisdiction over the military reservation to the Federal Government.³⁴

The *Dicks* case similarly has as a sequel the case of *Darbie v.*

³¹ See p. 156 *et seq.*, *supra*.

³² *Maryland*: art. 16, par. 39, Md. Ann. Code Gen. Laws (1947); *New Mexico*: Sec. 25-704, N. Mex. Stat. Ann. (1941), as amended by ch. 107, sec. 1, 1951 sess. laws; *Kansas*: R. S. (1933 Supp.) 60-1502; *Georgia*: sec. 30-107, Code of Ga. Ann., and see amendment to Ga. Constitution, set out as sec. 2-4901, Code of Ga., Ann.

³³ *E. g. Florida*: Fla. Stat. Ann. 46.12, and see *Mills v. Mills*, 153 Fla. 746, 15 So. 2d 763 (1943); *Nebraska*: R. S. Neb., Supp., 1955, 42-303.

³⁴ See p. 156 *et seq.*, *supra*, for discussion of the international law rule, which apparently was applied here.

Darbie, 195 Ga. 769, 25 S. E. 2d 685 (1943). In the *Darbie* case a Georgia amendment to the same effect as the Kansas amendment was the basis for the filing of a divorce suit by an Army officer residing on Fort Benning. The divorce was denied, but apparently only because the petition was filed in a county which, although adjacent to Fort Benning, was not the county wherein the fort was situated, and therefore the filing was held not in conformity with a provision of the Georgia constitution (art. 6, ch. 2-43, sec. 16) requiring such suits to be brought in the county in which the parties reside. The Georgia constitution has been amended (see sec. 2-4901) so as to eliminate the problem encountered in the *Darbie* case, and, in any event, because of its basis the decision in the case casts no positive judicial light on the question whether the State has jurisdiction to furnish a forum and grant a divorce to residents of an area under exclusive Federal jurisdiction.

The case of *Crownover v. Crownover*, 58 N. M. 597, 274 P. 2d 127 (1954), furnishes a sequel to the *Chaney* case.³⁵ The *Crownover* case was brought under the New Mexico amendment, which provides that for the purposes of the State's divorce laws military personnel continuously stationed for one year at a base in New Mexico shall be deemed residents in good faith of the State and of the county in which the base is located.³⁶ The court affirmed a judgment granting a divorce to a naval officer who, while he was stationed in New Mexico, was physically absent from the State for a substantial period of time on temporary duty, holding that the "continuously stationed" requirement of the statute was met by the fact of assignment to a New Mexico base as permanent station. An

³⁵ Another result of the *Chaney* decision, and of a previous New Mexico decision, *Arledge v. Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948), which denied residents of an exclusive Federal jurisdiction area the privilege of voting, was to influence the Atomic Energy Commission against acquiring or retaining exclusive Federal legislative jurisdiction over areas under its supervision (see p. 92 *et seq.*, *supra*, and see also *report*, pt. I, p. 65 *et seq.*)

³⁶ In *Wilson v. Wilson*, 58 N. M. 411, 272 P. 2d 319 (1954), it was decided this amendment did not contravene provisions of the New Mexico constitution.

objection that "domicile" within the State (not established in the case except through proof of residence under military orders) is an essential base for the court's jurisdiction in a divorce action was met by the court with construction of the New Mexico amendment as creating a conclusive statutory presumption of domicile. The opinion rendered by the court, and a scholarly concurring opinion rendered by the chief justice (58 N. M. 609), defended the entitlement of the court's decision to full faith and credit by courts of other States.

Military personnel and, indeed, civilian Federal employees and others residing on exclusive Federal jurisdiction areas may possibly retain previously established domiciles wherein would lie a venue for divorce.⁸⁷ It may well occur, however, that such a person has no identifiable domicile outside an exclusive jurisdiction area.⁸⁸ Federal courts, other than those for the District of Columbia, and for Territories, have no jurisdiction over divorce.⁸⁹ A resident of an exclusive jurisdiction area therefore may have recourse only to a State court in seeking the remedy of divorce. Absent a *bona fide* domicile within the jurisdiction of the court of at least one of the parties, there is the distinct possibility that a divorce decree may be collaterally attacked successfully in a different jurisdic-

⁸⁷ See *Harris v. Harris*, 205 Iowa 108, 215 N. W. 661 (1927), where absence of an Army officer from a State for 30 years, with only occasional visits, was held not to have terminated domicile or venue for divorce in the State; see also *Knowlton v. Knowlton*, 155 Ill. 158, 39 N. E. 595 (1895); *Radford v. Radford*, 26 Ky. L. 652, 82 S. W. 391 (1904); *Gallagher v. Gallagher*, 214 S. W. 516 (Tex. Civ. App., 1919); *Gearing v. Gearing*, 90 Pa. Super. Ct. 192 (1927); *DeNicola v. DeNicola*, 132 Conn. 185, 43 A. 2d 71 (1945); and in general, Kennan, *The Law of Divorce* (1934); and 21 A. L. R. 2d 1180.

⁸⁸ See *Pendleton v. Pendleton*, 109 Kan. 600, 201 Pac. 62 (1921), and see footnote 52, *infra*.

⁸⁹ *Simms v. Simms*, 175 U. S. 162 (1899); see also *Barber v. Barber*, 21 How. 582 (1858); *De La Rama v. De La Rama*, 201 U. S. 303 (1905); *Popovici v. Agler*, 280 U. S. 379 (1930); *Haddock v. Haddock*, 201 U. S. 562 (1906); *In re Burrus*, 136 U. S. 586 (1890).

tion.⁴⁰ As to persons residing on exclusive Federal jurisdiction areas, therefore, it would seem that even if there is avoided an immediate denial of a divorce decree on the precedent of the *Lowe* and *Chaney* cases, the theory of these cases may possibly be applied under the decision in *Williams v. North Carolina*, 325 U. S. 226 (1945), to invalidate any decree which is procured.

Probate and lunacy proceedings generally.—In the case of *Lowe v. Lowe*, discussed above, Chief Justice Bond, in an opinion concurring in the court's holding that it had no jurisdiction to grant a divorce to residents of an exclusive Federal jurisdiction area, added concerning such persons (150 Md. 592, 603, 133 A. 729, 734): "and I do not see any escape from the conclusion that ownership of their personal property, left at death, cannot legally be transmitted to their legatees or next of kin, or to any one at all; that their children cannot have legal guardians of their property; that they cannot adopt children on the reservations; that if any of them should become insane, they could not have the protection of statutory provisions for the care of the insane—and so on, through the list of personal privileges, rights, and obligations, the remedies for which are provided for residents of the state."

On the other hand, in *Divine v. Unaka National Bank*, 125 Tenn. 98, 140 S. W. 747 (1911),⁴¹ it was asserted that the power to probate the will of one who was domiciled, and who had died, on lands under the exclusive legislative jurisdiction of the United States was in the local State court. In *In re Kernan*, 247 App. Div. 664, 288 N. Y. Supp. 329 (1936),⁴² a New York court held that the State's courts could determine, by habeas corpus proceedings, the right to custody of an infant

⁴⁰ *Williams v. North Carolina*, 325 U. S. 226 (1945); see also 27 *Rocky Mt. L. Rev.* 353 (1955); 65 *Harv. L. Rev.* 193 (1951); *Wash. U. L. Q.* 53 (1952); 39 *Corn. L. Q.* 293 (1953-54); 34 *Mich. L. Rev.* 749 (1936).

⁴¹ See: 22 *Calif. L. Rev.* 167 (1934); 40 *Harv. L. Rev.* 131 (1926); 58 *Yale L. J.* 1406 (1949); 38 *Col. L. Rev.* 136 (1938).

⁴² *Aff'd.*, 272 N. Y. 560, 4 N. E. 2d 737 (1936). For discussion of the *Kernan* decision, see 50 *Harv. L. Rev.* 688 (1937); see also note in 4 *A. L. R.* 2d 16

who lived with a parent on an area under exclusive Federal jurisdiction.⁴³ In both these cases the reasoning was to the general effect that, while the Federal Government had been granted exclusive legislative jurisdiction over the area of residence, it had not chosen to exercise jurisdiction in the field involved, and the State therefore could furnish the forum, applying substantive law under the international law rule.⁴⁴ In *Shea v. Gehan*, 70 Ga. App. 229, 28 S. E. 2d 181 (1943), the Court of Appeals of Georgia decided that a county court had jurisdiction to commit a person to the United States Veterans' Administration Hospital in the county as insane, although such hospital was on land ceded to the United States and the person found to be insane was at the time a patient in the hospital and a non-resident of Georgia. The decision in this case was based on a theory that State courts have jurisdiction over non-resident as well as resident lunatics found within the State,⁴⁵ but the exclusive Federal jurisdiction status of the particular area within the boundaries of the State on which the lunatic here was located does not seem to have attracted the attention of the court. These appear to be the only judicial decisions, Federal or State, other than the divorce cases discussed above, wherein there has been a direct determination on the question of existence of jurisdiction in a State to carry on a probate proceeding⁴⁶ on the basis of a residence within the boundaries of the State on an exclusive Federal jurisdiction area.

On one occasion, where no question of Federal legislative

⁴³ For discussion of writ of habeas corpus in relation to exclusive Federal jurisdiction areas, generally, see p. 123 *et seq.*, *supra*.

⁴⁴ For discussion of the international law rule see p. 156 *et seq.*, *supra*.

⁴⁵ See *Bliss v. Bliss*, 133 Md. 61, 104 Atl. 467 (1918), discussed at p. 234 *infra*.

⁴⁶ Including: divorce; establishment of wills; settlement of decedents' estates; appointment of guardians for minors; adoption and custody of children; appointment of committees for incompetents and insane persons; adjudication, commitment, and confinement of insane persons; and the incidental supervision and control of property of persons who may be involved in such proceedings.

jurisdiction was raised, the Attorney General of the United States held that the property of an intestate who had lived on a naval reservation should be turned over to an administrator appointed by the local court,⁴⁷ but in a subsequent similar instance, where Federal legislative jurisdiction was a factor, he held that the State did not have probate jurisdiction.⁴⁸ And in a letter dated April 15, 1943, to the Director of the Bureau of the Budget, the Attorney General stated:

It is intimated in the [Veterans' Administration] Administrator's letter to you that the States probably have probate jurisdiction over Federal reservations. I am unable to concur in this suggestion. This Department is definitely committed to the opposite view. In a formal opinion by one of my predecessors (19 *Ops. A. G.* 247) it was expressly held, after a thorough review of the authorities and all the pertinent considerations, that State courts do not have probate jurisdiction over Federal reservations. While there is one case holding the contrary (*Divine v. Bank*, 125 Tenn. 98), nevertheless the Attorney General's opinion must be considered binding on the Executive branch of the Federal Government unless and until the Federal courts should take an opposite view of the matter.

The Judge Advocate General of the Army has held similarly,⁴⁹ and in several opinions⁵⁰ he has stated that: "Generally, the power and concomitant obligation to temporarily restrain and care for persons found insane in any area rests with the Government exercising legislative jurisdiction over that area; permanent care or confinement is more logically assumed by the Government exercising general jurisdiction over the area of the person's residence." The Judge Advocate General of the Navy

⁴⁷ 19 *Ops. A. G.* 176 (1888).

⁴⁸ 19 *Ops. A. G.* 247 (1889).

⁴⁹ C. 16153 (Apr. 8, 1904), *Dig. Op. J. A. G., Army* (1912), p. 939.

⁵⁰ *Ops. J. A. G., Army*: 1943/7229; 1944/10235; 1944/15536; 1945/10785.

has held,⁵¹ to the same effect, that in view of the fact that the United States has exclusive jurisdiction over the site of the Philadelphia Navy Yard, it would be inconsistent to request assistance of State authorities to commit as insane a person who committed a homicide within the reservation.

It is evident that questions regarding the probate jurisdiction of a State court with relation to a person residing on an exclusive Federal jurisdiction area would not arise in instances where the person is domiciled within the State as a result of factors other than mere residence on the Federal area. But it appears that some persons have no domicile except on a Federal area.⁵² Presumably in recognition of this fact, a number of States have enacted statutes variously providing a forum for the granting of some degree of probate relief to residents of Federal areas.⁵³ Except as to such statutes relating to divorce, discussed earlier herein, appellate courts appear not to have had occasion to review the aspects of these statutes granting such relief.

⁵¹ *Op. J. A. G., Navy*, JAG:26250-752:3 (Feb. 11, 1916).

⁵² See *Pendleton v. Pendleton*, 109 Kan. 600, 201 Pac. 62 (1921); and *Matter of Grant*, 83 Misc. 257, 144 N. Y. Supp. 567 (1913), *aff'd.*, 106 App. Div. 921, 151 N. Y. Supp. 1119 (1915); I Beale, *The Conflict of Laws* 101 (1935).

⁵³ *E. g. Florida*: Fla. Stat. Ann. 46.12 (any person in Federal service, and husband or wife of such a person, living within borders of the State, deemed prima facie resident of State for purpose of maintaining any suit in chancery or action at law); *California*: I Deering's Cal. Codes, Govt. Code, title I, div. 1, chap. 1, sec. 126 (e), (all civil and political rights reserved for residents of Federal areas); *Nevada*: Nev. Comp. Laws, Supp., sec. 2896.12 (jurisdiction reserved as to all cases arising under the civil (and criminal) laws of the State, and all civil and political rights reserved for residents of Federal areas); *Virginia*: Code of Va., 1950, Ann., title 7, ch. 3, sec. 7-21 (jurisdiction reserved as to civil (and criminal) matters arising on lands acquired for certain Federal purposes, lands to be deemed a part of city or county in which situated); *Tennessee*: Williams Tenn. Code, Ann., 1934, part III, title 2, ch. 15A, sec. 9572.18 (resident of Federal territory within the State for one year may petition for adoption of child); *Maryland*: Md. Code, 1939, art. 16, sec. 79 (residents of exclusive Federal jurisdiction areas to be considered residents of State, and of county in which area is situated, for the purposes of jurisdiction in applications for adoption of infants (see 7 *Md. L. Rev.* 289 (1943) for discussion of this statute)); see also footnotes 32 and 33, *supra*, for statutes relating to divorce.

It is evident, also, that the jurisdictional question is not likely to arise in States under the statutes of which residence or domicile is not a condition precedent to the assumption of probate jurisdiction by the courts.⁶⁴ So, in *Bliss v. Bliss*, 133 Md. 61, 104 Atl. 467 (1918), it was stated (p. 471): "as the jurisdiction of the courts of equity to issue writs de lunatico inquirendo is exercised for the protection of the community, and the protection of the person and the property of the alleged lunatic, there is no reason why it should be confined to cases in which the unfortunate persons are residents of or have property in the state. It is their presence within the limits of the state that necessitates the exercise of the power to protect their persons and the community in which they may be placed, and the jurisdiction of the court does not depend upon whether they also have property within the state."⁶⁵ The Uniform Veterans Guardianship Act, all or some substantial part of which has been adopted by approximately 40 States, section 18 of which provides for commitment to the Veterans' Administration or other agency of the United States Government for care or treatment of persons of unsound mind or otherwise in need of confinement who are eligible for such care or treatment, furnishes an example of State statutes which do not specify a

⁶⁴ See illustrative cases regarding adoption procedures at 170 A. L. R. 403, note 1.

⁶⁵ In general it is held, however, in consonance with State statutory provisions, that residence of the alleged insane person within the county or other territorial jurisdiction of the court is prerequisite to his adjudication and commitment as insane and appointment of a guardian over his person. *In re Beechwood*, 142 Misc. 400, 254 N. Y. Supp. 473 (1931); *Henry v. Edde*, 148 Kan. 70, 79 P. 2d 888 (1938); *Federal Trust Co. v. Allen*, 110 Kan. 484, 204 Pac. 747 (1922); see also 44 C. J. S. 59. There has been indicated to the Interdepartmental Committee the existence of a practice of releasing mentally afflicted persons from exclusive Federal jurisdiction areas and notifying local police that a mental case is roaming the streets unattended, and, alternatively, of bringing such persons to the nearest State courthouse, thereby actuating the machinery of the State to adjudication as insane, and commitment, of persons who otherwise would be beyond the reach of appropriate judicial process and necessary medical attention.

requirement for domicile or residence within the State for eligibility for probate relief.⁵⁶

A dearth of decisions on questions of the jurisdiction of State courts to act as a forum for probate relief to residents of exclusive Federal jurisdiction areas makes it similarly evident that potential legal questions relating to forum and jurisdiction usually remain submerged. So, Chief Justice Bond in his opinion in the *Lowe* case, discussed above, stated (133 A. 729, 734): "It has been the practice in the orphans' court of Baltimore City to receive probate of wills, and to administer on the estates, of persons resident at Ft. McHenry, and it has also, I am informed, been the practice of the orphans' court of Anne Arundel county to do the same thing with respect to wills and estates of persons claiming residence within the United States Naval Academy grounds. We have no information as to the practice elsewhere, but it would seem to me inevitable that the practice of the courts generally must have been to provide such necessary incidents to life on reservations within the respective states."⁵⁷

Several Federal agencies have been granted congressional authority enabling disposition of the personal assets of patients and members of their establishments.⁵⁸ This has curtailed

⁵⁶ The Uniform Veterans Guardianship Act was approved by the National Conference of Commissioners on Uniform State Laws in 1928, and a revision was adopted by the Conference in 1942.

⁵⁷ See report, part I, p. 50, and supporting data in appendix A of part I, verifying the accuracy of this belief.

⁵⁸ *E. g.*—*Veterans' Administration*: 38 U. S. C. 16-16j (providing for disposing of personal assets of veteran patients and members who die in Veterans' Administration facilities, and retroceding jurisdiction pertaining to the administration of estates of decedents to the respective States) and 38 U. S. C. 17-17j (providing for vesting by the United States of undisposed personal property of deceased veteran patients—see *United States v. Gallagher*, 97 F. Supp. 1014 (S. D. Cal., 1951); *In re Witte's Estate*, 174 Kan. 360, 255 P. 2d 1039 (1953); *In re Gonsky's Estate*, 79 N. D. 123, 55 N. W. 2d 60 (1952); *In re Hendrix' Estate*, 77 Cal. App. 2d 647; 176 P. 2d 398 (1947); *United States v. Essex Trust Co.*, 44 F. Supp. 476 (D. Mass., 1942); *United States v. Stevens*, 302 U. S. 623 (1938); 11 Comp. Gen. 205 (1931); *Public Health Service of the Department of Health, Education, and Welfare*: 42 U. S. C. 248d (enabling the Surgeon General, pursuant to regulations (see

what otherwise would constitute numerous and pressing problems. However, notwithstanding the holdings in the *Divine*, *Kernan*, and *Shea* cases, and in several divorce proceedings⁵⁹ there appear to exist other serious legal and practical problems relating to procurement by or with respect to residents of exclusive Federal jurisdiction areas of relief ordinarily made available by probate courts. While such relief is in instances essential, the Federal courts, except those of the District of Columbia, have no probate jurisdiction.⁶⁰ And because of the possibility that relief procured in a State court may be subject to collateral attack in a different State, it will not be clear until a decision of the Supreme Court of the United States is had on the matter whether even a decree rendered under an enabling State statute (except a statute reserving jurisdiction sufficient upon which to render the relief) must be accorded full faith and credit by other States when the residence upon which the original court based its jurisdiction was upon an area under exclusive Federal jurisdiction.

Miscellaneous rights and privileges. The *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), discussed at several points above, held that residence on an exclusive Federal jurisdiction

42 C. F. R. 35.41 *et seq.*), to provide for the disposal of money and effects, in the custody of hospitals or stations, of deceased patients); *Department of the Navy*: 10 U. S. C. 6522 (authorizing sale of personal property of deceased naval personnel not claimed by heirs or next of kin within two years to be sold, and covering proceeds, together with any money held in custody, into the Treasury); *Army and Air Force*: 10 U. S. C. 4712, 4713, 9712, 9713 (prescribing disposition of effects of decedent who was subject to court martial jurisdiction); several departments: 37 U. S. C. 361 *et seq.* (providing for settlement with personal representative of the amount due a decedent for pay and allowances or other items—see 1 *Miami L. Q.* 57 (1947)); *Secretaries of Treasury, Army, Navy, and Air Force*: 10 U. S. C. 2575 (providing for disposition of abandoned or unclaimed personal property).

⁵⁹ See p. 227 *et seq.*, *supra*.

⁶⁰ *Wills*: *Ellis v. Davis*, 109 U. S. 485 (1883); *Farrell v. O'Brien*, 199 U. S. 89 (1905); *Sutton v. English*, 246 U. S. 199 (1918); see also 21 *O. J.* 121; 25 *O. J.* 695; 43 *Harv. L. Rev.* 462 (1929-1930); 38 *Col. L. Rev.* 136 (1933). Domestic relations: *In re Burrus*, 136 U. S. 586 (1890).

area, for any length of time, would not give persons so residing or their children a legal inhabitancy in the town in which such area was located for the purpose of their receiving support under the laws of the Commonwealth for the relief of the poor.

Numerous miscellaneous rights and privileges, other than those hereinbefore discussed, are often reserved under the laws of the several States for residents of the respective States. Among these are the right or privilege of employment by the State or local governments, of receiving a higher education at State institutions free or at a favorable tuition, of acquiring hunting and fishing licenses at low cost, of receiving visiting nurse service or care at public hospitals, orphanages, asylums, or other institutions, of serving on juries, and of acting as an executor of a will or administrator of an estate. Different legal rules may apply, also, with respect to attachment of property of non-residents.⁶¹

It has been declared by many authorities and on numerous occasions, other than in decisions heretofore cited in this chapter, that areas under the exclusive legislative jurisdiction of the United States are not a part of the State in which they are embraced and that residents of such areas consequently are not entitled to civil or political privileges, generally, as State residents.⁶² Accordingly, residents of Federal areas are subject to these additional disabilities except in the States reserving civil and political rights to such residents (California and, in certain instances, Nevada),⁶³ when legislative jurisdiction over

⁶¹ *Bank of Phoebus v. Byrum*, 110 Va. 708, 67 S. E. 349 (1910).

⁶² *Commonwealth v. Clary*, 8 Mass. 72 (1811); *Mitchell v. Tiddets*, 17 Pick. 298 (Mass., 1836); *Foley v. Shriver*, 81 Va. 568 (1886); 6 *Ops. A. G.* 577 (1854); *Op. Sol., U. S. Dept. of the Interior*, M-33356 (Oct. 5, 1943); *Op. A. G., Mass.* (Aug. 30, 1922); *Op. A. G., N. J.* (Nov. 26, 1951); *Op. A. G., Ohio*, No. 94 (1933), p. 91; *Op. A. G., Wis.* (May 8, 1951), to Dist. Atty. of Monroe County; 1 *Kent's Commentaries*, marginal paging 431; *Story, Constitution of the United States*, sec. 1227; see also *United States v. Cornell*, 25 Fed. Cas. 646, No. 14867 (C. C. D. R. I., 1819); *United States v. Cordy*, 58 F. 2d 1013 (D. Md., 1932); *Ryan v. State*, 188 Wash. 115, 61 P. 2d 1276 (1936), *aff'd., sub nom. Mason Co. v. Tax Comm'n*, 302 U. S. 186 (1937); see also *State v. Mimms*, 43 N. M. 318, 92 P. 2d 993 (1939), *cert. den.*, 308 U. S. 626 (1940).

⁶³ See report, part I, pp. 132 and 178.

the areas is acquired by the Federal Government under existing State statutes. The potential impact of any widespread practice of discrimination in certain of these matters can be measured in part by the fact that there are more than 43,000 acres of privately owned lands within National Parks alone over which some major measure of jurisdiction has been transferred to the Federal Government.⁶⁴ It appears, however, that such discriminations are not uniformly practiced by State and local officials,⁶⁵ and no judicial decisions have been found involving litigation over matters other than education, voting and holding elective State office, divorce, and probate jurisdiction generally.

CONCEPTS AFFECTING STATUS OF RESIDENTS: *Doctrine of extraterritoriality*.—It may be noted that the decisions denying to residents of exclusive Federal jurisdiction areas rights or privileges commonly accorded State residents do so on the basis that such areas are not a part of the State, and that residence thereon therefore does not constitute a person a resident of the State. This doctrine of extraterritoriality of such areas was enunciated in the very earliest judicial decision relating to the status of the areas and their residents, *Commonwealth v. Clary*, 8 Mass. 72 (1811). The decision was followed in *Mitchell v. Tibbetts*, 17 Pick. 298 (Mass., 1836), and the two decisions were the basis of the *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841). Subsequent decisions to the same effect invariably cite these cases, or cases based upon them, as authority for their holdings.

The views expounded by the courts in such decisions are well set out in *Sinks v. Reese*,⁶⁶ where the Supreme Court of Ohio invalidated a proviso in a State consent statute reserving

⁶⁴ Letter dated Aug. 24, 1955, from Solicitor, Dept. of the Interior, to Chmn., Interdepartmental Committee.

⁶⁵ See report, part I, p. 56 *et seq.*, and supporting data in appendix A.

⁶⁶ See also p. 220, *supra*. For further discussion of effects of Federal exercise of legislative jurisdiction on residents of affected areas see 44 *Yale L. J.* 1324, 1360 (1935).

a right to vote to residents of a veterans' asylum because of a State constitutional provision which did not permit extension of voting rights to persons not resident in the State. The Ohio court said (19 Ohio St. 306, 316 (1889)):

* * * By becoming a resident inmate of the asylum, a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to her revenues, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the State of Indiana or Kentucky or the District of Columbia. The constitution of Ohio requires that electors shall be residents of the State; but under the provisions of the Constitution of the United States, and by the consent and act of cession of the legislature of this State, the grounds and buildings of this asylum have been detached and set off from the State of Ohio, and ceded to another government, and placed under its exclusive jurisdiction for an indefinite period. We are unanimously of the opinion that such is the law, and with it we have no quarrel; for there is something in itself unreasonable that men should be permitted to participate in the government of a community, and in the imposition of charges upon it, in whose interests they have no stake, and from whose burdens and obligations they are exempt.

Arledge v. Mabry, 52 N. M. 303, 197 P. 2d 884 (1948), (voting privilege denied) and *Schwartz v. O'Hara Township School Dist.*, 375 Pa. 440, 100 A. 2d 621 (1953), (public school education privilege denied) are two recent cases in which this doctrine was applied.

Contrary view of extraterritoriality.—The view that residents of areas of exclusive legislative jurisdiction are not residents or citizens of the State in which the area is situated has

not gone unquestioned. In *Woodfin v. Phoebus*, 30 Fed. 289 (C. C. E. D. Va., 1887), the court said (pp. 296-297): “

Although I have thought it unnecessary to pass upon the question whether Mrs. Phoebus and her children, defendants in this suit, by residing at Fortress Monroe, were by that fact alone non-residents and not citizens of Virginia, yet I may as well say, *obiter*, that I do not think that such is the result of that residence. Fortress Monroe is not a part of Virginia as to the right of the state to exercise any of the powers of government within its limits. It is *dehors* the state as to any such exercise of the rights of sovereignty there. It does not follow, however, from this immunity of the place from the state's rights of sovereignty, that inhabitants there, especially the widow and minor children of a deceased person, thereby lose their political character, and cease to be citizens of the state. Geographically, Fortress Monroe is just as much a part of Virginia as the grounds around the capital of the state at Richmond,—“Fortress Monroe, Virginia,” is its postal designation. Can it be contended that, because a person who may have his domicile in the custom-house at Richmond, or in that at Norfolk, or at Alexandria, or in the federal space at Yorktown, on which the monument there is built, or in that in Westmoreland county, in which the stone in honor of Martha Washington is erected, loses by that fact his character of a citizen of Virginia? Would it not be a singular anomaly if such a residence within a federal jurisdiction should exempt such a person from suit in a federal court? Can it be supposed that the authors of the constitution of the United States, in using the term “citizens of different states,” meant to provide that the residents of such small portions of states as should be acquired by the national government for special pur-

“ See also dissenting opinion in *Herken v. Glynn*, 151 Kan. 855, 101 P. 2d 946 (1940).

poses, should lose their geographical and political identity with the people of the states embracing these places, and be exempt by the fact of residence on federal territory from suit in a federal court? I doubt if it would ever be held by the supreme court of the United States that the cession of jurisdiction over places in states for national uses, such as the constitution contemplates, necessarily disenfranchised the residents of them, and left them without any political *status* at all. In the western territories of the United States, governments are provided on the very ground that no state authority exists. In the District of Columbia, a government is provided under the control of congress. In the territories and the federal district, a condition of things exists which excludes the theory of any reservation of rights to the inhabitants of the body politic to which they had before belonged. I see no reason for insisting that persons are cut off from membership of the political family to which they had belonged by the cession to the United States of sovereign jurisdiction and power over forts and arsenals in which they had resided.

I suggest these thoughts in the form of *quaere*, and make what is said no part of the adjudication of the case. But see *U. S. v. Cornell*, 2 Mason, 60; *Com. v. Clary*, 8 Mass. 72; *Sinks v. Reese*, 19 Ohio St. 306; *Foley v. Shriver*, 10 Va. Law J. 419.

In *Howard v. Commissioners*, 344 U. S. 624 (1953), the Supreme Court had occasion to pass directly on the question of extraterritoriality of Federal enclaves, although liability of the occupants of a Federal enclave to taxation by a municipality under the Buck Act, rather than their eligibility to privileges as residents of the State, was the ultimate issue for the court's decision.⁶⁸ The court said (p. 626):

⁶⁸ See also *Wichita Falls v. Bowen*, 143 Tex. 45, 182 S. W. 2d 695 (1944); *County of Norfolk v. Portsmouth*, 186 Va. 1032, 45 S. E. 2d 136 (1947); *State v. Kelly*, 76 Me. 331 (1884); *Hughes Transp., Inc. v. United States*, 128

The appellants first contend that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. With this we do not agree. When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky. A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed.

The decision in the *Howard* case would seem to make untenable the premise of extraterritoriality upon which most of the deci-

C. Cls. 221, 121 F. Supp. 212 (1954), *reh. granted*, 132 C. Cls. 804 (1955); *Motor Transport Co. v. McCanless*, 182 Tenn. 659, 189 S. W. 2d 200 (1945); *Grayburg Oil Co. v. State*, 286 S. W. 489 (Ct. Civ. App., Tex., 1926), *aff'd*, 3 S. W. 2d 427, *rev'd.*, on ground that sales to U. S. exempt from taxation, 278 U. S. 582; *McKesson & Robbins v. Collins*, 18 Cal. App. 2d 648, 64 P. 2d 469 (1937); and cases cited in footnote 11, p. 147, *supra*.

sions denying civil and political rights and privileges are squarely based.

Theory of incompatibility.—In some instances, usually where the courts have not been entirely explicit on this matter in the language of their opinions,⁶⁹ it can be construed that decisions denying civil or political rights to residents of exclusive Federal jurisdiction areas are based simply on a theory that exercise of such rights by the residents would be inconsistent with Federal exercise of "exclusive legislation" under the Constitution.

Weaknesses in incompatibility theory.—Historical evidence supports the contrary view, namely, that article I, section 8, clause 17, of the Constitution, does not foreclose the States from extending civil rights to inhabitants of Federal areas. As was indicated in chapter II,⁷⁰ James Madison, in response to Patrick Henry's contention that the inhabitants of areas of exclusive Federal legislative jurisdiction would be without civil rights, stated that the States, at the time they ceded jurisdiction, could safeguard these rights by making "what stipulations they please" in their cessions to the Federal Government. If a stipulation by a State safeguarding such rights is not incompatible with "exclusive legislation," it might well be argued that unilateral extension of the rights by a State after the transfer of jurisdiction is entirely permissible; for it would seem that the possession of State rights by the residents, rather than the timing of the securing of such rights, would create any incompatibility. And objections of incompatibility with exclusive Federal jurisdiction of State extension of such rights as voting to residents of Federal enclaves would seem answerable with the words of the Supreme Court in its opinion in the *Howard* case, *supra*: "The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to

⁶⁹ *E. g.*, *Commonwealth v. Clary*, *supra*, and *Opinion of the Justices*, *supra*.

⁷⁰ See p. 25, *supra*.

which we must give heed." What is more, truly exclusive Federal jurisdiction, as it was known in the time of the basic decisions denying civil and political rights and privileges to residents of Federal enclaves, no longer exists except as to the District of Columbia.

Former exclusivity of Federal jurisdiction.—The basic decisions and most other decisions denying civil or political rights and privileges to residents of Federal enclaves were rendered with respect to areas as to which the States could exercise no authority other than the right to serve process, and in many of these reference is made in the opinions of the court to the fact that residents of the areas were not obliged to comply with any State law or to pay any State taxes. It will be recalled that until comparatively recent times it was thought that there could not be transferred to the Federal Government a lesser measure of jurisdiction than exclusive.⁷¹

Present lack of Federal exclusivity.—That period is past, however, and numerous States now are reserving partial jurisdiction.⁷² Moreover, beginning in June 1936, by a number of statutes the Federal Government has retroceded to the States (and their political subdivisions) jurisdiction variously to tax and take other actions with respect to persons and transactions in areas under Federal legislative jurisdiction.⁷³ Consequently, and notwithstanding the definition given the term "exclusive legislative jurisdiction" for the purposes of this work,⁷⁴ there would seem at present to be no area (except the District of Columbia) in which the jurisdiction of the Federal Government is truly exclusive, and residents of such areas are liable to numerous State and local tax laws and at least some other State laws.⁷⁵

⁷¹ See p. 59 *et seq.*, *supra*.

⁷² See *report*, part I, p. 127 *et seq.*

⁷³ See p. 190 *et seq.*, *supra*.

⁷⁴ See p. 10, *supra*.

⁷⁵ This fact would seem not only to weaken present application of the incompatibility theory but also to invite questions, under the 14th Amendment to the Federal Constitution, as to the eligibility for State citizenship of

Rejection of past concepts.—In *Arapajolu v. McMenamin*, discussed above,⁷⁶ the Supreme Court of the State of California, taking cognizance of factors outlined above, held residents of areas over which the Federal Government had legislative jurisdiction to be residents of the State. In determining them entitled to vote as such residents, the court stated and disposed of a final argument as follows (249 P. 2d 318, 323):

Respondents argue in their brief: "The states could have reserved the right to vote at the time of the original cession where such right did not conflict with federal use of the property * * * but did not do so." We cannot follow the force of this argument. The State of California did not relinquish to the United States the right of citizens resident on federal lands to vote nor did the United States acquire those rights. The right to vote is personal to the citizen and depends on whether he has met the qualifications of section 1, Art. II of our Constitution. If the State retains jurisdiction over a federal area sufficient to justify a holding that it remains a part of the State of California a resident therein is a resident of the State and entitled to vote by virtue of the Constitutionally granted right. No express reservation of such rights is necessary, nor could any attempted express cession of such rights to the United States be effective."

Interpretations of Federal grants of power as retrocessions.—In asserting the existence at the present time of "jurisdiction" in the State of California over what were formerly "exclusive"

persons domiciled on such areas and concerning their entitlement to rights and privileges as residents of the State (*quaere*: may a person be a "resident" for purposes of taxation and not for other purposes?).

⁷⁶ See p. 222, *supra*.

⁷⁷ In *Adams v. Londerree* (see p. 224, *supra*), the Supreme Court of West Virginia based judicial recognition of certain civil rights of residents of an area under Federal legislative jurisdiction solely on a ground approximating this, but without actually discussing any possible evolution in this concept of extraterritoriality of such areas.

Federal jurisdiction lands, the court said in the *Arapajolu* case (249 P. 2d 322):

* * * The power to collect all such taxes depends upon the existence of State jurisdiction over such federal lands and therefore may not be exercised in territory over which the United States has exclusive jurisdiction. *Standard Oil Co. v. California*, 291 U. S. 242, 54 S. Ct. 381, 78 L. Ed. 775. In recognition of this fact the Congress has made these recessions to the States in terms of jurisdiction, e. g. 4 U. S. C. A. §§ 105 and 106: "and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State * * *"; 26 U. S. C. A. § 1606 (d): "and any State shall have full jurisdiction and power to enforce the provisions of such law * * * as though such place were not owned, held, or possessed by the United States."⁷⁸

In *Kiker v. Philadelphia*, 346 Pa. 624, 31 A. 2d 289 (1943), *cert. den.*, 320 U. S. 741, previously discussed at page 203, above, the Supreme Court of Pennsylvania referred to the Buck Act as a "recession of jurisdiction" to the State when upholding applicability thereunder of a municipal tax to the income of a Federal employee earned in a Federal enclave.⁷⁹ A holding to the same effect was had in *Davis v. Howard*, 306 Ky. 149, 206 S. W. 2d 467 (1947).

⁷⁸ The legislative histories of such statutes (see p. 190, *et seq.*, *supra*), cast little direct light on this subject.

⁷⁹ While in this case the court rejected the principle of extraterritoriality, and also held the Federal employee entitled to all benefits of facilities of the taxing municipality in upholding the constitutionality of the tax under the Fourteenth Amendment to the Constitution, the same court in *Schicartz v. O'Hara Township School Dist.*, *supra*, apparently reverted to the extraterritoriality doctrine and upheld the denial to residents of a Federal enclave of a right to attend public schools, indicating some influence by the fact that persons involved in the latter case were not actually taxed (but *quaere*: may a State accept a retrocession under the Buck Act and similar statutes on a regional basis?).

Interpretation of such statutes as Federal retrocessions of partial jurisdiction to the States apparently is essential, since States seemingly would require "jurisdiction" to apply taxes generally, and the tax and other provisions of their workmen's and unemployment compensation acts, at least as to persons over whom they have no authority except as may arise from the presence of such persons on an "exclusive" Federal jurisdiction area. Thus, in *Atkinson v. State Tax Commission*, 303 U. S. 20 (1938), the Supreme Court held (p. 25) that the enforcement by a State of its workmen's compensation law in a Federal area was "incompatible with the existence of exclusive legislative authority in the United States." And in *S. R. A., Inc. v. Minnesota*, 327 U. S. 558 (1946), it stated that the levy by Minnesota of a tax evidenced its acceptance of a retrocession of jurisdiction.⁸⁰

Summary of contradictory theories on rights of residents.—*Arledge v. Mabry* and *Schwartz v. O'Hara Township School District*, it may be said, represent cases maintaining strictly the principle of *stare decisis* on questions of exercise of State rights by residents of Federal areas. They uphold the doctrine of extraterritoriality of Federal enclaves and the theory of incompatibility between exercise of State rights by residents of Federal areas and Federal possession of jurisdiction over such areas. Under the view taken in these cases the only modifications which need to be made for modernizing the very early decisions upon which they are fundamentally based are those which patently are required for enforcing State laws the extension of which is authorized to Federal areas by Federal laws; in other words, no consequences whatever flow from a Federal retrocession of partial jurisdiction to a State other than that

⁸⁰ On the other hand, in the opinion in *Offutt Housing Company v. Sarpy County* (see p. 205, *supra*), in holding that language in the Military Leasing Act of 1947 permitting State taxation of Federal property leased to private parties extended to lands subject to the Federal power of "exclusive Legislation," the court said: "We do not hold that Congress has relinquished power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case."

the State may exercise the retroceded powers. Under this view, it would seem, residents of areas over which the Federal Government has any jurisdiction can enjoy State rights and privileges, unless reserved for the residents in the transfer of jurisdiction, only if Congress expressly retrocedes jurisdiction over such rights and privileges to the States.

It may also be said, on the other hand, that *Arapajolu v. McMenamin*, and to some extent *Adams v. Londeree*, the several other cases cited in this chapter upholding the right of persons to privileges under State laws, and cases upholding the right of States to exercise governmental authority in areas as to which the Federal Government has jurisdiction,⁸¹ indicate at least a trend away from the old cases and to abandonment of the doctrine of extraterritoriality and the theory of incompatibility. And this trend in the judicial recognition of the existence of State civil and political rights in residents of Federal enclaves would seem to be given considerable authority first: by the decision of the Supreme Court in *Howard v. Commissioners, supra*, rejecting the extraterritoriality doctrine, although, like the similar decision of the Supreme Court of Pennsylvania in *Kiker v. Philadelphia*, the *Howard* decision immediately related to a State's rights over individuals in Federal enclaves rather than to individuals' rights to privileges under State law, and second: by present exercise by States of considerable tax and other jurisdiction over Federal enclaves and residents thereof, opening the way to questions of State citizenship of persons domiciled on such areas, and of abridgment of their privileges, under the 14th Amendment. Residents of an exclusive Federal jurisdiction area, it has been held with respect to the District of Columbia, may not be deprived of the constitutional guarantees respecting life, liberty, and property.⁸²

⁸¹ See p. 60 *et seq.*, *supra*.

⁸² *Callan v. Wilson*, 127 U. S. 540 (1888); *O'Donoghue v. United States*, 289 U. S. 516 (1933); *Willson v. McDonnell*, 265 Fed. 432 (C. A. D. C., 1919).

Areas Not Under Legislative Jurisdiction¹

FEDERAL OPERATIONS FREE FROM INTERFERENCE: *In general.*—In *M'Culloch v. Maryland*, 4 Wheat. 316 (1819), Chief Justice Marshall enunciated for the Supreme Court what has become a basic principle of the constitutional law of the United States (pp. 405–406):

If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express

¹ This and the succeeding chapter are included in this text of the law of legislative jurisdiction for the purpose of clarifying certain powers and immunities possessed by the Federal Government with respect to its real property, and operations which may be conducted on such property, not arising from Federal possession of legislative jurisdiction over the property. The broad scope of this subject, and requirements for brevity here, preclude comprehensive treatment of the subject in this work. References largely will be limited to principal and controlling decisions affecting broad legal concepts except as to matters in which most widespread interest has been indicated. In any case, further authorities should be sought in resolving specific questions of law which may arise.

terms, decided it, by saying, "this constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it.

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, "any thing in the constitution or laws of any State to the contrary notwithstanding."

The "supremacy clause,"² from which Justice Marshall quoted and on which the announced constitutional principle was based, applies not only to those powers which have been expressly delegated to the United States,³ but also to powers which may be implied therefrom. These implied powers were, in that same opinion, defined by Chief Justice Marshall as follows (p. 421):

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

² Art. VI, cl. 2, of the Constitution, set out in major part in the margin of p. 12, *supra*.

³ For examples, see p. 12, *supra*.

This doctrine of implied powers was based on the "necessary and proper clause."⁴

Real property.—The freedom of Federal operations from State interference extends, by every rule of logic, to such operations involving use of Federal real property. So, in *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885), the Supreme Court said (p. 539):

Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers.⁵ But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.⁶

⁴ Art. I, sec. 8, cl. 18, of the Constitution, set out in the margin of p. 12, *supra*.

⁵ Sovereign immunity of the Federal Government, in the use of its property, from interference by a State, emanates from the Constitution itself and does not depend upon State surrender of jurisdiction (*Op. J. A. G., Navy, JAG: II: 1: VAvR: mac* (Mar. 24, 1955)).

⁶ The last sentence of this excerpt has, in effect, been overruled by subsequent decisions of the Supreme Court. The situation hypothesized by the last sentence cannot, it has since been held, constitutionally exist, and the sentence fails to take into account other constitutional powers of Congress which effectively serve to limit State control over federally owned lands. See *Van Brocklin v. Tennessee*, 117 U. S. 151 (1886), and *Utah Power & Light Co. v. United States*, 243 U. S. 389 (1917), both of which

The case of *Ohio v. Thomas*, 173 U. S. 276 (1899), aptly demonstrates the inconsequence, with respect to freedom of Federal functions from State interference, of the jurisdictional status of lands upon which such functions are being performed. In holding that a State could not enforce against Federal employees, charged with the responsibility of administering a soldiers' home, a State statute requiring the posting of notices wherever oleomargarine is served, the court said (p. 283):

Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application.

We mean by this statement to say that Federal officers who are discharging their duties in a State and who are engaged as this appellee was engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority.

In asserting that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece

are discussed *infra*. Nevertheless, the States have considerable authority with respect to Federal lands over which the Federal Government does not have exclusive legislative jurisdiction. So, the police power of a State may extend in certain respects over the public domain. *Omaechevarria v. Idaho*, 246 U. S. 343 (1917); and the Attorney General of Ohio has held that a State fire marshal can make inspections in a federally owned housing development. *Op. A. G., Ohio*, No. 189 (1945), p. 170.

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of land, in opposition to the language of the act of Congress ceding back the jurisdiction the United States received from the State. The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to and by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed.⁷

In addition to these sources of constitutional power of the Federal Government, which have consequent limitations on State authority, article IV, section 3, clause 2,⁸ of the Constitution, vests in Congress certain authority with respect to any federally owned lands which it alone may exercise without interference from any source. As was stated in *Utah Power & Light Co. v. United States*, 243 U. S. 389 (1917), (pp. 403-405):

The first position taken by the defendants is that their claims must be tested by the laws of the State in which the lands are situate rather than by the legislation of Congress, and in support of this position they say that lands of the United States within a State, when not used or needed for a fort or other governmental purpose of the United States, are subject to the jurisdiction, powers and laws of the State in the same way and

⁷ In the case *In re Turner*, 119 Fed. 231 (C. C. S. D. Iowa, 1902), it was held that an injunction could not issue to prevent a Federal officer from carrying out his official duties.

⁸ This clause reads:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

The clause does not give the United States jurisdiction over its property within the United States, such as the public lands, in the legislative jurisdiction sense of art. I, sec. 8, cl. 17. *Op. Sol., Dept. of Agriculture*, No. 10906-10910 (May 6, 1924); *Pollard v. Hagan*, 3 How. 212 (1845).

to the same extent as are similar lands of others. To this we cannot assent. Not only does the Constitution (Art. IV, § 3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them. * * *

* A State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use, and to prescribe in what manner others may acquire rights in them. *Op. Sol., Dept. of Agriculture*, No. 728 (Aug. 27, 1938).

In the absence of Federal legislative jurisdiction over an area, State laws remain fully effective in such area so long as such effectiveness is not inconsistent with the Federal Government's use of its property. *Op. J. A. G., Navy*, A16-1/N4-1 (400927) (Aug. 20, 1941).

The United States has only proprietorial jurisdiction over Bandolier National Monument, but the State of New Mexico cannot interfere with the protection, use, or control of the lands by the United States. *Memo from Acting Director, National Park Service*, to Regional Director, Region 3 (Nov. 6, 1946).

Since North Carolina has not ceded to the United States jurisdiction over that part of Blue Ridge Parkway in the State, State officers may make arrests for infractions of State laws, but the United States may establish such regulations as necessary to protect the parkway and regulate its use for the purposes for which it is dedicated. *Letter from Chief Counsel, National Park Service*, to Justice of the Peace, Celo, N. C. (Jan. 11, 1954).

There has been no cession of jurisdiction to the United States with respect to Grand Canyon National Park or Colorado or Bandolier National

From the earliest times Congress by its legislation, applicable alike in the States and Territories, has regulated in many particulars the use by others of the lands of the United States, has prohibited and made punishable various acts calculated to be injurious to them or to prevent their use in the way intended, and has provided for and controlled the acquisition of rights of way over them for highways, railroads, canals, ditches, telegraph lines and the like. * * * And so we are of opinion that the inclusion within a State of lands of the United States does not take from Congress the power to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power. * * *

That the power of Congress in these matters transcends any State laws is demonstrated by *Hunt v. United States*, 278 U. S. 96 (1928), wherein it was held that a State could not enforce its game laws against Federal employees who, upon

Monuments, and the State laws are in force throughout these areas insofar as they do not interfere with the protection, use, and control of them by the United States. *Memo from Director, National Park Service, Dept. of the Interior*, to Regional Director, Region 3 (Dec. 4, 1944).

Prehistoric ruins in Arizona on land forming part of the public domain (no exclusive Federal jurisdiction) are property of the United States, and articles found there are property of the United States; hence the State has no proprietary or sovereign right to interfere under a State statute with the disposition of such articles provided for by a Federal statute. 35 *Ops. A. G.* 286 (1927).

The Attorney General of Ohio has held that where the Federal Government acquired only a proprietorial interest in lands, for forest purposes, with a reservation by third parties of the right to remove minerals, the State may control the manner of a strip mining operation so long as this does not interfere with Federal authority under art. IV, sec. 3, cl. 2, of the Constitution (*Op. A. G., Ohio*, No. 790, p. 541 (1951)); but the State has no authority to require a license or payment of a license fee for mining on Federal land (*id.* No. 152, p. 23 (1951)).

direction of the Secretary of Agriculture, destroyed a number of wild deer in a national forest (which was not under the legislative jurisdiction of the United States), because the deer, by overbrowsing upon and killing young trees, bushes, and forage plants, were causing great damage to the land. The court said (p. 100):

* * * That this [destruction of deer] was necessary to protect the lands of the United States within the reserves from serious injury is made clear by the evidence. The direction given by the Secretary of Agriculture was within the authority conferred upon him by act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt, *Camfield v. United States*, 167 U. S. 518, 525-526; *Utah Power & Light Co. v. United States*, 243 U. S. 389, 404; *McKelvey v. United States*, 260 U. S. 353, 359; *United States v. Alford*, 274 U. S. 264, the game laws or any other statute of the state to the contrary notwithstanding.¹⁰

This power of Congress extends to preventing use of lands adjoining Federal lands in a manner such as to interfere with use of the Federal lands. This particular issue came before the Supreme Court in *Camfield v. United States*, 167 U. S. 518 (1897),¹¹ where the court considered the applicability of an act of Congress, which prohibited the fencing of public lands, to fencing of lands adjoining public lands in a manner as to make the latter property inaccessible. The court said (pp. 524-526):

While the lands in question are all within the State of Colorado, the Government has, with respect to its

¹⁰ It cannot be contended that the United States does not have the right to protect its own property from damage, particularly lands acquired for a bird refuge, which cannot be so used unless other wildlife is controlled. *Memo, Chief Counsel, Fish and Wildlife Service, Dept. of the Interior* (Nov. 20, 1940).

¹¹ See also *United States v. Alford*, 274 U. S. 264 (1927).

own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold them from sale. It may grant them in aid of railways or other public enterprises. It may open them to preëmption or homestead settlement; but it would be recreant to its duties as trustee for the people of the United States to permit any individual or private corporation to monopolize them for private gain, and thereby practically drive intending settlers from the market. It needs no argument to show that the building of fences upon public lands with intent to enclose them for private use would be a mere trespass, and that such fences might be abated by the officers of the Government or by the ordinary processes of courts of justice. To this extent no legislation was necessary to vindicate the rights of the Government as a landed proprietor.

But the evil of permitting persons, who owned or controlled the alternate sections, to enclose the entire tract, and thus to exclude or frighten off intending settlers, finally became so great that Congress passed the act of February 25, 1885, forbidding all enclosures of public lands, and authorizing the abatement of the fences. If the act be construed as applying only to fences actually erected upon public lands, it was manifestly unnecessary, since the Government as an ordinary proprietor would have the right to prosecute for such a trespass. It is only by treating it as prohibiting all "enclosures" of public lands, by whatever means, that the act becomes of any avail. * * * The general Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular

case. If it be found to be necessary for the protection of the public, or of intending settlers, to forbid all enclosures of public lands, the Government may do so, though the alternate sections of private lands are thereby rendered less available for pasturage. The inconvenience, or even damage, to the individual proprietor does not authorize an act which is in its nature a purpresture of government lands. While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State, which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of state legislation.

In *McKelvey v. United States*, 260 U. S. 353 (1922), the Supreme Court, in sustaining another provision of the same Federal statute, prohibiting restraints upon persons entering public lands, said (p. 359):

It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned. *Camfield v. United States*, 167 U. S. 518, 525; *United States v. Grimaud*, 220 U. S. 506, 521; *Light v. United States*, 220 U. S. 523, 536; *Utah Power & Light Co. v. United States*, 243 U. S. 389, 404-405. The provision now before us is but an exertion of that power. It does no more than to sanction free passage over the public lands and to make the obstruction thereof by unlawful means a punishable offense.

The opinions in *M'Culloch v. Maryland*, *Fort Leavenworth R. R. v. Lowe*, *Ohio v. Thomas*, *Hunt v. United States*, *Utah Power & Light Co. v. United States*, *Camfield v. United States*, and *McKelvey v. United States* clearly demonstrate that the authority of the Federal Government over its lands within the States is not limited to that derived from legislative jurisdiction over such lands of the character which has been the subject of the preceding chapters; there have been delegated to the Federal Government by the Constitution vast powers which may be exercised with respect to such lands. These powers not only permit the Government to exercise affirmative authority upon and with respect to such lands, but they also serve to prevent—and to authorize Federal legislation to prevent—interference by the States and by private persons with the Federal Government's acquisition, ownership, use, and disposition of lands for Federal purposes and with Federal activities which may be conducted on such lands.

FREEDOM OF USE OF REAL PROPERTY ILLUSTRATED: *Taxation*.—The freedom of the Federal Government's use of its real property from State interference, through the operation of constitutional provisions other than article I, section 8, clause 17, is illustrated by the freedom of such property from State, and State-authorized (local), taxation. Since the history of the development of such freedom from taxation reflects in considerable measure the development of freedom of Federal property, and Federal operations on such property, from State interference generally, such history is deserving of detailed consideration.

Prior to 1886, it was an open question whether federally owned real estate was in all instances exempt from State taxation. Thus, in *Commonwealth v. Young*, 1 Journ. Juris. (Hall's, Phila.) 47 (Pa., 1818), it was suggested that federally owned land over which legislative jurisdiction had not been acquired was subject to all State laws, including revenue laws. In *United States v. Railroad Bridge Co.*, 27 Fed. Cas. 686, No. 16,114 (C. C. N. D. Ill., 1855), it was suggested by Justice

McLean that the tax exemption of federally owned lands was dependent upon compacts between the United States and the State whereby the State has surrendered the right to tax; if not subject to such a compact, Justice McLean suggested, Federal lands could be subjected to State taxation. He added (p. 692):

* * * In many instances the states have taxed the lands on which our custom houses and other public buildings have been constructed, and such taxes have been paid by the federal government. This applies only to the lands owned by the Government as a proprietor, the jurisdiction never having been ceded by the state. The proprietorship of land in a state by the general government, cannot, it would seem, enlarge its sovereignty or restrict the sovereignty of the state.

Somewhat similar views were implied in two early California cases (subsequently superseded by contrary views, as indicated *infra*), *People v. Morrison*, 22 Cal. 73 (1863); *People v. Shearer*, 30 Cal. 645 (1866). In *United States v. Weise*, 28 Fed. Cas. 518, No. 16,659 (C. C. E. D. Pa., 1851), the court said (p. 518) that the authority of the State to tax property of the Federal Government "has been the subject of much discussion of late. It has been twice argued before the supreme court of the United States, but remains undecided." The court did not rule on the issue in that case, but held that such a tax could not in any event be enforced by levy, seizure, and sale of property.

In its opinion, the court did not identify the cases in which the tax issue had been "twice argued before the supreme court of the United States", but left undecided. It presumably had reference, however, to the unreported cases of *United States v. Portland* (1849) and *Roach v. Philadelphia County* (1849). According to an account given of the latter case in 2 American Law Journal (N. S.) 444 (1849-1850):

* * * A writ of Error had been taken to the Supreme Court of Pennsylvania. By the decision of that Court the lot on which is erected the Mint of the United States was held liable to taxation for county purposes under State laws. The State of Pennsylvania had never relinquished her right of taxation, nor had she given her consent to the purchase of the ground by the United States.—The Supreme Court of the United States affirmed the judgment of the State Court, thereby sustaining the right of the State to impose taxes upon the property, notwithstanding that it belonged to the United States.

According to a report of the same case, as recited by the Supreme Court in *Van Brocklin v. Tennessee*, 117 U. S. 151, 176 (1886), the treasurer of the mint had sought to recover State, county and city taxes which had been levied and paid both upon the building and land used by the mint of the United States, and the decision of the Pennsylvania Supreme Court upholding the validity of the taxes was sustained by an equal division of the United States Supreme Court.¹² The decision of the Pennsylvania court, like that of the United States Supreme Court in this case, has not been found in any of the reports.

In the opinion in the *Van Brocklin* case, the Supreme Court gave the following account (at p. 175) of the case of *United States v. Portland*:

The first of those cases was *United States v. Portland*, which, as agreed in the statement of facts upon which it was submitted to the decision of the Circuit Court

¹² An appropriation to pay taxes related to the judgment in the *Roach* case was made by the act of Sept. 30, 1850, 9 Stat. 523, 541. In acrimonious congressional debate upon the appropriation bill (Cong. Globe, 31st Cong., 1st Sess. 1644 (1850)), the moral right to tax the Federal mint was questioned. Later debate in the Congress indicates that the judgment in the *Roach* case was annulled by the Pennsylvania legislature. Cong. Globe, 31st Cong., 2d Sess. 394, 399 (1851).

of the United States for the District of Maine, was an action brought by the United States against the City of Portland to recover back the amount of taxes assessed for county and city purposes, in conformity with the statutes of Maine, upon the land, wharf and building owned by the United States in that city. The building had been erected by the United States for a custom-house, and had always been used for that purpose, and no other. The land, building and wharf were within the legislative jurisdiction of the State of Maine, and had always been so, not having been purchased by the United States with the consent of the legislature of the State. The case was heard in the Circuit Court at May term 1845, and was brought to this court upon a certificate of division of opinion between Mr. Justice Story and Judge Ware on several questions of law, the principal one of which was, whether the building, land and wharf, so owned and occupied by the United States, were legally liable to taxation; and this court, being equally divided in opinion on those questions, remanded the case to the Circuit Court for further proceedings. The action therefore failed. The legislature of Maine having meanwhile, by the statute of 1846, ch. 159, § 5,¹³ provided that the property of the United States should be exempted from taxation, the question has never been renewed.¹⁴

¹³ The reference obviously is to a Maine statute of Apr. 5, 1845.

¹⁴ These cases probably occasioned the enactment of the provisions, inserted during a period beginning in 1850 into various Federal statutes authorizing construction of Federal buildings, which conditioned construction upon State exemption of the buildings from taxation. *E. g.*, act of Sept. 30, 1850, 9 Stat. 523, 540; act of Mar. 3, 1851, 9 Stat. 598, 609; act of July 3, 1852, 10 Stat. 11, 12; act of Aug. 31, 1852, 10 Stat. 76, 87, 88. Of special interest is the fact of the inclusion, in the act of July 3, 1852, *supra*, of a specification that the condition for State waiver of taxation should not be construed as implying an admission of the existence of any such taxation power in the State.

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In 1806 the Attorney General of the United States indicated that there was no power in a city to tax Federal property, and that no attempt to impose such a tax had ever before been made. 1 *Ops. A. G.* 157.¹⁵ The confused state of the law on this subject at a somewhat later time led the Attorney General, in 5 *Ops. A. G.* 316 (1851), to say that, "it would be worse than idle for me to venture an opinion" as to whether a State might tax lands owned by the Federal Government and over which the latter had not acquired exclusive legislative jurisdiction. But in 1859 (9 *Ops. A. G.* 291) he ruled that a city had no power to tax property of the United States within its limits. However, in *Nathan v. Louisiana*, 8 How. 73 (1850), Justice McLean, in sustaining the validity of a State tax on all money or exchange brokers, observed (p. 82):

The taxing power of a State is one of its attributes of sovereignty. And where there has been no compact with the Federal government, or cession of jurisdiction for the purposes specified in the Constitution, this power reaches all the property and business within the State, which are not properly denominated the means of the general government; and, as laid down by this court, it may be exercised at the discretion of the State.

Although the question as to the constitutional power of a State to tax federally owned lands remained confused until 1886, in a number of State cases decided before that time it was held that federally owned property was exempt from State taxation.¹⁶

¹⁵ Set out also in 117 U. S. 163, and there characterized as "the earliest legal opinion upon the question."

¹⁶ Two California cases, *People v. McCreery*, 34 Cal. 432, 456 (1868); and *People v. Austin*, 47 Cal. 353, 361 (1874), which superseded the earlier California decisions referred to above indicating the contrary view; *West Hartford v. Board of Water Commissioners*, 44 Conn. 360 (1877), (dictum); *Chicago, Rock Island & Pacific Ry. v. Davenport*, 51 Iowa 451, 1 N. W. 720 (1879); *Fagan v. Chicago*, 84 Ill. 227 (1876); *People v. United States*, 93 Ill. 30 (1879); *Western Union Telegraph Company v. Richmond*, 67 Va. 1, 30 (1875); *Andrews v. Auditor*, 69 Va. 115, 124 (1877).

The long and tortuous history of the issue as to whether federally owned land not subject to exclusive Federal legislative jurisdiction might be taxed by a State came finally to an end when the United States Supreme Court, in 1886, rendered a comprehensive opinion on this subject which at no time since, as to the issue in question, has been qualified or made subject to exceptions by the court. In the case in which that opinion was rendered, *Van Brocklin v. Tennessee*, 117 U. S. 151, 176 (1886), the question presented was whether a State may tax lands which the Federal Government had acquired as a result of a tax sale.¹⁷ The court observed that the Federal Government is capable of attaining the objects for which it was created, and to do so by means which are necessary for their attainment. Thus, the Federal Government may acquire real property whenever such property is needed for its use in the execution of its powers, whether for fortifications, lighthouses, customhouses, barracks or hospitals, or for any other of the many purposes for which such property is used; and when the property cannot be acquired by voluntary arrangement with the owners, it may be taken against their will by the Federal Government in the exercise of its power of eminent domain upon making just compensation.

¹⁷ This case was the basis of the decision in *United States v. Woodworth*, 170 F. 2d 1019 (C. A. 2, 1948), (one of many such decisions), in which the court held that land held by the Federal Government is not subject to State taxation, without consent manifested by congressional enactment. The court here held that the exemption applies even where the tax was levied before Federal acquisition of the property if such tax had not previously become a lien. To the same effect is *Comp. Gen. Dec.*, No. B-91662 (Jan. 26, 1950).

The inchoate tax lien on real property in Alabama is not objectionable under the Federal Constitution as applied to a purchaser who bought on or after the tax day and before the amount of the tax had been fixed by levy and assessment; and the fact that the purchaser was the United States did not invalidate the lien. However, such a lien can not be enforced against the United States without its consent, since a judicial proceeding against property in which the United States has an interest is a suit against the United States. *United States v. Alabama*, 313 U. S. 274 (1941). To the same effect are *Op. Sol., Dept. of the Interior*, No. M-33569 (Mar. 7, 1944); *Op. A. G., Ill.*, p. 172, No. 1109 (July 11, 1953).

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Such acquisition may be with or without the consent of the State in which the property is situated. Moreover, the Supreme Court emphasized, the laws of the United States are supreme, and the States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers of the Federal Government.

Taxation, the court stated, relying on *M'Culloch v. Maryland*, 4 Wheat. 316 (1819), is such an interference. Moreover, the court made clear, a distinction cannot be made on the basis of the uses to which the real property of the Federal Government may be devoted (pp. 158-159):

The United States do not and cannot hold property, as a monarch may, for private or personal purposes. All the property and revenues of the United States must be held and applied, as all taxes, duties, imposts and excises must be laid and collected, "to pay the debts and provide for the common defence and general welfare of the United States." * * *

After referring to the Articles of Confederation of 1778, in which it was expressly provided that "no imposition, duties or restriction shall be laid by any State on the property of the United States," and to the fact that a similar provision was also contained in the Northwest Ordinance of 1787, the court said (pp. 159-160):

The Constitution creating a more perfect union, and increasing the powers of the national government, expressly authorized the Congress of the United States "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States;" "to exercise exclusive legislation over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;" and "to dis-

pose of and make all needful rules and regulations respecting the territory or other property of the United States"; and declared, "This Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." No further provision was necessary to secure the lands or other property of the United States from taxation by the States.

The court concluded its opinion as follows (pp. 179-180):

* * * To allow land, lawfully held by the United States as security for the payment of taxes assessed by and due to them, to be assessed and sold for State taxes, would tend to create a conflict between the officers of the two governments, to deprive the United States of a title lawfully acquired under express acts of Congress, and to defeat the exercise of the constitutional power to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States.

While citing article IV, section 3, clause 2, as one of the bases for its conclusion, the Supreme Court in the *Van Brocklin* opinion did not rely solely on that provision, nor did it spell out its reasons for concluding that this clause prevented State and local taxation of real estate of the United States. Four years later, the Supreme Court had occasion to give more detailed consideration to this question in *Wisconsin Central R. R. v. Price County*, 133 U. S. 496 (1890). In that case the court said (p. 504):

It is familiar law that a State has no power to tax the property of the United States within its limits. This exemption of their property from state taxation—and by state taxation we mean any taxation by authority of the State, whether it be strictly for state purposes

or for mere local and special objects—is founded upon that principle which inheres in every independent government, that it must be free from any such interference of another government as may tend to destroy its powers or impair their efficiency. If the property of the United States could be subjected to taxation by the State, the object and extent of the taxation would be subject to the State's discretion. It might extend to buildings and other property essential to the discharge of the ordinary business of the national government, and *in the enforcement of the tax those buildings might be taken from the possession and use of the United States*. The Constitution vests in Congress the power to “dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” *And this implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise.*

* * * [Emphasis added.]

The opinions of the Supreme Court in the *Van Brocklin* and *Wisconsin Central R. R.* cases establish an inflexible rule, with no exceptions, that property of the Federal Government may not, absent the express consent of the Government, be taxed by a State or subdivision thereof. All such property is held in a governmental capacity, and its taxation by a State or local subdivision, the Supreme Court has stated, would constitute an unconstitutional interference with Federal functions; in addition, since taxation carries with it the right to levy execution on the property in order to enforce payment of the tax on it, the taxation of such property by a State is prohibited by article IV, section 3, clause 2, of the Constitution, which vests solely in the Congress the authority to dispose of property of the United States.¹⁸

¹⁸ Federal property becomes exempt from taxation the moment title vests in the United States. *Op. A. G., Ill.*, p. 744, No. 10098 (1920).

State activities are exempt from Federal taxation only to the extent that they represent an exercise of governmental powers rather than engaging in business of a private nature. *Ohio v. Helvering*, 292 U. S. 360, 368 (1934); *South Carolina v. United States*, 199 U. S. 437, 458 (1905). Ohio taxing authorities thought that this rule applied conversely to allow them to tax a Federal housing project and the Ohio Supreme Court denied tax exemption. The United States Supreme Court rejected this contention in two curt sentences in *Cleveland v. United States*, 323 U. S. 329, 333 (1945), as follows: "And Congress may exempt property owned by the United States or its instrumentality from state taxation in furtherance of the purposes of the federal legislation. This is settled by such an array of authority that citation would seem unnecessary." Thereafter the Ohio Supreme Court rejected another attempt of the taxing authorities to apply the governmental versus proprietary function distinction to the United States, holding that so long as the land is owned by the United States it is tax exempt. *United States (Farm Credit Administration) v. Board of Tax Appeals, et al.*, 145 Ohio St. 257, 61 N. E. 2d 481 (1945). However, Federal ownership does not prohibit taxation of private interests in the same parcel of real property. *S. R. A., Inc. v. Minnesota*, 327 U. S. 558 (1946).

While federally owned property is constitutionally exempt from State and local taxation, the Congress may, of course, waive such exemption. Both at the present time and in years past Congress has authorized the payment of State and local taxes on certain federally owned real property. Thus, at the present time, approximately three million dollars per year are paid pursuant to such authorizations in addition to the so-called payments in lieu of taxes, which aggregate approximately 14 million dollars more.¹⁹ Such authorizations by the

¹⁹ *Hearings before Committee on Government Operations, United States Senate*, on S. 826, S. 1566, etc., 84th Cong., 2d Sess., part II, p. 339 *et seq.* (Apr. 19 and 20, 1956).

Congress are not, of course, a recent innovation. Thus, specific appropriation of funds for payment of the tax on the mint of the United States in Philadelphia, involved in *Roach v. Philadelphia County*, *supra*, was made by the Congress. And in 4 Stat. 673, 675 (act of May 14, 1834), is to be found another appropriation made expressly for the purpose of paying just such taxes.²⁰

Special assessments.—Federally owned property is constitutionally exempt not only from a State's and local subdivision's general real property taxes, but it is also immune from special assessments which are levied against property owners for improvements. See *Wisconsin Central R. R. v. Price County*, *supra*; *Mullen Benevolent Corp. v. United States*, 290 U. S. 89 (1933); *United States v. Anderson Cottonwood Irr. Dist.*, 19 F. Supp. 740 (N. D. Cal., 1937).²¹ Such immu-

²⁰ See also act of Mar. 3, 1851, 9 Stat. 598, 615; act of Aug. 31, 1852, 10 Stat. 76, 83.

²¹ It has been held that neither the property nor activities of the United States can be taxed by a State or any of its political subdivisions, and this rule applies with equal force where the tax is a special tax or assessment for local improvements, the basis being that the assessment is an involuntary exaction and as such is a tax which the United States may not be required to pay. *Comp. Gen. Dec.*, No. B-24813 (Jan. 26, 1944). This is true, it has been held, even where the improvement is of direct benefit to the Federal property (sewer) : 4 *Comp. Dec.* 116 (1897) ; (street) : 27 *Comp. Gen.* 20 (1947) ; 29 *Comp. Gen.* 18 (1949).

The Comptroller General has held that an assessment by an irrigation district, under authority of State law, of an operation charge separate from the cost of water that might be furnished, levied against land of the United States in common with other landholders, is an involuntary exaction and as such is a tax which the United States may not be required to pay. *Comp. Gen. Dec.*, No. B-47822 (Mar. 14, 1945) ; *id.* No. 122372 (Mar. 15, 1955) ; *id.* No. 47822 (Sept. 25, 1946). See also 9 *Comp. Dec.* 181 (1902).

He has also held that charges for water, garbage collection, sewage service, etc., may be assessed against the United States by a municipality when based, by statute, on the quantity of water or service furnished, but such charges may not be assessed, even under contract, when the assessment is as a general tax rather than on the basis of quantity furnished. 31 *Comp. Gen.* 405 (1952) ; 15 *Comp. Gen.* 380 (1935) ; 20 *Comp. Gen.* 206

nity extends not only to the Federal Government but also to its successors in interest, insofar as the special assessments relate to any improvements which were made while the Federal Government owned the property. This latter issue was so decided in *Lee v. Osceola & Little River Road Improvement District*, 268 U. S. 643 (1925), and in the course of its opinion the Supreme Court said (p. 645):

It was settled many years ago that the property of the United States is exempt by the Constitution from taxation under the authority of a State so long as title remains in the United States. *Van Brocklin v. State of Tennessee*, 117 U. S. 151, 180. This is conceded. It is urged, however, that this rule has no application after the title has passed from the United States, and that it may then be taxed for any legitimate purposes. While this is true in reference to general taxes assessed after the United States has parted with its title, we think it clear that it is not the case where the tax is sought to be imposed for benefits accruing to the property from improvements made while it was still owned by the United States. In the *Van Brocklin Case*, *supra*, p. 168, it was said that the United States has the exclusive right to control and dispose of its public lands, and that "no State can interfere with this right, or embarrass its exercise." Obviously, however, the United States will be hindered in the disposal of lands upon which local improvements have been made, if taxes may thereafter be assessed against the purchasers for the benefits resulting from such improvements. Such a liability for the future assessments of taxes would create a serious incumbrance upon the lands, and its subsequent

(1940); *Comp. Gen. Dec.*, No. B-67434 (July 25, 1947); *id.* B-89424 (Jan. 26, 1950); *id.* B-105117 (Mar. 16, 1953).

The imposition upon the United States of a toll or charge for use of harbor facilities which are under the control of a State is not a tax, but a charge for services, and is proper. 23 *Ops A. G.* 299 (1900).

enforcement would accomplish indirectly the collection of a tax against the United States which could not be directly imposed. * * * ²²

Condemnation of Federal land.—Closely related to the subject of State taxation of Federal land is that of State condemnation of such land. Prior to the decision of the Supreme Court in *Van Brocklin v. Tennessee*, 117 U. S. 151 (1886), in which was established the proposition that the Federal Government does not, and cannot, hold property in a proprietary capacity, it was held in a number of cases that the State's power of eminent domain extended to land of the Federal Government not used or needed for a governmental purpose.²³

The decision in the *Van Brocklin* case, in its holding that the Federal Government owns all of its property in a governmental capacity, rendered untenable the underlying principles upon which these cases sustaining the State's power of eminent domain rested, and in *Utah Power & Light Co. v. United States*, 243 U. S. 389 (1917), the United States Supreme Court disposed of the issue squarely by stating (pp. 403-404):

The first position taken by the defendants is that their claims must be tested by the laws of the State in which the lands are situate rather than by the legislation of Congress, and in support of this position they say that the lands of the United States within a State, when not used or needed for a fort or other governmental purpose of the United States are subject to the jurisdiction, powers and laws of the State in the same way and to the same extent as are similar lands of others.

²² Of historical interest is the act of June 10, 1852, 10 Stat. 10, wherein the Congress specifically authorized a State to impose taxes upon lands within such State from and after the date of sale of such lands by the United States.

²³ *E. g.*: *United States v. Railroad Bridge Co.*, 27 Fed. Cas. 686, No. 16,114 (C. C. N. D. Ill., 1855); *Union Pacific Ry. v. B. & M. R. R.*, 3 Fed. 106 (C. C. D. Neb., 1880); *Illinois Central R. R. v. Chicago, B. & N. R. R.*, 28 Fed. 477, 478 (C. C. N. D. Ill., 1886); *Simonson v. Thompson*, 25 Minn. 450 (1879); see also *United States v. Chicago*, 7 How. 185, 194 (1849).

To this we cannot assent. Not only does the Constitution (Art. IV, § 3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. * * *

And, as to the issue of the State's exercise of its power of eminent domain with respect to federally owned land, the court concluded (p. 405):

It results that state laws, including those relating to the exercise of the power of eminent domain, have no bearing upon a controversy such as is here presented [*viz.*, the right to use and occupy federally owned land], save as they may have been adopted or made applicable by Congress.

The same result would follow because of the Federal Government's sovereign immunity from suit. A proceeding to condemn land, in which the United States has an interest, is a suit against the United States which may be brought only by the consent of Congress. *Minnesota v. United States*, 305 U. S. 382, 386-387 (1939).

FEDERAL ACQUISITION AND DISPOSITION OF REAL PROPERTY:
Acquisition.—While the acquiescence of a State is essential to acquisition by the Federal Government of legislative jurisdiction over an area within such State,²⁴ it is not essential to the acquisition by the Federal Government of real property within the State.²⁵ The Federal Government may obtain such

²⁴ See chapter III (p. 46), *supra*.

²⁵ *Op. Sol., Dept. of Agriculture*, No. 1152 (Feb. 17, 1939). Acquiescence to acquisition of property is necessary only when required by the act of Congress authorizing the acquisition. *Id.* No. 13601-13602 (July 3, 1934). *E. g.*, 16 U. S. C. 516; but Federal acquisition of legislative jurisdiction

real property by gift, purchase, or condemnation. See *Fort Leavenworth R. R. v. Lowe*, 114 U. S. 525 (1885); *Kohl v. United States*, 91 U. S. 367 (1876). It may also obtain property of the State by exercise of its power of eminent domain, even though such property is used by the State for governmental purposes. *United States v. Wayne County*, 53 C. Cls. 417 (1918), *aff'd.*, 252 U. S. 574 (1920); *United States v. Carmack*, 329 U. S. 230 (1946); *Oklahoma v. Atkinson Co.*, 313 U. S. 508 (1941); *United States v. Montana*, 134 F. 2d 194 (C. A. 9, 1943); and see also *United States v. Clarksville*, 224 F. 2d 712 (C. A. 4, 1955).

Disposition.—By reason of article IV, section 3, clause 2, of the Constitution, Congress alone has the ultimate authority to determine under what terms and conditions property of the Federal Government may or shall be sold. In *Gibson v. Chouteau*, 13 Wall. 92 (1872), which involved a complex issue of a claim of title under State law as against title claimed through a patent from the Federal Government, the Supreme Court said (pp. 99–100):

With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted into the Union, that such interference with the primary disposal of the soil of the United States shall never be made. Such provision was inserted in the act admitting Missouri,

is not contemplated as a consequence of an acquiescence under this statute relating to national forests. *Id.* No. 728 (Aug. 27, 1938).

and it is embodied in the present Constitution, with the further clause that the legislature shall also not interfere "with any regulation that Congress may find necessary for securing the title in such soil to the *bona fide* purchasers."

The same principle which forbids any State legislation interfering with the power of Congress to dispose of the public property of the United States, also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition. The consummation of the title is not a matter which the grantees can control, but one which rests entirely with the government. With the legal title, when transferred, goes the right to possess and enjoy the land, and it would amount to a denial of the power of disposal in Congress if these benefits, which should follow upon the acquisition of that title, could be forfeited because they were not asserted before that title was issued.

Similarly, in *Bagnell v. Broderick*, 13 Pet. 436 (1839), it was held that the Congress has "the sole power to declare the dignity and effect of titles emanating from the United States" (p. 450), and in *Wilcox v. Jackson*, 13 Pet. 498 (1839), it was held that the question of whether title to land which once was the property of the Federal Government had passed to its assignee is to be resolved by the laws of the United States. In *Irvine v. Marshall, et al.*, 20 How. 558 (1858), it was said (p. 563):

* * * The fallacy of the conclusion attempted * * *, consists in the supposition, that the control of the United States over property admitted to be their own, is dependent upon locality, as to the point within the limits of a State or Territory within which that prop-

erty may be situated. But as the control, enjoyment, or disposal of that property, must be exclusively in the United States, anywhere and everywhere within their own limits, and within the powers delegated by the Constitution, no State, and much less can a Territory, (yet remaining under the authority of the Federal Government,) interfere with the regular, the just, and necessary powers of the latter. * * *

In the exercise of its powers of disposition, Congress may authorize the leasing of real property, as well as its sale. *United States v. Gratiot*, 14 Pet. 526 (1840). In disposing of property, Congress may also provide that it shall not become liable for the satisfaction of debts contracted prior to the issuance of a land patent. *Ruddy v. Rossi*, 248 U. S. 104 (1918). Congress may also restrict the disposition of personal property developed by a grantee on property acquired from the United States. *United States v. San Francisco*, 310 U. S. 16 (1940). Under its general powers of disposition, Congress may condition the use of real property of the United States by requiring the user to transmit over its lines electric power owned by the Federal Government. *Federal Power Commission v. Idaho Power Co.*, 344 U. S. 17 (1952).

In *Federal Power Commission v. Oregon*, 349 U. S. 435 (1955), which basically involved interpretation of Federal statutes, it was held that a State is without authority to require a person to obtain from the State permission to construct a privately owned dam on property of the United States where such construction was instituted with the permission of the United States; the granting of such permission by the United States is an exercise of the power of disposition with which a State may not interfere. The court said (pp. 441-443):

On its face, the Federal Power Act applies to this license as specifically as it did to the license in the *First Iowa* case [*First Iowa Coop. v. Federal Power Commission*, 328 U. S. 152]. There the jurisdiction of the Commission turned almost entirely upon the naviga-

bility of the waters of the United States to which the license applied. Here the jurisdiction turns upon the ownership or control by the United States of the reserved lands on which the licensed project is to be located. The authority to issue licenses in relation to navigable waters of the United States springs from the Commerce Clause of the Constitution. The authority to do so in relation to public lands and reservations of the United States springs from the Property Clause—"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Art. IV, § 3.

It is clear that Congress, in the exercise of its power of disposition, may authorize actions serving to improve the marketability of the property. Thus, it may provide for the reclamation of arid lands owned by the Federal Government. *United States v. Hanson*, 167 Fed. 881 (C. A. 9, 1909); *Kansas v. Colorado*, 206 U. S. 46, 91, 92 (1907).²⁸ It may also authorize the purchase of privately owned transmission lines to facilitate the sale of excess electrical energy produced by federally owned facilities. In *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 (1936), the court stated (p. 338):

* * * The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. * * *

²⁸ Reclamation of arid lands is also supportable by the welfare clause of the Constitution, the Supreme Court has indicated. *United States v. Gerlach Live Stock Co.*, 339 U. S. 725, 738 (1950).

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PROTECTION OF PROPERTY AND OPERATIONS OF THE GOVERNMENT: *Property*.—It is not essential that the Federal Government have legislative jurisdiction over real property owned by it in order to provide for its protection against trespass, unauthorized use, or destruction,²⁷ notwithstanding that State laws may continue effective.²⁸ Legislation having these objectives has in a number of cases been sustained on the basis of the power delegated to Congress by article IV, section 3, clause 2, of the Constitution. While this clause, it is clear from *Pollard v. Hagan*, 3 How. 212, 223 (1845), does not grant to Congress “municipal sovereignty” over any area within a State, it constitutes a “grant of power to the United States of control over its property.” *Kansas v. Colorado*, 206 U. S. 46, 89 (1907).

On the basis of the power vested in Congress by article IV, section 3, clause 2, of the Constitution, the United States was granted an injunction to restrain grazing of cattle on public lands without a permit. *Light v. United States*, 220 U. S. 523 (1911). In the course of its opinion, the court said (pp. 536–538):

The United States can prohibit absolutely or fix the terms on which its property may be used. As it can withhold or reserve the land it can do so indefinitely, *Stearns v. Minnesota*, 179 U. S. 243. It is true that the “United States do not and cannot hold property as a monarch may for private or personal purposes.” *Van Brocklin v. Tennessee*, 117 U. S. 158. But that does not lead to the conclusion that it is without the rights incident to ownership, for the Constitution declares, § 3, Art. IV, that “Congress shall have power to dis-

²⁷ The right of the United States to protect its property at the Forest Products Laboratory, Madison, Wis., does not depend on the acquisition of jurisdiction. *Op. Sol., Dept. of Agriculture*, No. 4069 (Apr. 8, 1942).

²⁸ The United States does not have either exclusive or concurrent legislative jurisdiction over the national forests and does not need such jurisdiction to protect them. *Op. Sol., Dept. of Agriculture*, No. 4658 (Apr. 27, 1943).

pose of and make all needful rules and regulations respecting the territory or the property belonging to the United States." "The full scope of this paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of control over its property." *Kansas v. Colorado*, 206 U. S. 89.

"All the public lands of the nation are held in trust for the people of the whole country." *United States v. Trinidad Coal Co.*, 137 U. S. 160. And it is not for the courts to say how that trust shall be administered. That is for Congress to determine. The courts cannot compel it to set aside the lands for settlement; or to suffer them to be used for agricultural or grazing purposes; nor interfere when, in the exercise of its discretion, Congress establishes a forest reserve for what it decides to be national and public purposes. In the same way and in the exercise of the same trust it may disestablish a reserve, and devote the property to some other national and public purpose. These are rights incident to proprietorship, to say nothing of the power of the United States as a sovereign over the property belonging to it. * * *

* * * He [*i. e.*, the defendant] could have obtained a permit for reasonable pasturage. He not only declined to apply for such license, but there is evidence that he threatened to resist efforts to have his cattle removed from the Reserve, and in his answer he declares that he will continue to turn out his cattle, and contends that if they go upon the Reserve the Government has no remedy at law or in equity. This claim answers itself.²⁹

Similarly, in *Utah Power & Light Co. v. United States*, 243 U. S. 389 (1917), it was held that the United States could enjoin the occupancy and use, without its permission, of cer-

²⁹ See also *Shannon v. United States*, 160 Fed. 870 (C. A. 9, 1908), in which the same conclusion was reached on similar facts.

tain of its lands in forest reservations as sites for works employed in generating and distributing electric power, and to obtain compensation for such occupancy and use in the past. In *United States v. Gear*, 3 How. 120 (1845), it was held that the United States was entitled to an injunction to prevent unauthorized mining of lead on federally owned land. The Federal Government may also prevent the extraction of oil from public lands. See *United States v. Midwest Oil Co.*, 236 U. S. 459 (1915). In *Cotton v. United States*, 11 How. 229 (1850), it was held that the United States may bring a civil action of trespass for the cutting and carrying away of timber from lands owned by the United States. The United States, as the absolute owner of the Arkansas Hot Springs, has the same power a private owner would have to exclude the public from the use of the waters. *Van Lear v. Eisele*, 126 Fed. 823 (C. C. E. D. Ark., 1903). Indeed, the United States has prevailed in perhaps every type of action, including special remedies variously provided by State statutes to protect and conserve its lands, and resources and other matters located thereon.

The Federal Government has undisputed authority to provide,³⁰ and has provided,³¹ criminal sanctions for various acts injurious, or having a reasonable potential of being injurious, to real property of the United States. Congress may provide for the punishment of theft of timber from lands of the United States. See *United States v. Briggs*, 9 How. 351 (1850); see also *United States v. Ames*, 24 Fed. Cas. 784, No. 14,441 (C. C. D. Mass., 1845). Federal criminal sanctions may be applied to any person who leaves a fire, without first extinguishing it, on private lands "near" inflammable grass on the

* The power of the Congress to legislate with respect to the use and occupancy of defense housing projects of the Farm Security Administration, and to define crimes with respect thereto, is not dependent on Federal possession of legislative jurisdiction, but is derived from art. IV, sec. 3, cl. 2. *Op. Sol., Dept. of Agriculture*, No. 3645 (Oct. 17, 1941).

As sovereign proprietor the United States has full authority to protect lands over which it does not have exclusive legislative jurisdiction and to punish for violations of its laws with respect thereto. *Op. Sol., Dept. of Agriculture*, No. 10906-10910 (May 6, 1924).

³¹ *E. g.*, see 18 U. S. C. 1851 *et seq.*, and 1361.

public domain. *United States v. Alford*, 274 U. S. 264 (1927).

Operations.—The Federal Government has undisputed authority³² to protect the proper carrying out of the functions assigned to it by the Constitution, without regard to whether the functions are carried out on land owned by the United States or by others, and without regard to the jurisdictional status of the land upon which the functions are carried out.³³ Where such functions involve Federal use of property the Congress may, regardless of the jurisdictional status of such property, make such laws with respect to the property as may be required for effective carrying out of the functions. So, the Congress has enacted statutes prohibiting, under criminal penalties, certain dissemination of information pertaining to defense installations.³⁴

Moreover, the United States, in carrying out Federal functions, whether military or civilian, may take such measures with respect to safeguarding of Federal areas (building of fences, posting of sentries or armed guards, limiting of ingress and egress,³⁵ evicting of trespassers,³⁶ etc.), regardless of the

³² Under the "necessary and proper" clause (art. I, sec. 8, cl. 18, of the Constitution); see p. 12, *supra*.

³³ See also chapter X, *infra*.

³⁴ *E. g.*, see 18 U. S. C. 793 *et seq.*

³⁵ The right to exclude civilians from military reservations under such reasonable rules and regulations as the local commander may prescribe is not dependent upon the jurisdictional status of the particular area involved. *Op. J. A. G., Army*, 1946/3760 (May 23, 1946).

The authority of the Army to restrict or control the solicitation of life insurance on military reservations is not dependent on the jurisdictional status of the reservation. *Op. J. A. G., Army*, 004.6 (June 27, 1942).

Irrespective of the jurisdictional status of a reservation, the proper administration of such reservation and the effectuation of Federal purposes thereon may require the exclusion of State or local officials who ordinarily would be entitled to perform their functions on the reservation. *Op. J. A. G., Army*, 1948/8924 (Dec. 15, 1948).

There is no legal objection to allowing access to military reservations to State enforcement officials in order that they may inspect agricultural products to ascertain whether there has been compliance with State inspection, grading, etc., laws. *Ops. J. A. G., Army*, 012.31 (May 20, 1940, and Apr. 26, 1940).

³⁶ An officer in command of a military post has the right to protect it

jurisdictional status of such areas, as may be necessary for the proper carrying out of the functions.³⁶

AGENCY RULES AND REGULATIONS: Beyond the acts and omissions defined as criminal by statutes, certain agencies of the Federal Government³⁷ have received from the Congress authority to establish rules and regulations for the government of the land areas under their management, and penalties are provided by statute for the breach of such rules and regulations; statutory authority also exists for these agencies to confer on certain of their personnel arrest powers in excess of those ordinarily had by private citizens. However, most Federal agencies do not now have such authority. In the absence of specific authority to make rules and regulations, criminal sanctions may not attach (regardless of the jurisdictional status of the lands involved) to violations of any such rules

from injury at the hands of trespassers, but without inflicting unnecessary or wanton harm to persons or property. 9 *Ops. A. G.* 476 (1880).

³⁶ It does not appear that the authority of Federal officials to take security measures has ever been disputed in litigation, and the existence of the authority is clear in the light of judicial decisions referred to elsewhere in this chapter upholding the control of Federal functions and Federal lands by the Federal Government and its instrumentalities free from interference from State governments or other sources. See *Op. J. A. G., Navy*, JAG:II:1:VAvR:mac (Mar. 24, 1955); *id.*, JAG:II:1:VAvR:gjg (Apr. 13, 1955), see also *report*, part I, p. 46 *et seq.* On the general subject of criminal jurisdiction see chapter V, p. 105 *et seq., supra*.

³⁷ *E. g.*, General Services Administration (40 U. S. C. 318 *et seq.*), (but penalty is authorized to be prescribed by Administrator, within limits set by statute, and the authority of special policemen is restricted to Federal property over which the United States has acquired exclusive or concurrent jurisdiction); National Park Service and Fish and Wildlife Service of the Department of the Interior (16 U. S. C. 3, 10, 10a and 715i); Secretary of the Army (16 U. S. C. 9a); Forest Service of the Department of Agriculture (7 U. S. C. 1011 (f), 16 U. S. C. 551 and 559, and 18 U. S. C. 1863). For additional discussion of this subject see p. 137, *supra*. See also 22 *Ops. A. G.* 512 (1899), wherein limitations on arrest authority of forest rangers were indicated and legislation suggested, and 30 *Ops. A. G.* 465 (1915), confirming the authority of employees of Gettysburg National Park to make arrests under a statute enacted apparently pursuant to the suggestion of the Attorney General.

or regulations issued by the officer in charge of a Federal area,³⁸ except that members of the armed forces are subject always to the Uniform Code of Military Justice. It should be noted that civilian Federal employees in various circumstances are subject to disciplinary action and that members of the public at large may be excluded from the Federal area.

The validity of rules and regulations issued by the Secretary of Agriculture was challenged in *United States v. Grimaud*, 220 U. S. 506 (1911), by persons charged with driving and grazing sheep on a forest reserve without a permit. In deciding that the authority to make administrative rules was not an unconstitutional delegation of legislative power by Congress, and that the regulations of the Secretary were valid and had the force of law, the court said (p. 521):

That "Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution." *Field v. Clark*, 143 U. S. 649, 692. But the authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense.

It is true that there is no act of Congress which, in express terms, declares that it shall be unlawful to graze sheep on a forest reserve. But the statutes, from which we have quoted, declare, that the privilege of using reserves for "all proper and lawful purposes" is subject to the proviso that the person so using them shall comply "with the rules and regulations covering such forest reservation." The same act makes it an offense to violate those regulations, that is, to use them otherwise than in accordance with the rules established by the

³⁸ The Judge Advocate General of the Navy has noted (with respect to naval areas) that authority to make regulations and prescribe penalties is needed. *Op. J. A. G., Navy*, JAG: II: JCR (Jan. 17, 1950).

Secretary. Thus the implied license under which the United States had suffered its public domain to be used as a pasture for sheep and cattle, mentioned in *Buford v. Houtz*, 133 U. S. 326, was curtailed and qualified by Congress, to the extent that such privilege should not be exercised in contravention of the rules and regulations. *Wilcox v. Jackson*, 13 Pet. 498, 513.

If, after the passage of the act and the promulgation of the rule, the defendants drove and grazed their sheep upon the reserve, in violation of the regulations, they were making an unlawful use of the Government's property. In doing so they thereby made themselves liable to the penalty imposed by Congress.³⁹

³⁹ Prior to the *Grimand* decision, the courts had been divided on the question of the right of Congress to authorize agency heads to issue rules and regulations for the use and protection of property. Such rules were sustained for civil purposes in *Dastervignes v. United States*, 122 Fed. 30 (C. A. 9, 1903); *United States v. Shannon*, 151 Fed. 863 (C. O. D. Mont., 1907), *aff'd.*, 160 Fed. 870 (C. A. 9, 1908). They were held valid in criminal prosecutions in *United States v. Domingo*, 152 Fed. 566 (D. Idaho, 1907); *United States v. Deguirro*, 152 Fed. 568 (N. D. Cal., 1906); *United States v. Bale*, 156 Fed. 687 (D. S. D., 1907); *United States v. Rizzinelli*, 182 Fed. 675 (D. Idaho, 1910). However, the regulations were not upheld in *United States v. Blasingame*, 116 Fed. 654 (S. D. Cal., 1900); *United States v. Matthews*, 146 Fed. 306 (E. D. Wash., 1906). At first they were not upheld, and then the case was reversed, in *Dent v. United States*, 8 Ariz. 138, 71 Pac. 920 (1903), *rev'd.*, 8 Ariz. 413, 76 Pac. 455.

Although the United States exercises only a proprietorial jurisdiction over the Grand Canyon National Park, because of the authority of Congress to work out "needful Rules and Regulations respecting the * * * Property belonging to the United States," regulations can be issued which put the United States on a different footing from other proprietors. *Memo from Acting Director, National Park Service, Dept. of the Interior, to the Regional Director, Region 3* (Feb. 20, 1947).

In *United States v. Gilbert*, 58 F. 2d 1031 (M. D. Pa., 1932), there was upheld the authority of the Secretary of War to make regulations governing the licensing of guides in Gettysburg National Military Park.

While there has been no cession of police jurisdiction to the United States over the Natchez Trace Parkway in Alabama, Tennessee and Mississippi, Federal criminal statutes and National Park Service regulations relating to the protection and regulation of the use of Federal property

And it has been held that rules and regulations issued pursuant to congressional authority supersede conflicting State law.⁴⁰

CONTROL OVER FEDERAL CONSTRUCTION: *Building codes and zoning.*—In *United States v. City of Chester*, 144 F. 2d 415 (C. A. 3, 1944), in which the city had attempted to require the United States Housing Authority to comply with local building regulations in the construction of war housing in an area not under Federal legislative jurisdiction, it was held (pp. 419-420):

The authority of the Administrator to proceed with the building of the Chester project under the Lanham Act without regard to the application of the Building

are applicable under article IV, section 3, clause 2, of the Constitution. *Op. Sol., Dept. of the Interior*, No. M-32076 (June 18, 1943).

It has been held that regulations of the Secretary of the Interior, promulgated under a statute, governing traffic on highways within national parks, are authorized by article IV, section 3, of the Constitution, entitling the Government to make all needful regulations respecting its property. *Robbins v. United States*, 284 Fed. 39 (C. A. 8, 1922). It would seem that the *Robbins* case does not control where the highways are neither the property of the United States nor under its legislative jurisdiction. *Colorado v. Toll*, 268 U. S. 228 (1925).

The existing rules and regulations governing the administration of the National Park Service exclude from operation in the national parks, except over State highways over which the States have retained jurisdiction, cars operated under the Drivurself System, rented under a temporary sales agreement or other methods intended to evade such regulations. 35 *Ops. A. G.* 305 (1927).

⁴⁰ The rules and regulations of the Secretary of Agriculture for the protection of land utilization projects supersede conflicting State law requiring a legal and sufficient fence as a condition to the recovery of damages caused by trespassing livestock; and the Government may abate the unlawful occupancy of or trespass upon Government land. *Op. Sol., Dept. of Agriculture*, No. 1693 (Sept. 7, 1939). To the same effect see *United States v. Thompson*, 41 F. Supp. 13 (E. D. Wash., 1941).

Although the State of Arizona has the power to require that motor vehicles which are operated on State highways comply with its motor vehicle license law, the Secretary of the Interior has power to make regulations, with respect to highways constructed and maintained by his Department, to carry out the purposes for which Grand Canyon National Park was established, and any State regulations inconsistent with the Secretary's regulations would be superseded. 36 *Ops. A. G.* 527 (1932).

Code Ordinance of Chester is to be found in the words of Clause 2 of Article VI of the Constitution of the United States which provides that the Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land. The questions raised by the defendants were settled in general principle as long ago as the decision of Mr. Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 405, 4 L. Ed. 579, wherein it was stated, "If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. * * *."

The court added (p. 420):

A state statute, a local enactment or regulation or a city ordinance, even if based on the valid police powers of a State, must yield in case of direct conflict with the the exercise by the Government of the United States of any power it possesses under the Constitution. * * *

This decision was cited with approval and followed in *Curtis v. Toledo Metropolitan Housing Authority, et al.*, 36 Ohio Ops. 423, 78 N. E. 2d 676 (1947); *Tim v. City of Long Branch*, 135 N. J. L. 549, 53 A. 2d 164 (1947); and in *United States v. Philadelphia*, 56 F. Supp. 862 (E. D. Pa., 1944), *aff'd.*, 147 F. 2d 291 (C. A. 3, 1945), *cert. den.*, 325 U. S. 870. The only decision to the contrary was rendered in *Public Housing Administration v. Bristol Township*, 146 F. Supp. 859 (E. D. Pa., 1956). Except for the last-cited decision, in which a motion to vacate is now reported to have been granted, the results reached in these cases are substantially the same as that reached in *Oklahoma City v. Sanders*, 94 F. 2d 323 (C. A. 10, 1938), in which it was concluded that local requirements could not be enforced against a contractor constructing buildings in an area of partial jurisdiction.⁴¹

⁴¹ " * * * the United States may perform its functions without con-

The Congress, by section 1 (b) of the Lanham Act (42 U. S. C. 1521 (b)), had expressly authorized construction of

forming to the police regulations of a State." *Arizona v. California*, 283 U. S. 423, 451 (1931).

Local building construction laws cannot be applied to construction of buildings for the Army, irrespective of the jurisdictional status of the reservation involved. *Op. J. A. G., Army*, 1942/4225 (Sept. 14, 1942); *id.* 412.2 (Nov. 29, 1940).

The State of New York, acting through the Department of Docks of the City of New York, cannot require the Federal Government, acting through the Navy Department, to submit plans for proposed construction work on tidelands in New York harbor as would be required from an individual or corporation. *Op. J. A. G., Navy*, ND 3/N1-13 (420, 320), (May 19, 1942).

Since the United States does not exercise exclusive jurisdiction over Boulder City, Nevada, the State and its political subdivision, Clark County, may enforce local building codes with respect to non-Governmental structures; but the United States may engage in its own building activities without conforming to State regulations. *Memo from Regional Counsel, Region 3, Bureau of Reclamation, Dept. of the Interior*, to Director of Power, Boulder City, Nevada (Sept. 25, 1951).

An Illinois statute requiring that construction plans for swimming pools be approved by the State Department of Public Health, and that the work may proceed only after a permit has been issued by the Department, need not be complied with by the United States (however, a bathing beach was the immediate concern of this opinion). *Op. Sol., Dept. of Agriculture*, No. 1781 (Oct. 13, 1939).

No matter whether the United States has exclusive or proprietary jurisdiction over lands upon which substations of the Bonneville Power Administration are to be built, neither the United States nor its contractors need obtain building permits for such construction. The police regulations of a State cannot interfere with the functions of the Federal Government. A State or municipal requirement of a building permit would be an undue interference with the Federal purpose for which the land was acquired. *Memo from Review Counsel, Bonneville Power Administration, Dept. of the Interior*, to Chief, Branch of Design and Construction (Apr. 18, 1951).

Attempted regulation by a State of construction and operation of a naval magazine, which was being operated for the Navy by a private contractor, is prohibited by the Federal supremacy clause of the Constitution. *Op. J. A. G., Navy*, JAG: II: HJD: amp (June 5, 1944).

Contractors are not required to obtain village building permits for the construction of a naval ordnance plant required for the purpose of national defense where the cost of such permits would be paid by the Federal Government. *Op. J. A. G., Navy*, JAG: P: CCW: amp., SO 4950 (May 20, 1942).

A claim for the fee paid by a contractor to the State of Oregon for required inspection of liquid gas installation which the contractor pro-

the housing involved in the *City of Chester* case without regard to State or municipal ordinances, rules or regulations relating to plans and specifications or forms of contract. However, as the trial court indicated in the *Philadelphia* case (56 F. Supp. 864), such a provision was unnecessary.

The case of *Tim v. City of Long Branch*, *supra*, is the only instance which has been noted of attempted imposition, through judicial action, of zoning limitations of State or local governments on use of real property owned by the Federal Government. Other such problems have arisen, nevertheless.⁴² In a case where the Federal Government was merely a lessee of privately owned property, however, it was held that the denial by a city zoning board of an application made by the lessor for the use of a lot as a substation post office was not unconstitutional as an unlawful regulation of property of the Federal Government. *Mayor and City Council of Baltimore v. Linthicum*, 170 Md. 245, 183 Atl. 531 (1936). The matter had been considered previously by a lower tribunal,

vided for Government use may be allowed, where the Oregon statute provides for such fees to be levied on the owner of the equipment and where the contract provided that the United States should pay all taxes, etc., levied on the contractor's property in the possession of the Government, since the fee is not a tax on the United States but is a part of the contract price. *Comp. Gen. Dec.*, No. B-108379 (Sept. 16, 1952).

Under a lump-sum contract for construction of a Government hospital which provides in the specifications that the contractor shall procure all necessary permits and licenses at his own expense, but which contains no provision for an adjustment in the contract price in the event of a subsequent determination that permit fees are not payable, the Government may not deduct from the contract price the building permit fee which the contractor lawfully avoided paying to the municipality where the hospital was constructed. 34 *Comp. Gen.* 31 (1954).

⁴² Where the United States owns property in a State without having acquired exclusive jurisdiction over such property, such property remains subject to the laws of the State, except insofar as such laws interfere with the use of the property by the United States; and the enforcement of a ruling of the State Board of Health forbidding the location of cabins or camp sites within one and one-half miles of the shore line of a lake would interfere with the use to which the property may be put and the United States is not bound thereby. *Op. Sol., Dept. of Agriculture*, No. 726 (Aug. 26, 1938).

and the court invoked the rule of *res adjudicata* as to all contentions made by the property owner, including constitutional arguments. As to the contention that the application of the zoning ordinance would be an unlawful regulation of property of the United States and an unlawful interference with the mails, the court noted (183 Atl. 533):

* * * it may be observed that the property is not owned by the United States; there is only a lease limited to ten years' duration, or the duration of appropriations for rentals, and the lessee has only such property rights as may be derived from the owner. * * * Any interference of the local police regulations with the mails would be, at most, an indirect one, and to pass on the objection on that ground we should have to consider the rule and the decisions on local regulations interfering only incidentally with federal powers. *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204, 14 S. Ct. 1087, 38 L. Ed. 962; 2 Willoughby, *United States Constitutional Law*, §§ 598, 601, 602, and 605. We do not pass on it because it is foreclosed as stated.

Contractor licensing.—The United States Supreme Court has held that a State may not require that a contractor with the Federal Government secure a license from the State as a condition precedent to the performance of his contract. *Leslie Miller, Inc. v. Arkansas*, 352 U. S. 187 (1956).⁴⁸ After citing a Federal statute requiring bids to be awarded to a responsible bidder whose bid was most advantageous to the Federal Government, and after noting that the Armed Services Procurement Regulations listed criteria for determining responsibility and that these criteria were similar to those contained in the

⁴⁸ The Attorney General of the United States suggested, in 1876, in considering an injunction issued by a State court against a Federal contractor's receiving an installment of pay for his work, that no process issued under the authority of a State Government can obstruct, directly or indirectly, the operations of the Federal Government. 15 *Ops. A. G.* 524 (1876).

Arkansas law as qualifying requirements for a license to operate as a contractor, the court said (pp. 189-190):

Mere enumeration of the similar grounds for licensing under the state statute and for finding "responsibility" under the federal statute and regulations is sufficient to indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of persons and companies contracting with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder. * * *

While it appears to be the weight of authority that neither a State nor a local subdivision may impose its building codes or license requirements on contractors engaged in Federal construction, it does not follow that the contractor may ignore all State law.⁴⁴ For example, the State's laws concerning negligence would continue to be applicable, and such negligence might be predicated upon the contractor's noncompliance with a State statute relating to safety requirements. Thus, in *Stewart & Co. v. Sadrakula*, 309 U. S. 94 (1940), it was held that, under the international law rule,⁴⁵ such a State statute governed the rights of the parties to a negligence action. While this case involved an area of exclusive Federal legislative jurisdiction, that fact is not controlling on the issue concerned. Obviously the statute also would have been held applicable in the absence of legislative jurisdiction in the Federal Government.

⁴⁴ However, it has been held that local "Sunday Laws" can have no application to contracts with the Government, irrespective of the jurisdictional status of the site of their consummation. *Op. J. A. G., Army*, 1943/13467 (Oct. 2, 1943); *id.* 230.451 (July 6, 1942).

⁴⁵ See p. 156 *et seq.*, *supra*.

The Supreme Court held that the application of such safety requirements would not interfere with the construction of the building. In answer to the argument that compliance with such requirements might increase the cost of the building, the court said (p. 104), that such contention "ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference therewith through any attempted state action."

In *Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania*, 318 U. S. 261 (1943),⁴⁶ the Supreme Court said of a price regulation held applicable to a Federal contractor which would incidentally affect the Government (p. 269):

* * * We may assume that Congress, in aid of its granted power to raise and support armies, Article I, § 8, cl. 12, and with the support of the supremacy clause, Article VI, § 2, could declare state regulations like the present inapplicable to sales to the government. * * *

In the same opinion, the court said also (p. 271):

Since the Constitution has left Congress free to set aside local taxation and regulation of government contractors which burden the national government, we see no basis for implying from the Constitution alone a restriction upon such regulations which Congress has not seen fit to impose, unless the regulations are shown to be inconsistent with Congressional policy. * * *

The views expressed by the Supreme Court in this case concerning the power of Congress to create such immunity in Federal contractors were subsequently applied in *Carson v. Roane-Anderson Company*, 342 U. S. 232 (1952), in which it was held that Congress had immunized contractors of the Atomic Energy Commission from certain State taxes, and also

⁴⁶ For a discussion of this case see p. 169 *et seq.*, *supra*.

⁴⁷ See also discussion of tax liabilities of Federal contractors, p. 313 *et seq.*, *infra*.

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in *Leslie Miller, Inc. v. Arkansas*, 352 U. S. 187 (1956), in which the Supreme Court concluded that the State's regulations relating to the licensing of contractors were in conflict with the regulations established by the Department of Defense and therefore were inapplicable to a contractor with that Department.

Federal Operations Not Related to Land¹

STATE LAWS AND REGULATIONS RELATING TO MOTOR VEHICLES: *Federally owned and operated vehicles*.—In an opinion by Justice Holmes, it was concluded by the Supreme Court that a State may not constitutionally require a Federal employee to secure a driver's permit as a prerequisite to the operation of a motor vehicle in the course of his Federal employment. *Johnson v. Maryland*, 254 U. S. 51 (1920). The court said (pp. 56–57):

Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in *United States v. Hart*, Pet. C. C. 390. 5 Ops. Atty. Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment—as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. *Commonwealth v. Closson*, 229 Massachusetts, 329. This might stand on much the same footing as liability under the common law of a State to a person injured by the driver's negligence. But even the most unquestionable and most universally applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pur-

¹ See footnote 1, p. 249, *supra*.

suance of the laws of the United States. *In re Neagle*, 135 U. S. 1.

It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work and that duty it must be presumed has been performed. *Keim v. United States*, 177 U. S. 290, 293.²

Even earlier, but on similar principles, the Comptroller of the Treasury had disallowed payment of a fee for registration of a federally owned motor vehicle. 15 *Comp. Dec.* 231 (1908).

In *Ex parte Willman*, 277 Fed. 819 (S. D. Ohio, 1921), the driver of a mail truck, on a street which was a post road, was held not to be subject to arrest, conviction, and imprisonment because the lights on his truck, which were those prescribed by the regulations of the Post Office Department, did not conform to the requirements of a State statute. The court relied on *Johnson v. Maryland*, *supra*, and *Ohio v. Thomas*, 173 U. S. 276 (1899), in reaching its conclusion.

An apparently contrary conclusion was reached in *Virginia v. Stiff*, 144 F. Supp. 169 (W. D. Va., 1956), in which the question was presented as to whether State regulations as to the maximum weight of vehicles using the highways were applicable to a truck owned and operated by the Federal Government, and engaged on Federal business. In holding such

² See also *American Automobile Ins. Co., et al. v. Struce*, 218 S. W. 534 (Tex., 1920).

regulations to be applicable so as to subject the Government employee truck driver to a criminal penalty, the court stated that their purpose is to protect the safety of travellers and to protect the roads from unreasonable wear; that the State of Virginia authorizes the use of highways by overweight vehicles in case of emergency; and that the Department of Defense seeks permits from the State to authorize the passage of overweight vehicles. It appears that in this case no facts were presented to indicate whether there was any federally imposed requirement upon the driver to operate the overweight truck, the defense being based merely on Federal ownership of the truck and the fact of its being engaged on Government business.

When Federal employees have failed to comply with local traffic regulations, the courts have generally applied the test of whether noncompliance was essential to the performance of their duties. Thus, in *Commonwealth v. Closson*, 229 Mass. 329, 118 N. E. 653 (1918), it was held that a mail carrier is subject to the rules and regulations made by the street and park commissioners requiring a traveller to drive on the right side of the road and in turning to the left into another street to pass to the right of and beyond the center of the intersecting street before turning. In *United States v. Hart*, 26 Fed. Cas. 193, No. 15,316 (C. C. D. Pa., 1817), it was held that an act of Congress prohibiting the stopping of the mail is not to be so construed as to prevent the arrest of the driver of a mail carriage when he is driving through a crowded city at such a rate as to endanger the lives of the inhabitants. In *Hall v. Commonwealth*, 129 Va. 738, 105 S. E. 551 (1921), it was held that the driver of a postal truck must comply with the State's speed laws. The court emphasized that no time schedules had been established by the Post Office Department which would require excessive speed.

That a Federal employee is not immune from arrest for noncompliance with State traffic regulations where performance of his duties did not necessitate such noncompliance

is well illustrated by the following excerpt from the opinion of the court in *Oklahoma v. Willingham*, 143 F. Supp. 445 (E. D. Okla., 1956), (p. 448):

The State of Oklahoma has not only the right but the responsibility to regulate travel upon its highways. The power of the state to regulate such travel has not been surrendered to the Federal Government. An employee of the Federal Government must obey the traffic laws of the state although he may be traveling in the ordinary course of his employment. No law of the United States authorizes a rural mail carrier, while engaged in delivering mail on his route, to violate the provisions of the state law enacted for the protection of those who use the highways.

Guilt or innocence is not involved, but there is involved a question of whether or not the prosecution is based on an official act of the defendant. There is nothing official about how or when the defendant re-entered the lane of traffic on the highway. There is no official connection between the acts complained of and the official duties of the mail carrier. The mere fact that the defendant was on duty and delivering mail along his route does not present any federal question or defense under federal law. The efficient operation and administration of the work of the Post Office Department does not require a carrier, while delivering mail, to drive his car from a stopped position into the path of an approaching automobile. When he is charged with doing so, his defense is under state law and is not different from that of any other citizen.

Where, on the other hand, the Federal employee could not discharge his duties without violating State or local traffic regulations, it has been held that he is immune from any liability under State or local law for such noncompliance. Thus, in *Lilly v. West Virginia*, 29 F. 2d 61 (C. A. 4, 1928), the court

held that a Federal prohibition agent, who struck and killed a pedestrian while pursuing a suspected criminal, was excepted from limitations of speed prescribed by a city ordinance, provided that he acted in good faith and with the care that an ordinarily prudent person would have exercised under the circumstances, the degree of care being commensurate with the dangers. The court said (p. 64):

The traffic ordinances of a city prescribing who shall have the right of way at crossings and fixing speed limits for vehicles are ordinarily binding upon officials of the federal government as upon all other citizens. *Commonwealth v. Closson*, 229 Mass. 329, 118 N. E. 653, L. R. A. 1918C, 939; *United States v. Hart*, 26 Fed. Cas. No. 15,316, page 193; *Johnson v. Maryland*, 254 U. S. 51, 41 S. Ct. 16, 65 L. Ed. 126. Such ordinances, however, are not to be construed as applying to public officials engaged in the performance of a public duty where speed and the right of way are a necessity. The ordinance of Huntington makes no exemption in favor of firemen going to a fire or peace officers pursuing criminals, but it certainly could not have been intended that pedestrians at street intersections should have the right of way over such firemen or officers, or that firemen or officers under such circumstances should be limited to a speed of 25 miles, or required to slow down at intersections so as to have their vehicles under control. Such a construction would render the ordinances void for unreasonableness in so far as they applied to firemen or officers engaged in duties, in the performance of which speed is necessary; and we think that they should be construed as not applicable to such officers, either state or federal, under such circumstances. *State v. Gorham*, 110 Wash. 330, 188 P. 457, 9 A. L. R. 365; *Farley v. Mayor of New York City*, 152 N. Y. 222, 46 N. E. 506, 57 Am. St. Rep. 511; *Hubert v. Granzow*, 131 Minn. 361, 155 N. W. 204, Ann. Cas.

1917D, 563; *State v. Burton*, 41 R. I. 303, 103 A. 962, L. R. A. 1918F, 559; *Edberg v. Johnson*, 149 Minn. 395, 184 N. W. 12.

Similarly, in *State v. Burton*, 41 R. I. 303, 103 Atl. 962 (1918), it was held that a member of the United States naval reserve, driving a motor vehicle along a city street in the performance of an urgent duty to deliver a dispatch under instructions from his superior officer, is not amenable to local law regulating the speed of motor vehicles. State laws, the court held, are subordinate to the exigencies of military operations by the Federal Government in time of war.

Closely allied to these cases relating to the applicability of State and local traffic regulations to Federal employees is the case of *Bennett v. Seattle*, 22 Wash. 2d 455, 156 P. 2d 685 (1945), in which State traffic regulations were held to have been suspended as a consequence of certain action taken by the military. Under the facts of the case, it appears that the plaintiff in a negligence action was walking on the right, instead of the left, side of the street, the latter ordinarily being required by State law. The court did not regard the State law as applicable in view of the closing of the particular street to the public by Army officers. As to the Army's action, the court said (156 P. 2d 687):

The highway was closed to general public travel in December, 1941. Public authority acquiesced in the action taken by the army officers. The appellant does not question the right and power of the officers of the army to close the part of Sixteenth avenue from east Marginal way to the bridge to public travel and to admit into the closed area only such busses and automobiles of employees of the Boeing plant as they deemed advisable; but it contends that, notwithstanding this, such part of Sixteenth avenue did not cease to be a public highway and that the statutory rules of the road still applied.

* * * * *

The action taken in closing the highway to public use did not infringe upon, or interfere with, the exercise of any prerogative of sovereignty or any governmental function of the state or its legal subdivisions. The appellant, in maintaining its streets, acts in a proprietary capacity, and it acquired no right in a statutory rule of conduct by a pedestrian on the highway that would prevent its temporary suspension when such became necessary or convenient by an exercise of a war power of the kind we are now considering.*

Vehicles operated under Federal contract.—State laws which constitutionally cannot have any application to motor vehicles owned and operated by the Federal Government may, in many instances, be applicable to motor vehicles which are privately owned but which, under contract with the Federal Government, are used for many of the same purposes for which re-ally owned vehicles are used. A distinction must be made on the basis of ownership; the ownership may be of decisive significance.

Thus, it has been held that a State may tax vehicles which are used in operating a stage line and make constant use of the highways, notwithstanding the fact that they carry mail under a Federal contract; moreover, such tax may be measured by gross receipts, even though over one-half of the taxed income is derived from mail contracts. *Alward v. Johnson*, 282 U. S. 509 (1931). The Supreme Court said (p. 514):

Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely. *Railroad Co. v. Peniston*, 18 Wall. 5, 30; *Metcalf & Eddy v. Mitchell*,

* See also *King v. Edward Hines Lumber Co.*, 68 F. Supp. 1019 (D. Ore., 1946).

269 U. S. 514. The facts in *Panhandle Oil Co. v. Mississippi*, 277 U. S. 218, and *New Jersey Bell Tel. Co. v. State Board*, 280 U. S. 338, were held to establish direct interference with or burden upon the exercise of a Federal right. The principles there applied are not controlling here.

In reliance on this case, it was concluded, in *Crowder v. Virginia*, 197 Va. 96, 87 S. E. 2d 745 (1955), *app. dism.*, 350 U. S. 957, that a carrier is not exempt from a State's gross receipts tax even though, under a contract with the Post Office Department, it was engaged in the interstate carriage of mails, under direction from the Government as to routes, schedules and termini. A contractor engaged in transporting mail is not exempt from payment of State motor fuel taxes. *Op. A. G., Ill.*, p. 219, No. 2583 (Apr. 21, 1930). Nor is a contractor who is engaged in work for the Federal Government on a cost-plus-a-fixed-fee basis. *Id.* p. 252, No. 199 (Nov. 19, 1940). In *Baltimore & A. R. R. v. Lichtenberg*, 176 Md. 383, 4 A. 2d 734 (1939), *app. dism.*, 308 U. S. 525, a contractor with the Federal Government for the transportation of workmen to a Government project was held subject to State regulation as a common carrier.⁴ In *Ex parte Marshall*, 75 Fla. 97, 77 So. 869 (1918), it was held that a bus company which enters into a contract with the military to transport troops between a military camp and a city, subject to terms and conditions specified in the contract, the United States having no other interest or ownership in or control over the buses, is liable to pay a local license tax for the operation of the buses.⁵ In reliance on

⁴ See also cases cited in footnote 10, p. 180, *supra*.

The Comptroller of the Treasury held that the United States may make its own contracts for transportation unrestrained by the laws of a State as to charges therefor. The substance of this decision is that State laws governing rates to be charged by common carriers transporting property within its jurisdiction do not apply when the contract of carriage is with the United States. 15 *Comp. Dec.* 648 (1909).

⁵ Cf. *Searight v. Stokes*, 3 How. 151 (1845); *Louwein v. Moody*, 12 S. W. 2d 989 (Tex., 1929). The Attorney General of Arizona has held (opinion dated Mar. 8, 1932), that the State could require contractors engaged on work for

the decision in *Ex parte Marshall, supra*, it was held in *State v. Wiles*, 116 Wash. 387, 199 P. 749 (1921), that a contractor engaged in carrying mail for the United States within the State is not exempt from a State statute making it unlawful to operate motor trucks on the highways without first securing a license therefor, the fee varying according to the capacity of the truck. The court said that such a fee is not a direct tax on the property of the Federal Government or on instrumentalities used by it in the discharge of its constitutional functions, but at most an indirect and immaterial interference with the conduct of government business.

Even though title to a vehicle is not in the Federal Government, a State vehicle tax may not be levied on an automobile owned by a Federal instrumentality when by Federal statute the property of the instrumentality has been declared to be immune from State taxes. See *Roberts v. Federal Land Bank of New Orleans*, 189 Miss. 898, 196 So. 763 (1940).⁶ And in an early case, *United States v. Barney*, 24 Fed. Cas. 1014, No. 14,525 (D. Md., circa 1810), it was held that a Federal statute prohibiting the stoppage of the mails serves to prevent the enforcement, under State law, of a lien against privately owned horses used to draw mail carriages.

STATE LICENSE, INSPECTION AND RECORDING REQUIREMENTS: *Licensing of Federal activities.*—The case of *United States v. Murray*, 61 F. Supp. 415 (E. D. Mo., 1945), involved a holding that a local subdivision could not require an inspector employed by the Office of Price Administration

the United States in Grand Canyon National Park to obtain State motor vehicle licenses. See *Op. Sol., Dept. of the Interior* (Aug. 30, 1932).

⁶ A cost-plus-a-fixed-fee contractor may not be reimbursed amounts paid to a State and municipality for automobile license tags and title for a Government-owned automobile, being used by the contractor in connection with the contract work, in the absence of a showing as to why the automobile could not be operated without such license and why it was necessary to obtain a title. 21 *Comp. Gen.* 769 (1942).

The Attorney General of Illinois has ruled that a Federal Land Bank is not exempt from the registration requirements of the State motor vehicle law. *Op. A. G., Ill.*, p. 603, No. 3584 (Nov. 14, 1931).

to conform with local requirements covering food handlers. The court said (p. 417):

It is fundamental that the officers, agents, and instruments of the United States are immune from the provisions of a city ordinance in the performance of their duties. This principle of law, while having exceptions not here involved, applies to the ordinance alleged to have been the basis of the defendants' conduct in this case. It is the duty of the Government and its agencies to employ persons qualified and competent for their work. That duty it must be presumed to have performed, and a city cannot by ordinance impose further qualifications upon such officers and agents as a condition precedent to the performance and execution of duties prescribed under federal law.⁷

Applicability of inspection laws to Federal functions.—The United States Supreme Court has held that a State's inspection laws generally are inapplicable to activities of the Federal

⁷ Local laws respecting licensing of physicians can have no application to medical officers of the Army, irrespective of the jurisdictional status of the area upon which they are carrying out their duties, so long as they are acting within the scope of their official duties. *Op. J. A. G., Army*, 1945/2297 (Mar. 9, 1945).

A person employed by the Federal Government in doing dental work in an alien detention camp may not be required by the State to comply with its licensing requirements. *Op. A. G., Tex.*, No. 0-4764.

A State statute which provides that no person shall be permitted to project any motion picture without first obtaining a State license has no application to the United States in the conduct of its activities; therefore, an employee of the Forest Service who obtained at personal expense a State license to project motion pictures in the course of his official duties may not be reimbursed from appropriated funds. 31 *Comp. Gen.* 81 (1951).

Although an ordinance or regulation of a local fire department requires obtaining of a permit for the operation of a gasoline pump, a Federal employee whose official duties require his operation of such a pump need not stand the examination or pay the fee which are prescribed. 3 *Comp. Gen.* 683 (1924).

Plumbers engaged in installing plumbing in a Post Office for the United States are not required to procure the certificates provided for by local statute relating to the examination and licensing of plumbers. *Op. A. G., Ill.*, p. 193, No. 3191 (May 8, 1931).

FEDERAL OPERATIONS NOT RELATED TO LAND 303

Government, even though such laws may be for the protection of the general public. *Mayo v. United States*, 319 U. S. 441 (1943).⁸ In that case a State was held to be without consti-

⁸ The Government is not liable for the payment of inspection fees prescribed by municipal regulations enacted under police powers for the purpose of controlling dangerous instrumentalities in connection with property used by the Coast Guard in the exercise of governmental functions. 27 *Comp. Gen.* 232 (1947).

The powder officer for the harbor of Norfolk, Va., appointed under a State statute, has no authority over powder belonging to the Federal Government, and the United States is not liable for any charge for services performed by him. 25 *Ops. A. G.* 234 (1904).

Local law restricting the amount of gun powder that could be stored in one location could not be applied to storage under a Government contract, irrespective of the jurisdictional status of the reservation. *Op. J. A. G., Army*, 1942/5068 (Oct. 30, 1942).

New Hampshire is precluded from enforcing its laws, by periodic inspections or otherwise, in connection with the Electric Manufacturing Shop of the Portsmouth Navy Yard, although the shop is operated in a privately owned plant building. *Op. J. A. G., Navy*, SO 725213 (Aug. 27, 1942).

A city ordinance which requires the inspection of elevators cannot obligate the Government for the payment of fees for the inspection of elevators in a building leased by the Government under a lease provision that the Government will maintain and repair the premises, in the absence of a requirement in the lease obligating the Government to pay such fees as part of the rental, since the Government is not liable for the payment of inspection fees prescribed by State or municipal regulations enacted under the police power. *Comp. Gen. Dec.*, No. B-91662 (Jan. 26, 1950).

A State regulation imposing certain restrictions on the importation of alcohol and requiring an affidavit to accompany applications to import the same is not binding on the General Government and payment of notary fees for oaths administered in connection with a shipment of alcohol, the property of the United States and destined for its use, is not authorized. 24 *Comp. Dec.* 540 (1918).

The imposition of a registration fee prescribed by a State statute in connection with the use of outboard motors on boats required to be used in the discharge of authorized governmental functions constitutes an infringement of the right of the United States to conduct its activities free from State interference or control, and, accordingly, payment of such fee upon demand therefor by the State is not authorized. 27 *Comp. Gen.* 273 (1947).

Since the provision of the Chicago City Code for inspection of mechanical refrigeration systems and the issuance of a certificate of inspection upon the payment of the required fee is one of regulation, payment of such fee is not authorized in the absence of Federal statutory provision therefor. *Comp. Gen. Dec.*, No. B-91662 (Jan. 26, 1950).

The Soil Conservation Service and the Forest Service of the Department

tutional power to exact an inspection fee with respect to fertilizers which the Federal Government owned and distributed within the State pursuant to provisions of the Soil Conservation and Domestic Allotment Act. The court said (pp. 447-448):

These inspection fees are laid directly upon the United States. They are money exactions the payment of which, if they are enforceable, would be required before executing a function of government. Such a requirement is prohibited by the supremacy clause. * * * These fees are like a tax upon the right to carry on the business of the post office or upon the privilege of selling United States bonds through federal officials. Admittedly the state inspection service is to protect consumers from fraud but in carrying out such protection, the federal government must be left free. This freedom is inherent in sovereignty. The silence of Congress as to the subjection of its instrumentalities, other than the United States, to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction. *Shaw v. Gibson-Zahniser Oil Corp.*, 276 U. S. 575, 578. But where, as here, the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues.

Recording requirements.—It has also been held that the Federal Government is not required to comply with State recording requirements in order to protect its rights. *In the Matter of American Boiler Works, Inc., Bankrupt*, 220 F. 2d 319 (C. A. 3, 1955); see also *Norman Lumber Co. v. United States*, 223 F. 2d 868 (C. A. 4, 1955). In *In re Read-York, Inc.*, 152 F. 2d 313 (C. A. 7, 1945), it was held that the failure

of Agriculture are not required to submit to State inspection of their nurseries situated in Michigan or to pay fees for such inspection. *Op. Sol., Dept. of Agriculture*, No. 3572 (Sept. 12, 1941).

of the Federal Government to record a contract for the manufacture and delivery of gliders to the Army, in compliance with Wisconsin's public policy and statutes, did not prevent title from passing to the Federal Government, upon the making of partial payments, as against the manufacturer's trustee in bankruptcy. These results are in accord with an earlier decision by the United States Supreme Court, in *United States v. Snyder*, 149 U. S. 210 (1893), in which it was held that the lien imposed by Federal statute to secure the payment of a Federal tax is not subject to the requirement of a State statute that liens shall be effective only if recorded in the manner specified by the State statute. In *United States v. Allegheny County*, 322 U. S. 174 (1944), the court said (p. 183):

* * * Federal statutes may declare liens in favor of the Government and establish their priority over subsequent purchasers or lienors irrespective of state recording acts. * * * Or the Government may avail itself, as any other lienor, of state recording facilities, in which case, while it has never been denied that it must pay nondiscriminatory fees for their use, the recording may not be made the occasion for taxing the Government's property. * * *

The courts of the State of Virginia have also recognized that State registration requirements can have no application to the Federal Government. In *United States v. William R. Trigg Co.*, 115 Va. 272, 78 S. E. 542 (1912), the question was presented as to whether the Federal Government is required to comply with the State registry laws and have its contracts recorded in order to make effective the liens reserved in such contracts, as against those who have no prior liens. The court said (78 S. E. 544):

This power to contract, which is an incident of the sovereignty of the United States, and is, as stated by Judge Marshall, coextensive with the duties and powers of government, carries with it complete exemption of the

government from all obligation to comply with State registry laws, for the reason that it would grievously retard, impede, and burden the sovereign right of the government to subject it to the operation of such laws. * * *

If the states had the power to interfere with the operations of the federal government by compelling compliance on its part with state laws, such as the registry statutes, then, in the language of the Supreme Court, the potential existence of the government would be at the mercy of state legislation. * * *

While State recording requirements cannot in any way be applicable to the Federal Government, and while noncompliance therewith will not serve to dilute the rights of the Federal Government, it is clear that should the Federal Government decide to avail itself of State recording facilities it must pay to the State a reasonable fee therefor, but it cannot be subjected, without its consent, to State taxes which may be imposed upon such recordation. *Federal Land Bank of New Orleans v. Crosland*, 261 U. S. 374 (1923).⁹ In *Pittman v. Home Owners' Loan Corp.*, 308 U. S. 21 (1939), it was held that the Maryland tax on mortgages, graded according to the amount of the loan secured and imposed in addition to the ordinary registration fee as a condition to the recordation of the instrument, cannot be applied to a mortgage tendered for record by the Home Owners' Loan Corporation, in view of the provisions of the Home Owners' Loan Act which declares the corporation to be an instrumentality of the Federal Government and which provides for its exemption from all State and municipal taxes. In the course of its opinion, the court said (pp. 32-33):

⁹ It is not within the power of the legislature of a State to impose a tax upon a deed admitted to record that is executed to convey land purchased by the United States. 14 *Comp. Dec.* 256 (1907).

We assume here, as we assumed in *Graves v. New York ex rel. O'Keefe*, 306 U. S. 466, that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the congressional power and that the activities of the Corporation through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments. *McCulloch v. Maryland*, 4 Wheat. 316, 421, 422; *Smith v. Kansas City Title Co.*, 255 U. S. 180, 208, 209; *Graves v. New York ex rel. O'Keefe*, *supra*. Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect the operations thus validly authorized. "A power to create implies a power to preserve." *McCulloch v. Maryland*, *supra*, p. 426. This power to preserve necessarily comes within the range of the express power conferred upon Congress to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. I, § 8, par. 18. In the exercise of this power to protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field. *The Shreveport Case*, 234 U. S. 342, 351, 352. The exercise of this protective power in relation to state taxation has many illustrations. See, e. g., *Bank v. Supervisors*, 7 Wall. 26, 31; *Choate v. Trapp*, 224 U. S. 665, 668, 669; *Smith v. Kansas City Title Co.*, *supra*, p. 207; *Trotter v. Tennessee*, 290 U. S. 354, 356; *Lawrence v. Shaw*, 300 U. S. 245, 249. In this instance, Congress has undertaken to safeguard the operations of the Home Owners' Loan Corporation by providing the described immunity. As we have said, we construe this provision as embracing

and prohibiting the tax in question. Since Congress had the constitutional authority to enact this provision, it is binding upon this Court as the supreme law of the land. Const. Art. VI.

APPLICABILITY OF STATE CRIMINAL LAWS TO FEDERAL EMPLOYEES AND FUNCTIONS: *Immunity of Federal employees.*—It is well established that an employee of the Federal Government is not answerable to State authorities for acts which he was authorized by Federal laws to perform. In *In re Neagle*, 135 U. S. 1 (1890), it was held that the State of California had no criminal jurisdiction over an acting deputy United States marshal who committed a homicide in the course of defending a United States Supreme Court justice while the latter was in that State in the performance of his judicial functions; that a writ of habeas corpus is an appropriate remedy for freeing such employee from the custody of State authorities; and that the Federal courts may determine the propriety of the employee's conduct under Federal law.¹⁰ The court said (p. 75):

* * * To the objection made in argument, that the prisoner is discharged by this writ from the power of the state court to try him for the whole offence, the reply is, that if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if in doing that act he did no more than what was necessary and proper for him to do, he *cannot* be guilty of a crime under the law of the State of California. When these things are shown, it is established that he is innocent of any crime against the laws of the State, or of any authority whatever. There is no occasion for any further trial in the state court, or in any court. The Circuit Court of the

¹⁰ Cf. *Maryland v. Soper*, 270 U. S. 9 (1926); *Colorado v. Symes*, 286 U. S. 510 (1932).

United States was as competent to ascertain these facts as any other tribunal, and it was not at all necessary that a jury should be impanelled to render a verdict on them. * * *

The underlying constitutional considerations prompting the conclusion that a State may not prosecute a Federal employee for acts authorized by Federal law were set forth in some detail in *Tennessee v. Davis*, 100 U. S. 257 (1880). In that case it was held that a State indictment of a Federal revenue agent for a homicide committed by him in the course of his duties is removable to a Federal court. In its opinion, the court said (pp. 262-263):

Has the Constitution conferred upon Congress the power to authorize the removal, from a State court to a Federal court, of an indictment against a revenue officer for an alleged crime against the State, and to order its removal before trial, when it appears that a Federal question or a claim to a Federal right is raised in the case, and must be decided therein? A more important question can hardly be imagined. Upon its answer may depend the possibility of the general government's preserving its own existence. As was said in *Martin v. Hunter* (1 Wheat. 363), "the general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers." It can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offence against the law of the State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at once for their protection,—if their protection must be left to the action of the State court,—the operation of the general government may at any time be arrested at the will of one of its members. The legis-

lation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national government, and in obedience to its laws. It may deny the authority conferred by those laws. The State court may administer not only the laws of the State, but equally Federal law, in such a manner as to paralyze the operations of the government. And even if, after trial and final judgment in the State court, the case can be brought into the United States court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested.

We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.

The principle that a Federal official or employee is not liable under State law for acts done pursuant to Federal authorization has been applied in many instances. Thus, it has been held that a State's laws relating to homicide or assault cannot be enforced against a Federal employee who, while carrying out his duties, committed a homicide or assault in the course of making an arrest, maintaining the peace, or pursuing a fugitive. *Brown v. Cain*, 56 F. Supp. 56 (E. D. Pa., 1944); *Castle v. Lewis*, 254 Fed. 917 (C. A. 8, 1918); *Ex parte Dickson*, 14 F. 2d 609 (N. D. N. Y., 1926); *Ex parte Warner*, 21 F. 2d 542 (N. D. Okla., 1927); *In re Fair*, 100 Fed. 149 (C. C.

D. Neb., 1900); *In re Laing*, 127 Fed. 213 (C. C. S. D. W. Va., 1903); *Kelly v. Georgia*, 68 Fed. 652 (S. D. Ga., 1895); *North Carolina v. Kirkpatrick*, 42 Fed. 689 (C. C. W. D. N. C., 1890); *United States v. Fullhart*, 47 Fed. 802 (C. C. W. D. Pa., 1891); *United States v. Lewis*, 129 Fed. 823 (C. C. W. D. Pa., 1904), *aff'd.*, 200 U. S. 1 (1906); *United States v. Lipsett*, 156 Fed. 65 (W. D. Mich., 1907).

It has likewise been held that a United States marshal cannot be subjected to arrest and imprisonment by a State for acts done pursuant to the commands of a writ issued by a Federal court. *Anderson v. Elliott*, 101 Fed. 609 (C. A. 4, 1900), *app. dism.*, 22 S. Ct. 930, 46 L. Ed. 1262 (1902); *Ex parte Jenkins*, 13 Fed. Cas. 445, No. 7,259 (C. C. E. D. Pa., 1853). A State militia officer who, under the orders of a governor of a State, employs force to resist and prevent a United States marshal from executing process issued under a Federal decree is subject to punishment for violating the laws of the United States. *United States v. Bright*, 24 Fed. Cas. 1232, No. 14,647 (C. C. D. Pa., 1809). And in *United States v. Harvey*, 26 Fed. Cas. 206, No. 15,320 (C. C. D. Md., 1845), Justice Taney held that on an indictment for obstructing the mails it is no defense that a warrant had been issued under State law in a civil suit against the mail carrier.

Obstruction of Federal functions.—It has been held in a number of cases that State laws will not be applied to Federal employees or their activities where the application of such laws would serve to obstruct the accomplishment of legitimate Federal objectives. Thus, a State law prohibiting the carrying of arms may not be applied to a deputy United States marshal seeking to make an arrest. *In re Lee*, 46 Fed. 59 (D. Miss., 1891), (but this case was reversed—47 Fed. 645—on the basis of a Federal statute which limited the authority of marshals to the State for which they were appointed. Marshals now may carry firearms, nevertheless—see 18 U. S. C. 3053). A State statute providing for the punishment of one who maliciously threatens to accuse a person of a crime in or-

der to compel him to do an act has no application to a United States pension examiner who is charged with the duty of investigating fraudulent pension claims. *In re Waite*, 81 Fed. 359 (N. D. Iowa, 1897), *app. dism.*, 180 U. S. 635. Nor may a State proceed against a Federal military officer for allegedly disturbing the peace in clearing a roadway of civilians to enable a military company to proceed to a place where a National Guard recruitment program was being conducted, it has been held. *In re Wulzen*, 235 Fed. 362 (S. D. Ohio, 1916).

Nearly all the cases cited immediately above involved the release, by a Federal court, on a writ of habeas corpus, of a prisoner from State custody. On the other hand, a prisoner held pursuant to Federal authority is beyond the reach of the processes of a State for release by writ of habeas corpus. See *Ableman v. Booth*, 21 How. 506 (1859); *Tarble's Case*, 13 Wall. 397 (1871). Similarly, property obtained by a United States marshal by virtue of a levy of execution under a judgment of a Federal court may not be recovered by an action for replevin in a State court. See *Covell v. Heyman*, 111 U. S. 176 (1884). In *Ex parte Robinson*, 20 Fed. Cas. 965, No. 11,934 (C. C. S. D. Ohio, 1856), it was held that a Federal court may order the discharge of a Federal marshal who was held in State custody for contempt because of his refusal to produce certain persons named in a writ of habeas corpus issued by a State judge.

Liability of employees acting beyond scope of employment.—Federal officials and employees are not, of course, above the laws of the State. Whatever their exemption from State law while engaged in performing their Federal functions, this exemption does not provide an immunity from arrest for the commission of a felony not related to the carrying out of the functions. *United States v. Kirby*, 7 Wall. 482 (1868). In *In re Lewis*, 83 Fed. 159 (D. Wash., 1897), it was stated that a Federal officer who, in the performance of what he conceives to be his official duty, transcends his au-

thority and invades private rights, is liable to the individuals injured by his actions (however, it has been held that absent criminal intent he is not liable under the criminal laws of the State). Employment as a mail carrier does not provide the basis for an exemption from the penalty under a State statute prohibiting the carrying of concealed weapons, in the absence of a showing of "authority from the federal government empowering him as a mail carrier to carry weapons in a manner prohibited by state laws." *Hathcote v. State*, 55 Ark. 183, 17 S. W. 721 (1891). However, even when a soldier is subject to punishment by a State, for an act not connected with his duties as a soldier, when the punishment will serve to interfere with the performance of duties owed by him to the Federal Government a Federal court will require utmost good faith on the part of the State authorities, and any unfair or unjust discrimination against the offender because he is a soldier, or departure from the strict requirements of the law, or any cruel or unusual punishment, may be inquired into by the Federal courts in proceedings instituted by the soldier's commanding officer. The imposition of a sentence of sixty days for an offense which did not result in injury to person or property was held unwarranted, and the court discharged the soldier on a writ of habeas corpus. *Ex parte Schlaffer*, 154 Fed. 921 (S. D. Fla., 1907).

LIABILITY OF FEDERAL CONTRACTORS TO STATE TAXATION:
Original immunity of Federal contractors.—In *Panhandle Oil Company v. Knox*, 277 U. S. 218 (1928), it was held that a State tax imposed on dealers in gasoline for the privilege of selling, and measured at so many cents per gallon of gasoline sold, is void under the Federal Constitution as applied to sales to instrumentalities of the Federal Government, such as the Coast Guard Fleet and a veterans' hospital. In *Graves v. Texas Company*, 298 U. S. 393 (1936), the court struck down as violative of the Constitution, when applied to sales to the Federal Government, a State tax providing that, "Every distributor, refiner, retail dealer or storer of gaso-

line * * * shall pay an excise tax of six cents (\$0.06) per gallon upon the selling, distributing, storing or withdrawing from storage in this State for any use, gasoline * * *". The court held that a tax on storage, or withdrawal from storage, essential to sales of gasoline to the Federal Government, is as objectionable, constitutionally, as a tax upon the sales themselves. However, even in that day it was held that a tax was not objectionable merely because the person upon whom it was imposed happened to be a contractor of a government. *Metcalf & Eddy v. Mitchell*, 269 U. S. 514 (1926).

Later view of contractors' liability.—In the decisions rendered by the Supreme Court, beginning in 1937 to date, the earlier decisions have not been followed. New tests for measuring the validity of State taxes on Federal contractors were devised in *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937). One of the issues involved in that case was whether a gross sales and income tax imposed by a State on a Federal contractor doing work on a Federal dam is invalid on the ground that it lays a direct burden upon the Federal Government. In sustaining the validity of the tax, the court observed (1) that the tax is not laid upon the Federal Government, its property or officers; (2) that it is not laid upon an instrumentality of the Federal Government; and (3) that it is not laid upon the contract of the Federal Government. The decision in the *Panhandle* case, *supra*, was limited to the facts involved in that case. The fact that the State tax might increase the price to the Federal Government did not, the court indicated, render it constitutionally objectionable. In answer to the argument that a State might, conceivably, increase the tax from 2% to 50%, the court said (302 U. S. 161):

* * * The argument ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference therewith through any attempted state action. * * *

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In *Alabama v. King & Boozer*, 314 U. S. 1 (1941), the court not only made a further departure from the doctrine of the *Panhandle* case, but it expressly overruled the decision in that case. Involved was a sale of lumber by King & Boozer to "cost-plus-a-fixed-fee" contractors for use by the latter in constructing an army camp for the Federal Government. The question presented for decision was whether the Alabama sales tax with which the seller was chargeable, but which he was required to collect from the buyer, infringes any constitutional immunity of the Federal Government from State taxation. In sustaining the tax, the court said (pp. 8-9):

* * * The Government, rightly we think, disclaims any contention that the Constitution, unaided by Congressional legislation, prohibits a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the Government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, see *Panhandle Oil Co. v. Knox*, *supra*; *Graves v. Texas Co.*, *supra*, we think it no longer tenable. * * *

The court rejected the Government's contention that the legal incidence of the tax was on the Federal Government (p. 14):

We cannot say that the contractors were not, or that the Government was, bound to pay the purchase price, or that the contractors were not the purchasers on whom the statute lays the tax. The added circum-

stance that they were bound by their contract to furnish the purchased material to the Government and entitled to be reimbursed by it for the cost, including the tax, no more results in an infringement of the Government immunity than did the tax laid upon the contractor's gross receipts from the Government in *James v. Dravo Contracting Co.*, *supra*. * * *¹¹

Immunity of Federal property in possession of a contractor.—Where, however, the tax is on machinery owned by the Federal Government, or where the tax imposed by a State on a contractor of the Federal Government is based, in part, upon the value of the machinery which is owned by the Federal Government but which is installed in the contractor's plant, the tax is objectionable on constitutional grounds. Thus, in *United States v. Allegheny County*, 322 U. S. 174 (1944), the court, in holding such a tax to be invalid, said (pp. 182-183):

Every acquisition, holding, or disposition of property by the Federal Government depends upon proper exercise of a constitutional grant of power. In this case no contention is made that the contract with Mesta is not fully authorized by the congressional power to raise and support armies and by adequate congressional authorization to the contracting officers of the War Department. It must be accepted as an act of the Federal Government warranted by the Constitution and regular under statute.

Procurement policies so settled under federal authority may not be defeated or limited by state law. The purpose of the supremacy clause was to avoid the intro-

¹¹ In a companion case, *Curry v. United States*, 314 U. S. 14 (1941), the court upheld a use tax imposed upon the contractor. And the Attorney General of New Mexico rendered an opinion that any type of State tax might be imposed upon a Federal contractor, even though the extra cost might have to be borne by the Federal Government, so long as an area under exclusive Federal jurisdiction were not involved. *Op. A. G., N. Mex.*, No. 5347 (Mar. 28, 1951).

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duction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls. The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State. * * * ¹²

The court added (pp. 188-189):

A State may tax personal property and might well tax it to one in whose possession it was found, but it could hardly tax one of its citizens because of moneys of the United States which were in his possession as Collector of Internal Revenue, Postmaster, Clerk of the United States Court, or other federal officer, agent, or contractor. We hold that Government-owned property, to the full extent of the Government's interest therein, is immune from taxation, either as against the Government itself or as against one who holds it as a bailee.

The facts in the *Allegheny* case were distinguished from those involved in *Esso Standard Oil Co. v. Evans*, 345 U. S. 495 (1953), in which the Supreme Court sustained a State tax upon the storage of gasoline; the fact that the gasoline was owned by the Federal Government did not, the court held, relieve the storage company of the obligation to pay the tax. The court said (pp. 499-500):

This tax was imposed because Esso stored gasoline. It is not, as the *Allegheny County* tax was, based on the worth of the government property. Instead, the amount collected is graduated in accordance with the exercise of Esso's privilege to engage in such operations;

¹² Cf. *American Motors Corp. v. City of Kenosha*, 274 Wis. 315, 80 N. W. 2d 363 (1957).

so it is not "on" the federal property as was Pennsylvania's. Federal ownership of the fuel will not immunize such a private contractor from the tax on storage. It may generally, as it did here, burden the United States financially. But since *James v. Dravo Contracting Co.*, 302 U. S. 134, 151, this has been no fatal flaw. We must look further, and find either a stated immunity created by Congress in the exercise of a constitutional power, or one arising by implication from our constitutional system of dual government.

Neither condition applies to the kind of governmental operations here involved. There is no claim of a stated immunity. And we find none implied. The United States, today, is engaged in vast and complicated operations in business fields, and important purchasing, financial, and contract transactions with private enterprise. The Constitution does not extend sovereign exemption from state taxation to corporations or individuals, contracting with the United States, merely because their activities are useful to the Government. We hold, therefore, that sovereign immunity does not prohibit this tax.

Economic burden of State taxation on the United States.—The Supreme Court's emphasis of the legal incidence test, as distinguished from the rejected test of the economic consequences, is best illustrated in *Kern-Limerick, Inc. v. Scurlock*, 347 U. S. 110 (1954). In that case, the court held that a State tax of 2% of the gross receipts from all sales in the State could not be applied to transactions whereby private contractors procured two tractors for use in constructing a naval ammunition depot under a cost-plus-a-fixed-fee contract which provided that the contractor should act as a purchasing agent for the Federal Government and that title to the purchased articles should pass directly from the vendor to the Federal Government, with the latter being solely obligated to

pay for the articles. The Supreme Court said (pp. 122-123):

We find that the purchaser under this contract was the United States. Thus, *King & Boozer* is not controlling for, though the Government also bore the economic burden of the state tax in that case, the legal incidence of that tax was held to fall on the independent contractor and not upon the United States. The doctrine of sovereign immunity is so embedded in constitutional history and practice that this Court cannot subject the Government or its official agencies to state taxation without a clear congressional mandate. No instance of such submission is shown.

Nor do we think that the drafting of the contract by the Navy Department to conserve Government funds, if that was the purpose, changes the character of the transaction. As we have indicated, the intergovernmental submission to taxation is primarily a problem of finance and legislation. But since purchases by independent contractors of supplies for Government construction or other activities do not have federal immunity from taxation, the form of contracts, when governmental immunity is not waived by Congress, may determine the effect of state taxation on federal agencies, for decisions consistently prohibit taxes levied on the property or purchases of the Government itself.

Legislative exemption of Federal instrumentalities.—The Supreme Court, in the first of the two excerpts quoted above from its opinion in *King & Boozer*, made reference to legislative exemption. Such legislative exemption of instrumentalities of the Federal Government has been sustained in two relatively recent cases. In *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U. S. 95 (1941), the Supreme Court held that statutory exemption from State taxation was a good defense to a State's attempt to collect a sales tax on lumber purchased by the Federal Land Bank for repairs to a farm

which it had acquired by foreclosure. The Supreme Court said (pp. 102-103):

Congress has the power to protect the instrumentalities which it has constitutionally created. This conclusion follows naturally from the express grant of power to Congress "to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. I, § 8, par. 18." *Pittman v. Home Owners' Loan Corp.*, 308 U. S. 21, 33, and cases cited. We have held on three occasions that Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of federal credit agencies. *Smith v. Kansas City Title & Trust Co.*, *supra*; *Federal Land Bank v. Crosland*, 261 U. S. 374; *Pittman v. Home Owners' Loan Corp.*, *supra*. * * *

Similarly, in *Carson v. Roane-Anderson Company*, 342 U. S. 232 (1952), the Supreme Court held that, under the provisions of the Atomic Energy Act, Tennessee could not enforce its sales tax on sales by third persons to contractors of the Atomic Energy Commission. In sustaining the immunity provided by the Atomic Energy Act, the Supreme Court said (pp. 233-234):

* * * The constitutional power of Congress to protect any of its agencies from state taxation (*Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21; *Federal Land Bank v. Bismarck Co.*, 314 U. S. 95) has long been recognized as applying to those with whom it has made authorized contracts. See *Thomson v. Pacific R. Co.*, 9 Wall. 579, 588-589; *James v. Dravo Contracting Co.*, 302 U. S. 134, 160-161. Certainly the policy behind the power of Congress to create tax immunities does not turn on the nature of the agency doing the work of the Government. The power stems from the power

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to preserve and protect functions validly authorized (*Pittman v. Home Owners' Corp.*, *supra*, p. 33)—the power to make all laws necessary and proper for carrying into execution the powers vested in the Congress. U. S. Const., Art. I, § 8, cl. 18. * * *

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