JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

REPORT OF THE

INTERDEPARTMENTAL COMMITTEE

FOR THE STUDY OF

JURISDICTION OVER FEDERAL AREAS

WITHIN THE STATES

PART I

The Facts and Committee Recommendations

Submitted to the Attorney General and transmitted to the President

April 1956

Reprinted by Constitutional Research Associates
P.O. Box 550
So. Holland, Illinois 06473

The White House,
Washington, April 27, 1956

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

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

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

Sincerely,
DWIGHT D. EISENHOWER.

The Honorable Herbert Brownell, Jr.,
The Attorney General, Washington, D.C.

LETTER OF TRANSMITTAL

Office of the Attorney General,

Washington, D.C., April 27,1956.

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

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

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

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

Respectfully,
Herbert Brownell, Jr.,
Attorney General

THE PRESIDENT,
THE WHITE HOUSE.

LETTER OF SUBMISSION

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

APRIL 25, 1956

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

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

Respectfully submitted,

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ROBERT L. FARRINGTON,
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PARKE M. BANTA,
General Counsel,
Department of Health, Education, and Welfare.
EDWARD E. ODOM,
Retired as General Counsel,
Veterans' Administration.

PREFACE

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

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

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

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

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

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

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

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

Resolved by the 49th annual meeting of the National

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

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

-

September 1955

IX

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CONTENTS

Page
Committee and staff membership..... II
President's letter of approval..... III
Attorney General's letter of transmittal..... IV
Committee's letter of submission..... VII
Preface..... VII

CHAPTER I

Outline of study..... 1

CHAPTER II

History and development of Federal legislative jurisdiction:
Origin of article I, section 8, clause 17, of the Constitution. 7
Early practice concerning acquisition of legislative jurisdiction 7
Acquisition of exclusive jurisdiction made compulsory..... 8
State inroads upon acquisition of exclusive jurisdiction..... 9
Retrocession by the Federal Government..... 10
Exclusive jurisdiction requirement terminated..... 10
Subsequent developments..... 10

CHAPTER III

Definitions--Categories of legislative jurisdiction:
Exclusive legislative jurisdiction..... 13
Concurrent legislative jurisdiction..... 14
Partial legislative jurisdiction..... 14
Proprietorial interest only..... 14

CHAPTER IV

Basic characteristic of the several categories of legislative jurisdiction:
Effect of varying statuses..... 15
Exclusive legislative jurisdiction..... 15
Concurrent legislative jurisdiction..... 19
Partial legislative jurisdiction..... 20
Proprietorial interest only..... 21

CHAPTER V

Laws and problems of States related to legislative jurisdiction:
Use of material from state sources..... 23
Provisions of State constitutions and statutes relating to jurisdiction..... 23
Expressions by State attorneys general respecting Federal exercise of jurisdiction..... 24

Difficulty of determining jurisdictional status of Federal areas..... 25
Taxing problems..... 26
Other problems..... 27

Summary..... 27

CHAPTER VI

Jurisdictional preferences of Federal agencies: Page
Basic groupings of jurisdictional preferences..... 33
Agencies preferring exclusive or partial jurisdiction..... 33
Agencies preferring concurrent jurisdiction..... 34
Agencies preferring a proprietorial interest only..... 34
Lands held in other than the preferred status..... 35
Difficulty of obtaining information concerning jurisdictional statue..... 36

CHAPTER VII

Analysis of Federal agency preferences:
A. General: Determinations concerning jurisdictional needs.. 39

B. Views of agencies desiring exclusive or partial jurisdiction:
State interference with Federal functions..... 39
Direct interference..... 40
Indirect interference..... 43
Security..... 46
Uniformity of administration..... 48
Miscellaneous..... 48
C. Problems connect with exclusive (and certain partial) jurisdiction:
State services generally..... 49
Fire protection..... 50
Refuse and garbage collection and similar services..... 51
Law enforcement..... 52
Notaries public and coroners..... 53
Personal rights and privileges generally..... 53
Voting..... 54
Education..... 55
Miscellaneous rights and privileges..... 56
Benefits dependent on domicile..... 57
D. Summary as to exclusive and partial jurisdiction..... 58
E. Views of agencies preferring concurrent jurisdiction

Agencies preferring such jurisdiction..... 59
Advantages and disadvantages..... 60
General Services Administration..... 60
Department of Health, Education, and Welfare..... 61
Department of the Navy..... 61
Department of Justice (Bureau of Prisons)..... 62
Department of Commerce (Bureau of Public Roads)..... 62
Department of the Interior..... 63
F. Views of agencies desiring a proprietorial interest only:
Federal lands largely in proprietorial interest status. 64
Agencies preferring proprietorial interest..... 64
Characteristics of proprietorial interest status..... 65
Experience of Atomic Energy Commission..... 65
Experience of other agencies..... 66
Summary as to proprietorial interest status..... 66

CHAPTER VIII

Conclusions and recommendations:
General observations..... 69
Principal Committee conclusions..... 70
Requirement for adjustments in jurisdictional status..... 70
Retrocession of unnecessary Federal

jurisdiction..... 71
Acceptance by States of relinquished jurisdiction..... 72
Rule-making and enforcement authority..... 73
Jurisdiction of United states commissioners..... 75
Miscellaneous Federal legislation..... 76
State legislation..... 76
Uniform State cession and acceptance statute..... 77

Summary..... 79

Appendix A

Summary of Federal landholding agencies' data related to jurisdiction:
Department of the Treasury..... 82
Department of Defense:
a. Department of the Army..... 84
b. Department of the Navy..... 89
c. Department of the Air Force..... 94
Department of Justice..... 96
Department of the Interior..... 98
Department of Agriculture..... 101
Department of Commerce..... 103
Department of Health, Education, and Welfare..... 105
Atomic Energy Commission..... 107
Central Intelligence Agency..... 108

JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

CHAPTER I

OUTLINE OF STUDY

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

In an ensuing study of the State supreme court decision with a view toward applying to the Supreme Court of the United States for a writ of certiorari, the Department of Justice ascertained that State laws and practices relating to the subject of Federal legislative jurisdiction are very different in different States, that practices of Federal agencies with respect to the same subject 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 States and Texas combined. The Department of Agriculture controls more than three fourths as much land as the Department of the Interior. Altogether 23 agencies of the Federal Government control property owned by the United States outside of the District of Columbia. Any survey relating to these lands is therefore bound to constitute a considerable project.

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

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

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

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

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

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

Appendix B contains the texts of all constitutional provisions and major statutes of general effect, Federal and 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 by **protected by appropriate reservations made by the States** in granting their respective consents to federalization. (**It may be noted that this assurance has to this time borne only little fruit**.)

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

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

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

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

It should be noted that lands already under the proprietorship of the United States when these general consent statutes were enacted, such as the lands of the so-called public domain, were not affected by the statutes, and legislative jurisdiction with respect to them remained in the several States. Curiously, therefore, the vast areas of land which constitute the Federal public domain generally are held by the United States in a proprietorial 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 Statues 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

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.

CHAPTER IV

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 t[he?] 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

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

Difficulty of determining jurisdictional status of Federal areas.-- Perhaps the problems most often referred to by State attorneys general arose out of the difficulty of determining the jurisdictional status of federally owned areas, where the task was to

ascertain whether State laws, or which state law applied in an area. In Kansas and in Maryland, for example, there presently exist serious situations with respect to the indefinite jurisdictional status of important highways. The basic question involved in Kansas situa-

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

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

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

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

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

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

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

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

CHAPTER VI

JURISDICTIONAL PREFERENCES OF FEDERAL AGENCIES

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

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

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

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

Agency and the Immigration and Naturalization Service of the Department of Justice hold relatively minor amounts of real property but it is interesting to note, in view of the security aspects of their operations, that they are also included in the group which desires only a proprietorial interest for their properties.

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

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

been patterned on similar preexisting laws.

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

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

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

Lack of firm agency policy with respect to the quantum of jurisdiction which should be acquired for various types of agency installation is also responsible for many instances in which less jurisdiction than deemed desirable is had by an agency over various of its properties. The Navy, for example, has indicated that its practice has been to acquire legislative jurisdiction over its installations only after the local commander has submitted a justified request for such acquisition. The Committee has received information from several agencies, and the replies of several other agencies

suggest the same fact, that until the present study had focused their attention to matters relating to jurisdiction, many Federal agencies had developed no policy in this field. This has been responsible for the acquisition of an excess of jurisdiction more often than of too little jurisdiction, but has been an apparently significant factor in each case. The Committee feels that if its work served no other purpose than has already been accomplished in simulating the agencies to a study of their own policies, practices and procedures with respect to acquisition of legislative jurisdiction it will have been worthwhile.

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

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

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

CHAPTER VII

ANALYSIS OF FEDERAL AGENCY PREFERENCES

A. GENERAL

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

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

officials.

B. VIEWS OF AGENCIES DESIRING EXCLUSIVE OR PARTIAL JURISDICTION

State interference with Federal functions.--The views of the Veterans' Administration, the National Park Service of the Department of the Interior, the Bureau of the Census and the Civil Aeronautics Administration of the Department of Commerce, and the three military departments, most nearly follow the traditional Federal policy, almost uniform prior to 19940, that the United States needs to acquire

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

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

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

Direct interference.--Freedom from interference in their operations by State and local authorities is, indeed, mentioned as a desirable factor by the Navy, Air Force and Veterans' Administration as well as the Army, and in the answers of numerous local managers or commanders of installations of these and various other agencies. While each of the agency answers to questionnaire A indicates that the reporting agency is fully aware of the constitutional immunity of Federal

functions from any direct State interference, it would appear that there is an understandable lack of such knowledge on the part of some local commanders and managers. However, notwithstanding knowledge of immunities apart from those flowing from jurisdictional status, these agencies believe that exclusive jurisdiction aids them in securing freedom from State and local interference. As stated in the Navy report:

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

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

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

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

The question of compliance by the agency with various types of Stat and local statutes enacted under the police powers of the States, statutes designed for the protection of the health and safety of the public, apparently is the principal basis of the concern on the part

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

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

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

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

Hunt v. United States, 278 U.S. 96 (1928)).

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

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

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

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

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

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

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

Most of the problems which can be ascribed to indirect State interference which Federal agencies and their instrumentalities encounter with respect to installations over which the United States does not exercise exclusive jurisdiction aries from attempts by the State to apply, indirectly, either their taxing or their police powers to Federal activities. As to the taxing power, it is clear that the Federal Govern enjoys no general immunity from the economic burden of State taxes imposed on its contractors (Alabama v. King & Boozer, 314 U.S. 1 (1914). Any immunity in this regard must flow from taxable transaction occurs or the taxable object is located. At the present time the financial savings which accrue to the United States by virtue of this immunity would appear not to be significant in view of Congress' consent to the applicability of State taxes on gasoline sales, other sales and uses, and income earned on Federal reservations regardless of the jurisdictional statuses of the reservations. However, the losses to the States because of their inability to ta privately owned property located on exclusive jurisdiction areas is obviously considerable, although only in relatively rare cases does the United States receive direct benefit from immunity of private property from taxation.

Where license or similar charges, or minimum price laws, imposed under the police power of the State are involved, there would appear to be some advantage to exclusive legislative jurisdiction being vested in the United States. If suppliers of agencies of the United States or their instrumentalities are to enjoy freedom form the applicability of State minimum resale price laws, for example, it must be considered that in the absence of congressional restrictions on the States the suppliers can derive such freedom only from the fact the sale took place on lands under the exclusive legislative jurisdiction

of the United States. The cases of Penn Dairies, Inc. v. Milk Control Commission (318 U.S. (1943)), and Pacific Coast Dairies v. Department of Agriculture of California (318 U.S. 285 (1943)), would appear to have made at least that mush clear.

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

The Committee finds that while the United States and its instrumentalities are not directly subject to State and local laws and regulations which have the effect of impeding Federal use of property,

regardless of the legislative jurisdictional status of the property involved, such laws and regulations in some instances indirectly may affect Federal activities to some degree on property which is not immunized from them by its jurisdictional status.

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

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

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

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

Security.--Several agencies have suggested that exclusive (or, in some cases, at least concurrent) jurisdiction is necessary to provide adequately for the physical security of their installations. Although there was no precise definition of the word "security" by the Committee or any of the reporting agencies, it is assumed that all agencies using the term had roughly equivalent understandings of what the term embraced. As used in the present section of this report it

should be taken to mean the protection afforded an installation by internal and external measures too control the entrance and departure of all persons into or from the installation and to prevent the unauthorized entry or departure by force or covert means of any persons, to prevent the unauthorized removal of Government property by persons leaving the installation, and all other measures taken by the manager or commander to prevent depredation of Government property, or subversion, sabotage, or similar activities within the installation.

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

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

On the other hand, certain other agencies have suggested that the arresting of trespassers is on a firmer legal footing if the United States has an appropriate measure of legislative jurisdiction. This is true presently with respect to areas under the supervision of the General Services Administration, because that agency possesses authority under the provisions of the act of June 1, 1948 (62 Stat. 281, as amended (40 U.S.C. 318)), to appoint its uniformed guards as special policemen with power of arrest somewhat greater than those of a private person only where the United States has acquired exclusive or concurrent jurisdiction over the property. By General Services Administration may, upon request, detail its special policemen to properly administered by other agencies and may extend to such

property the application of its regulations. It has been indicated to the Committee, however, that as a matter of policy the General Services Administration will not detail its special policemen to any Federal establishment unless there is already some General Services Administration organizations and since as a matter of policy certain Federal agencies are unwilling to accede to the latter of these conditions, the acceptance of concurrent or a greater measure of jurisdiction provides no cure-all if police authority is necessary to the security of Government installations. However, the Committee proposes to recommend a helpful amendment to the act of June 1, 1948, as amended, by eliminating therefrom the requirement for exclusive or concurrent jurisdiction, as not constituting a necessary or desirable requirement. With this amendment GSA guards will be able to exercise police powers over federally owned property without regard to its jurisdictional status.

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

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

Uniformity of administration.--One of the advantages mentioned by agencies favoring exclusive legislative jurisdiction was that uniformity of administration would be secured. It is assumed that this presupposes that exclusive jurisdiction is essential for some installations of the agency. To be sure, absolutely uniform

administration of all its installations located in the United States could be accomplished by any agency in such circumstances only if all its installations were in an identical jurisdictional status. However, no agency has expressed a desire that all its lands be held in an exclusive jurisdictional status, and any such desire would be futile as a practical matter, since no agency now has all its property in that status and approximately half the currently do not grant exclusive jurisdiction to the United States in the ordinary case. For similar reasons uniformity of administration is therefore not believed by the Committee to be a valid argument for any particular quantum of legislative jurisdiction other than a proprietorial interest.

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

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

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

communities.

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

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

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

or partial legislative jurisdiction.. Almost uniformly, notarizations were performed by notaries public under the commission of the State in which the installation was located; State coroners frequently investigated deaths occurring under unknown circumstances within such areas; and vital statistics (marriages, births, deaths) were recorded

in State or county recording offices. In numerous instances local police and fire protection was furnished to and n the Federal installation. In very many instances residents of the enclave were to all intents and purposes regarded as citizens of the State so far as their civil and political rights were concerned. Thus, their children were accepted on an s in local schools, they were given the right of suffrage, they were accorded access to State courts in such matters as probate, divorce and adoption of children, and they were treated ass citizens of the State in obtaining hunting licenses and reduced tuition to State colleges sand universities.

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

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

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

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

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

legality,

with serious implications, which present themselves in connection with the furnisher services.

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

Where serious crimes are committed in areas of exclusive Federal jurisdiction, generally the full services of the Federal Bureau of Investigation, the United States attorney, and the United States district court are available for detection and prosecution of the offenders. On the other hand, in the case of misdemeanors or other less serious crimes, there is generally no adequate Federal machinery for bringing the offenders to justice. If there is a United States commissioner reasonably available, there is generally no official corresponding to a town constable or municipal policeman. Some

Federal installations, judging by their replies to questionnaire B, have attempted to solve this problem by authorizing local or State police to enforce State or Federal areas of exclusive or partial legislative jurisdiction. The possible consequences of such obviously extra-legal measures are a matter of serious concern to the Committee.

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

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

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

purposes.

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

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

It was surprising to the Committee, in reviewing the hundreds of replies to questionnaire B, that there was no uniform practice on the part of the three States (California, Kansas and Virginia) from which the information required by these questionnaires was derived as to the denial of such rights and privileges. For example, in two Federal areas of exclusive jurisdiction within the same city, the residents of one were accorded the status of full citizens by State officials while the residents of the other were denied all rights thereof. Surprisingly, even in some cases when the Federal Government exercised no legislative jurisdiction whatever, the residents were denied certain privileges they should normally have been accorded as residents of the State. The Committee can only conjecture as to the reasons for such diversity of practice on the part of State officials. Among the factors which the Committee surmises might have an influence upon the State or local officials are (1) the size of the Federal installation and the number of residents thereof (this would determine,
for instance, what the impact of participation by Federal residents in

local elections would be); (2) the predominantly military or nonmilitary character of the residents and their identification with the community by long residence, unity of interest and concert of purpose; (3) the good or ill feeling existing between the Federal installation and the community at large; (4) whether the State has legislation specifically conferring political and civil rights on residents of Federal enclaves, although interpreted as retroactive insofar as the granting of civil and political rights is concerned, the practice is not uniform; and (5) the very general unawareness of local, State and Federal officials of the jurisdictional status of the lands and the incidents of such status.

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

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

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

It is obvious that the presence of large numbers of school-age children in Federal enclaves has a considerable impact on local school districts. This is particularly true in the remote, sparsely settled areas in which so many of our Army, Navy, and Air Force bases are located. In recognition of the Federal Government's responsibility

to reduce the effects of this impact Congress has enacted certain statutes to provide financial aid to affected school districts, and in the last fiscal year nearly $200 million were expended under these statutes. The act of September 30, 1950 (64 Stat. 1107), as amended (20 U.S.C. and Supp. 241), authorizes the Department of Health, Education, and Welfare to grant financial aid to localities for the operation and maintenance of their schools based on the impact which Federal activities have on the local educational. Such aid usually takes the form of monetary grants to local school agencies in proportion to the increased burdens assumed by such agencies in accordance with certain formulas given in the act. If, however, State law prohibits expenditure of tax revenues for free public education of children who reside on Federal property or if it is the judgment of the Commissioner of Education that no local educational agency is able to provide free public education, he may make such other arrangements as are necessary to provide for the education of such children. The act of September 23, 1950 (54 Stat. 906), as amended (20 U.S.C. Supp. 300), provides for similar aid in school construction.

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

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

fair share of the Federal funds available for education.

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

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

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

One fact did impress itself on the Committee--that there was no uniform desire on the part of State officials to deny to residents of areas of exclusive or partial Federal jurisdiction the rights and privileges to which they would otherwise have been entitled if the State's jurisdiction over the area of their residence had not been ousted. Whether the granting of these rights and privileges is a conscious policy on the part of the States is not known to the

Committee. Obviously, in the cases of States which have conferred civil and political rights on residents of Federal areas by statute (e.g., California), the policy has been consciously and deliberately evolved. In nearly all cases where this policy is followed, however, it would appear that it is done as a matter of grace, despite the fact that the retrocession of certain tax benefits to the States by the Buck Act and similar Federal statutes may give rise to obligations in return for benefits conferred. To the extent that they are a matter of grace, they could be discontinued by the States at any time. The consequences of such discontinuance might be very serious to residents of these areas.

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

D. SUMMARY AS TO EXCLUSIVE AND PARTIAL JURISDICTION

The foregoing discussion and analysis of the positions of those agencies adhering to the view that exclusive legislative jurisdiction closely approaching exclusive is desirable for their properties has run to a considerable length. Because the views are held by several

major landholding agencies the Committee felt it particularly desirable to analyze these views with the utmost care and deference. In summary:

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

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

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

(b) Enhancement of security of installation.

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

(d) Uniformity of administration.

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

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

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

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

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

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

(c) Loss by residents of the area of civil and political rights

normally flowing from residence in a State.

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

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

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

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

E. VIEWS OF AGENCIES PREFERRING CONCURRENT JURISDICTION

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

point in the study, indicated concurrent jurisdiction desirable for certain areas for

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

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

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

Such disadvantages as are peculiar to areas under concurrent legislative jurisdiction arise out of the fact hat under this status

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

General Services Administration.--This agency, which administers

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

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

Department of the Navy.--This Department feels that for its so called minor installations concurrent legislative jurisdiction is desired in order to provide a Federal criminal code by virtue of the Assimilative Crimes Act (18 U.S.C. 13). Consequently, the Department

feels that concurrent jurisdiction would be the minimum measure of Federal jurisdiction that would satisfy its needs.

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

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

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

Bureau of Prisons.--This Bureau of the Department of Justice indicates that for its installations in which prisoners are maintained, a concurrent legislative jurisdictional status would be desirable. These installations presently have various jurisdictional statuses. It is pointed out as incongruous that a Federal prisoner who commits a crime beyond that which can be handled by administrative measures in a Federal prison institution should have to be tried in State courts, under State law, and be sentenced to a State penal institution, in the absence of at least concurrent criminal

jurisdiction in the Federal Government over the institution where the crime was committed. On the other hand, the Bureau has no wish to deprive its guard force and other personnel and their families of the privilege of voting and other integration into the normal life of the communities in which its installations are located, as often occurs under a jurisdictional status greater than concurrent. The Committee is in agreement with the views of the Bureau of Prisons.

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

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

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

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

Department of the Interior.--This Department proprietorial interest only as most desirable for the great bulk of the vast areas of Federal lands under its supervision. However, in its initial submission of information to the Committee, the Department indicated that concurrent legislative jurisdiction would most nearly suit the needs of its national parks, as to which the United States now holds exclusive or

certain partial legislative jurisdiction, and of certain national monuments and perhaps wildlife areas which cover vast areas and are in comparatively isolated sections of their respective States, as to which the United States now generally holds a proprietorial interest only. This status, it was indicated, would allow effective enforcement of law and order and would insure the best protection of a number of interests, including control as may be necessary of the private inholdings which are within the boundaries of certain parks so that the inholdings do not change park characteristics. This type of jurisdiction would not adversely affect the rights of park, monument, or wildlife refuge residents so far as their relations with the States and State political subdivisions are concerned. More recently, however, the Department has modified its position, stating:

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

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

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

It is not clear to the Committee in which spheres of the National Park Service's operations the widespread disagreements with State authorities are expected. If it is in the field of conservation or control of hunting or fishing, there would appear to be no doubt as to the ability of the United States to prevail in disputes where proper administration of the area requires Federal control. (See Hunt v. United States, 278 U.S. 96 (1928).) If it is with respect to the enforcement of criminal laws, the Committee notes that information from individual installation which are in concurrent jurisdiction status almost uniformly is to the effect that difficulties in this respect,

to the limited extent they have occurred, have occurred not out of an eagerness on the part of both sovereigns to exercise jurisdiction, but from the lack of interest of both. The Committee is of the view that concurrent jurisdiction most nearly fits the needs of the United States for national parks and for national monuments located in remote areas. In some instances, the Committee recognizes, this jurisdictional status may be desirable for some wildlife refuges.

F. VIEWS OF AGENCIES DESIRING A PROPRIETORIAL INTEREST ONLY

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

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

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

agencies control more than 90 percent of the land owned by the United States.

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

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

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

received by transfer from other Federal agencies. Indeed, as to two exclusive jurisdiction areas upon which communities are located, the

difficulties encountered were sufficient to induce the Commission to sponsor legislation which allowed it to retrocede jurisdiction to the State. While the Atomic Energy Commission recognizes that concurrent jurisdiction has to some extent the advantages of both a proprietorial interest and exclusive jurisdiction, the measure of jurisdiction has not been obtained for the reason that it provides no clear-cut line of responsibility between the fields of Federal and State authority thus, in the view of the Commission, opening the way for disputes and misunderstandings.

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

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

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

Summary as to proprietorial interest status.--The Committee concludes in concurrence with the agencies preferring a proprietorial

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

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

Many Federal lands for which a proprietorial interest status only is acknowledged to be ideal are, however, held under some form of legislative jurisdiction. Since there exists no general authority for Federal agencies to retrocede unneeded jurisdiction to the States, appropriate legislation has been drafted by the Committee to make such retrocessions possible. The Committee also deems it desirable that uniform State legislation be enacted providing for the acceptance of such retroceded jurisdiction, so that not doubt will exist as to the precise status of the lands involved.

Chapter VIII

CONCLUSIONS AND RECOMMENDATIONS

General observations.--The thorough study which has been given to the exercise by the Federal Government of legislative jurisdiction under article I, section 8, clause 17, of the Constitution has, in the opinion of the Committee, been long overdue. In the early days of the Republic there may have been a requirement for the exercise of such power in areas within the States which were acquired to carry out the functions vested in the Federal Government by the Constitution. However, even this is in doubt, for, as has been pointed out, there was not a uniform practice with respect to the transfer of legislative authority from the States to the United States during the first 50 years after the adoption of the Constitution. In any event, the

tremendous expansion of Federal functions and activities which has occurred in the recent history of the United States with a resultant increase in Federal land holdings, changed patterns in the use of Federal lands, development of new concepts of the rights and privileges of citizens, and many other factors, have drastically altered conditions affecting the desirability of Federal exercise of exclusive legislative jurisdiction over federally owned areas.

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

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

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

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

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

2. With respect to the large bulk of federally owned or operated

real property in the several States and outside of the District of Columbia it is desirable that the Federal Government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest status only, with legislature jurisdictions several States;

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

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

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

and areas is in need of major and immediate adjustment to being about the more efficient management of the Federal operations carried out thereon, the furthering of sound Federal-State relations, the clarification of the rights of the persons residing in such areas and the legalization of many acts occurring on these installations and

areas which are currently of an extra-legal nature. Many adjustments can be accomplished unilaterally by Federal officials within the framework of existing statutory and administrative authority by changing certain of their existing practices and policies. Others may be capable of accomplishment by cooperative action on the part of the appropriate Federal and State officials. In perhaps the majority of instances, however, there is neither Federal nor State statutory authority which would permit the adjustment of the jurisdictional status of Federal lands to the mutual of the Federal and State authorities involved. For this reason the Committee recommends the enactment of certain statutes, both Federal and State, which would authorize the appropriate officials of these Governments to proceed apace in the adjustments clearly indicated.

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

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

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

The Committee feels that this end could best be accomplished by amending section 355 of the Revised Statutes of the United States, as amended (49 U.S.C. 255; 33 U.S.C. 733; 34 U.S.C. 520; 50 U.S.C. 175) so as to give to the heads of Federal agencies and their designers the necessary authority to retrocede legislative jurisdiction to the States. An appropriate amendment would permit each Federal agency to adjust the amount of jurisdiction it retains to the actual needs of the installation concerned. It is hoped, in this regard, that the present report and the forthcoming textual study will give to Federal land management agencies a full appreciation of the many factors which they should consider in making their determinations of what measure of jurisdiction best suits a particular installation. The Committee therefore recommends that section 355 of the Revised Statutes, as amended, be further amended by adding a paragraph in the following language:

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

Acceptance by States of relinquished jurisdiction.--It can be seen that for a relinquishment made under this proposed amendment to section 355, Revised Statutes, to be effective, there must be an acceptance by the State. The Committee feels such a provision is necessary as a matter of sound policy. It would inject some preciseness into an area which, as has been seen throughout the report, is replete with confusion and vagueness. By the use of the present provisions of section 355 of the Revised Statutes, together

with the proposed addition, the proper Federal and State officials could, by the necessary exchange of instruments, fix precisely for any Federal installation or sovereign. No parcels of Federal property affected by any change of legislative jurisdictional status under the amended section 355 would be left dangling in an uncertain status.

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

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

Because of the requirement of Federal legislative jurisdiction and other practical difficulties mentioned earlier in this report, many Federal agencies have found it impossible to make use of the authority granted in the act. In other instances the requirement that the lands concerned by under the exclusive or concurrent jurisdiction of the United States before General Service Administration rules and regulations can be extended to them has resulted in the undesirable

practice on the part of some agencies of acquiring otherwise unneeded legislative jurisdiction over Federal lands. For these reasons the Committee recommends that the rulemaking authority presently granted to the General Services Administration by the mentioned act of June 1, 1948, as amended, be broadened to allow the head or other duly authorized officer of each Federal land-management agency to make needful rules and regulations for the management of the Federal property under the control of such agency.

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

In summary, therefore, the Committee recommends that the act of

June 1, 1948 (62 Stat. 281), as amended (40 U.S.C. 318-318c), be further amended as follows:

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

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

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

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

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

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

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

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

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

and "$50."

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

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

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

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

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

substantially as follows:

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

The Committee recommends repeal of section 4661 for the reason that its provisions requiring a cession of jurisdiction over the sites of lighthouses, beacons, public piers and landmarks as a condition precedent to the erection of such structures are inconsistent with section 355 of the Revised Statutes of the United States, as amended. The first sentence of section 4 at type of jurisdiction is sufficient to meet the requirements of section 4661, and requires exclusive jurisdiction in the United States. Its repeal is recommended for this reason. The second sentence of section 4662 should be preserved, however, to insure the power of the several States to serve civil and criminal process within such sites already acquired under this act. The Committee recommends, however, that its application be broadened to all Federal lands and has therefore recommended that, as a codification matter, the new section be inserted in title 40.

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

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

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

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

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

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

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

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

Sec. 2. Notwithstanding any other provision of law, there are reserved over any lands as to which any legislative jurisdiction may

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

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

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

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

The proposed statute has been drawn in the form in which it appears above in order to meet a number of needs which came to the attention of the Committee in the course of its study. The following comments in respect to certain of its specific provisions are considered appropriate: (a) The authority to make the actual cession of jurisdiction and to determine the measure thereof which should be ceded are confided to the Governor in order to permit an adjustment of

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

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

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

who are affected.