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JURISDICTION OVER LANDS OWNED BY THE UNITED STATES WITHIN THE STATE OF WASHINGTON

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PART I

THE SUBJECT IN GENERAL

Among the unique characteristics of our federal system of government is the concept of the dual sovereignty of the national and state governments over land, things, and persons located within the boundaries of the states. In addition to its position and rights as ultimate sovereign over all territory within its borders, the United States is also a corporate body politic and as such can make contracts, and can hold property, both real and personal. Under this power to own property in its own right the United States has become a great landed proprietor, owning many tracts of land within the exterior boundaries of the states, and it is this fact which gives rise to the problems of jurisdiction and control with which this paper is concerned.

The normal situation under the pattern of dual sovereignty by the federal and state governments is that which exists when a private person owns land within a state. In such a case the power of the federal government is comparatively small and is strictly limited by the Constitution. The furthest departure from this "norm" is found in cases where the federal government owns land within a state and exercises exclusive jurisdiction over it; here the state is completely ousted of jurisdiction, and there is a small "federal island" within the boundaries of the state. Between these two points there are three intermediate variations; hence the intra-state lands owned by the federal government may be divided into four classes on the basis of the amount of control that that gov-

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\*U. S. v. Burrill, 78 Atl. 568 (Me., 1910). It may be that the power of the United States to hold property is derived solely by implication from Art. IV, § 3, cl. 2 of the Constitution, which gives Congress "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. S." And see Ashwander v. Tenn. Val. Auth., 297 U. S. 288, 338 (1935), holding that the method of disposing of government property must be one adopted in the public interest.
ernment exercises over them. I. Land owned by the United States as a proprietor, but not devoted to any public purpose. II. Land owned by the United States as a proprietor and used for a purpose appropriate to the functions of the federal government. III. Land owned by the federal government, and over which it exercises exclusive jurisdiction except for certain powers which the state reserved to itself when it ceded jurisdiction. IV. Land owned by the United States, and over which it exercises exclusive jurisdiction.

CLASS I. LAND OWNED BY THE UNITED STATES, BUT NOT DEVOTED TO ANY PUBLIC PURPOSE.

In its capacity as a body politic the United States has much the same power to acquire property as has any corporation. It can receive it as a gift from a private person; or from a state; it can take it by foreclosure when it was held as security for a debt; it can purchase it at a tax sale for delinquent federal taxes; or it can take it by devise from a private person, so long as the state law does not prohibit such devises. In none of these cases is it necessary that the federal government intend to devote the land to a public purpose. Such acquisitions of land by the United States are, however, rare; and the greatest part of this first class is composed of public lands of the United States to which the federal government reserved title, but not jurisdiction, in the Acts of Congress admitting states to the Union. Upon the admission of the states these lands became integral parts of the several states, with the federal government occupying the position of a mere proprietor.

Over all the areas in this class the jurisdiction of the state is complete, except that it "does not extend to any matter not consistent with the power of the United States to protect its lands, to control

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2For this basic classification I am indebted to Mr. H. R. Fields, the author of an excellent comment on Jurisdiction Over Nationally Owned Areas Within the States, 24 Calif. L. Rev. 573 (1936).
5Neilson v. Lagow, 12 How. 98 (U. S., 1851).
8U. S. v. Fox, 94 U. S. 315 (1877).
their use, and to prescribe in what manner others may acquire rights in them. Thus the state cannot tax such lands, and its law cannot affect title to them. The federal government may provide that such lands be kept unfenced, and that there shall be no interference with free passage over them. Once Congress has outlined its broad policy, it may confer power on the proper federal officers to regulate details. However, "the police power of the state extends over the federal public domain, at least where there is no legislation by Congress on the subject," and Congress cannot use its power as proprietor to destroy the "essential uses of private property" located on the public lands. The state alone has jurisdiction over ordinary crimes committed on such lands, and the state law of persons and things is the law therein. The federal government, of course, has power to punish violations of such regulations as it may make pursuant to its power to protect and control its lands, and such state laws as conflict with these regulations must yield to them.  

**Class II. Land Owned by the United States and Devoted to a Public Purpose.**

When any of the lands in the first class are devoted by the United States to a purpose appropriate to the functions of the federal government they fall into the second class. In addition, lands which are purchased for a public purpose and without any consent or cession of jurisdiction by the state, and lands which are condemned by the United States through an exercise of its right of eminent domain, to which condemnation the state in no way

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2. Van Brocklin v. Tenn., 117 U. S. 151 (1885) (Cf. Forbes v. Gracey, 94 U. S. 762 (1876)); Wisconsin Central R. Co. v. Price County, 133 U. S. 496 (1890); Page v. Pierce County, 25 Wash. 6, 64 Pac. 801 (1901); Wash. Const., Art. XXVI.
12. 41 U. S. C. A. § 14: "No land shall be purchased on account of the United States except under a law authorizing such purchase."
consents, form a part of this class. The lands included in these first two classes have in common the characteristic that the control exercised by the federal government over them does not depend upon the consent of the states within which they are located; these rights of ownership and control either are attributes of the United States as a sovereign or are granted to it by Article IV, Section 3, Clause 2 of the Constitution.\(^\text{23}\)

The jurisdiction exercised by the federal government over the areas in this class is similar to that which it has with respect to lands in Class I, except that, in addition to the restriction that the state cannot interfere with the proprietary rights of the national government, there is the further limitation that the state can do no act which will embarrass the federal government in the exercise of the powers and functions incident to the public purpose to which the lands are devoted.\(^\text{24}\) The land remains part of the state, and the state has, except for the two restrictions just noted, complete jurisdiction over the land, and the things and persons upon it. The state may not tax the land,\(^\text{25}\) nor any federal instrumentality upon it,\(^\text{26}\) and there is authority for the proposition that it may not require federal employees living on such lands to do acts which would hinder their effectiveness as servants of the United States.\(^\text{27}\) Otherwise the civil laws and the civil jurisdiction of the state control persons and things on the land, and the criminal

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\(^\text{23}\) U. S. 567 (1935). Dismissed at request of petitioner, 297 U. S. 726 (1936). (A low cost housing and slum clearance project is not a public purpose sufficient to justify condemnation, by the federal government, of private land within a state.) The federal courts have jurisdiction of such condemnation proceedings. Kohl v. U. S., \textit{supra.}

\(^\text{24}\) See Note 1, \textit{supra.}


\(^\text{26}\) Cases cited in note 11, \textit{supra.}

\(^\text{27}\) But see Rainier Nat. Park Co. \textit{v. Henneford,} 182 Wash. 159, 45 P. (2d). 617 (1935) (Park Co. held liable to pay a state occupation tax although it contended that it was a federal instrumentality); Silas Mason Co. \textit{v. State Tax Comm.,} 188 Wash. 98, 61 P. (2d) 1269 (1936); and James v. Dravo Contracting Co., 302 U. S. 134 (1937) (Held, a contractor engaged in building locks and dams for the federal government on land belonging to the United States is not such a federal agent or instrumentality as to escape a state tax laid on gross income. Four of the justices dissented.) \textit{Cf., Panhandle Oil Co. v. Miss.,} 277 U. S. 218 (1927) (A sales tax levied by the state on a sale made to the United States for the use of the Coast Guard and a Veterans' Hospital held to be an improper burden on the federal government even though the seller paid the tax.) See generally on this point, Stokes, \textit{State Taxation and the New Federal Instrumentalities,} 22 Iowa L. Rev. 39 (1936).

\(^\text{28}\) Pundt \textit{v. Pendleton,} 167 Fed. 997 (D. C. N. D. Ga., 1909) (An army teamster living on a fort in Georgia cannot be compelled by Georgia to work on state roads.) Johnson \textit{v. Maryland,} 254 U. S. 51 (1920). (A post office employee driving a post office truck on a post road in performance of his duty cannot be penalized by the state for failure to procure a state license to drive.)
jurisdiction of the state is exclusive except where it conflicts with some federal regulation necessary to the proper administration of the area. Accordingly the current state law of contracts, torts, etc., is in force within the area; a state sales tax on private sales therein should be valid; and special state statutes, such as a workmen's compensation act, should apply, at least to private persons residing upon the tract.

Just what is a "public purpose" sufficient to put federally owned lands into this second class is a point apparently not considered in the cases. The concept of a public purpose in the law is exceedingly elastic, and one who seeks a "general rule" seeks in vain. However, there is no reason to suppose that the courts will be hampered by the absence of a precise definition in deciding whether or not the federal government has devoted its lands to a purpose sufficiently "public" to warrant placing the lands in this second class, as the restrictions on the state are slight, and the power given the federal government is reasonable and proper. Hence it is probable that lands set aside for national recreational parks, national military parks, national cemeteries, and national monuments fall within this category.

CLASS III. LAND OWNED BY THE UNITED STATES AND OVER WHICH IT EXERCISES EXCLUSIVE JURISDICTION EXCEPT FOR CERTAIN POWERS RESERVED BY THE STATE.

It is impossible to consider the problems of jurisdiction and control presented when lands fall into this third category without first briefly surveying the entire field covered by the third and fourth classes.

The United States Constitution provides that, "The Congress shall have the 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, dockyards, and other needful buildings." When the state gives unqualified consent to the purchase of land by the federal government for any of the purposes prescribed in the Constitution the jurisdiction of the United States becomes, ipso facto, exclusive, without any other act by the state. Until recently there was reason to believe that any attempt by a state to reserve any jurisdiction over such lands (except the right to serve process within the area for acts done beyond the boundaries thereof) would be void; but in James v. Dravo Contracting Co., the United States Supreme Court held that, when consenting to a purchase by the federal government, a state can reserve such "concurrent jurisdiction as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition."

The United States may also acquire exclusive jurisdiction over land owned by it within a state by an express cession of jurisdiction by the state, provided that the United States devotes such land to a purpose within its powers to exercise exclusive jurisdiction. And when a state thus cedes jurisdiction it can likewise reserve to itself any jurisdictional powers, and can attach to its cession any conditions, not inconsistent with the federal government's power to control the land with respect to the purposed use. Thus the United States gets exclusive jurisdiction except for certain powers which the state sees fit to reserve to itself. The lands

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3Art. I, § 8, cl. 17.


302 U. S. 134 (1937). Held, under the statute quoted (Michie's W. Va. Code 1937, § § 3, 4), West Virginia can tax the gross income of a contractor engaged in constructing locks and dams on land owned by the United States within the boundaries of West Virginia, because the state had reserved that power.


over which federal and state control is thus divided comprise the third class of areas owned by the United States.

The idea that a state could cede any part of its jurisdiction to the United States except by consent to purchase as provided in the Constitution is a comparatively recent development and was first expressed by Mr. Justice Field in *Fort Leavenworth R. Co. v. Lowe.* There are references in earlier cases to "cession of jurisdiction," and many of the state acts consenting to the purchase of land by the United States "ceded" jurisdiction, but all these were references to the cession which occurred when the state consented to purchase, and the view which prevailed before the *Fort Leavenworth R. Co.* case was that the state had no power to cede its jurisdiction over land within its borders except by consenting to the purchase by the United States of land to be used for one of the purposes set out in the Constitution.

The principle of express cession is now firmly established in the law, but it opens two questions of considerable interest. First: Are there any limits to the power of a state to cede its jurisdiction to the United States? Suppose, for example, that a state desires to cede to the United States complete jurisdiction over all the lands within its borders owned by the federal government, but not devoted to any public purpose. No case has come to hand precisely on this point, but the validity of such a cession is doubtful, because the state has no power, under our system of government, to cede jurisdiction over such lands. If the state and the United States were independent sovereigns, I take it that the cession would be valid. But the two are not independent of one another, and their dealings must be conducted in a manner fitted to carry out the purposes of the Constitution. In the *Fort Leavenworth R. Co.* case the Supreme Court was of the opinion that the state could cede its jurisdiction over land to be used for a public purpose, because such cession would be for the benefit of the state. Now, if the benefit that will accrue to the state from the national government's

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Art. I, § 8, cl. 17.
114 U. S. 525, 540, 541 (1884).
Cases cited in note 35, supra.
This problem must be approached from the angle of the state's power to cede jurisdiction, because the federal government has power to exercise the jurisdiction if it can secure it. It is now settled that the Constitution does not limit the sovereignty nor the external functions of the United States. U. S. v. Curtiss Wright Export Corp., 299 U. S. 304 (1936).
114 U. S. 525, 541 (1884).
use of the land for a public purpose is the fact which gives the
state power to cede away its jurisdiction, then the state can have
no power to cede jurisdiction over land which is not to be used
for a public purpose, as it is clear that the use of federal land for a
non-public purpose will not benefit the state.

The character of the "public purpose" sufficient to support an
express cession of jurisdiction has not yet been clearly pointed out.
The remarks of Mr. Justice Field, just discussed above, seem to
indicate that the Supreme Court was then of opinion that the
purpose must be one of those enumerated in Article I, Section 8,
Clause 17 of the Constitution. But in the case of In re Kelly a
lower federal court expressly stated that a state could cede
jurisdiction over land to be used for a public purpose, although
that purpose was not one of those set out in that clause. Reason-
ably, the only limit should be that the purpose must be appropriate
to the exercise of the functions given to the federal government by
the Constitution. Upon this premise, the cessions by various states
of exclusive jurisdiction over national parks can be sustained.

The second question raised by the principle of express cession of
jurisdiction is: What powers can the state reserve, and what con-
ditions can it attach to the cession, when it cedes jurisdiction to the
United States? The general principle is that it can reserve any
jurisdiction not inconsistent with the power of the federal govern-
ment to control the area for the purpose for which jurisdiction
was ceded, and what reservations are consistent with this power
will depend to some extent, of course, upon the particular use to
be made of the land. The right to serve civil and criminal process
within the federal area for acts committed outside it is almost
always reserved to the state. The right to tax private property
located on the land over which jurisdiction is ceded may be reserved
by the state in the act of cession. The reservation of this right is
regarded as compatible even with the exclusive jurisdiction of the United

"71 Fed. 545, 550 (C. C. D. Wis., 1895). See also Yosemite Park &
"Cases cited in note 36, supra. This principle has now been extended
to cover cessions by consent to purchase. James v. Dravo Contracting
"Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525, 533 (1884); Conces-
sions Co. v. Morris, 109 Wash. 46, 186 Pac. 655 (1919); Ryan v. State,
188 Wash. 115, 61 P. (2d) 1276 (1936). The reservation of this right is
regarded as compatible even with the exclusive jurisdiction of the United
"Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525, 542 (1884); Benson
v. U. S., 146 U. S. 325 (1892); Williams v. Arlington Hotel Co., 22 F.
(2d) 669 (C. C. A. 8th, 1927); St. Louis-San Francisco R. Co. v. Satter-
field, 27 F. (2d) 536 (C. C. A. 8th, 1928).
"U. S. v. Unzeuta, 281 U. S. 138 (1929). This, however, does not give
the state jurisdiction over the roads opened. People v. Hillman, 246 N. Y.
have been attempts by the states to reserve to residents of ceded lands the right to vote in state elections, and, of course, a state may make such a reservation if it wishes to do so, inasmuch as a state may enfranchise even an alien. However, most state constitutions provide that voters must be residents of the state, and one residing within such an area is not a resident of the state.

When Virginia deeded to the United States the land for Fortress Monroe it also ceded its jurisdiction over the land, with the proviso that if the United States appropriated the lands to any purpose other than that of a fort the lands should revert to Virginia. This reverter proviso was held to be a valid reservation by the state. So far as the jurisdictional point is concerned, however, such a condition is not particularly important because the rule seems to be that the jurisdiction ceded to the United States will lapse if the federal government ceases to use the land for the purpose for which jurisdiction was ceded. It is interesting also to observe that the United States may re-cede to the state all the jurisdiction given it by the state, and this regardless of whether or not it has ceased to use the property for the public purpose originally contemplated. The consent of the state is not necessary to the validity of this recession of jurisdiction, the theory being that the jurisdiction of the United States is merely a suspension of that of the state.

The cession of jurisdiction by a state is regarded as in the nature of a contract. Hence the United States must accept the cession.

467, 159 N. E. 400 (1927); Baker v. State, 47 T. C. R. 482, 83 S. W. 1122 (1904).

Sinks v. Reese, 19 Ohio St. 306 (1869); Foley v. Shriver, 81 Va. 668 (1886); State v. Willett, 117 Tenn. 334, 97 S. W. 299 (1906); Note 20 Harv. L. Rev. 497 (1906).

Wash. Const., Amendment 2 and Amendment 5.

Sinks v. Reese, 19 Ohio St. 306 (1869); Lowe v. Lowe, 150 Md. 592, 133 Atl. 729 (1926). (An army officer and his wife residing on a military reservation are not residents of the State of Maryland, and hence the state courts have no jurisdiction to divorce them.) Accord, Dicks v. Dicks, 177 Ga. 379, 170 S. E. 245 (1933). The Lowe case is noted in 36 Yale L. J. 146; 40 Harv. L. Rev. 130; 11 Minn. L. Rev. 74.


Pt. Leavenworth R. Co. v. Lowe, 114 U. S. 525, 542 (1884); Arlington Hotel Co. v. Fant, 278 U. S. 439 (1929); Renner v. Bennett, 21 Ohio St. 431 (1871); LaDuke v. Melin, 45 N. D. 349, 177 N. W. 673 (1920).

State ex rel. Cashman v. Board of Commissioners, 153 Ind. 302, 35 N. E. 809 (1899); Renner v. Bennett, 21 Ohio St. 431 (1871). In 1935 Congress passed acts expressly re-ceding to the states any jurisdiction theretofore taken by the United States over lands acquired for low cost housing, slum clearance, resettlement, or rural rehabilitation projects. 49 Stat. 2025; 49 Stat. 2035 (1935).

Renner v. Bennett, 21 Ohio St. 431 (1871).

In re Ladd, 74 Fed. 31 (C. C. D. Neb., 1896).
However, the acquisition of control is regarded as beneficial; so the acceptance will be presumed. As a result of this contractual theory the rule is settled that the state alone cannot alter the division of power once the cession has been made and while the United States continues to use the land for the purpose for which jurisdiction was ceded.

When the purpose for which the land is to be used by the federal government is not one of the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution, it has been argued that the state did not cede exclusive jurisdiction unless Congress demanded it or unless the state expressly stated that the jurisdiction was to be "exclusive"; that inasmuch as "rights of sovereignty are never to be taken by implication" the United States gets only such jurisdiction as is necessary to carry out its purpose, when the state cedes only "jurisdiction". However, the great majority of such acts expressly cede "exclusive jurisdiction" and then proceed to make reservations.

It frequently happens that the federal government does not use all of a ceded area for a public purpose. Thus it may allow an hotel to be built on land primarily used as a fort. The rule presently is that such areas are not to be divided, and that, where the area is used primarily for a public purpose, the use of a small part of it for a non-public purpose is immaterial; the jurisdiction of the United States is the same over the entire area.

When the state cedes to the United States exclusive jurisdiction over a tract of land, that land ceases to be a part of the state, and this is so even though the state reserved the right to serve process or the right to tax or the right to open roads. Unless the state reserved the right to tax, it has no power to tax private property

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5In re Ladd, 74 Fed. 31 (C. C. D. Neb., 1896).


5In re Kelly, 71 Fed. 545 (C. C. D. Wis., 1895); People v. Mouse, 259 Pac. 762 (Cal., 1927). For subsequent opinion, see 203 Cal. 728, 265 Pac. 944 (1928).


located within the boundaries of the ceded territory. Inasmuch as the area is not a part of the state, the state has no more right, without an express reservation of that right, to tax income earned upon it by a citizen of another state than it would have to tax income earned by such person in a foreign country. Similarly it should have no power to tax a sale made within the territory, at least where the taxing statute applies only to sales made "within" the state. The state has no criminal jurisdiction over ceded territory, because a criminal act done thereon is not done "against the peace and dignity" of the state; nor does the state have any civil jurisdiction over persons, land, and things located upon the area ceded.

We have seen that when the state cedes to the United States exclusive jurisdiction over land to be used for a federal purpose, even though the state may make certain reservations compatible with the power of the federal government to control the area, the land ceases to be a part of the state, and the state law no longer prevails therein. But there must be some law in force upon such land. Manifestly it is within the power of Congress to legislate upon this subject, and in the field of criminal law Congress has handled the situation adequately. Section 272 of the Federal Criminal Code makes that code applicable to offenses committed on lands under the exclusive jurisdiction of the United States, and it seems that this includes lands within this third class. To round out the pattern of the criminal law Congress has from time to time enacted the so-called "assimilative crimes acts." These acts, in effect,
make the criminal law of the state within which the federal area is located extend to offenses committed on such area, which offenses are not expressly covered by the Federal Criminal Code. The jurisdiction of the state is in no wise extended; it is as though Congress had enacted a whole group of minor penal statutes to apply to areas within its executive jurisdiction. Accordingly, state penal statutes enacted after the last assimilative crimes act do not apply to the federal lands.

In the field of ordinary civil law, however, Congress has done very little for the lands within its exclusive jurisdiction; and, as the state law, as such, does not apply, these areas have become a sort of no-man's land in the law. In the case of Chicago, Rock Island & Pac. R. R. Co. v. McGlinn Mr. Justice Field laid down a principle which has had a great effect on the status of the private law applicable to intrastate areas within the exclusive jurisdiction of the United States. The defendant's railroad ran through Fort Leavenworth, a military reservation, jurisdiction over which the state of Kansas had ceded to the United States, reserving only the right to serve process and to tax certain private property on the tract. Before Kansas had passed this act of cession there was in force in the area a Kansas statute making railroad companies liable for injuries to livestock which strayed onto an unfenced right-of-way. After the cession, plaintiff's cow, not realizing the furore she was about to cause, wandered upon defendant's track on the military reservation and was killed by a train. The Supreme Court held that the Kansas statute was still in force on the ceded tract, because it was a "municipal law" and was not affected by a transfer of jurisdiction. This holding was an application of the general principle of public law that the law which regulates the intercourse and general conduct of individuals remains in force until abrogated or altered by the new sovereign. The rule thus established has been carefully followed in later cases and is now well settled.
It is clearly a reasonable rule, for without it the ordinary conduct of individuals residing on intrastate land under the exclusive jurisdiction of the United States would be governed solely by the common law, but it has the unfortunate result of leaving these areas under an antiquated legal system while the people of the surrounding lands make progress in the law. No doubt, the sensible thing is for Congress to enact "civil assimilation acts" similar to those which seem to work so well in the field of the criminal law.80

Although the state has no jurisdiction over the territory under the exclusive aegis of the federal government, one must remember that the state's jurisdiction over the inhabitants of such territory is not entirely inhibited. When a person comes upon the soil of a state, he is normally within its jurisdiction. This fact is not particularly important in the law of crimes, because the fixed rule of public law is that one sovereign will not enforce the criminal law of another;81 nor is it important in the case of the so-called "local actions", where the jurisdiction over the action depends upon the wrong's having been committed upon land within the territory over which the jurisdiction of the court extends.82 But when a defendant commits a wrong of a transitory character—as a breach of contract or a negligent invasion of plaintiff's right to be secure in his person—then the plaintiff may sue the defendant wherever he can find him.83 Thus if the defendant negligently injures the plaintiff while on a federal area, the plaintiff can sue the defendant in a state court, if he can serve him upon state lands. The state court will have jurisdiction of both parties and can proceed to judgment—the law applied will, of course, be that in force over the federal area. If the state reserved to itself in the act of cession the right to serve process for transitory wrongs committed on the federal lands the plaintiff could even serve the defendant on the federal area and sue him in a state court. The usual reservation, however, is of the right to serve process for acts done outside the federal area.84


80See 37 YALE L. J. 796, 803 (1928). See also 45 Stat. 54 (1928) (State law of right of action for wrongful death extended to federal areas); and 49 Stat. 1938 (1935) (States given right to extend their industrial insurance programs over federal areas.)

81Restatement, Conflict of Laws, § 427, § 610.


83Danielson v. Donmopray, 57 F. (2d) 565 (D. C. D. Wyo., 1932); Madden v. Arnold, 47 N. Y. S. 757 (1897); Norfolk & P. B. L. R. Co. v. Parker, 152 Va. 454, 147 S. E. 461 (1929); 32 American L. Rev. 78 (1898).

CLASS IV. LAND OWNED BY THE UNITED STATES AND UNDER ITS EXCLUSIVE JURISDICTION.

The United States can acquire exclusive jurisdiction over land within a state in three ways. First, it may, when it reserves title to public lands in an enabling act, expressly reserve exclusive jurisdiction. Apparently this device is seldom resorted to, but it seems to be a perfectly legitimate one. The Congress has the power to admit new states into the Union, but there is nothing in the Constitution which compels it to do so. The forming of states from the territory of the United States rests in the discretion of Congress, and hence it may leave any area under territorial status as long as it may see fit.

Secondly, the United States may receive exclusive jurisdiction, over land to which it holds title, by an express cession from the state, provided that it devotes the land to a purpose within its powers to exercise exclusive jurisdiction.

The third, and most common, device by which the United States may acquire exclusive jurisdiction over intrastate land is by a purchase of such land with the consent of the legislature of the state, as provided for in the Constitution. When this method is employed, the courts require a strict compliance with the terms of the Constitution. The word "purchase" is not used in its common law sense as a word of art, but means an actual purchase for a consideration. The consent of the state must be given through the state legislature only, and not, for example, by a convention of the people of the state. The United States must use the land "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." The phrase "other needful buildings" is, of course,
open to a variety of constructions. For example, one may argue
that the rule of *ejusdem generis* applies and that hence the phrase
refers only to such unenumerated structures as are necessary
under the war power of the federal government. The courts, how-
ever, have put a broader construction upon the language so that
it covers "all structures and places necessary for carrying on the
business of the national government." Just how far the Supreme
Court will allow this broad language to extend remains to be seen.
Suppose that the federal government purchased land for a national
recreational park, and the state consented to the purchase. Would
the United States acquire exclusive jurisdiction thereby? It would
seem a fantastic construction to hold that the presence of a small
administration building could place several square miles of land
under the exclusive jurisdiction of the United States simply be-
cause the state consented to the purchase of the land. One must
remember, however, that the state could later expressly cede ex-
nclusive jurisdiction over land to be so used and that it might do so
with reservations in the case of a national park. The question of
what constitutes a needful building is becoming increasingly im-
portant as the federal government continues to expand its field of
activity, because the states will probably be reluctant to cede away
exclusive jurisdiction over areas from which large tax revenues,
from the taxation of private persons and business can be secured.
This point is illustrated by two decisions of the Supreme Court of
Washington relating to the Grand Coulee Dam Project.

When the state consents to a purchase of land to be used for
one of the purposes set out in the Constitution it may, logically,
reserve any powers compatible with the federal government's nec-
essary jurisdiction. For many years the only reservation that was
recognized as valid was that of the power to serve civil and crim-
inal process within the area for acts done outside the boundaries
thereof, and this reservation was commonly made. From the

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*U. S. v. Tucker, 122 Fed. 518, 522 (D. C. W. D. Ky., 1903). See also,
(C. C. W. D. Mo., 1889) (post office buildings); Arlington Hotel Co. v.
Fant, 278 U. S. 439 (1929) (military hospital at a hot spring); 26 Ops.
Atty. Gen. 289 (1907) (reservoirs, aqueducts, and roadways appurtenant
to the water supply system of Washington, D. C.); James v. Dravo
Contracting Co., 58 Sup. Ct. 208 (1937) (locks and dams); In re Kelly, 81
Fed. 645 (C. C. D. Wis., 1895); and People v. Mouse, 259 Pac. 762 (Cal.,
1927) (a soldiers' home is not a "needful building"); but see subsequent
opinion as to exclusive jurisdiction: 203 Cal. 782, 265 Pac. 944 (1928).
Contra: Sinks v. Reese, 19 Ohio St. 306 (1889); Foley v. Shriver, 81 Va.
568 (1886).

*Silas Mason, Inc. v. State Tax Commission, 188 Wash. 93, 61 P. (2d)
1269 (1936); and Ryan v. State, 188 Wash. 115, 61 P. (2d) 1276 (1936).

*Art. I, § 8, cl. 17.

*Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525 (1884); Chi. R. I.
& Pac. R. Co. v. Mcgillin, 114 U. S. 542 (1884); Western Union Co. v.
earliest period in our history as a nation many statesmen have thought that the national government must have exclusive jurisdiction over forts, magazines, arsenals, dock-yards, and other needful buildings in order to perform its functions upon such lands. To insure that the United States shall have jurisdiction Congress has provided that no public money shall be expended upon any such land "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." The Attorneys General have rendered several opinions on the validity of the reservations by states of certain powers over these areas in the state acts consenting to purchase. They have been of the opinion that the following attempted reservations fail to meet the requirements of the act of Congress: a reservation by Georgia of its civil and criminal jurisdiction over persons in territory required for the erection of a Federal Building; a reservation by Illinois of the right to administer its criminal laws upon land acquired for a Federal Building; and a reservation by Kansas of "concurrent jurisdiction" over sites acquired for federal buildings. But in the latest decision on the subject, James v. Dravo Contracting Co., the United States Supreme Court expressly decided that in consenting to the federal government's purchase of land for "needful buildings" the state may reserve to itself such concurrent jurisdiction over the lands purchased as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition. The court said that it was unable to reconcile the implication that the state could reserve no jurisdiction with the freedom of the state and its admitted authority to refuse or qualify cessions of jurisdiction when purchases were made without its consent. The four justices who dissented upon another ground expressed no opinion upon this


WASH. CONST., Art. XXV, reserves the right to serve civil process for acts done inside the reservations as well as outside.

The Federalist No. 43 (Madison). An adverse criticism of this view is expressed by G. N. Lieber, Cessions of Jurisdiction by States to the United States, 32 AM. L. REV. 78 (1888).


302 U. S. 134 (1937).
The power of the state to reserve jurisdiction in a consent to purchase statute is thus considerably broadened. There may, however, still be improper reservations, and their exact effect has never been authoritatively decided. It may be contended that an improper reservation in an act of consent renders the whole act nugatory because the consent of the state must be given freely. But, upon the hypothesis that consent once given is conclusive, any attempt by the state to reserve powers incompatible with the necessary jurisdiction of the national government is void.

It is settled law that, when the United States has exclusive jurisdiction over land within the exterior boundaries of a state, that land is not a part of the state at all. The state has no power to tax persons residing on the land; nor any power to tax property situated on the land; nor any power to tax income earned, by a non-resident of the state, upon that land; nor any power, under a sales tax on sales made within the state to tax sales made upon the land. The criminal laws of the state do not extend to offenses committed upon federal land, except where the assimilative crimes acts so extend them, and even then they are not extended through

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100 See note 26, supra.
106 Surplus Trading Co. v. Cook 281 U. S. 647 (1929); Concessions Co. v. Morris, 109 Wash. 46, 186 Pac. 655 (1919).
107 Winston Bros. Co. v. State Tax Comm., 156 Ore. 505, 62 P. (2d) 7 (1936); Atkinson v. State Tax Comm., 156 Ore. 61, 62 P. (2d) 13 (1936). The tax in these two cases was an excise tax on the privilege of doing business in Oregon, but it was measured by income.
108 See cases cited in note 65, supra.
any power of the state.\textsuperscript{100} The state has no power to extend its civil law over a federal area,\textsuperscript{110} and state laws passed after the federal government secured exclusive jurisdiction will not apply unless Congress re-enacts them to apply within the area.\textsuperscript{111}

The civil law of the state in force when the United States acquired exclusive jurisdiction is still the law within the tract where it is consistent with the federal law and where it has not been changed or abrogated by Congress.\textsuperscript{112} Congress also has the power to adopt for places under its exclusive authority such provisions of a state’s private law as presently exist.\textsuperscript{113}

The people who reside upon land under the exclusive jurisdiction of the United States are not residents of the state for any purpose.\textsuperscript{114} If the right to vote in state elections depends upon residence in the state, these people cannot vote;\textsuperscript{115} they cannot send their children to state supported schools unless the state permits it;\textsuperscript{116} they are not ""inhabitants"" of a town and, hence, are not entitled to poor relief;\textsuperscript{117} they cannot take advantage of the state’s machinery for the securing of legal rights in cases such as divorce,\textsuperscript{118} guardianship, adoption, and lunacy, in which the state’s jurisdiction depends upon their residence. When a resident of such land dies thereon, and his estate consists wholly of personality


\textsuperscript{110}Arlington Hotel Co. v. Fant, 278 U. S. 439 (1929); Williams v. Arlington Hotel Co., 22 F. (2d) 669 (C. C. A. 8th, 1927).


\textsuperscript{113}See Murray v. Gerrick Co., 291 U. S. 315 (1933). In 1928 Congress adopted, for areas under its exclusive jurisdiction, the law of right of action for wrongful death then current in the state within whose borders the federal area was situated. 45 STAT. 54 (1928).

\textsuperscript{114}Story, THE CONSTITUTION (5th ed., 1891) § 1227.

\textsuperscript{115}Sinks v. Reese, 19 Ohio St. 306 (1869); In re Opinion of the Justices, 1 Metc. 580 (Mass., 1841).

\textsuperscript{116}In re Opinion of the Justices, 1 Metc. 580 (Mass., 1841); see Laws, Wash. (Extraordinary Session) 1925, c. 93, by which Washington admitted to state public schools, without payment of tuition, children residing in United States military, naval, or lighthouse reservations or national parks.

\textsuperscript{117}In re Opinion of the Justices, 1 Metc. 580 (Mass., 1841).

\textsuperscript{118}Low v. Lowe, 150 Md. 592, 138 Atl. 729 (1926); 36 YALE L. J. 146; 40 HARV. L. REV. 130; 11 MINN. L. REV. 74.
located on the reservation, the problem of probating the estate arises. The federal courts have no probate jurisdiction; hence, if any probate is to be had, the state courts must provide the machinery. But the state courts have no jurisdiction over a wholly extra-state estate of a non-resident, and a court is under a duty to refuse, upon its own motion if need be, to adjudicate a matter over which it has no jurisdiction. There seems to be no way out of this cul-de-sac at present, except for the state courts to ignore their lack of jurisdiction and proceed with the probate of such estates as a matter of expediency.\footnote{See In re Grant's Estate, 144 N. Y. S. 567 (1913).}

It is thus apparent that the inhabitants of land under the exclusive jurisdiction of the national government are sometimes placed in embarrassing positions. On the other hand, they are exempt from state taxation and from certain other burdens which residence in a state entails;\footnote{See Storaasli v. Minnesota, 283 U. S. 57 (1930). (Plaintiff resided in Fort Snelling, an area under the exclusive jurisdiction of the United States. Hence he was neither a resident of Minnesota nor a resident of any other state and was compelled to pay a privilege tax for operating his car on Minnesota roads, under circumstances under which neither a resident of Minnesota nor of any other state would have had to pay the tax.)} so perhaps they do not feel that their lot is such a hard one.\footnote{This statement is unsupported by authority. The curious may interview the unfortunate Lowe and Dicks families which the callous States of Maryland and Georgia left in "holy deadlock" because, as the parties lived in forts, Maryland and Georgia had no jurisdiction to divorce them. Notes 117 and 51, supra.}

## PART II

### FEDERAL LANDS WITHIN THE STATE OF WASHINGTON

When the State of Washington was admitted to the Union in 1889 the United States was the owner of vast tracts of public land within the borders of the new state. In the Enabling Act\footnote{225 STAT. 676, § 4 (1889).} Congress provided that the constitutional convention should provide, "by ordinances irrevocable without the consent of the United States, and the people of said state," that the people inhabiting the state agreed to disclaim all right and title to the unappropriated public lands lying within its boundaries, and to all Indian lands lying within those limits,\footnote{The Act also provided that Indian lands should remain under the absolute jurisdiction and control of Congress. Note 85, supra. Inasmuch as the exercise of jurisdiction over Indian reservations depends not only on the character of the land, but also on the race of the individuals to be affected by the regulation in question, I shall make no effort to cover the status of Indian lands. See Brown, The Indian Problem and the Law, 39 Yale L. J. 307 (1930); Brown, The Taxation of Indian Property, § 516.} and that no taxes should be imposed
by the state on lands or property belonging to or which might thereafter be purchased by the United States or reserved for its use. Article XXVI of the Constitution of the State of Washington embodies the compact between the United States and the people of Washington as required by the Enabling Act. Accordingly, the United States was left as proprietor over all the unappropriated public lands within the state. The great bulk of these vast tracts has since been formed into Forest Reserves and National Forests by Acts of Congress and by Executive Proclamations. The creation of a National Forest or a Forest Reserve upon land already owned by the United States or acquired by it through an exchange of similar lands has very little effect on the problem of jurisdiction. The regulations incident to the cutting of timber, the preservation of game and fish, the prevention of fires, and the preservation of the navigability of streams are all such as the United States has power to make under its rights as proprietor. National Forest land is reserved from entry by settlers, and the proprietary regulations are more numerous than they are over unappropriated public lands; but the land is still a part of the state, its residents are still citizens of the state, and the state law is in force over the area except where it conflicts with the rules and regulations of the United States.

There are two National Monuments in the state of Washington. The Mt. Olympus National Monument was established within the

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15 MINN. L. REV. 182 (1930); Houghton, The Legal Status of Indian Suffrage in the United States, 19 CALIF. L. REV. 507 (1931). And see Silas Mason Co. v. Tax Commission, 302 U. S. 186 (1937) ("But with respect to such lands [Colville Indian Reservation] exclusive legislative authority would be obtained by the United States only through cession by the State.")

127 STAT. 1063 (1893) (Pacific Forest Reserve); 29 STAT. 896 (1897) (Mt. Rainier Forest Reserve); 29 STAT. 901 (Olympic Forest Reserve); 29 STAT. 903 (Priest River Forest Reserve in Washington and Idaho); 29 STAT. 904 (Washington Forest Reserve); 34 STAT. 3288 (1906) (Colville Forest Reserve); 34 STAT. 3010 (Wenaha Forest Reserve in Washington and Oregon); 36 STAT. 202 (1910) (Kaniksu National Forest in Washington and Idaho); 36 STAT. 227 and 272 (Chelan National Forest); 36 STAT. 220 and 227 (Wenatchee National Forest). In 1910 Congress passed an act providing that, "Hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created in the State of Washington, except by an Act of Congress." 36 STAT. 848 (1910).

1241 STAT. 1366 (1921) authorizes the Secretary of the Interior to exchange certain land in Rainier National Forest for other lands suitable for a National Forest.

1248 STAT. 400 (1934) authorizes the President to establish fish and game sanctuaries in the National Forests. The jurisdiction of the states is not to be altered without their legislative consent.

12See the Conservation Act, 36 STAT. 961 (1911), 43 STAT. 1215 (1924), 16 U. S. C. A. § 480. See also Nickell v. Dept. of Labor and Industries, 164 Wash. 589, 3 P. (2d) 1005 (1931). (State Workmen's Compensation statute held to cover one employed by a contractor engaged in constructing a bridge for the federal government within Rainier National Forest.)
Olympic National Forest by President Theodore Roosevelt to preserve and protect "certain objects of unusual scientific interest, including several glaciers, and the region which from time immemorial has formed the summer range and breeding grounds of the Olympic Elk (cervus roosevelti), a species peculiar to these mountains and rapidly decreasing in numbers." The Whitman National Monument was established in 1935 in memory of Marcus Whitman and his wife. These two areas are similar to national forests except that any use of the land which interferes with its preservation and protection as a National Monument is forbidden.

These National Forests and National Monuments fall within the second class of intrastate lands owned by the United States; they are devoted to a public purpose, but there has been no cession whatsoever of state jurisdiction.

In 1899 Congress set aside part of the Mt. Rainier Forest Reserve as Rainier National Park and placed it under the control of the Secretary of the Interior. In 1901 the legislature of the State of Washington ceded to the United States "exclusive jurisdiction" over "all the territory that is now or may hereafter be included in that tract of land in the State of Washington set aside for the purposes of a national park and known as the Rainier National Park; saving, however, to the said state, the right to serve civil and criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park." In 1916 Congress accepted this cession and recognized the rights that the state had reserved to itself. Accordingly, Rainier National Park is no longer a part of the state of Washington and is an area falling within the third class of lands owned by the United States. The Attorneys General of the State of Washington have recognized this fact in several opinions holding that the state's jurisdiction and state laws do not extend over the area in the park. The Attorneys General have

1323 STAT. 993 (1899).
1324 LAWS, Wash. 1901, p. 192; REM. REV. STAT. § 8110.
1325 STAT. 243 (1896); 16 U. S. C. A. § 95.
construed the state's reservation of the power to tax to mean that it can tax not only private property and persons in the park, but also that the state automobile license tax and the state taxes on gasoline sales should be collected within the boundaries of the park. The state gasoline tax, however, is levied on gasoline sold "within the state," and the ruling as to this tax may be questioned. Although the state may have the power to levy a tax on private sales made within the park; yet, a statute which covers only sales made within the state does not in terms cover sales made within the park, because that area is no longer a part of the state. Perhaps, however, this literal construction was not intended by the legislature.

Article XXV of the Constitution of the State of Washington gives the consent of the state "to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tract or parcels of land as are now held and reserved by the United States for the purpose of erecting thereon forts, magazines, arsenals, dock-yards, 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": "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." This article is difficult to interpret; it purports to be a consent of the state as indicated in Article I, Section 8, Clause 17 of the United States Constitution, but it is not a consent to purchase, because purchase is not mentioned in it, and it is not a consent by the legislature of the state. However, it has the appearance

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136 Ops. Atty. Gen. 1923, p. 87 (distributors selling liquid fuel within park must pay the state tax); Ops. Atty. Gen. 1931, p. 5 (a person is not entitled to a refund of a gasoline tax on gasoline used in trucks operated entirely within boundaries of the park); Ops. Atty. Gen. 1933, pp. 48, 49 ("Transportation between points within the park and points outside of the park but within the state may be interstate for some purposes, but is intrastate insofar as the taxing power of the state is concerned.")

137 See Laws, Wash. 1921, p. 670, and REM. REV. STAT. § 8328.

138 But in a recent case a lower federal court held that the Rainier National Park Co. must pay sales, occupation, and highway transportation taxes because the phrase "within the state" means "within the geographical boundaries of the state". Rainier Nat. Park Co. v. Martin, 18 F. Supp. 451 (D. C. W. D. Wash., 1937). For the same result on a different ground see the same case in 23 F. Supp. 60, affirmed 302 U. S. 661 (1937).

139 See note 89, supra.

140 The consent, to be valid under Art. I, § 8, cl. 17 of the Constitution, must be made by the state legislature and not by a convention of the people thereof. 12 Ops. Atty. Gen. 428 (1868).
of a cession of exclusive jurisdiction to the United States, and the reservation of the right to serve process should be valid so long as it does not interfere with the power of the national government to control the area. Although the article is not, in terms, a cession, it is certainly one in spirit, and there should be no objections to construing it as such. But it refers only to such lands, held for the purposes enumerated, as the United States owned at the time the state constitution became effective.

The most important law of this state relative to the jurisdiction of the United States was passed by the legislature in 1891. The first part of this statute is a consent by the legislature to the acquisition by purchase or by condemnation by the United States of any tract of land within the boundaries of the state "for the sites of locks, dams, piers, break-waters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers and harbors of this state or bordering thereon, or for the sites of forts, magazines, arsenals, docks, navy-yards, naval stations, or other needful buildings authorized by any act of Congress." The consent is given in accordance with Article I, Section 8, Clause 17 of the United States Constitution. The second part of the statute cedes to the United States the jurisdiction of the state over all such lands "as may have been or may be hereafter acquired by purchase or condemnation, or set apart by the general government for any or either of the purposes before mentioned." Over all the areas thus acquired or set aside, under both parts of the act, the state reserves to itself the right to serve civil and criminal process "against any person charged with crimes committed, or for any cause of action or suit accruing without the bounds of such tract."

Under this statute, as soon as the federal government purchases or condemns a tract of land to be used for one of the purposes enumerated in Article I, Section 8, Clause 17 of the Constitution, it secures exclusive jurisdiction over it. Hence the national government has exclusive control over all forts, magazines, arsenals, dock-yards, armories, military stations, naval stations, torpedo bases, military hospitals, lighthouses, Coast Guard stations, federal office buildings, post offices, court houses, land offices, weather bureaus, penitentiaries, and customs houses—in short, over all structures which may come under the head of "other needful buildings"—which it has now established or may hereafter

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14^See note 45, supra.
142^Laws, Wash. 1891, c. 18, p. 31; Rem. Rev. Stat. § 5108. See also Laws, Wash. 1890, p. 459.
143^See note 92, supra.
establish on lands acquired by purchase or condemnation. Nor can it be controverted that it has the same jurisdiction by cession from the state, over such areas, as it held for any of the purposes enumerated in the 1891 Act of the legislature of Washington at the time that act became effective. It may be argued that, by this act, the state did not cede "exclusive jurisdiction", and that hence, under the rule of In re Kelly,\(^4\) the United States received, over such areas as are not used for "needful buildings", only such jurisdiction as is necessary to carry out the purpose for which the land is to be used. As to this, it may be answered that the result of the Kelly case is improper: for, if it be the law, then an act ceding merely "jurisdiction" is simply a declaration of what has happened without the act of the legislature. Rather, it would seem that a statute ceding "jurisdiction" and reserving only the right to serve process shows a clear intent to cede "exclusive jurisdiction".

It is manifest that the "consent to purchase" part of the 1891 statute can apply only to such areas as are to be used for "needful buildings". Nevertheless, the consent to purchase obviously covers all future acquisitions within its scope, because a consent may properly look to the future.

But suppose that the United States does not purchase or condemn a tract of land, but sets it aside from the public domain and devotes it to one of the purposes listed in the 1891 statute. The consent to purchase clause cannot apply. Can the cession of jurisdiction part of the act operate upon land set aside after 1891? This is doubtful, for how can a cession be made to apply to the future? If it is argued that a consent to purchase act is only a form of cession and that it can apply to future acquisitions, the answer is that the Constitution stands over the state and the United States and provides that, when the United States purchases land to be used for a "needful building" and the state has consented to such purchase, the federal government then has the power to exercise "exclusive legislation". A cession, however, is not provided for in the Constitution—the automatic quality is lacking—and hence it seems as improper to hold that a state can cede away its jurisdiction over land to be set aside in the future as it would be to sustain a deed by a private person presently granting to the grantee all such of the grantor's land as the grantee should put to certain uses in years to come.

The most recent cases in which the effect of this statute was considered are Silas Mason Co. v. Tax Commission\(^1\) and Ryan v.

\(^{14}\)71 Fed. 545 (C. C. D. Wis., 1895).

\(^{15}\)188 Wash. 98, 61 P. (2d) 1269 (1936), and 302 U. S. 186 (1937).
State of Washington. Plaintiffs in both cases were non-resident contractors engaged, by contract with the United States, in performing certain work upon, and wholly within, the land owned by the United States for the Grand Coulee Dam Project within the exterior boundaries of the state of Washington. The state imposed upon plaintiffs its occupation tax for doing business "within the state". In suits for recovery of taxes paid and for injunctions against further impositions of this tax, plaintiffs contended, inter alia, that the area upon which they were working was under the exclusive jurisdiction of the federal government and not a part of the state at all. The Supreme Court of Washington, speaking through Judge Steinert in the Ryan case, decided this point adversely to plaintiffs. The court admitted that locks and dams might be "needful buildings" and that the 1891 statute gave the state's consent to the federal government's purchase of land for needful buildings within the meaning of the United States Constitution, but it was of opinion that the state never intended to cede away its jurisdiction over such an area as that included in the dam project, because it did not "clearly appear that the land is to be used by the United States for a constitutional or governmental purpose."

When these cases were decided by the United States Supreme Court the decisions of the state court were affirmed. The court, speaking through Mr. Chief Justice Hughes, was somewhat doubtful of the propriety of the state court's construction of the 1891 statute, but went on to observe, "Considering the scope of the federal undertaking we cannot say that this construction of Section 8108 (Rem. Rev. Stat.) is inadmissible." Since the decision was based upon this construction of the statute it was not necessary to decide the question of whether or not a cession, other than by consent to purchase, can apply to the future, and this question is still open. It should be observed that the United States Supreme Court also decided that the federal government does not have exclusive jurisdiction over river bed, shore, and upland lands acquired from the state, inasmuch as in neither state nor federal statutes is there any provision for exclusive federal jurisdiction.

The state could, of course, expressly cede jurisdiction to the
United States over the land included in the Grand Coulee Project, but when there is no necessity for the federal government's having exclusive jurisdiction, and when the area is one in which so much activity is going on and from which large tax revenues from private persons engaged in business can be secured, it is hardly likely that the state will do so—certainly it will be reluctant to give up its power to tax private persons and property.

Inasmuch as the improvement and protection of rivers and harbors is a proper function of the national government and not an encroachment on the rights of the state, such improvements as the Lake Washington Ship Canal may be regarded as “needful buildings”149. Accordingly, such land as was purchased or condemned by the federal government for the Lake Washington canal and locks came immediately under the exclusive jurisdiction of the United States, by virtue of the Constitution and of the 1891 Act of the Washington legislature. But such land as was set aside by the United States or as was devoted by the state for canal purposes is, presumably, not affected by the 1891 statute, because it was not purchased, and because it was set aside or received after 1891. And the state has never made an express cession of jurisdiction over those lands: the only acts of the legislature relative to that canal have been a grant to the United States of a right of way over state lands150, a grant of the right to place the canal, locks, etc., upon the proposed site151, and an act giving the City of Seattle power to convey certain shore lands to the United States for the canal152. Therefore, as to the lands included in the canal improvement, the federal government has exclusive jurisdiction over the lands acquired by purchase or condemnation for canal purposes, but has only such jurisdiction as is necessary to maintain and operate the canal over all the other land included in that project. Part of that area, then, falls within the fourth class of federally owned land, and part falls within the second class.

When the War Department decided to establish a military reservation at what is now Fort Lewis, Washington, the state legislature authorized Pierce County to condemn land for that purpose and to donate it to the United States. As the national government thus would not acquire that land by purchase or by its own condemnation proceedings, the Legislative Act of 1891 would not cover the acquisition. But the legislature rose to the occasion and expressly ceded to the United States exclusive jurisdiction, reserving only the right to serve process, with the proviso that a deed and a map

150Laws, Wash. 1907, c. 216, p. 498.
151Laws, Wash. 1901, c. 6, p. 7.
be recorded in the Pierce County Auditor’s office. This proviso gave rise to a rather interesting case. Before the map and deed had been recorded, one Pothier committed an alleged murder on the land and was indicted under the Federal Penal Code, which applies only to areas under the exclusive jurisdiction of the United States. The Circuit Court of Appeals for the First Circuit held that the indictment was bad, because Camp Lewis was not yet under the exclusive jurisdiction of the federal government, and Pothier was released. Observe, however, that there is a presumption in such cases that the deeds, plats, or maps have been properly recorded. The land included within the boundaries of Fort Lewis falls within the fourth class of areas owned by the United States; the jurisdiction of the federal government is exclusive, except for the state’s reserved right to serve process, and the land is not a part of the state of Washington.

When the United States ceases to use land over which the state has ceded jurisdiction, the jurisdiction previously ceded reverts to the state. Suppose, however, that the United States has exclusive jurisdiction over a tract of land, which it purchased for a “needful building”, by virtue of the state’s consent to the purchase; when it ceases to use this land for the needful building for which it was purchased, does the jurisdiction revert to the state? It seems that, in policy, it should, for there is no reason for the national government’s having exclusive jurisdiction over an area no longer used for a public purpose, although still owned by the United States. But the jurisdiction is acquired by operation of the Constitution, and no provision is made therein for any reverter. So far as the writer can ascertain, this point has never been squarely decided, and it appears to be a fairly close question. Of course the United States can give up its jurisdiction by an express Act of Congress or by a sale of the land to a private person or to a corporation. In 1922 and 1924 Congress conveyed to the State of Washington the title to certain military reservations on Fidalgo, Hope, Whidby, Skagit and San Juan Islands, reserving the right of user for military, naval, or lighthouse purposes, the land so conveyed to be

164 Pothier v. Rodman, 291 Fed. 311 (C. C. A. 1st, 1923). The proceeding was one for a writ of habeas corpus. The Supreme Court later reversed the Circuit Court of Appeals on the ground that the question of whether or not the locus of the alleged crime was within the exclusive jurisdiction of the United States was one to be determined by the court where the indictment was found. Rodman v. Pothier, 264 U. S. 399 (1923).
167See 5 STAT. 520 (1819). Secretary of War authorized to sell useless forts, “and the jurisdiction which had been specially ceded [i. e. by consent to purchase] for military purposes to the United States by a state over such sites shall thereafter cease.”
used for public parks. In effect these statutes divested the United States of its jurisdiction and restored that of the state, since the United States must own the land in order to have jurisdiction over it.

CONCLUSION

The problem of jurisdiction over federally owned lands within the borders of the states is peculiarly important in the state of Washington, as the national government is the owner of a large part of the land in this state and devotes that land to all sorts of purposes. Although the general law relative to the situation is fairly well settled, there are many discrepancies among the cases, and it is hoped that the courts will, in the future, correct these inconsistencies.

The principal burden of solving the problems created by the existence within the borders of the states of areas under the exclusive jurisdiction of the United States rests upon Congress and upon the legislatures of the several states. The law in these areas dealing with the ordinary civil rights, powers, and duties of private persons should be brought up to date by Congress, either by direct legislation or by statutes adopting for those areas the current state law relative to civil matters. The latter device—"assimilative civil law acts"—would afford the better solution.

The fact that the federal courts have jurisdiction over residents of lands under the exclusive control of the national government may well result in injustice, because the jurisdiction of those courts is so hedged about by statutes. Suppose, for example, that a resident of such an area commits a tort or breaches a contract and that the only remedy of the injured person is given to him by an Act of Congress relative to the private law in force upon that land. So long as the wrongdoer remains upon the federal area, the plaintiff can get relief only through the federal courts, and, as this is a case arising "under a law of the United States", the plaintiff must show that the "matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00". If he cannot show this jurisdictional amount, he will be without a remedy. Such difficulties as this can be corrected by an amendment to the Judicial Code expressly recognizing and providing for the peculiar situations which arise because of the presence of these "islands" of sole federal control. It is submitted, however, that it would be better simply to give aggrieved persons the right to sue in state courts, but it is doubtful if Congress alone can grant this right, as such, because it would be inconsistent with the ex-

exclusive jurisdiction given the United States. It is suggested that Congress re-cede to the states civil jurisdiction over private persons residing on areas over which it is not necessary that the federal government have such powers. Of course where the state cedes jurisdiction by an express statute or by a consent to purchase act, it can reserve the power to serve its civil process for acts done inside or outside the federal reservation, and perhaps this proviso should always be included in these statutes.

In short, there is no real reason in policy for denying to private persons residing upon land under the exclusive jurisdiction of the national government the numerous benefits and privileges enjoyed by residents of the states, nor is there any good reason for allowing those persons to escape the burdens of modern civil life. It is within the power of Congress and the state legislatures to remedy the defects and uncertainties of the system as it now exists, and it is hoped that future legislation will solve the present difficulties and prevent, as nearly as possible, the occurrence of new ones in years to come.