places where the power of exclusive legislation is vested in the Congress by the Constitution. Congress already, with the design that the places under the exclusive jurisdiction of the United States shall not be freed from the restraints of the law, has enacted for them (Revised Statutes, LXX, chapter 3) an extensive criminal code ending with the provision (§ 5391) that where an offense is not specially provided for by any law of the United States, it shall be prosecuted in the courts of the United States and receive the same punishment prescribed by the laws of the State in which the place is situated for like offenses committed within its jurisdiction. We do not mean to suggest that the statute before us creates a crime in the technical sense. If it is desirable that penalties should be inflicted for a default in the delivery of a telegram occurring within the jurisdiction of the United States, Congress only has the power to establish them.[3]

The civil authority of a State is extinguished over privately owned areas[4] and privately operated areas[5] to the same extent as over federally owned and operated areas[6] when such areas are placed under the exclusive legislative jurisdiction of the United States.[7]

[3] See also *Western Union Tel. Co.* v. *Brown*, 234 U. S. 542 (1914).

[4] *Petersen* v. *United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885; and it has been held that an owner of an area within a national park under the exclusive jurisdiction of the United States may not kill game contrary to Federal regulation, even on his own land. *Op. Sol., Dept. of the Interior*, M–27284 (Dec. 27, 1932).

[5] *Chicago, Rock Island & Pacific Ry.* v. *McGlinn*, 114 U. S. 542 (1885); *Arlington Hotel Company* v. *Fant*, 278 U. S. 439 (1929).

[6] *United States* v. *Ames*, 24 Fed. Cas. 784, No. 14,441 (C. C. D. Mass., 1845).

[7] The authority that Federal agencies may exercise in exclusive Federal jurisdiction areas which are under their supervision has been the subject of many opinions and legal memoranda by chief law officers of a number of such agencies. However, the questions of law discussed in such writings involve essentially the powers available to the agencies, as distinguished from those available to the United States Government (including the Congress), and except as the opinions or memoranda directly concern matters of legislative jurisdiction they will not be referred to in this work.

State reservations of authority.—State reservation of authority to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area.[8] It has been held, however, that a reservation of the right to serve process does not permit a State to serve a writ of attachment against either public or private property located on an area under exclusive Federal jurisdiction,[9] and, it would seem,[10] it does not permit State service of a writ of habeas corpus with respect to a person held on such an area. It has also been held, on the other hand, that a reservation to serve process enables service, under a statute appointing the Secretary of State to receive service for foreign corporations doing business within the State, upon a corporation doing business within the boundaries of the State only upon an exclusive Federal jurisdiction area.[11] And residence of a person on an exclusive Federal jurisdiction area does not toll application of the State statute of limitations where there has been a reservation of the right to serve proc-

[8] See p. 118 *et seq.*, *supra*, and p. 187, *infra*.

[9] *Op. J. A. G., Navy*, 5267–1116 : 3 (Mar. 26, 1923); see also *Foley* v. *Shriver*, 81 Va. 568 (1886); but in *Sauer* v. *Steinbauer*, 14 Wis. 70 (1861), an order of a State court directing sale of property of a judgment debtor was held to be process and its execution on an area under Federal legislative jurisdiction was upheld under a State reservation of the right of service or execution of process on the area. Further, the Judge Advocate General of the Navy has more recently reversed his position as to private property: *Op. J. A. G., Navy*, JAG : II : WRN : mnc (Sept. 27, 1955). Also upholding the attachment of private property as service of process are: 14 Ops. A. G. 426 (1874), and *Op. J. A. G., Army*, JAG 680.2 (Feb. 25, 1939).

[10] See p. 123 *et seq.*, *supra*.

[11] *Knott Corp.* v. *Furman*, 163 F. 2d 199 (C. A. 4, 1947), *cert. den.*, 332 U. S. 809; but see *Hercules Powder Co.* v. *Ruben*, 188 Va. 694, 51 S. E. 2d 149 (1949); *Neidig* v. *Century Sprinkler Corp.*, 60 Dauph. 585 (Pa. C. P., 1950); see also *Brooks Hardware Co.* v. *Greer*, 111 Me. 78, 87 Atl. 889 (1911); *Camden* v. *Harris*, 109 F. Supp. 311 (W. D. Ark., 1953); *Ohio River Contract Co.* v. *Gordon*, 244 U. S. 68 (1917); *United Services Automobile Ass'n* v. *Harman*, 151 S. W. 2d 609 (Tex., 1941), *cert. den.*, 315 U. S. 807.

ess.[12] While a State may reserve various authority of a civil character other than the right to serve process in transferring legislative jurisdiction over an area to the Federal Government,[13] such reservations result in Federal possession of something less than exclusive jurisdiction, and the rights of States with respect to the exercise of reserved authority in a Federal area will be discussed in a subsequent chapter.[14]

Congressional exercise of right—statute relating to death or injury by wrongful act.—While the Congress has, through the Assimilative Crimes Act and Federal law defining various specific crimes, established a comprehensive system of Federal laws for the punishment of crimes committed in areas over which it has legislative jurisdiction,[15] it has not made similar provision for civil laws in such areas. Indeed, the only legislative action of the Federal Government toward providing Federal civil law in these areas has been the adoption (in the general manner accomplished by the Assimilative Crimes Act), for areas under the exclusive legislative jurisdiction of the United States, of the laws of the several States relating to right of action for the death or injury of a person by the wrongful act or neglect of another.[16]

The act of February 1, 1928, has a history relating back to 1919. In that year Senator Walsh of Montana first introduced a bill (S. 206, 66th Cong., 1st Sess.), which was debated and passed by the Senate, but on which the House took no action, having substantially the language of the statute finally enacted. Nearly identical bills were introduced by the same senator and

[12] *Maurice* v. *Worden*, 52 Md. 283 (1879).
[13] See p. 60 *et seq.*, *supra*.
[14] See chapter VII, *infra*.
[15] See chapter V, *supra*.
[16] Act of February 1, 1928, 45 Stat. 54, 16 U. S. C. 457; and see *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94 (1940); *Misner* v. *Cleveland Wrecking Company of Cincinnati, et al.*, 25 F. Supp. 763 (W. D. Mo., 1938); *Whitmore* v. *French*, 37 Cal. 2d 744, 235 P. 2d 3 (1951); *Kitchens* v. *Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101 (1947), *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948); *Puleo* v. *H. E. Moss & Co.*, 159 F. 2d 842 (C. A. 2, 1947), (admiralty jurisdiction).

passed by the Senate, without the filing of a report and without debate, in the three succeeding Congresses.[17] However, not until a fifth bill was presented by the senator (S. 1798, 70th Cong., 1st Sess.) did favorable action ensue in the House,[18] as well as in the Senate, and the bill became law.

On but two occasions were these bills debated. When the first bill (S. 206, 66th Cong., 1st Sess.) came up for consideration, on June 30, 1919, Senator Walsh said with respect to it: [19]

> The acts creating the various national parks give to the United States exclusive jurisdiction over those territories, so that a question has frequently arisen as to whether, in case one suffers death by the default or willful act of another within those jurisdictions, there is any law whatever under which the dependents of the deceased may recover against the person answerable for his death. For instance, in the Yellowstone National Park quite a number of deaths have occurred in connection with the transportation of passengers through the park, and a very serious question arises as to whether, in a case of that character, there is any law whatever under which the widow of a man who was killed by the neglect, for instance, of the transportation company handling the passengers in the park could recover.
>
> The purpose of this proposed statute is to give a right of action in all such cases exactly the same as is given by the law of the State within which the reservation or other place within the exclusive jurisdiction of the United States may be located.
>
> * * * * *
>
> This is merely to give the same right of action in a case within a district which is within the exclusive jurisdic-

[17] S. 258, 67th Cong., 1st Sess., 61 Cong. Rec. 2131; S. 314, 68th Cong., 1st Sess., 65 Cong. Rec. 4138; and S. 104, 69th Cong., 1st Sess., 67 Cong. Rec. 4759.
[18] H. Rept. 369, 70th Cong., 1st Sess., passed House (without debate), 69 Cong. Rec. 2039.
[19] 58 Cong. Rec. 2052.

tion of the United States as is given by the law of the State within which it is located should the occurrence happen outside of the region within the exclusive jurisdiction of the United States.

Senator Smoot interjected:

I understand from the Senator's statement what is desired to be accomplished, but I was wondering whether it was a wise thing to do that at this time. An act of Congress authorizes the payment of a certain amount of money to the widow or the heirs of an employee killed or injured in the public service. It is true that those amounts are usually paid by special bills by way of claims against the Government when there is no objection to them. I do not know just how this bill, if enacted into law, will affect the existing law.

To which Senator Walsh replied:

Let me say to the Senator that we are required to take care of the cases to which he has referred, because they touch the rights of persons in the employ of the United States, and their cause of action is against the United States. This bill does not touch cases of that kind at all. It merely touches cases of injury inflicted by some one other than the Government. Under this bill the Government will be in no wise liable at all.[20]

During Senate consideration of the fifth of the series of bills (S. 1798, 70th Cong., 1st Sess.), on January 14, 1928, the following discussion was had: [21]

Mr. WALSH of Montana. A similar bill has passed the Senate many times, at least three or four, but for some reason or other it has not succeeded in securing the approbation of the House. It is intended practically to

[20] Liability does attach to the Federal Government under this act at the present time, pursuant to the provisions of the Federal Tort Claims Act (28 U. S. C. 1346 (b) *et seq.*, and 2671 *et seq.*).

[21] 69 Cong. Rec. 1486.

make the application of what is known as Lord Campbell's Act to places within the exclusive jurisdiction of the United States.

Practically every State now has given a right of action to the legal representatives of the dependent relatives of one who has suffered a death by reason of the neglect or wrongful act of another, there being no such recovery, it will be recalled, at common law.

There are a great many places in the United States under the exclusive jurisdiction of the United States—the national parks, for instance. If a death should occur within those places, within the exclusive jurisdiction of the United States, there would be no right of recovery on the part of the representatives or dependents of the person who thus suffered death as a result of the wrongful act or neglect of another.

In the State of the Senator I suppose a right of action is given by the act of the Legislature of the State of Arkansas to the representatives of one who thus suffers, but if the death occur within the Hot Springs Reservation, being entirely within the jurisdiction of the United States, no recovery could be had, because recovery can be had there only by virtue of the laws of Congress. The same applies to the Yellowstone National Park in Wyoming and the Glacier National Park in Montana.

Mr. ROBINSON of Arkansas. This act would make the State law applicable?

Mr. WALSH of Montana. It would; so that if under the law of Arkansas a right of recovery could be had if the death occurred outside of the national park, the same right of action would exist if it occurred in the national park.

Mr. BRUCE. In other words, as I understand it, it is intended to meet the common-law principle that a personal action dies with the death of the person?

Mr. WALSH of Montana. Exactly.

Only a single written report was submitted (by the House Committee on the Judiciary, on S. 1798)[22] on any of the bills related to the act of February 1, 1928. In this it was stated:

> This bill has passed the Senate on three or four occasions, but has never been reached for action in the House. This bill gives a right of action in the case of death of any person by neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States within the exterior boundaries of any State.
>
> It provides that a right of action shall exist as though the place were under the jurisdiction of the State and that the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which the national park or other Government reservation may be. Under the common law no right of action survived to the legal representatives in case of death of a person by wrongful act or neglect of another. This was remedied in England by what is known as Lord Campbell's Act, and the States have almost without exception passed legislation giving a right of action to the legal representatives or dependent relatives of one who has suffered death by reason of the wrongful act of another. This bill will provide a similar remedy for places under the exclusive jurisdiction of the United States.

It may be noted that neither the language of the 1928 act,[23] nor the legislative history of the act, set out above, cast much light on whether the act constitutes a retrocession of a measure of jurisdiction to the States, or an adoption of State law as Federal law. But a retrocession, it has been seen,[24] requires State consent, and no consent is provided for under this statute,

[22] H. Rept. No. 369, 70th Cong., 1st Sess. (8835).
[23] See *report*, part I, p. 242.
[24] P. 54 *et seq.*, *supra*.

unlike the case with respect to Federal statutes providing for application of State laws relating to workmen's compensation, unemployment compensation, and other matters,[25] where the Federal statute cannot be implemented without some action by the State. It is largely on this basis that the 1928 statute is here classified as a Federal adoption of State law, rather than a retrocession.

It may also be noted that the debate on the bills, and the House report, set out in pertinent part above, indicate that the purpose of the bill was to furnish a remedy to survivors in the nature of that provided by Lord Campbell's Act, and no reference is made to language in the title of the bill, and in its text, suggesting that the bill applied to personal injuries, as well as deaths, by wrongful act. While the question whether the act applies to personal injuries, as well as deaths, appears not to have been squarely presented to the courts, for purposes of convenience, only, the act is herein referred to as providing a remedy in both cases.[26] In any event, however, it would clearly seem not to apply to cases of damage to personal or real property.

The statute adopting for exclusive jurisdiction areas State laws giving a right of action for death or injury by wrongful act or neglect did not, it was held by a case which led to further Federal legislation, adopt a State's workmen's compensation

[25] See p. 190 *et seq.*, *infra*.
[26] In *Murray* v. *Gerrick & Co., et al.*, which is more fully discussed in the text, *infra*, the Supreme Court said (291 U. S. 315, 319) that the 1928 statute gave an individual no right to sue if he survived his injury. The issue was not before the court, however. See also *Pound* v. *Gaulding*, 237 Ala. 387, 187 So. 468 (1939), wherein a former State employers' liability act was applied under the international law rule, discussed *infra*, in the case of an injury, which suggests a view in the court that the 1928 statute was not applicable to injuries. On the other hand, in at least three State cases (*Whitmore* v. *French*, 37 Cal. 2d 744, 235 P. 2d 3 (1951), *State* v. *Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937), and *Kitchens* v. *Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101, *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948)), the courts assumed that the 1928 statute applied to personal injuries as well as deaths.

law. *Murray* v. *Gerrick & Co., et al.*, 291 U. S. 315 (1934).[27] An argument to the contrary was answered by the court as follows (p. 318):

> * * * This argument overlooks the fact that the federal statute referred only to actions at law, whereas the state act abolished all actions at law for negligence and substituted a system by which employers contribute to a fund to which injured workmen must look for compensation. The right of action given upon default of the employer in respect of his obligation to contribute to the fund is conferred as a part of the scheme of state insurance and not otherwise. The Act of Congress vested in Murray no right to sue the respondents, had he survived his injury. Nor did it authorize the State of Washington to collect assessments for its state fund from an employer conducting work in the Navy Yard. If it were held that beneficiaries may sue, pursuant to the compensation law, we should have the incongruous situation that this law is in part effective and in part ineffective within the area under the jurisdiction of the federal government. Congress did not intend such a result. On the contrary, the purpose was only to authorize suits under a state statute abolishing the common law rule that the death of the injured person abates the action for negligence.

It was also held in the *Murray* case that the 1928 Federal statute served to make effective in Federal areas the law as revised from time to time by the State, not merely the law in effect as of the date of transfer of legislative jurisdiction to

[27] See also: *State* v. *Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *Employers' Liability Assur. Corp.* v. *DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); *Utley* v. *Phelan*, 168 Okla. 411, 33 P. 2d 498 (1934); *Utley* v. *State Industrial Comm.*, 176 Okla. 255, 55 P. 2d 762 (1936); *Utley* v. *State Industrial Comm.*, 176 Okla. 257, 55 P. 2d 764 (1936); *Pound* v. *Gaulding*, 237 Ala. 387, 187 So. 468 (1939); *Martin* v. *Clinton Const. Co.*, 41 Cal. App. 2d 35, 105 P. 2d 1029 (1940).

the United States. The issue was not presented, however, whether a State statute enacted after the 1928 Federal statute would apply.[28]

State unemployment compensation and workmen's compensation laws may be made applicable in such areas by authority of the Congress. But while the application of these laws has been made possible by Federal statutes,[29] these statutes, discussed more fully in chapter VII, *infra,* did not provide *Federal* laws covering unemployment compensation; rather, they effect a retrocession of sufficient jurisdiction to the States to enable them to enforce and administer in Federal enclaves their State laws relating to unemployment compensation and workmen's compensation. The Federal Government has similarly granted powers to the States for exercise in Federal enclaves with respect to taxation,[30] and these also will be discussed in a subsequent chapter.

Early apparent absence of civil law.—A careful search of the authorities has failed to disclose recognition prior to 1885 of any civil law as existing in areas under the exclusive legislative jurisdiction of the United States. Debates and other parts of the legislative history of the Assimilative Crimes Act, indicating prevalence of a belief that in the absence of Federal statutory law providing for punishment of criminal acts such acts in exclusive jurisdiction areas could not be punished,[31] suggest the existence in that time of a similar belief that in the absence of appropriate Federal statutes no civil law existed in such areas.[32]

[28] In *Kitchens* v. *Duffield*, 83 Ohio App. 41, 76 N. E. 2d 101 (1947), *aff'd.*, 149 Ohio St. 500, 79 N. E. 2d 906 (1948), this question was answered in the affirmative.

[29] Unemployment compensation: 26 U. S. C. 3305; workmen's compensation: act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. 290; both are further discussed in chapter VII, *infra.*

[30] See p. 190 *et seq.*, *infra.*

[31] See p. 124 *et seq.*, *supra.*

[32] A single possible exception to this suggestion is a statement by Kent (1 *Commentaries*, Kent (7th Ed., 1851), footnote c to marginal p. 431), that "if Congress have not provided any adequate and exclusive remedy for

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INTERNATIONAL LAW RULE: *Adopted for areas under Federal legislative jurisdiction.*—In 1885 the United States Supreme Court had occasion to consider the case of *Chicago, Rock Island & Pacific Ry.* v. *McGlinn,* 114 U. S. 542, involving a cow which became a casualty on a railroad right-of-way traversing Fort Leavenworth reservation. At the time that the Federal Government had acquired legislative jurisdiction over the reservation [33] a Kansas law required railroad companies whose roads were not enclosed by a fence to pay damages to the owners of all animals killed or wounded by the engines or cars of the companies without reference to the existence of any negligence. A State court had held the law applicable to the casualty involved in the *McGlinn* case. The United States Supreme Court, in affirming the judgment of the State court, explained as follows its reasons for so doing (p. 546):

> It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general, that a change of government leaves them in force until, by direct action by the new government, they are altered or repealed. *American Insurance Co.* v. *Canter,* 1 Pet. 542; Halleck, International Law, ch. 34, § 14.

injuries to public property, then the common law or laws of the states apply." But Kent may have been referring to the application of criminal, rather than civil, law, following an apparently isolated decision (*People* v. *Lent,* 2 Wheel. 548 (N. Y., 1819)) holding to the same effect.

[33] Transfer of jurisdiction was effective as to railroad right-of-way as well as to rest of reservation. *Fort Leavenworth R. R.* v. *Lowe,* 114 U. S. 525 (1885).

The rule thus defined by the court had been applied previously to foreign territories acquired by the United States [34] (*American Insurance Company* v. *Canter,* 1 Pet. 511 (1828)), but not until the *McGlinn* case was it extended to areas within the States over which the Federal Government acquired exclusive legislative jurisdiction. The *McGlinn* case has been followed many times, of course;[35] adoption of the international

[34] "Law once established continues until changed by some competent legislative power. It is not changed merely by change of sovereignty * * *." III Beale, *Cases on Conflict of Laws,* Summary, sec. 9 (1902). "This principle has been recognized by American tribunals in its application to laws protecting the private rights of the inhabitants of the territory concerned." I Hyde, *International Law Chiefly as Interpreted and Applied by the United States,* sec. 122 (2d Rev. Ed., 1945).

[35] *E. g.: Stewart & Co.* v. *Sadrakula,* 309 U. S. 94 (1940); *Crook, Horner & Co.* v. *Old Point Comfort Hotel Co.,* 54 Fed. 604 (C. C. E. D. Va., 1893); *Seerman* v. *Lustig & Weil, Inc.,* 252 App. Div. 906, 299 N. Y. Supp. 920 (1937); *In re Chavez, et al.,* 149 Fed. 73 (C. A. 8, 1906); *Steele* v. *Halligan,* 229 Fed. 1011 (W. D. Wash., 1916); *Williams* v. *Arlington Hotel Co.,* 22 F. 2d 669 (C. A. 8, 1927); *Danielson* v. *Donmopray,* 57 F. 2d 565 (D. Wyo., 1932), but it appears that the act of February 1, 1928, 45 Stat. 54 (see p. 148, *supra*),

law rule for areas under exclusive legislative jurisdiction has filled a vacuum which would otherwise exist in the absence of Federal legislation, and furnishes a code of civil law for Federal enclaves.

Federalizes State civil law, including common law.—The rule serves to federalize not only the statutory but the common law of a State. *Kniffen* v. *Hercules Powder Co.*, 164 Kan. 196, 188 P. 2d 980 (1948); *Kaufman* v. *Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *Norfolk & P. B. L. R.* v. *Parker*, 152 Va. 484, 147 S. E. 461 (1929); *Henry Bickel Co.* v. *Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918). But it applies merely to the civil law, not the criminal law, of a State. *In re Ladd*, 74 Fed. 31 (C. C. D. Neb., 1896). See also 22 *Calif. L. Rev.* 152, 164 (1934).

Only laws existing at time of jurisdictional transfer federalized.—It should be noted, however, that the international law rule brings into force only the State laws in effect at the time the transfer of legislative jurisdiction occurred, and later State enactments are not effective in the Federal enclave. So, in

rather than the international law rule, was for application here; *Coffman* v. *Cleveland Wrecking Co. of Cincinnati*, 24 F. Supp. 581 (W. D. Mo., 1938); *Hoffman, et al.* v. *Leavenworth Light, Heat & Power Co.*, 91 Kan. 450, 138 Pac. 632 (1914); *Craig* v. *Craig*, 143 Kan. 624, 56 P. 2d 464 (1936); *Kaufman* v. *Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *State* v. *Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *State ex rel. Grays Harbor Const. Co.* v. *Dept. of Labor & Industries*, 167 Wash. 507, 10 P. 2d 213 (1932), but it appears that the court here upheld State administration of a law—*cf. Atkinson* v. *State Tax Commission*, 303 U. S. 20 (1938); *Employers' Liability Assur. Corp.* v. *DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); and *Willis* v. *Oscar Daniels Co.*, 200 Mich. 19, 166 N. W. 496 (1918). And in *United States* v. *Chicago, R. I. & P. Ry.*, 171 F. 2d 377 (C. A. 10, 1948) the court chose, without explanation, to apply "Federal common law" (see footnote 1 in *St. Louis-San Francisco Ry.* v. *United States*, 187 F. 2d 925 (C. A. 5, 1951)), instead of law applicable under the international law rule, in a case under the Federal Tort Claims Act. See also *Dicks* v. *Dicks*, 177 Ga. 379, 170 S. E. 245 (1933).

Arlington Hotel Company v. *Fant*, 278 U. S. 439 (1929), the court charged an innkeeper on a Federal reservation at Hot Springs, Arkansas, with liability as an insurer of his guests' personal property against fire, under the common law rule, which was in effect in that State at the time legislative jurisdiction had passed to the United States over the area involved, although Arkansas, like most or all States, had subsequently modified this rule by statute so as to require a showing of negligence.[36] The non-applicability to areas under exclusive Federal legislative jurisdiction of State statutes enacted subsequent to the transfer of jurisdiction to the Federal Government has the effect that the civil law applicable in such areas gradually becomes obsolete, as demonstrated by the *Arlington Hotel Co.* case, since the Federal Government has not legislated for such areas except in the minor particulars already mentioned.[37]

CIRCUMSTANCES WHEREIN FORMER STATE LAWS INOPERATIVE: (a). *By action of the Federal Government.*—That an act of Congress may constitute the "direct action of the new government" mentioned in the *McGlinn* case which will invalidate former State laws in an area over which exclusive legislative jurisdiction has been transferred to the Federal Government apparently has not been the subject of litigation, undoubtedly because the matter is so fundamental and self-evi-

[36] See also: *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94 (1940); *Steele* v. *Halligan*, 229 Fed. 1011 (W. D. Wash., 1916); *Williams* v. *United States*, 145 F. Supp. 4 (W. D. Wis., 1956); *School District No. 20* v. *Steele, et al.*, 46 S. D. 589, 195 N. W. 448 (1923); *Employers' Liability Assur. Corp.* v. *DiLeo*, 298 Mass. 401, 10 N. E. 2d 251 (1937); *McCarthy* v. *R. G. Packard Co.*, 105 App. Div. 436, 94 N. Y. Supp. 203 (1905), *aff'd.*, 182 N. Y. 555, 75 N. E. 1130; *Kaufman* v. *Hopper*, 220 N. Y. 184, 115 N. E. 470 (1917), see also 151 App. Div. 28, 135 N. Y. Supp. 363 (1912), *aff'd.*, 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); *Henry Bickel Co.* v. *Wright's Administratrix*, 180 Ky. 181, 202 S. W. 672 (1918); *Willis* v. *Oscar Daniels Co.*, 200 Mich. 19, 166 N. W. 496 (1918); *Utley* v. *State Industrial Comm.*, 176 Okla., 255, 55 P. 2d 762 (1936); *Utley* v. *State Industrial Comm.*, 176 Okla. 257, 55 P. 2d 764 (1936); *State* v. *Rainier National Park Co.*, 192 Wash. 592, 74 P. 2d 464 (1937); *Op. A. G., Fla.*, No. 054–105 (1954).

[37] See also *report*, part I, p. 11.

dent. In *Webb* v. *J. G. White Engineering Corp.*, 204 Ala. 429, 85 So. 729 (1920), State laws relating to recovery for injury were held inapplicable to an employee of a Federal contractor on an exclusive Federal jurisdiction area on the ground that Federal legislation had pre-empted the field. It is not clear whether the same result would have obtained in the absence of exclusive jurisdiction in the Federal Government over the area in which the injury occurred.[38]

The "direct action of the new government" apparently may be action of the Executive branch as well as of the Congress. In the case of *Anderson* v. *Chicago and Northwestern R. R.*, 102 Neb. 578, 168 N. W. 196 (1918), the facts were almost precisely as in the *McGlinn* case. However, the War Department had ordered the railroad not to fence the railroad right-of-way on the ground that such fencing would interfere with the drilling and maneuver of troops. The defendant railroad was held not liable in the absence of a showing of negligence. The court said (102 Neb. 584):

> The war department has decided that the fencing of the right of way would impair the effectiveness of the territory for the purpose for which the cession was made. That department possesses peculiar and technical skill and knowledge of the needs of the nation in the training of its defenders, and of the necessary conditions to make the ceded territory fit for the purpose for which it was acquired. It is not for the state or its citizens to interfere with the purposes for which control of the territory was ceded, and, when the defendant was forbidden to erect the fences by that department of the United States government lawfully in control of the

[38] *Cf. Penn Dairies, Inc., et al.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261 (1943), wherein the Supreme Court suggested that Federal legislation could eliminate the applicability to contractors with the Government of State laws setting minimum prices for milk notwithstanding that the Federal Government did not have exclusive legislative jurisdiction over the area on which the Federal installation was situated.

> reservation, no other citizen can complain of non-performance or hold defendant guilty of a violation of law.

(b) *Where activity by State officials required.*—An apparent exception to the international law rule is concerned with State laws which require administrative activity on the part of St[illegible] officials. In *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94 (1940), the question was presented as to whether certain safety requirements prescribed by the New York Labor Law applied to a post office building which was being constructed in an area over which the Federal Government had exclusive legislative jurisdiction. An employee of a contractor engaged in the construction of the New York City Post Office fell from the building and was killed. His administratrix, in an action of tort against the contractor, narrowed the scope of the charges of negligence until there finally was alleged only the violation of a subsection of the New York Labor Law which required the planking of floor beams. The Supreme Court of the United States, in upholding a judgment for the administratrix based upon a finding that the Labor Law was applicable, said (pp. 101–103):

> It is urged that the provisions of the Labor Law contain numerous administrative and other provisions which cannot be relevant to the federal territory. The Labor Law does have a number of articles. Obviously much of their language is directed at situations that cannot arise in the territory. With the domestication in the excised area of the entire applicable body of state municipal law much of the state law must necessarily be inappropriate. Some sections authorize quasi-judicial proceedings or administrative action and may well have no validity in the federal area. It is not a question here of the exercise of state administrative authority in federal territory. We do not agree, however, that because the Labor Law is not applicable as a whole, it follows that none of its sections are. We have held in *Collins* v. *Yosemite Park Company* that the sections of a Cali-

fornia statute which levied excises on sales of liquor in Yosemite National Park were enforceable in the Park, while sections of the same statute providing regulation of the Park liquor traffic through licenses were unenforceable.

In view of the decisions in the *Sadrakula* and *Gerrick* cases, the conclusion is inescapable that State laws which contemplate or require administrative action are not effective under the international law rule. Clearly, the States receive no authority to operate administrative machinery within areas under exclusive Federal legislative jurisdiction through the adoption of State law as Federal law for the areas.[39] Therefore, adoption as Federal law of a State law requiring administrative action would be of little effect unless the Federal Government also established administrative machinery paralleling that of the State. Instead of providing for the execution of such State laws as Federal law, the Federal Government has authorized the States to extend the application of certain such laws to areas of exclusive Federal legislative jurisdiction. Thus, as has been indicated, the States have been authorized to extend their workmen's compensation and unemployment compensation laws to such Federal areas. However, little or no provision has been made for either State or Federal administration of laws in various other fields.[40]

[39] See p. 138 *et seq.*, *supra*, for related discussion whether State regulatory statutes are adopted under the Assimilative Crimes Act, and p. 169 *et seq.*, *infra*, for discussion of relation of the States to Federal enclaves. The Attorney General of California has held that the regulatory provisions of the State workmen's compensation laws did not continue in force in a Federal enclave upon the creation of such enclave, a question of State administration of such provisions being involved. 24 *Ops. A. G. Cal.* 103 (Sept. 13, 1954).

[40] *E. g.*: marriage—see 101 *U. of Pa. L. Rev.* 124, 131 *et seq.* (1952–1953); 22 *Calif. L. Rev.* 152, 168 (1933); *Ops. J. A. G., Army*—250 and 938 (1912), (State has no power to license or regulate marriage ceremonies on Federal enclaves, but such marriages should be entered into in accordance with State laws so as to be made a matter of public record); *id.* 13754 (1943), (marriages solemnized in a Federal enclave are valid provided the statutes of the State from which the license was obtained contain no contrary provision); *id. Digest*, 1912–1930, p. 227 (May 23, 1918), (a chaplain has no legal authority to perform marriages except as obtained in conformity with local law where the ceremonies are to be performed); *Op. A. G., N. Mex.*, 1094 (Aug. 17, 1913), (laws relating to marriage continue effective in Federal enclaves, under the international law rule). While practical problems have arisen and questions been raised concerning such matters as notarization of documents, and licensing and inspection of activities affecting public health or safety, on Federal enclaves, under the international law rule, no legal opinion or court decision dealing with such matters has been located except as indicated in chapter VII, *infra*.

(c) *Inconsistency with Federal law.*—In *Hill* v. *Ring Construction Co., et al.*, 19 F. Supp. 434 (W. D. Mo., 1937), which involved a contract question, the court refused to give effect under the international law rule to a statute which had been in effect in the State involved at the time legislative jurisdiction was transferred to the Federal Government. This statute provided that thirteen and one-half cubic feet (rather than the mathematically provable 27 cubic feet) constituted a cubic yard. In refusing to apply the statute, the court stated it was inconsistent with the "national common law" which, according to the court, provides that "two added to two were always four and a cubic yard was a cubic yard." The court makes clear, however, that it strained to this conclusion.

There appears to be no reported decision except that in the *Hill* case, *supra*, wherein a State civil law has been declared inapplicable as Federal law under the international law rule in an area under exclusive Federal jurisdiction because of its inconsistency with other law of the new Federal sovereign.[41] There are similarly no cases holding State law applicable notwithstanding such inconsistency. The rule, as it was defined in the *McGlinn* case, is very clear on this subject, however, and State civil laws inconsistent with Federal laws would fall under the international law rule as State criminal laws inconsistent with Federal laws fall under the Assimilative Crimes Act.[42]

[41] The case of *Petersen* v. *United States*, 191 F. 2d 154 (C. A. 9, 1951), *cert. den.*, 342 U. S. 885, and other similar cases, seem not in point in that they involve an attempted *State* exercise of authority in an exclusive Federal jurisdiction area, although there may have been involved an inconsistent Federal law.

[42] See p. 135 *et seq.*, *supra*.

INTERNATIONAL LAW RULE IN RETROCESSION OF CONCURRENT JURISDICTION: A question which has not as yet been considered by the courts is the extent to which, if to any, the international law rule is applicable to areas which had been subject to exclusive legislative jurisdiction, and over which concurrent jurisdiction has been retroceded to the State.

The fact that concurrent jurisdiction only is retroceded would, as a matter of statutory construction, suggest that Federal law currently in effect in the area is unaffected. The applicable Federal criminal laws would not, presumably, be repealed or suspended by a retrocession of concurrent jurisdiction, nor any other Federal statutes which were enacted for areas under Federal legislative jurisdiction. Similarly, it might be argued, such retrocession of concurrent jurisdiction does not serve to repeal Federal laws which were adopted pursuant to the international law rule. While it is a seeming anomaly to have two sets of laws governing civil matters, it seems no more anomalous than to have two sets of criminal laws applicable to the same crime, and that, it has been seen, is a state of fact, to which reasonably satisfactory adjustment appears to have been made. However, an adjustment to two sets of civil laws would seem more difficult, and, indeed, perhaps it would not be entirely possible.

The considerations supporting a conclusion that laws federalized under the international law rule would not survive a retrocession of concurrent jurisdiction to the State have their bases in the fact that the international law rule is applied as a matter of necessity, in order to avoid a vacuum in the area which has been the subject of the jurisdictional transfer. When the need for the application of the rule no longer exists, it is logical to assume, the laws which have been adopted thereunder are no longer effective. The merit of this conclusion rests on practical considerations as well as logic, and these considerations would seem to make the conclusion outweigh the contrary position, based solely on considerations of logic.

STATE AND FEDERAL VENUE DISCUSSED: The civil laws effective in an area of exclusive Federal jurisdiction are Federal laws, notwithstanding their derivation from State laws, and a cause arising under such laws may be brought in or removed to a Federal district court under sections 24 or 28 of the former Judicial Code (now sections 1331 and 1441 of title 28, United States Code), giving jurisdiction to such courts of civil actions arising under the "* * * laws * * * of the United States" where the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs. *Steele* v. *Halligan*, 229 Fed. 1011 (W. D. Wash., 1916). To the same effect as the holding in the *Steele* case, and following the decisions in the *McGlinn* and *Arlington Hotel Co.* cases, were those in *Coffman* v. *Cleveland Wrecking Co., et al.*, 24 F. Supp. 581 (W. D. Mo., 1938), and in *Jewell* v. *Cleveland Wrecking Co. of Cincinnati, et al.*, 28 F. Supp. 366 (W. D. Mo., 1938), *rev'd. on other grounds*, 111 F. 2d 305 (C. A. 8, 1940). In each of these it was decided that laws of the State (Missouri) existing at the time of Federal acquisition of legislative jurisdiction over an area became "laws of the United States" within that area. However, in a related case in the same district (*Jewell* v. *Cleveland Wrecking Co.*, 28 F. Supp. 364 (W. D. Mo., 1938)), another judge appears to have rejected this view of the law on grounds not entirely clear but having their bases in the fact that the trial in the *McGlinn* case, *supra*, occurred in a State court (it involved a transitory action).[43]

Transitory actions may be brought in State courts notwithstanding that they arise out of events occurring in an exclusive Federal jurisdiction area. *Ohio River Contract Co.* v. *Gordon*, 244 U. S. 68 (1917).[44] Indeed, unless there is involved one of

[43] See also *Misner* v. *Cleveland Wrecking Co. of Cincinnati, et al.*, 25 F. Supp. 763 (W. D. Mo., 1938) which, however, was concerned with the construction of the Federal statute relating to death or injury of a person by wrongful act or neglect of another (see p. 148, *supra*), and see *Mater* v. *Holley*, 200 F. 2d 123 (C. A. 5, 1952); *Olsen* v. *McPartlin*, 105 F. Supp. 561 (D. Minn., 1952).

[44] See also: *Chicago, Rock Island & Pacific Ry.* v. *McGlinn, supra; Arlington Hotel Co.* v. *Fant*, 278 U. S. 439 (1929); *Danielson* v. *Donmopray, supra;*

the special situations (admiralty, maritime, and prize cases, bankruptcy matters and proceedings, etc.), as to which Federal district courts are given original jurisdiction by chapter 85 of title 18, United States Code, only State courts, and not Federal district courts, may take cognizance of an action arising out of events occurring in an exclusive Federal jurisdiction area unless the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs.[45] But State authority to serve process in exclusive Federal jurisdiction areas is limited to process relating to activities occurring outside of the areas,[46] although a number of States now reserve broader authority relating to service of process,[47] so that unless process can be served on the defendant outside the exclusive Federal jurisdiction area it appears that even a transitory action arising in such an area could not be maintained in a State court.[48] In such a case it appears that no remedy whatever exists, even with

Armstrong v. *Foote*, 11 Abb. Pr. 384 (Brooklyn City Ct., 1860); *Delamater* v. *Folz*, 50 Hun 528, 3 N. Y. Supp. 711 (Sup. Ct., 1889); *Madden* v. *Arnold*, 22 App. Div. 240, 47 N. Y. Supp. 757 (1897), *aff'd.*, 162 N. Y. 638, 57 N. E. 1116; *McCarthy* v. *R. G. Packard Co.*, 105 App. Div. 436, 94 N. Y. Supp. 203 (1905), *aff'd.*, 182 N. Y. 555, 75 N. E. 1130; *Norfolk & P. B. L. R.* v. *Parker*, 152 Va. 484, 147 S. E. 461 (1929); but *cf. Webb* v. *J. G. White Engineering Corp.*, 204 Ala. 429, 85 So. 729 (1920), where it was held that Congress had pre-empted, through the Federal Employees' Compensation Act of 1916, the remedy available for injury to employees of one of its contractors. See also 32 *Am. L. Rev.* 78 (1898); 22 *Va. L. Rev.* 791 (1936), and 38 *Col. L. Rev.* 128, 139 (1938).

[46] 28 U. S. C. 1331; 28 U. S. C. 1441; and see *Jewell* v. *Cleveland Wrecking Co.*, 28 F. Supp. 364 (W. D. Mo., 1938).

[47] See p. 10, *supra*.

[48] *Report*, part I, p. 127 *et seq.*, and see *Goldberger Const. Corp.* v. *Rappoli Co., Inc.*, 169 Misc. 40, 6 N. Y. S. 2d 472 (1938), *aff'd.*, 255 App. Div. 769, 7 N. Y. S. 2d 571 (1938).

[48] See *Buttery* v. *Robbins*, 177 Va. 368, 14 S. E. 2d 544 (1941); *Ohio River Contract Co.* v. *Gordon*, *supra*. In *Knott Corporation* v. *Furman*, 163 F. 2d 199 (C. A. 4, 1947), *cert. den.*, 322 U. S. 826, it was held that the doing of business by a corporation upon an exclusive Federal jurisdiction area within the boundaries of a State constituted the doing of business within the State for the purpose of a State statute designating the Secretary of the Commonwealth as an agent of foreign corporations doing business within the State for service of process; but see cases *contra* cited in footnote 11, *supra* (p. 147).

respect to a transitory cause of action, where the matter in controversy does not involve the Federal jurisdictional amount.

A local action, as distinguished from a transitory action, having rise in an exclusive Federal jurisdiction area, generally is held as not cognizable in State courts.[49] So, except, as local actions may come within the purview of the limited (except in the District of Columbia) authority of Federal district courts to entertain them, no remedy is available in many types of such actions arising in Federal exclusive jurisdiction areas. Divorce actions and actions for probate of wills, it will be seen,[50] have constituted a special problem in this respect.

Local actions pending in the State courts at the time of transfer of legislative jurisdiction from a State to the Federal Government should be proceeded in to a conclusion, it has been held. *Van Ness* v. *Bank of the United States*, 13 Pet. 15 (1839).[51]

FEDERAL STATUTES AUTHORIZING APPLICATION OF STATE LAW: As has been indicated, the Federal Government has authorized the extension of State workmen's compensation and unemployment compensation laws to areas of exclusive legislative jurisdiction. In addition, the States have been authorized to extend certain of their tax laws to such areas. As a consequence, areas of exclusive legislative jurisdiction are as completely subject to certain State laws as areas in which the Federal Government has only a proprietorial interest. The operation and effect of the extension of these State laws is considered more fully in chapter VII.

[49] *Woodfin* v. *Phoebus*, 30 Fed. 289 (C. C. E. D. Va., 1887); *Martin* v. *House*, 39 Fed. 694 (C. C. E. D. Ark., 1888); *United States* v. *McIntosh*, 57 F. 2d 573, & 2 Fed. Supp. 244 (E. D. Va., 1932), *app. dism.*, 70 F. 2d 507 (C. A. 4, 1934), *cert. den.*, 293 U. S. 586; *In re Town of Highlands*, 48 N. Y. St. Rep. 795, 22 N. Y. Supp. 137 (Sup. Ct., 1892); *Dibble* v. *Clapp*, 31 How. Pr. 420 (Buffalo Super. Ct., 1886); but *cf. Lotterle* v. *Murphy*, 67 Hun 76, 21 N. Y. Supp. 1120 (Sup. Ct., 1893); see also 38 *Col. L. Rev.* 128 (1938).

[50] See p. 225 *et seq.*, *infra*.

[51] See also *McLaughlin* v. *Bank of Potomac*, 48 Va. (Grat.) 68 (1850).

Relation of States to Federal Enclaves

EXCLUSIVE FEDERAL JURISDICTION: *States basically without authority.*—When the Federal Government has acquired exclusive legislative jurisdiction over an area, by any of the three methods of acquiring such jurisdiction,[1] it is clear that the State in which the area is located is without authority to legislate for the area or to enforce any of its laws within the area.[2] All the powers of government with respect to the area are vested in the United States. *Pollard* v. *Hagan,* 3 How. 212, 223 (1845).

Exclusion of State authority illustrated.—A classic illustration of the exclusion of State authority from areas of exclusive legislative jurisdiction is to be found in two cases which were decided by the United States Supreme Court on the same day, *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania,* 318 U. S. 261 (1943), and *Pacific Coast Dairy, Inc.* v. *Department of Agriculture of California,* 318 U. S. 285 (1943), *reh. den.,* 318 U. S. 801. In each of these cases the State officials had sought to enforce regulations governing the price of milk sold to the Army. In the California case, the milk was delivered by the dealer to an area of exclusive Federal jurisdiction; in the Pennsylvania case, the United States had

[1] See chapter III, p. 41 *et seq., supra.*

[2] See pp. 105 *et seq.*, and 145 *et seq., supra;* but a municipality is not prevented from annexing, pursuant to State-granted authority, an area which is under exclusive Federal jurisdiction, and imposing therein a State (municipal) tax authorized for imposition by Federal law, the annexation being not inconsistent with Federal exercise of exclusive jurisdiction. *Howard* v. *Commissioners,* 344 U. S. 624 (1953).