

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

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 very 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, within 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 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 State and Texas combined. The Department of Agriculture control 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.

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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 non-lawyer 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 States, 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 States 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 courses 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 harassment 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 their 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 non-acceptance of jurisdiction came about because of a general theory in law that a proffered benefit is accepted unless its non-acceptance 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 statute 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 states 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, 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 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.

Retrocession 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 retrocession, 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 retrocession 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 1949. 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 retested 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 State 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 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 possess, by whichever method acquired, all the authority of the State, and in which the State concerned has not reserved to itself the right 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

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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 areas 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 when the State concerned has reserved to itself the right to exercise, by itself or concurrently with 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.

BASIC CHARACTERISTICS OF THE SEVERAL  
CATEGORIES OF LEGISLATIVE JURISDICTION

Effects of varying statutes.--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 not 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

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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 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 there over 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 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 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 not 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

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, 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 distinguish 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.

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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 legislation 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 court, 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.

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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 attorney 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 apart 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 State 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