from the provisions of article I, section 8, clause 17, of the Constitution. In any case, therefore, it would appear clear that a State cannot unilaterally recapture legislative jurisdiction once it is vested in the Federal Government.

MEANS OF TERMINATION OF FEDERAL JURISDICTION: *In general.*—Federal legislative jurisdiction over an area within a State will, however, terminate under any of the following three sets of circumstances:

1. Where the Federal Government, by or pursuant to an act of Congress, retrocedes jurisdiction and such retrocession is accepted by the State;

2. Upon the occurrence of the circumstances specified in a State cession or consent statute for the reversion of legislative jurisdiction to the State; or

3. When the property is no longer used for a Federal purpose.

FEDERAL STATUTORY RETROCESSION OF JURISDICTION: *In general.*—Over the years the United States Government has, in the natural course of events, acquired legislative jurisdiction over land when such jurisdiction obviously was neither needed nor exercised. In some such cases where hardship has been worked on the Federal Government, on State and local governments, or on individuals, statutes have been enacted by the Congress returning jurisdiction to the States. These statutes can be grouped into two categories:

1. Those enacted to give the inhabitants of federally owned property the normal incidents of civil government enjoyed by the residents of the State in which the property is located, such as voting and access to the local courts in cases where residence within a State is a factor.

2. Those enacted to give State or local governments authority for policing highways traversing federally owned property.

A small number of other somewhat similar statutes cannot easily be categorized.

This chapter deals only with general retrocessions of legislative jurisdiction possessed by the United States. Retrocessions relating to particular matters, such as taxation, will be dealt with in chapter VII.

Right to retrocede not early apparent.—The right of Congress to retrocede jurisdiction over lands which are within the exclusive legislative jurisdiction of the United States has not always been apparent. Justice Story, it has already been noted,[3] had expressed the view in 1819 that the Federal Government was required by clause 17 to assume jurisdiction over areas within the purview of the clause which were acquired by it. The debate [4] preceding the enactment in 1871 of a statute retroceding jurisdiction over a disabled soldiers' home in Ohio demonstrates the conflicting views that continued to exist on the subject of retrocession even at that late date. Both the senators who favored the bill and those who opposed it were desirous of finding a means of negating or avoiding a decision of the Supreme Court of Ohio,[5] which had held that the residents of the home could not vote because of Federal possession of legislative jurisdiction over the area on which the home was located. Contemplating Justice Story's decision on the one hand, and the Ohio decision on the other, Senator Thurman of Ohio said, "the dilemma, therefore, is one out of which you cannot get." [6]

Out of the dilemma, however, Congress did get, but not without much debate. Without detailing the arguments, pro and con, advanced during Senate debate, a few quotations will suffice to point out the reasoning in favor of and against the measure.

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[3] *Supra*, p. 59.
[4] Cong. Globe, 41st Cong., 3d Sess. 512–524, 541–548 (1871).
[5] *Sinks* v. *Reese*, 19 Ohio St. 306 (1869).
[6] Cong. Globe, 41st Cong., *supra*, at p. 517.

During the debate Senator Thurman also said:

> It [the bill] provides, that "the jurisdiction over the place" shall be ceded to the State of Ohio. Is it necessary for me to say to any lawyer that that is an unconstitutional bill? The Constitution of the United States says in so many words that the Congress shall have power "to exercise exclusive jurisdiction in all cases whatsoever over" such territory. Can Congress cede away one of its powers? We might as well undertake to cede away the power to make war, the power to make peace, to maintain an Army or a Navy, or to provide a civil list, as to undertake to cede away that power.[7]

and:

> * * * As was read to the Senate yesterday from a decision made by Judge Story, it is not competent for Congress to take a cession of land for one of the purposes mentioned in the clause of the Constitution which I read yesterday, to wit, for the seat of the national capital, for forts, arsenals, hospitals, or the like; it is not competent for Congress to take any such cession limited by a qualification that the State shall have even concurrent jurisdiction with the Federal Government over that territory, much less that the State can have exclusive jurisdiction over it; because the Constitution of the United States, the supreme law of the land, declares that over all territory owned by the United States for such a purpose Congress shall have exclusive jurisdiction. Then, obviously, if it is not competent for Congress to accept from a State a grant of territory, the State reserving jurisdiction over it, or even a qualified jurisdiction over it, where the territory is used for one of these purposes, as a matter of course Congress cannot cede away the jurisdiction of the United States.[8]

[7] *Id.* at p. 516.
[8] *Id.* at p. 541.

In discussing whether it was necessary that exclusive jurisdiction be in the United States, Senator Morton of Indiana, one of the proponents of the bill, said:

> It [clause 17] does not say it shall have; but the language is, "and to exercise like authority;" that is, it may acquire complete jurisdiction; but may it not acquire less? Now, I undertake to say that the rule and the legislation heretofore by which the Government has had exclusive jurisdiction over arsenals in the States has been without good reason. It has always been a difficulty. There is not any sense in it. It would have been a matter of more convenience from the beginning, both to the Federal Government and the States, if the ordinary jurisdiction to punish crimes and enforce ordinary contracts had been reserved over arsenal grounds and in forts. There never was any reason in that. It has always been a blunder and has always been an inconvenience.
>
> But the question is now presented whether the Government may not, by agreement with the State, take jurisdiction just so far as she needs it, and leave the rest to the State, where it was in the first place. It seems to me that reason says that that may be done, because the greater always includes the less. It seems, too, that convenience would say that it should be done. * * *[9]

The bill was passed.[10] The Supreme Court of the State of Ohio, in another contested election case,[11] thereafter upheld the right of the inmates of the home to vote. In the course of the court's opinion the authority of Congress to retrocede jurisdiction was likewise upheld.

Right to retrocede established.—That the Federal Government may retrocede to a State legislative jurisdiction over an

[9] *Id.* at pp. 545–546.
[10] Act of January 21, 1871, 16 Stat. 399.
[11] *Renner* v. *Bennett*, 21 Ohio St. 431 (1871).

area and that a State may accept such retrocession would appear to be fully established by the reasoning adopted by the Supreme Court in *Fort Leavenworth R. R.* v. *Lowe,* 114 U. S. 525 (1885), in which it was stated that the rearrangement of legislative jurisdiction over a Federal area within the exterior boundaries of a State is a matter of agreement by the Federal Government and the particular State in which the federally owned area is located. While this reasoning was employed to sustain a cession of legislative jurisdiction by a State to the Federal Government, it would appear to be equally applicable to a retrocession of legislative jurisdiction to a State.

Some 27 years after enactment of the legislation retroceding jurisdiction over the disabled soldiers' home in Ohio, Congress enacted a statute [12] similarly retroceding jurisdiction over such homes in Indiana and Illinois. The Supreme Court of Indiana, in a case contesting the inmates' right to vote, upheld this right and the right of Congress to retrocede jurisdiction.[13] An additional such retrocession statute, involving a home in Kansas, was enacted in 1901.[14]

Construction of retrocession statutes.—It has been held that statutes retroceding jurisdiction to a State must be strictly construed.[15] This view was not followed, on the other hand, in *Offutt Housing Company* v. *Sarpy County,* 351 U. S. 253 (1956). There, the Supreme Court said (p. 260):

> * * * We could regard Art. I, § 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit and unambiguous legislative enactment. We have not heretofore so regarded it, see *S. R. A., Inc.* v. *Minnesota,* 327 U. S. 558; *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U. S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of those cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, is that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case.

It is difficult to follow the reasoning in the *Offutt* case that the Congress did not relinquish the Federal power of "exclusive Legislation" over the areas involved, but merely permitted State taxation, since imposition of taxes requires "jurisdiction" in the State over the subject matter, aside from any "consent" of the Federal Government, as will be more fully developed hereinafter.[16]

SUMMARY OF RETROCESSION STATUTES: *Retrocessions few.*—There have been relatively few instances, however, in which the Federal Government has retroceded all legislative jurisdiction over an area that is normally exercised by a State. The

[12] Act of July 7, 1898, 30 Stat. 668.

[13] *State ex rel. Cashman, et al.* v. *Board of Commissioners of Grant County,* 153 Ind. 302, 54 N. E. 809 (1899).

[14] Act of Mar. 3, 1901, 31 Stat. 1175.

[15] *Oklahoma City* v. *Sanders,* 94 F. 2d 323, 328 (C. A. 10, 1938). See also p. 188, *infra,* for rule on construction of State statutes making reservations.

[16] *Infra,* p. 245, *et seq.*

instances mentioned below are all which were found in a diligent search of Federal statutes.

Statutes enacted to afford civil rights to inhabitants of Federal enclaves.—One of the earliest retrocession statutes enacted by the Congress of the United States involved a portion of the District of Columbia.[17] The seat of the general government had been established on territory received in part from the State of Maryland and in part from the State of Virginia, embracing the maximum ten miles square permitted by clause 17. By the act of February 27, 1801, 2 Stat. 103, that portion of the District of Columbia which had been ceded by Maryland was designated the county of Washington, and that portion which had been ceded by Virginia was denominated the county of Alexandria. A report[18] on the bill providing for retrocession to Virginia of Alexandria County stated:

> * * * The people of the county and town of Alexandria have been subjected not only to their full share of those evils which affect the District generally, but they have enjoyed none of those benefits which serve to mitigate their disadvantages in the county of Washington. The advantages which flow from the location of the seat of government are almost entirely confined to the latter county, whose people, as far as your committee are advised, are entirely content to remain under the exclusive legislation of Congress. But the people of the county and town of Alexandria, who enjoy few of those advantages, are (as your committee believe) justly impatient of a state of things which subjects them not only to all the evils of inefficient legislation, but also to political disfranchisement. To enlarge on the immense value of the elective franchise would be unnecessary before an American Congress, or in the present state of public opinion. The condition of thousands of our fellow-citizens who, without any equivalent, (if equivalent there could be,) are thus denied a vote in the local or general legislation by which they are governed, who, to a great extent, are under the operation of old English and Virginia statutes, long since repealed in the counties where they originated, and whose sons are cut off from many of the most highly valued privileges of life, except upon the condition of leaving the soil of their birth, is such as most deeply move the sympathies of those who enjoy those rights themselves, and regard them as inestimable. * * *

[17] Act of July 9, 1846, 9 Stat. 35.
[18] H. Rept. No. 325, 29th Cong., 1st Sess. 489 (1846).

It has been noted[19] that other statutes, the acts of January 21, 1871, 16 Stat. 399, July 7, 1898, 30 Stat. 668, and March 3, 1901, 31 Stat. 1175, were thereafter enacted by the Congress in concern over voting rights. During the debate on the 1871 bill much was said, pro and con, concerning the "right" of the inhabitants of the disabled soldiers' home to vote.[20]

Other statutes of "special" application have been passed which involved additional fields of civil rights. One such statute is the act of March 4, 1921.[21] During World War I the United States Housing Corporation acquired exclusive jurisdiction over a site on which a town was to be built for the purpose of housing Government employees. After the war, according to the report[22] which accompanied the bill to the House of Representatives, the Federal Government desired:

> * * * that the property [jurisdiction] be retroceded to the State of Virginia in order that that State may exercise political power, so that taxes may be levied and the town may be incorporated. As it is now, the town of Cradock, consisting of 2,000 people, is without the protection of any civil government, as the National Government is no longer in charge there.

[19] *Supra*, at pp. 87, 88.
[20] Cong. Globe, 41st Cong., 3d Sess. 517 *et seq.* (1871).
[21] 41 Stat. 1439.
[22] H. Rept. No. 1311, 66th Cong., 3d Sess. 7777 (1921).

The bill passed both the Senate and House without discussion or debate.

Another statute of "special" application which deals with the problem of normal civil rights for inhabitants of Federal enclaves is the act of March 4, 1949,[23] known as the Los Alamos Retrocession Bill. Identical bills were introduced in the House and Senate to cover the problems arising at the Atomic Energy Commission area at Los Alamos.[24] The House bill was finally enacted. The following extract from the Senate report [25] on the bill indicates the problems desired to be eliminated by the legislation:

> The need for establishing uniformity of jurisdiction in the administration of civil functions of the Los Alamos area, and the further need for assuring the people of the area the right of franchise and the right to be heard in the courts of New Mexico, was emphasized by two recent decisions of the Supreme Court of the State of New Mexico.[26] These decisions declared that those persons residing on territory subject to exclusive Federal jurisdiction are not citizens of the State of New Mexico and, therefore, have neither the right to vote nor the right to sue in courts of that State for divorce. However, under an act of Congress approved October 9, 1940 (Buck Act), the State of New Mexico is authorized to require such noncitizens to pay sales, use, and income taxes just as do those persons enjoying full State citizenship.
>
> The effect of this bill will be to remove disabilities inherent in the noncitizen status of persons residing on the areas now under exclusive Federal jurisdiction. It will give them the same rights and privileges which those persons residing on lands at Los Alamos under State jurisdiction now enjoy. It will give them the right to vote in State and Federal elections. It will give them the right to have full effect given to their wills and to have their estates administered. It will give them rights to adopt children, to secure valid divorces in appropriate cases, and to secure licenses to enjoy the land for hunting and fishing.

[23] 63 Stat. 11.

[24] H. R. 54, 81st Cong., 1st Sess.; S. 152, 81st Cong., 1st Sess.

[25] S. Rept. No. 76, 81st Cong., 1st Sess. 11291 (1949).

[26] Ed. note: *Arledge* v. *Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948); *Chaney* v. *Chaney*, 53 N. M. 66, 201 P. 2d 782 (1949).

The Atomic Energy Act of 1954 [27] included a section which similarly retroceded jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque, to the State of New Mexico.

Statutes enacted to give State or local governments authority for policing highways.—These statutes may be divided into two groupings, "general" and "special." There are two in the "general" category, one authorizing the Attorney General,[28] and the other the Administrator of Veterans' Affairs,[29] in very similar language, to grant to States or political subdivisions of States easements in or rights-of-way over lands under the supervision of the Federal officer granted the power, and to cede to the receiving State partial, concurrent, or exclusive jurisdiction over the area involved in the grant. Both these statutes, it is indicated by information in official records, were enacted to resolve problems arising out of the desirability of State, rather than Federal, policing of highways. Efforts of the Department of Defense to acquire authority similar to that given by these statutes to the Attorney General and the Administrator of Veterans' Affairs have not been successful to this time,[30] notwithstanding that apparently all the "special" statutes enacted to provide State authority for policing highways have involved military installations.

[27] Act of Aug. 30, 1954, 68 Stat. 961, retroceding jurisdiction over housing area.

[28] Act of May 9, 1941, 55 Stat. 183, 43 U. S. C. 931a.

[29] Act of May 31, 1947, 61 Stat. 124, 38 U. S. C. 11i; see also *Hearings before the Committee on Veterans' Affairs*, H. of R., March 25, 1947, 80th Cong., 1st Sess., on H. R. 1844; H. Rept. No. 187, 80th Cong., 1st Sess. 11118 (1947); and S. Rept. No. 177, 80th Cong., 1st Sess. 11115 (1947).

[30] H. R. 7111, 83d Cong., 2d Sess. (1954), and S. 1260, 84th Cong., 1st Sess. (1955).

The first of the statutes of "special" application in the field of jurisdiction over highways concerned the Golden Gate Bridge and the California State highways, which crossed the Presidio of San Francisco Military Reservation and the Fort Baker Military Reservation.[31] On February 13, 1931, the Secretary of War, exercising a congressional delegation of authority,[32] granted to the Golden Gate Bridge and Highway District of California certain rights-of-way to extend, maintain and operate State roads across these military reservations. The grant from the Secretary of War was subject to the condition that the State of California would assume responsibility for managing, controlling, policing and regulating traffic. A subsequent statute retroceded to the State of California the jurisdiction necessary for the State to carry out its responsibility for policing the highways.

The next statute [33] related to another approach to the Golden Gate Bridge. Statutes enacted thereafter have related to highways occupying areas at Vancouver Barracks Military Reservation, Washington,[34] Fort Devens Military Reservation, Massachusetts,[35] Fort Bragg, North Carolina,[36] Fort Sill, Oklahoma,[37] Fort Belvoir, Virginia,[38] and Wright-Patterson Air Force Base, Ohio.[39]

[31] Act of February 11, 1936, 49 Stat. 1108.

[32] Act of July 5, 1884, 23 Stat. 104, formerly 10 U. S. C. 1348, 43 U. S. C. 933, now re-enacted as sections 4777 and 9777 of title 10 (positive law) U. S. Code.

[33] Act of July 26, 1939, 53 Stat. 1120.

[34] Act of July 30, 1941, 55 Stat. 608; see also H. Rept. No. 887, 77th Cong., 1st Sess. 10555 (1941), and S. Rept. No. 563, 77th Cong., 1st Sess. 10545 (1941).

[35] Act of May 23, 1950, 64 Stat. 187, and act of June 15, 1955, 69 Stat. 132; see also S. Rept. No. 1433, 81st Cong., 2d Sess. 11367 (1950).

[36] Act of April 15, 1952, 66 Stat. 60; see also H. Rept. No. 1385, 82d Cong., 2d Sess. 11575 (1952), and S. Rept. No. 1397, 82d Cong., 2d Sess. 11567 (1952).

[37] Act of May 27, 1953, 67 Stat. 39; see also H. Rept. No. 349, 83d Cong., 1st Sess. 11665 (1953), and S. Rept. No. 166, 83d Cong., 1st Sess. 11659 (1953).

[38] Act of May 27, 1953, 67 Stat. 37; see also H. Rept. No. 347, 83d Cong., 1st Sess. 11665 (1953), and S. Rept. No. 165, 83d Cong., 1st Sess. 11659 (1953).

[39] Act of Feb. 27, 1954, 68 Stat. 18; see also *Report of Hearing before a Subcommittee of the Committee on Armed Services, United States Senate, 83d Cong., 2d Sess.*, titled "*Miscellaneous Bills*," including S. 2689, pp. 1–5 (Feb. 2, 1954).

Miscellaneous statutes retroceding jurisdiction.—Six statutes appear to have been enacted by the Federal Government retroceding jurisdiction for reasons not demonstrably connected with civil rights of inhabitants or State policing of highways. The first of these in point of time was enacted in 1869,[40] to permit the State of Vermont to exercise jurisdiction over a State court building which was permitted to be constructed on federally owned land. A 1914 statute [41] temporarily retroceded to the State of California jurisdiction over portions of the Presidio of San Francisco and Fort Mason, so that city and State authorities could police these areas during a period when the Panama-Pacific International Exposition was to be held thereon.

A 1927 statute [42] ceded to the Commonwealth of Virginia jurisdiction over an area known as Battery Cove, for the purpose of transferring from Federal to Virginia officials authority to police the area. The cove, which was on the Potomac River abutting Virginia, had been transformed into dry land during dredging operations in the Potomac. It was part of the territory originally ceded to the United States by Maryland for the seat of government.

In 1939, the Congress enacted a statute [43] retroceding to the Commonwealth of Massachusetts jurisdiction over a bridge in Springfield. The reason for this retrocession was that, while

[40] Act of Feb. 22, 1869, 15 Stat. 274; see also Cong. Globe, 40th Cong., 3d Sess. 1201–1202 (1869).

[41] Public Resolution No. 57, Oct. 22, 1914, 38 Stat. 783; see also H. Rept. No. 1167, 63d Cong., 2d Sess. 6560 (1914), and S. Rept. No. 803, 63d Cong., 2d Sess. 6553 (1914).

[42] Act of Feb. 23, 1927, 44 Stat. 1176; see also S. Rept. No. 598, 79th Cong., 1st Sess., p. 7 (letter Dec. 9, 1943, of National Capital Park and Planning Commission), 10927 (1945).

[43] Act of July 27, 1939, 53 Stat. 1127; see also H. Rept. No. 973, 76th Cong., 1st Sess. 10300 (1939), S. Rept. No. 804, 76th Cong., 1st Sess. 10294 (1939), and 84 Cong. Rec. 8727 and 9379 (1939).

the bridge spanned a pond located on territory over which the United States exercised exclusive legislative jurisdiction, both ends of the bridge were located on land controlled by the city.

In 1945, long existing disputes and confusion over the boundary line between the District of Columbia and the Commonwealth of Virginia led to the enactment of a statute [44] by the Federal Government ceding concurrent jurisdiction to the Commonwealth over territory to a line fixed as a boundary.

The only remaining instance found of the Federal enactment of a retrocession statute for a miscellaneous purpose relates to the Chain of Rocks Canal in Madison County, Wisconsin.[45] That statute was enacted, it seems, simply because the United States had no further requirement for jurisdiction over the area involved.[46]

REVERSION OF JURISDICTION UNDER TERMS OF STATE CESSION STATUTE: *In general.*—Most State statutes providing for cession of legislative jurisdiction to the United States further provide for reversion of the ceded jurisdiction to the State upon termination of Federal ownership of the property.[47] Some of these, and other State statutes, contain various provisions otherwise limiting the duration of Federal exercise of ceded jurisdiction. The Attorney General has since an early date approved such limitations.[48]

Leading cases.—In two important Federal court cases consideration was given to the effect of provisions in a State cession statute that the legislative jurisdiction transferred by such statute to the Federal Government shall cease or revert

[44] Act of Oct. 31, 1945, 59 Stat. 552; see also H. Rept. No. 595, 79th Cong., 1st Sess. 10933 (1945); and S. Rept. No. 598, 79th Cong., 1st Sess. 10927 (1945).

[45] Act of May 21, 1952, 66 Stat. 81.

[46] H. Rept. No. 1075, 82d Cong., 1st Sess. 11499 (1951), and S. Rept. No. 1504, 82d Cong., 2d Sess. 11567 (1952).

[47] See *report*, part I, pp. 28–32, 127 *et seq.*

[48] 7 *Ops. A. G.* 628 (1856); 8 *Ops. A. G.* 387 (1857); 13 *Ops. A. G.* 418 (1871); 39 *Ops. A. G.* 155 (1938).

to the State upon the occurrence of the conditions specified in the statute. In each of these cases, the legal validity of such provision was fully sustained although in one instance the Supreme Court indicated that Federal legislative jurisdiction might merely be "suspended" while the circumstances specified in the State statute prevailed.

In *Crook, Horner & Co.* v. *Old Point Comfort Hotel Co., et al.*, 54 Fed. 604 (C. C. E. D. Va., 1893), the court gave effect to the provisions in a Virginia cession statute that legislative jurisdiction shall exist in the United States only so long as the area is used for fortifications and other objects of national defense, and that such jurisdiction shall revert to Virginia in the event the property is abandoned or used for some purpose not specified in the Virginia cession statute.

In *Palmer* v. *Barrett*, 162 U. S. 399 (1896), New York had ceded to the United States jurisdiction over the Brooklyn Navy Yard subject to the condition that it be used for a navy yard and hospital purposes. Part of the area in question was subsequently leased to the city of Brooklyn for use by market wagons. The lease was terminable by the United States on thirty days' notice; it provided that the city of Brooklyn would patrol the premises, that no permanent buildings would be erected on the premises, and that during the period of the lease the water tax for water consumed by the Navy Yard would be reduced to that charged to manufacturing establishments in Brooklyn. The plaintiff brought suit in the State courts to recover damages for his alleged unlawful ouster from two market stands which had been in his possession. One of the defenses was that the State court had no jurisdiction. The United States Supreme Court disposed of this contention as follows (p. 403): [49]

[49] *Lotterle* v. *Murphy*, 67 Hun 76, 21 N. Y. Supp. 1120 (N. Y., 1893), was based on *Palmer* v. *Barrett*, and it was held to the same general effect in *People* v. *Vendome Service, Inc.*, 12 N. Y. S. 2d 183, *aff'd.*, 284 N. Y. 738, 31 N. E. 2d 508 (1940).

> * * * The power of the State to impose this condition [that the land be used for purposes of a navy yard and hospital] is clear. In speaking of a condition placed by the State of Kansas on a cession of jurisdiction made by that State to the United States over land held by the United States for the purposes of a military reservation, this court said in *Fort Leavenworth Railroad* v. *Lowe*, (p. 539), *supra:* "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post."

As to the question of jurisdiction, the court said (p. 404):

> * * * In the absence of any proof to the contrary, it is to be considered that the lease was valid, and that both parties to it received the benefits stipulated in the contract. This being true, the case then presents the very contingency contemplated by the act of cession, that is, the exclusion from the jurisdiction of the United States of such portion of the ceded land not used for the governmental purposes of the United States therein specified. Assuming, without deciding, that, if the cession of jurisdiction to the United States had been free from condition or limitation, the land should be treated and considered as within the sole jurisdiction of the United States, it is clear that under the circumstances here existing, in view of the reservation made by the State of New York in the act ceding jurisdiction, the exclusive authority of the United States over the land covered by the lease was at least suspended whilst the lease remained in force.

Had the Federal Government, instead of leasing the property to the city of Brooklyn on a short-term lease, devoted it to Federal purposes other than those specified in the New York cession statute, legislative jurisdiction would presumably have

reverted to the State of New York.[50] Although the court in the case before it spoke of the suspension of jurisdiction, instead of termination of jurisdiction, it presumably took into account the fact that the lease was of short duration and that there was no evidence that the Federal Government had abandoned all plans for the future use of the leased area for the purposes specified in the New York statute. It must be assumed that a permanent reversion, instead of a temporary suspension, of Federal legislative jurisdiction would occur where the evidence indicates that it is no longer the intention of the Federal Government to use the property for the purposes specified in the State cession statute.

REVERSION OF JURISDICTION BY TERMINATION OF FEDERAL USE OF PROPERTY: *Doctrine announced.*—In the case of *Fort Leavenworth R. R.* v. *Lowe*, 114 U. S. 525 (1885), when considering a cession statute which did not contain a reverter provision the court nevertheless said of the ceded jurisdiction (p. 542):

> * * * It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.

Discussion of doctrine.—Only in one case, however, has the Supreme Court concluded that reversion for such reasons had occurred. In *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558 (1946), the question presented was whether the State of Minnesota had jurisdiction to tax realty sold by the United States to a private party under an installment contract, the tax being assessed "subject to fee title remaining in the United States," where such realty had been purchased by the United States with the consent of the State. After stating that a State must have jurisdiction in order to tax, the court said (pp. 563–564):

[50] See *Fay* v. *Locke*, 201 Mass. 387, 87 N. E. 753 (1909); *La Duke* v. *Melin*, 45 N. D. 349, 177 N. W. 673 (1920).

> In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs. There was no requirement in the act of cession for return of sovereignty to the State when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, § 8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the States. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power. Recognition has been given to this result as a rule of necessity. If such a step is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property. Under these assumptions the existence of territorial jurisdiction in Minnesota so as to permit state taxation depends upon whether there was a transfer of the property by the contract of sale.

The court concluded that under its contract of sale with the United States, the vendee acquired the equitable title to the land, and that therefore the Federal legislative jurisdiction over the property reverted to the State.[51]

[51] See also *Bancroft Inv. Corporation* v. *Jacksonville*, 157 Fla. 546, 27 So. 2d 162 (1946), wherein the matter of reversion of legislative jurisdiction to the State apparently was involved although not specifically discussed. The Comptroller General has ruled that payments in lieu of taxes might be made under the Lanham Act on an area, transferred from the War Dept. to the Housing and Home Finance Agency for use for Lanham Act housing, notwithstanding that the War Department had procured jurisdiction over the area, since upon the transfer the land was held under the Lanham Act, which reserves jurisdiction to the States, and the area had received full services from the State and local governments. *Comp. Gen. Dec.*, No. B-111783 (Dec. 11, 1952).

Of interest in the above-quoted excerpt from the Supreme Court's opinion is the reference to the State's acceptance of the reversion of legislative jurisdiction. As has been indicated in the preceding chapter, the consent of the State and Federal Government is ordinarily essential to effect transfers of legislative jurisdiction from one to the other. However, where—as is suggested in the *S. R. A.* opinion—the termination of Federal ownership and use of the property results in a termination of Federal legislative jurisdiction, it would seem that to add to this rule a proviso that a State must accept such jurisdiction would result, in the event of a State's refusal to accept the reversion, either in the continuance of Federal legislative jurisdiction over an area not owned or used by the Federal Government, or in the creation of a "no-man's land" over which neither the Federal Government nor the State has jurisdiction. It seems highly doubtful in view of these practical results, and barring special circumstances,[52] that the State's acceptance is essential. Moreover, in the *S. R. A.* opinion, the court seemed to imply that the termination of Federal legislative jurisdiction over an area no longer owned or used by the Federal Government rests on constitutional principles. If so, Federal legislative jurisdiction over such area would appear to revert to the State irrespective of the latter's wishes in the matter. In any event the Congress could, for example, expressly provide for reversion of jurisdiction to the State upon cessation of Federal ownership of property, although the *S. R. A.* decision would seem to make such express provision unnecessary.

[52] See *State* v. *Lohnes*, 69 N. W. 2d 508 (Sup. Ct. N. D., 1955).

An early Federal statute [53] granting authority for the sale of surplus military sites contained a provision that upon sale of any such site jurisdiction thereover which had been ceded to the Federal Government by a State was to cease. The statute made no provision for State acceptance of the retrocession. The modern counterpart of this statute, providing for disposition of surplus Federal property,[54] makes no reference whatever to termination of jurisdiction had by the United States over property disposed of thereunder, but the General Services Administration, which administers the existing statute, has no information of any exception to full acceptance by agencies of the Federal and State governments of the theory that all jurisdiction reverts to the State upon Federal disposition of real property under this statute.

While the case of *S. R. A., Inc.* v. *Minnesota, supra,* is the only case in which the Supreme Court concluded that on the facts presented Federal legislative jurisdiction reverted to the State, the court in several earlier cases indicated that changed circumstances might result in a reversion of legislative jurisdiction. In *Benson* v. *United States,* 146 U. S. 325 (1892), the intervening factor was an action of the Executive branch. In that case it was contended that jurisdiction passed to the United States only over such portions of the military reservation as were actually used for military purposes, and that the United States therefore had no jurisdiction over a homicide which was committed on a part of the reservation used for farming purposes. In rejecting this contention, the court said (p. 331):

> * * * But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. * * * The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. * * *

[53] Act of March 3, 1819, 3 Stat. 520.

[54] Federal Property and Administrative Services Act of 1949 (act of June 30, 1949, 63 Stat. 377), sec. 203, as amended, 40 U. S. C. 484.

The views expressed by the court in the *Benson* case, which presumably would be applicable to a retrocession as well as a cession, narrow substantially the rule as stated in the excerpt from the *Fort Leavenworth* case quoted earlier in this chapter.

The *Benson* case was followed in *Arlington Hotel Co.* v. *Fant,* 278 U. S. 439 (1929),[55] in overruling an argument that jurisdiction was not lodged in the United States over an area leased to a private hotel operator within a reservation over which jurisdiction had been ceded to the United States, and it was again followed in the case of *United States* v. *Unzeuta,* 281 U. S. 138 (1930), where the Federal Government was held to have jurisdiction over an area (on which a crime had been committed) constituting a right-of-way over a Federal enclave. The same rule has been applied in other cases.[56]

The reluctance of the court to ignore jurisdictional determinations by the Executive branch is further illustrated by its opinion in *Phillips* v. *Payne,* 92 U. S. 130 (1876), in which was presented the question of the legal validity of the retrocession by the Federal Government to Virginia of that portion of the District of Columbia which had previously been ceded by Virginia to the Federal Government. In the course of its opinion, the court stated (p. 131) the position of the plaintiff in error that the Federal legislative procedures leading to the

[55] See also *Williams* v. *Arlington Hotel Co.,* 22 F. 2d 669 (C. A. 8, 1927).

[56] *Chicago, etc. Ry.* v. *McGlinn,* 114 U. S. 542 (1885); *Steele* v. *Halligan,* 229 Fed. 1011 (W. D. Wash., 1916); *United States* v. *Holt,* 168 Fed. 141 (C. C. W. D. Wash., 1909), *aff'd. sub nom. Holt* v. *United States,* 218 U. S. 245; *Commonwealth* v. *King,* 252 Ky. 699, 68 S. W. 2d 45 (1934); and see also *State* v. *Bruce,* 104 Mont. 500, 69 P. 2d 97 (1937); 106 Mont. 322, 77 P. 2d 403 (1938), *aff'd.,* 305 U. S. 577; *rev'd. on other grounds, Valley County* v. *Thomas,* 109 Mont. 345, 97 P. 2d 345 (1939).

retrocession were "in violation of the Constitution" but it held that (p. 134):

> The plaintiff in error is estopped from raising the point which he seeks to have decided. He cannot, under the circumstances, vicariously raise a question, nor force upon the parties [*i. e.*, the Federal Government and Virginia] to the compact an issue which neither of them desires to make.
>
> In this litigation we are constrained to regard the *de facto* condition of things which exists with reference to the county of Alexandria as conclusive of the rights of the parties before us.

The position taken by the court in the *Benson, Arlington Hotel, Unzeuta,* and *Phillips* cases suggests that the rule announced in the *Fort Leavenworth* case would not apply in any situation in which the Executive branch has indicated that the area involved, though presently used for non-Federal purposes, is intended to be used for Federal purposes. Where, of course, a condition in a State cession or consent statute pursuant to which legislative jurisdiction was obtained by the Federal Government provides that jurisdiction shall revert to the State if the area, or any portion of it, is used, even temporarily, for purposes other than those specified in the State consent or cession statute, full effect would be given to such condition. Absent such express condition in the State consent or cession statute, it seems probable that the courts would conclude that Federal legislative jurisdiction has terminated only upon a clear showing that the area is not only not being used for the purposes for which it was acquired but also that there appears to be no plan to use it for such purpose in the future.[57]

[57] See *Commonwealth* v. *King*, 252 Ky. 699, 68 S. W. 2d 45 (1934), where in the absence of a reverter clause land leased to a bank was held to remain under the exclusive legislative jurisdiction of the United States; *cf. Springfield* v. *United States*, 99 F. 2d 860 (C. A. 1, 1938), *cert. den.*, 306 U. S. 650, where it was indicated that jurisdiction reverted to the States under similar circumstances; and *State* v. *Oliver*, 162 Tenn. 100, 35 S. W. 2d 396 (1931).

Criminal Jurisdiction

RIGHT OF DEFINING AND PUNISHING FOR CRIMES: *Exclusive Federal jurisdiction.*—Areas over which the Federal Government has acquired exclusive legislative jurisdiction are subject to the exclusive criminal jurisdiction of the United States. *Bowen* v. *Johnston,* 306 U. S. 19 (1939); *United States* v. *Unzeuta,* 281 U. S. 138 (1930); *United States* v. *Watkins,* 22 F. 2d 437 (N. D. Cal., 1927).[1] That the States can neither define nor punish for crimes in such areas[2] is made clear in the

[1] *Battle* v. *United States*, 209 U. S. 36 (1908); *Ex parte Tatem*, 23 Fed. Cas. 708, No. 13,759 (E. D. Va., 1877); *Kelly* v. *United States*, 27 Fed. 616 (C. C. D. Me., 1885); *United States* v. *Tucker*, 122 Fed. 518 (W. D. Ky., 1903); *United States* v. *Holt*, 168 Fed. 141 (C. C. W. D. Wash., 1909), *aff'd., sub nom. Holt* v. *United States*, 218 U. S. 245; *Bowen* v. *United States*, 134 F. 2d 845 (C. A. 5, 1943), *cert. den.*, 319 U. S. 764; *Mannix* v. *United States*, 140 F. 2d 250 (C. A. 4, 1944); *England* v. *United States*, 174 F. 2d 466 (C. A. 5, 1949); 22 *Calif. L. Rev.* 152 (1934).

The Attorney General of Missouri has held that the State is divested, by its statute giving general consent to Federal acquisition of land, of jurisdiction over violations of criminal law occurring on an area acquired by the Federal Government. *Ops. A. G., Mo.* (Jan. 19, 1953, and Feb. 20, 1953). The Attorney General of Illinois has held to the same effect, *Op. A. G., Ill.*, No. 469 (Oct. 9, 1946), as has the Attorney General of Florida, *Ops. A. G., Fla.*, No. 044–210 (July 21, 1944), No. 046–442 (Oct. 18, 1946), and No. 053–203 (Aug. 19, 1953), and the Attorney General of Utah, *Op. A. G., Utah*, No. 1291. These opinions all assume Federal acceptance of the proffered jurisdiction. The date of Federal acceptance of jurisdiction, not the date of Federal acquisition of title to the land, is the date when State criminal jurisdiction terminates. *Op. A. G., Cal.*, No. NS4842 (Apr. 9, 1943).

[2] *Commonwealth* v. *King*, 252 Ky. 699, 68 S. W. 2d 45 (1934); *State* v. *DeBerry*, 224 N. C. 834, 32 S. E. 2d 617 (1945); *People* v. *Hillman*, 246 N. Y. 467, 159 N. E. 400 (1927); *People* v. *Kraus*, 212 App. Div. 397, 207 N. Y. Supp. 87 (1924); *State* v. *Kelly*, 76 Me. 331 (1884); *State* v. *Tully*, 31 Mont. 365, 78 Pac. 760 (1904); *People* v. *Mouse*, 203 Cal. 782, 265 Pac. 944 (1928), *app. dism.*, 278 U. S. 662; *Baker* v. *State*, 47 Tex. Cr. App. 482, 83 S. W. 1122 (1904); *State* v. *Morris*, 76 *N. J. L.* 222, 68 Atl. 1103 (1908); *People* v. *Marra*, 4 N. Y. Cr. Rep. 304 (1886); *Lasher* v. *State*, 30 Tex. Cr. App. 387,