Chapter VIII

Residents of Federal Enclaves

EFFECTS OF TRANSFERS OF LEGISLATIVE JURISDICTION: *In general.*—With the transfer of sovereignty, which is implicit in the transfer of exclusive legislative jurisdiction, from a State to the Federal Government, the latter succeeds to all the authority formerly held by the State with respect to persons within the area as to which jurisdiction was transferred,[1] and such persons are relieved of all their obligations to the State.[2] Where partial jurisdiction is transferred, the Federal Government succeeds to an exclusive right to exercise some authority formerly possessed by the State, and persons within the area are relieved of their obligations to the State under the transferred authority. And transfer of legislative jurisdiction from a State to the Federal Government has been held to affect the *rights,* or *privileges,* as well as the *obligations,* of persons under State law. Specifically, it has been held to affect the rights of residents of areas over which jurisdiction has been transferred to receive an education in the public schools, to vote and hold public office, to sue for a divorce, and to have their persons, property, or affairs subjected to the probate or lunacy jurisdiction of State courts; it has also been interpreted as affecting the right of such residents to receive various other miscellaneous services ordinarily rendered by or under the authority of the State.

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[1] Criminal matters—see p. 105 *et seq.;* civil matters—see p. 145 *et seq.;* in general—see p. 169 *et seq.*

[2] See p. 185 *et seq., supra;* but it should be noted that the Federal Government has retroceded to the States authority to collect most taxes, and authority with respect to certain other matters, see p. 190 *et seq., supra.*

Education.—The question whether children resident upon areas under the legislative jurisdiction of the Federal Government are entitled to a public school education, as residents of the State within the boundaries of which the area is contained, seems first to have been presented to the Supreme Judicial Court of Massachusetts in a request for an advisory opinion by the Massachusetts House of Representatives. The House sought the view of the court on the question, *inter alia:*

> Are persons residing on lands purchased by, or ceded to, the United States, for navy yards, arsenals, dock yards, forts, light houses, hospitals, and armories, in this Commonwealth, entitled to the benefits of the State common schools for their children, in the towns where such lands are located?

The opinion of the court (*Opinion of the Justices*, 1 Metc. 580 (Mass., 1841)), reads in pertinent parts as follows (pp. 581–583):

> The constitution of the United States, Art. 1, § 8, provides that congress shall have power to exercise exclusive legislation in all cases whatsoever, over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings. The jurisdiction in such cases is put upon the same ground as that of the district ceded to the United States for the seat of government; and, unless the consent of the several States is expressly made conditional or limited by the act of cession, the exclusive power of legislation implies an exclusive jurisdiction; because the laws of the several States no longer operate within those districts.
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> and consequently, that no persons are amenable to the laws of the Commonwealth for crimes and offences committed within said territory, and that persons residing within the same do not acquire the civil and political privileges, nor do they become subject to the civil duties and obligations of inhabitants of the towns within which such territory is situated.

The court then proceeded to apply the general legal principles which it had thus defined to the specific question concerning education (p. 583):[3]

> We are of opinion that persons residing on lands purchased by, or ceded to, the United States for navy yards, forts and arsenals, where there is no other reservation of jurisdiction to the State, than that above mentioned [service of process], are not entitled to the benefits of the common schools for their children, in the towns in which such lands are situated.

The next time the question was discussed by a court it was again in Massachusetts, in the case of *Newcomb* v. *Rockport*, 183 Mass. 74, 66 N. E. 587 (1903). There, however, while the court explored Federal possession of legislative jurisdiction as a possible defense to a suit filed to require a town to provide school facilities on two island sites of lighthouses, the court's decision adverse to the petitioners actually was based on an absence of authority in the town to construct a school, and the possession of discretion by the town as to whether it would furnish transportation, under Massachusetts law, even conceding that the Federal Government did not have exclusive jurisdiction over the islands in question.

The legal theories underlying the two Massachusetts cases mentioned above have constituted the foundation for all the several decisions on rights to public schooling of children resident on Federal lands.[4] Where the courts have found that

[3] See 17 *Tenn. L. Rev.* 328, 352 (1942) and 14 *Wash. L. Rev.* (pt. 1) 1, 18 (1939), for comment on this matter.

[4] *Hufford* v. *Herrold*, 189 Iowa 853, 179 N. W. 53 (1920); *School Dist. No. 20* v. *Steele*, 46 S. D. 589, 195 N. W. 448 (1923); *Rockwell* v. *Independent School District*, 48 S. D. 137, 202 N. W. 478 (1925); *Tagge* v. *Gulzow*, 132 Neb. 276, 271 N. W. 803 (1937); *Rolland* v. *School District*, 132 Neb. 281,

legislative jurisdiction over a federally owned area has remained in the State, they have upheld the right of children residing on the area to attend State schools on an equal basis with State children generally; where the courts have found that legislative jurisdiction over an area has been vested in the United States, they have denied the existence of any right in children residing on the area to attend public schools, on the basis, in general, that Federal acquisition of legislative jurisdiction over an area places the area outside the State or the school district, whereby the residents of the area are not residents of the State or of the school district.[5]

Further, where a school building is located on an area of exclusive Federal jurisdiction it has been held (*Op. A. G., Ind.*, p. 259 (1943)) the local school authorities have no jurisdiction over the building, are not required to furnish school facilities for children in such building, and if they do the latter with

271 N. W. 805 (1937), (for comment on this case see 17 *Neb. L. Bul.* 86, and 38 *Colo. L. Rev.* 128, 140); *In re Annexation of Reno Quartermaster Depot*, 180 Okla. 274, 69 P. 2d 659 (1937); *State ex rel. Moore* v. *Board of Education of Euclid City School Dist.*, 41 Ohio Abs. 161, 57 N. E. 2d 118 (1944); *McGwinn* v. *Board of Education*, 33 Ohio Op. 433, 69 N. E. 2d 391 (1945), *aff'd.*, 78 Ohio App. 405, 69 N. E. 2d 381 (1946), *app. dism'd.*, 147 Ohio St. 259, 70 N. E. 2d 776; *Miller* v. *Hickory Grove School Bd.*, 162 Kan. 528, 178 P. 2d 214 (1947); *Independent School Dist.* v. *Central Education Agency*, 247 S. W. 2d 597 (1952), *aff'd.*, 152 Tex. 56, 254 S. W. 2d 357 (1953); and *Schwartz* v. *O'Hara Township School Dist.*, 375 Pa. 440, 100 A. 2d 621 (1953).

[5] But see p. 238 *et seq., infra.* And the Attorney General of Illinois has ruled that children residing at Ft. Sheridan (an exclusive Federal jurisdiction area) are entitled to the benefits of the school system of Illinois, *Op. A. G., Ill.*, p. 363, No. 2722 (July 22, 1930), apparently overruling an earlier inconsistent decision (*id.* p. 491, No. 1284 (1927)). But the Attorney General of Indiana has held under similar circumstances that such children may not attend without payment of tuition. *Op. A. G., Ind.*, p. 411, No. 66 (1948). Other State Attorneys General have held that children residing on federally owned areas are not entitled to treatment as State residents in relation to public school education where the areas are under exclusive Federal jurisdiction: *Op. A. G., N. J.*, No. 37 (Nov. 26, 1951); 50 *Ops. A. G., Md.*, 129; 27 *id.* 116 (1942); but that they are entitled to treatment as State residents for this purpose where the Federal Government does not have exclusive legislative jurisdiction: 5 *id.* 136; *Op. A. G., N. M.*, Sept. 2, 1914; *Op. A. G., Ohio*, p. 193, No. 479 (1949).

money furnished by the Federal Government they are acting as Federal agents.

There should be noted, however, the small number of instances in which the right of children residing in Federal areas to a public school education has been questioned in the courts. This appears to be due in considerable part to a feeling of responsibility in the States for the education of children within their boundaries, reflected in such statutes as the 1935 act of Texas (Art. 2756b, Vernon's Ann. Civil Statutes), which provides for education of children on military reservations, and section 79–446 of the Revised Statutes of Nebraska (1943), which provides for admission of children of military personnel to public schools without payment of tuition. In recent years a powerful factor in curtailing potential litigation in this field has been the assumption by the Federal Government of a substantial portion of the financial burden of localities in the operation and maintenance of their schools, based on the impact which Federal activities have on local educational agencies, and without regard to the jurisdictional status of the Federal area which is involved.[6]

Voting and office holding.—The *Opinion of the Justices*, 1 Metc. 580 (Mass., 1841), anticipated judicial decisions concerning the right of residents of Federal enclaves to vote,[7]

[6] Act of Sept. 30, 1950, 64 Stat. 1100, as amended, 20 U. S. C. and Supp. 236 *et seq.* (see H. Rept. 2287, 81st Cong., 2d Sess.); and act of Sept. 23, 1950, 64 Stat. 967, as amended, 20 U. S. C. Supp. 271 *et seq.* (see H. Rept. 2810, 81st Cong., 2d Sess.); and see report prepared by Legislative Reference Service, Library of Congress, for the Senate Committee on Appropriations, 81st Cong., 1st Sess., *Education of Children Living on Federal Reservations and in Localities Particularly Affected by Federal Activities* (G. P. O., 1949); and report prepared as Staff Study Number 17 for the Advisory Committee on Education, *Education of Children on Federal Reservations* (G. P. O., 1939). See also *report*, pt. I, p. 55 *et seq.*

[7] The case of *Custis* v. *Lane*, 17 Va. 579 (1813), which involved denial of a right to vote to a resident of that portion of Virginia ceded for establishment of the seat of the Federal Government, antedated the *Opinion of the Justices* by some years, but this earlier case has failed to receive much judicial attention. Decisions contrary to these two appear to have been rendered only in *Arapajolu* v. *McMenamin*, and *Adams* v. *Londeree*, discussed at p. 222, *et seq., infra;* and see 34 *A. L. R. 2d* 1185 *et seq.*

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as it anticipated decisions relating to their rights to a public school education and in several other fields. One of the questions propounded to the court was:

> Are persons so residing [on lands under the exclusive jurisdiction of the United States] entitled to the elective franchise in such towns [towns in which such lands are located]?

After stating that persons residing in areas under exclusive Federal jurisdiction did not acquire civil and political privileges thereby,[8] the court said (p. 584):

> We are also of the opinion that persons residing in such territory do not thereby acquire any elective franchise as inhabitants of the towns in which such territory is situated.

The question of the right of residents of a Federal enclave to vote, in a county election, came squarely before the Supreme Court of Ohio, in 1869, in the case of *Sinks* v. *Reese*, 19 Ohio St. 306 (1869).[9] Votes cast by certain residents of an asylum for former military and naval personnel were not counted by election officials, and the failure to count them was assigned as error. The State had consented to the purchase of the lands upon which the asylum was situated, and had ceded jurisdiction over such lands. However, the act of cession provided that nothing therein should be construed to prevent the officers, employees, and inmates of the asylum from exercising the right of suffrage. The court held that under the provisions of the Constitution of the United States and the cession act of the State of Ohio the grounds of the asylum had been detached and set off from the State, that the Constitution of the State of Ohio required that electors be residents of the State, that it was not constitutionally permissible for the general assembly of the State to confer the elective franchise upon

[8] See p. 216 *supra*, for a quotation of the pertinent language of the opinion.

[9] Noted in 2 *A. L. R.* 397, and 34 *A. L. R. 2d* 1199.

non-residents, and that all votes of residents of the area should therefore be rejected.[10]

The *Opinion of the Justices* and the decision in *Sinks* v. *Reese* have been followed, resulting in a denial of the right of suffrage to residents of areas under the legislative jurisdiction of the United States, whatever the permanency of their residence, in nearly all cases where the right of such persons to vote, through qualification by residence on the Federal area, has been questioned in the courts.[11] In some other instances, which should be distinguished, the disqualification has been based on a lack of permanency of the residence (lack of domicile) of persons resident on a Federal area, without reference to the jurisdictional status of the area,[12] although in similar instances the courts have held that residence on a Federal area can constitute a residence for voting purposes.[13] The courts have generally ruled that residents of a federally owned area may qualify as voters where the Federal Government has never

[10] For developments in the aftermath of *Sinks* v. *Reese*, see p. 85 *et seq.*, *supra*.

[11] *In re Town of Highlands*, 48 N. Y. St. Rept. 795, 22 N. Y. Supp. 137 (Sup. Ct., 1892), (see also *Reilly* v. *Lamar, Beall and Smith*, 2 Cranch 344 (1805)); *McMahon* v. *Polk*, 10 S. D. 296, 73 N. W. 77 (1897); *State ex rel. Lyle* v. *Willet*, 117 Tenn. 334, 97 S. W. 299 (1906); *Herken* v. *Glynn*, 151 Kan. 855, 101 P. 2d 946 (1940), (in the opinion in this case it was stated (151 Kan. at p. 864), "No case has been found where it has been held that residents on lands ceded by a state to the United States retained or acquired a right to vote as residents of the ceding state." This statement continues true today with but two exceptions which will be discussed in the text, *infra*); *State ex rel. Parker* v. *Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); *State ex rel. Wendt* v. *Smith*, 63 Ohio Abs. 31, 103 N. E. 2d 822 (1951); *Arledge* v. *Mabry*, 52 N. M. 303, 197 P. 2d 884 (1948); see also *Dibble* v. *Clapp*, 31 How. Pr. 420 (Buffalo (N. Y.) Super. Ct., 1866).

[12] *Merrill* v. *Shearston*, 73 Col. 230, 214 Pac. 540 (1923), (noted: 34 *A. L. R. 2d* 1198); *Kemp* v. *Heebner*, 77 Col. 177, 234 P. 1068 (1925), (noted: 34 *A. L. R. 2d* 1198); *Application for the Removal of Names from Registry List*, 133 Misc. 38, 231 N. Y. Supp. 396 (1928), (noted: 34 *A. L. R. 2d* 1201).

[13] *Cory* v. *Spencer*, 67 Kan. 648, 73 Pac. 920 (1903); *State ex rel. Parker* v. *Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); see also *Lankford* v. *Gebhart*, 130 Mo. 621, 32 S. W. 1127 (1895); *Schultz, et al.* v. *Lewallen, et al.*, 188 Tenn. 206, 217 S. W. 2d 944 (1948); and see cases cited in footnotes 14, 15 & 16, *infra*.

acquired legislative jurisdiction over the area,[14] where legislative jurisdiction formerly held by the Federal Government has been retroceded by act of Congress,[15] or where Federal legislative jurisdiction has terminated for some other reason.[16] Attorneys General of several States have had occasion to affirm or deny, on similar grounds, the right of residents of federally owned areas to vote.[17]

In *Arapajolu* v. *McMenamin*, 113 Cal. App. 2d 824, 249 P. 2d 318 (1952), a group of residents, military and civilian, of various military reservations situated in California, sought in an action of mandamus to procure their registration as voters. The court recognized (249 P. 2d at pp. 319–320) that it had been consistently held that when property was acquired by the

[14] *State* v. *Denoyer*, 6 N. D. 586, 72 N. W. 1014 (1897); *Hankey* v. *Bowman*, 82 Minn. 328, 84 N. W. 1002 (1901); *State* v. *Mountrail County*, 28 N. D. 389, 149 N. W. 120 (1914); *State ex rel. Parker* v. *Corcoran*, 155 Kan. 714, 128 P. 2d 999 (1942); *Johnson* v. *Morrill*, 30 Cal. 2d 446, 126 P. 2d 873 (1942). See also H. Rept. No. 43, 42d Cong., 2d Sess. 1528 (1872), or p. 89, H. Misc. Doc. No. 52, 45th Cong., 2d Sess. 1819 (1878).

[15] *Renner* v. *Bennett*, 21 Ohio St. 431 (1871), (noted: 34 *A. L. R. 2d* 1202); *State ex rel. Cashman* v. *Board of Commissioners of Grant County*, 153 Ind. 302, 54 N. E. 809 (1899).

[16] *Stephens* v. *Nacey*, 49 Mont. 230, 141 Pac. 649 (1914), (jurisdiction had by Federal Government over Indian lands held to have been extinguished by extinguishment of Indian title); *La Duke* v. *Melin*, 45 N. D. 349, 177 N. W. 673 (1920), (jurisdiction had by Federal Government over military reservations held to have been terminated as to an area by abandonment of its use as a military reservation); *Hammond* v. *Brinkman*, 173 Kan. 406, 246 P. 2d 345 (1952), (transfer of area over which jurisdiction had by Federal Government to use as housing area under Lanham Act held to restore civil rights to residents).

[17] *Op. A. G., Cal.*, No. LB 129/788 (Dec. 20, 1933); *id.* LB 158/290 (June 25, 1937); *id.* No. NS4278 (May 4, 1942); 3 *Ops. A. G., Cal.* 136 (Mar. 2, 1944); *Op. A. G., Cal.*, No. LB 220/683 (Aug. 11, 1942); *Op. A. G., Fla.*, 052–250 (Aug. 13, 1952); *Op. A. G., Ill.*, p. 144, No. 3820 (Mar. 2, 1932); *id.* p. 226, No. 3898 (Mar 31, 1932); *Op. A. G., Ind.*, p. 142, No. 35 (1944); 10 *Ops. A. G., Md.* 107, 120; 17 *id.* 139; 21 *id.* 347; 23 *id.* 224; *Op. A. G., Ohio*, p. 594, No. 7201 (1944); *id.* p. 266, No. 1705 (1950). But the Attorney General of Utah has ruled that persons may not qualify as voters by residence on an area as to which the State retained concurrent jurisdiction. *Op. A. G., Utah* (Oct. 29, 1954), overruling earlier opinion, No. 52–089.

United States with the consent of the State and consequent acquisition of legislative jurisdiction by the Federal Government the property "ceases in legal contemplation to be a part of the territory of the State and hence residence thereon is not residence within the State which will qualify the resident to be a voter therein." Reviewing the cases so holding, the court noted that all but one, *Arledge* v. *Mabry, supra,* had been decided before the United States had retroceded to the States, with respect to areas over which it had legislative jurisdiction, the right to apply State unemployment insurance acts, to tax motor fuels, to levy and collect use and sales taxes, and to levy and collect income taxes.[18] In *Arledge* v. *Mabry,* the court suggested, the retrocessions had not been considered[19] and the case had been decided (erroneously) on the basis that the United States still had and exercised exclusive jurisdiction. The court concluded (249 P. 2d 323):

> The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution.[20]

[18] For discussion of these and certain other retrocessions, see p. 190 *et seq., supra.*

[19] But the opinion in *Arledge* v. *Mabry* demonstrates that the court was aware of the exercise of authority by the State pursuant to such retrocessions (197 P. 2d 884, 889).

[20] The court commended an opinion of the Attorney General of California holding to the same effect (*Op. No. 52–183, 20 Ops. A. G., Cal. 127*). In an earlier opinion, which apparently had been superseded by several mentioned in footnote 17, *supra,* the Attorney General had held that residence

The several cases discussed above all related to voting, rather than office-holding, although the grounds upon which they were decided clearly would apply to either situation. The case of *Adams* v. *Londeree,* 139 W. Va. 748, 83 S. E. 2d 127 (1954), on the other hand, involved directly the question whether residence upon an area under the legislative jurisdiction of the United States qualified a person to run for and hold a political office the incumbent of which was required to have status as a resident of the State. The court said (83 S. E. 2d at p. 140) that "in so far as this record shows, the Federal Government has never accepted, claimed or attempted to exercise, any jurisdiction as to the right of any resident of the reservation [as to which the State had reserved only the right to serve process] to vote." Hence, the majority held, a resident of the reservation, being otherwise qualified, was entitled to vote at a municipal, county, or State election, and to hold a municipal, county, or State office. A minority opinion filed in this case strongly criticizes the decision as contrary to judicial precedents and unsupported by any persuasive text or case authority.[21]

While *Arapajolu* v. *McMenamin* and *Adams* v. *Londeree* apparently are the only judicial decisions recognizing the existence of a right to vote or hold office in persons by reason of their residence on what has been defined for the purposes of this text as an exclusive Federal jurisdiction area, reports from Federal agencies indicate that residents of such areas under their supervision in many instances are permitted to vote [22] and a few States have by statute granted voting rights to such residents (*e. g.,* California, Nevada (in some instances), New Mexico, and Ohio (in case of employees and inmates of disabled soldiers' homes)).[23] On the other hand, one State has a constitutional prohibition against voting by such persons,[24] decisions cited above demonstrate frequent judicial denial to residents of exclusive Federal jurisdiction areas of the right to vote, and it is clear that many thousand residents of Federal areas are disenfranchised by reason of Federal possession of legislative jurisdiction over such areas.[25]

within a Federal enclave did not of itself disqualify a person from voting. *Op. A. G., Cal.,* No. LB 64/106.

[21] In neither of the opinions in this case was note taken of the decisions in *Palmer* v. *Barrett, Crook, Horner & Co.* v. *Old Point Comfort Hotel Co.* or *S. R. A., Inc.* v. *Minnesota* (see p. 96 *et seq., supra*), which might be applied to support the court's decision in the instant case in view of the Federal Government's lease of the premises here for private residential purposes.

[22] See *report,* part I, appendix A, p. 81 *et seq.*

Divorce.—The effect upon a person's right to receive a divorce of such person's residence on an area under the exclusive legislative jurisdiction of the United States was the subject of judicial decision for the first time, it appears, in the case of *Lowe* v. *Lowe,* 150 Md. 592, 133 Atl. 729 (1926). The statute of the State of Maryland which provided the right to file proceedings for divorce required residence of at least one of the parties in the State. The parties to this suit resided on an area in Maryland acquired by the Federal Government which was subject to a general consent and cession statute whereby the State reserved only the right to serve process, and were not indicated as being residents of Maryland unless by virtue of their residence on this area. Reviewing judicial decisions and other authorities holding to the general effect that the inhabitants of areas under the exclusive legislative jurisdiction of the Federal Government (133 Atl. at p. 732) "cease to be inhabitants of the state and can no longer exercise any civil or political rights under the laws of the state," and that such areas themselves (*ibid.,* p. 733) "cease to be a part of the state," the court held that residents of areas under exclusive Federal jurisdiction are not such residents of the State as would entitle them to file a bill for divorce.[26]

The case of *Chaney* v. *Chaney,* 53 N. M. 66, 201 P. 2d 782

[23] *Ibid.,* appendix B, p. 127 *et seq.*

[24] Rhode Island: *Constitution,* art. II, sec. 5.

[25] See *report,* part I, appendix A, p. 81 *et seq.*

[26] See notes: 40 *Harv. L. Rev.* 130 (1926–27); 11 *Minn. L. Rev.* 74 (1926); 36 *Yale L. J.* 146 (1926–27); see also: 12 *Geo. Wsh. L. Rev.* 80, 82 (1943–44); 22 *Calif. L. Rev.* 152, 167 (1934).

(1949), involved a suit for divorce, with the parties being persons living at Los Alamos, New Mexico, on lands acquired by the Federal Government which were subject to a general consent statute whereby the State of New Mexico reserved only the right to serve process. The State divorce statute provided that the plaintiff "must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint * * *." [27] The court, applying *Arledge* v. *Mabry*,[28] held concerning the area under Federal legislative jurisdiction that "such land is not deemed a part of the State of New Mexico," and that "persons living thereon do not thereby acquire legal residence in New Mexico." Accordingly, following *Lowe* v. *Lowe, supra*, it found that residence on such area did not suffice to supply the residence requirement of the State divorce statute.

The *Lowe* and *Chaney* cases appear to be the only cases in which a divorce was denied because of the exclusive Federal jurisdiction status of an area upon which the parties resided.[29] However, in a number of cases, some involving Federal enclaves, it has been held that personnel of the armed forces (and their wives) are unable, because of the temporary nature of their residence on a Government reservation to which they have been ordered, to establish on such reservation the residence or domicile required for divorce under State statutes.[30] One such case is *Pendleton* v. *Pendleton*, 109 Kan. 600, 201 Pac. 62 (1921), where the court deemed it unnecessary to discuss the impact of the exclusive Federal jurisdiction status of Fort Riley, Kansas, upon the right of a resident of the post to get a divorce. Another is *Dicks* v. *Dicks*, 177 Ga. 379, 170 S. E. 245

[27] Sec. 25–704, N. Mex. Stat. (1941) Ann.

[28] See footnote 11, *supra*.

[29] It may be noted (see *Valverde* v. *Valverde*, 121 Fla. 576, 164 So. 287 (1935)), that venue in a suit merely for maintenance may be based on grounds different from those deemed necessary for venue in a divorce action.

[30] See 21 *A. L. R. 2d* 1163 *et seq.*, and Schouler, *Marriage, Divorce, Separation and Domestic Relations*, vol. II, p. 1750 *et seq.*, for discussions of divorce domicile of military personnel.

(1933), where the court suggested the existence of substantive divorce law as to Fort Benning, Georgia, under the international law rule,[31] since the United States had exclusive legislative jurisdiction over the area, but held that there were absent in the State a domicile of the parties and a forum for applying the law.

The *Lowe, Chaney, Pendleton,* and *Dicks* decisions had an influence on the enactment, in the several States involved, of amendments to their divorce laws variously providing a venue in courts of the respective States to grant divorces to persons resident on Federal areas.[32] Similar statutes have been enacted in a few other States.[33]

The case of *Craig* v. *Craig*, 143 Kan. 624, 56 P. 2d 464 (1936), *clarification denied*, 144 Kan. 155, 58 P. 2d 1101 (1936), brought after amendment of the Kansas law, provides a sequel to the decision in the *Pendleton* case. The court ruled in the *Craig* case that the Kansas amendment, which provided that any person who had resided for one year on a Federal military reservation within the State might bring an action for divorce in any county adjacent to the reservation, required mere "residence" for this purpose, not "actual residence" or "domicile," with their connotations of permanence. The amendment, the court said in directing the entry of a decree of divorce affecting an Army officer and his wife residing on Fort Riley, provided a forum for applying the law of divorce which had existed at the time of cession of jurisdiction over the military reservation to the Federal Government.[34]

The *Dicks* case similarly has as a sequel the case of *Darbie* v.

[31] See p. 156 *et seq., supra.*

[32] *Maryland:* art. 16, par. 39, Md. Ann. Code Gen. Laws (1947); *New Mexico:* Sec. 25–704, N. Mex. Stat. Ann. (1941), as amended by ch. 107, sec. 1, 1951 sess. laws; *Kansas:* R. S. (1933 Supp.) 60–1502; *Georgia:* sec. 30–107, Code of Ga. Ann., and see amendment to Ga. Constitution, set out as sec. 2–4901, Code of Ga., Ann.

[33] *E. g. Florida:* Fla. Stat. Ann. 46.12, and see *Mills* v. *Mills*, 153 Fla. 746, 15 So. 2d 763 (1943); *Nebraska:* R. S. Neb., Supp., 1955, 42–303.

[34] See p. 156 *et seq., supra*, for discussion of the international law rule, which apparently was applied here.

Darbie, 195 Ga. 769, 25 S. E. 2d 685 (1943). In the *Darbie* case a Georgia amendment to the same effect as the Kansas amendment was the basis for the filing of a divorce suit by an Army officer residing on Fort Benning. The divorce was denied, but apparently only because the petition was filed in a county which, although adjacent to Fort Benning, was not the county wherein the fort was situated, and therefore the filing was held not in conformity with a provision of the Georgia constitution (art. 6, ch. 2–43, sec. 16) requiring such suits to be brought in the county in which the parties reside. The Georgia constitution has been amended (see sec. 2–4901) so as to eliminate the problem encountered in the *Darbie* case, and, in any event, because of its basis the decision in the case casts no positive judicial light on the question whether the State has jurisdiction to furnish a forum and grant a divorce to residents of an area under exclusive Federal jurisdiction.

The case of *Crownover* v. *Crownover,* 58 N. M. 597, 274 P. 2d 127 (1954), furnishes a sequel to the *Chaney* case.[35] The *Crownover* case was brought under the New Mexico amendment, which provides that for the purposes of the State's divorce laws military personnel continuously stationed for one year at a base in New Mexico shall be deemed residents in good faith of the State and of the county in which the base is located.[36] The court affirmed a judgment granting a divorce to a naval officer who, while he was stationed in New Mexico, was physically absent from the State for a substantial period of time on temporary duty, holding that the "continuously stationed" requirement of the statute was met by the fact of assignment to a New Mexico base as permanent station. An

[35] Another result of the *Chaney* decision, and of a previous New Mexico decision, *Arledge* v. *Mabry,* 52 N. M. 303, 197 P. 2d 884 (1948), which denied residents of an exclusive Federal jurisdiction area the privilege of voting, was to influence the Atomic Energy Commission against acquiring or retaining exclusive Federal legislative jurisdiction over areas under its supervision (see p. 92 *et seq., supra,* and see also *report,* pt. I, p. 65 *et seq.*)

[36] In *Wilson* v. *Wilson,* 58 N. M. 411, 272 P. 2d 319 (1954), it was decided this amendment did not contravene provisions of the New Mexico constitution.

objection that "domicile" within the State (not established in the case except through proof of residence under military orders) is an essential base for the court's jurisdiction in a divorce action was met by the court with construction of the New Mexico amendment as creating a conclusive statutory presumption of domicile. The opinion rendered by the court, and a scholarly concurring opinion rendered by the chief justice (58 N. M. 609), defended the entitlement of the court's decision to full faith and credit by courts of other States.

Military personnel and, indeed, civilian Federal employees and others residing on exclusive Federal jurisdiction areas may possibly retain previously established domiciles wherein would lie a venue for divorce.[37] It may well occur, however, that such a person has no identifiable domicile outside an exclusive jurisdiction area.[38] Federal courts, other than those for the District of Columbia, and for Territories, have no jurisdiction over divorce.[39] A resident of an exclusive jurisdiction area therefore may have recourse only to a State court in seeking the remedy of divorce. Absent a *bona fide* domicile within the jurisdiction of the court of at least one of the parties, there is the distinct possibility that a divorce decree may be collaterally attacked successfully in a different jurisdic-

[37] See *Harris* v. *Harris,* 205 Iowa 108, 215 N. W. 661 (1927), where absence of an Army officer from a State for 30 years, with only occasional visits, was held not to have terminated domicile or venue for divorce in the State; see also *Knowlton* v. *Knowlton,* 155 Ill. 158, 39 N. E. 595 (1895); *Radford* v. *Radford,* 26 Ky. L. 652, 82 S. W. 391 (1904); *Gallagher* v. *Gallagher,* 214 S. W. 516 (Tex. Civ. App., 1919); *Gearing* v. *Gearing,* 90 Pa. Super. Ct. 192 (1927); *DeNicola* v. *DeNicola,* 132 Conn. 185, 43 A. 2d 71 (1945); and in general, Kennan, *The Law of Divorce* (1934); and 21 *A. L. R. 2d* 1180.

[38] See *Pendleton* v. *Pendleton,* 109 Kan. 600, 201 Pac. 62 (1921), and see footnote 52, *infra.*

[39] *Simms* v. *Simms,* 175 U. S. 162 (1899); see also *Barber* v. *Barber,* 21 How. 582 (1858); *De La Rama* v. *De La Rama,* 201 U. S. 303 (1905); *Popovici* v. *Agler,* 280 U. S. 379 (1930); *Haddock* v. *Haddock,* 201 U. S. 562 (1906); *In re Burrus,* 136 U. S. 586 (1890).

tion.[40] As to persons residing on exclusive Federal jurisdiction areas, therefore, it would seem that even if there is avoided an immediate denial of a divorce decree on the precedent of the *Lowe* and *Chaney* cases, the theory of these cases may possibly be applied under the decision in *Williams* v. *North Carolina,* 325 U. S. 226 (1945), to invalidate any decree which is procured.

Probate and lunacy proceedings generally.—In the case of *Lowe* v. *Lowe,* discussed above, Chief Justice Bond, in an opinion concurring in the court's holding that it had no jurisdiction to grant a divorce to residents of an exclusive Federal jurisdiction area, added concerning such persons (150 Md. 592, 603, 133 A. 729, 734): "and I do not see any escape from the conclusion that ownership of their personal property, left at death, cannot legally be transmitted to their legatees or next of kin, or to any one at all; that their children cannot have legal guardians of their property; that they cannot adopt children on the reservations; that if any of them should become insane, they could not have the protection of statutory provisions for the care of the insane—and so on, through the list of personal privileges, rights, and obligations, the remedies for which are provided for residents of the state."

On the other hand, in *Divine* v. *Unaka National Bank,* 125 Tenn. 98, 140 S. W. 747 (1911),[41] it was asserted that the power to probate the will of one who was domiciled, and who had died, on lands under the exclusive legislative jurisdiction of the United States was in the local State court. In *In re Kernan,* 247 App. Div. 664, 288 N. Y. Supp. 329 (1936),[42] a New York court held that the State's courts could determine, by habeas corpus proceedings, the right to custody of an infant

[40] *Williams* v. *North Carolina,* 325 U. S. 226 (1945); see also 27 *Rocky Mt. L. Rev.* 353 (1955); 65 *Harv. L. Rev.* 193 (1951); *Wash. U. L. Q.* 53 (1952); 39 *Corn. L. Q.* 293 (1953-54); 34 *Mich. L. Rev.* 749 (1936).

[41] See: 22 *Calif. L. Rev.* 167 (1934); 40 *Harv. L. Rev.* 131 (1926); 58 *Yale L. J.* 1406 (1949); 38 *Col. L. Rev.* 136 (1938).

[42] *Aff'd.,* 272 N. Y. 560, 4 N. E. 2d 737 (1936). For discussion of the *Kernan* decision, see 50 *Harv. L. Rev.* 688 (1937); see also note in 4 *A. L. R. 2d* 16

who lived with a parent on an area under exclusive Federal jurisdiction.[43] In both these cases the reasoning was to the general effect that, while the Federal Government had been granted exclusive legislative jurisdiction over the area of residence, it had not chosen to exercise jurisdiction in the field involved, and the State therefore could furnish the forum, applying substantive law under the international law rule.[44] In *Shea* v. *Gehan,* 70 Ga. App. 229, 28 S. E. 2d 181 (1943), the Court of Appeals of Georgia decided that a county court had jurisdiction to commit a person to the United States Veterans' Administration Hospital in the county as insane, although such hospital was on land ceded to the United States and the person found to be insane was at the time a patient in the hospital and a non-resident of Georgia. The decision in this case was based on a theory that State courts have jurisdiction over non-resident as well as resident lunatics found within the State,[45] but the exclusive Federal jurisdiction status of the particular area within the boundaries of the State on which the lunatic here was located does not seem to have attracted the attention of the court. These appear to be the only judicial decisions, Federal or State, other than the divorce cases discussed above, wherein there has been a direct determination on the question of existence of jurisdiction in a State to carry on a probate proceeding [46] on the basis of a residence within the boundaries of the State on an exclusive Federal jurisdiction area.

On one occasion, where no question of Federal legislative

[43] For discussion of writ of habeas corpus in relation to exclusive Federal jurisdiction areas, generally, see p. 123 *et seq., supra.*

[44] For discussion of the international law rule see p. 156 *et seq., supra.*

[45] See *Bliss* v. *Bliss,* 133 Md. 61, 104 Atl. 467 (1918), discussed at p. 234 *infra.*

[46] Including: divorce; establishment of wills; settlement of decedents' estates; appointment of guardians for minors; adoption and custody of children; appointment of committees for incompetents and insane persons; adjudication, commitment, and confinement of insane persons; and the incidental supervision and control of property of persons who may be involved in such proceedings.

jurisdiction was raised, the Attorney General of the United States held that the property of an intestate who had lived on a naval reservation should be turned over to an administrator appointed by the local court,[47] but in a subsequent similar instance, where Federal legislative jurisdiction was a factor, he held that the State did not have probate jurisdiction.[48] And in a letter dated April 15, 1943, to the Director of the Bureau of the Budget, the Attorney General stated:

> It is intimated in the [Veterans' Administration] Administrator's letter to you that the States probably have probate jurisdiction over Federal reservations. I am unable to concur in this suggestion. This Department is definitely committed to the opposite view. In a formal opinion by one of my predecessors (19 *Ops. A. G.* 247) it was expressly held, after a thorough review of the authorities and all the pertinent considerations, that State courts do not have probate jurisdiction over Federal reservations. While there is one case holding the contrary (*Divine* v. *Bank*, 125 Tenn. 98), nevertheless the Attorney General's opinion must be considered binding on the Executive branch of the Federal Government unless and until the Federal courts should take an opposite view of the matter.

The Judge Advocate General of the Army has held similarly,[49] and in several opinions[50] he has stated that: "Generally, the power and concomitant obligation to temporarily restrain and care for persons found insane in any area rests with the Government exercising legislative jurisdiction over that area; permanent care or confinement is more logically assumed by the Government exercising general jurisdiction over the area of the person's residence." The Judge Advocate General of the Navy

[47] 19 *Ops. A. G.* 176 (1888).
[48] 19 *Ops. A. G.* 247 (1889).
[49] C. 16153 (Apr. 8, 1904), *Dig. Op. J. A. G., Army* (1912), p. 939.
[50] *Ops. J. A. G., Army:* 1943/7229; 1944/10235; 1944/15536; 1945/10785.

has held,[51] to the same effect, that in view of the fact that the United States has exclusive jurisdiction over the site of the Philadelphia Navy Yard, it would be inconsistent to request assistance of State authorities to commit as insane a person who committed a homicide within the reservation.

It is evident that questions regarding the probate jurisdiction of a State court with relation to a person residing on an exclusive Federal jurisdiction area would not arise in instances where the person is domiciled within the State as a result of factors other than mere residence on the Federal area. But it appears that some persons have no domicile except on a Federal area.[52] Presumably in recognition of this fact, a number of States have enacted statutes variously providing a forum for the granting of some degree of probate relief to residents of Federal areas.[53] Except as to such statutes relating to divorce, discussed earlier herein, appellate courts appear not to have had occasion to review the aspects of these statutes granting such relief.

[51] *Op. J. A. G., Navy,* JAG: 26250-752: 3 (Feb. 11, 1916).
[52] See *Pendleton* v. *Pendleton,* 109 Kan. 600, 201 Pac. 62 (1921); and *Matter of Grant,* 83 Misc. 257, 144 N. Y. Supp. 567 (1913), *aff'd.,* 166 App. Div. 921, 151 N. Y. Supp. 1119 (1915); I Beale, *The Conflict of Laws* 101 (1935).
[53] *E. g. Florida:* Fla. Stat. Ann. 46.12 (any person in Federal service, and husband or wife of such a person, living within borders of the State, deemed prima facie resident of State for purpose of maintaining any suit in chancery or action at law); *California:* I Deering's Cal. Codes, Govt. Code, title I, div. 1, chap. 1, sec. 126 (e), (all civil and political rights reserved for residents of Federal areas); *Nevada:* Nev. Comp. Laws, Supp., sec. 2896.12 (jurisdiction reserved as to all cases arising under the civil (and criminal) laws of the State, and all civil and political rights reserved for residents of Federal areas); *Virginia:* Code of Va., 1950, Ann., title 7, ch. 3, sec. 7-21 (jurisdiction reserved as to civil (and criminal) matters arising on lands acquired for certain Federal purposes, lands to be deemed a part of city or county in which situated); *Tennessee:* Williams Tenn. Code, Ann., 1934, part III, title 2, ch. 15A, sec. 9572.18 (resident of Federal territory within the State for one year may petition for adoption of child); *Maryland:* Md. Code, 1939, art. 16, sec. 79 (residents of exclusive Federal jurisdiction areas to be considered residents of State, and of county in which area is situated, for the purposes of jurisdiction in applications for adoption of infants (see 7 *Md. L. Rev.* 289 (1943) for discussion of this statute)); see also footnotes 32 and 33, *supra,* for statutes relating to divorce.

It is evident, also, that the jurisdictional question is not likely to arise in States under the statutes of which residence or domicile is not a condition precedent to the assumption of probate jurisdiction by the courts.[54] So, in *Bliss* v. *Bliss*, 133 Md. 61, 104 Atl. 467 (1918), it was stated (p. 471): "as the jurisdiction of the courts of equity to issue writs de lunatico inquirendo is exercised for the protection of the community, and the protection of the person and the property of the alleged lunatic, there is no reason why it should be confined to cases in which the unfortunate persons are residents of or have property in the state. It is their presence within the limits of the state that necessitates the exercise of the power to protect their persons and the community in which they may be placed, and the jurisdiction of the court does not depend upon whether they also have property within the state." [55] The Uniform Veterans Guardianship Act, all or some substantial part of which has been adopted by approximately 40 States, section 18 of which provides for commitment to the Veterans' Administration or other agency of the United States Government for care or treatment of persons of unsound mind or otherwise in need of confinement who are eligible for such care or treatment, furnishes an example of State statutes which do not specify a

[54] See illustrative cases regarding adoption procedures at 170 *A. L. R.* 403, note 1.

[55] In general it is held, however, in consonance with State statutory provisions, that residence of the alleged insane person within the county or other territorial jurisdiction of the court is prerequisite to his adjudication and commitment as insane and appointment of a guardian over his person. *In re Beechwood*, 142 Misc. 400, 254 N. Y. Supp. 473 (1931); *Henry* v. *Edde*, 148 Kan. 70, 79 P. 2d 888 (1938); *Federal Trust Co.* v. *Allen*, 110 Kan. 484, 204 Pac. 747 (1922); see also 44 *C. J. S.* 59. There has been indicated to the Interdepartmental Committee the existence of a practice of releasing mentally afflicted persons from exclusive Federal jurisdiction areas and notifying local police that a mental case is roaming the streets unattended, and, alternatively, of bringing such persons to the nearest State courthouse, thereby actuating the machinery of the State to adjudication as insane, and commitment, of persons who otherwise would be beyond the reach of appropriate judicial process and necessary medical attention.

requirement for domicile or residence within the State for eligibility for probate relief.[56]

A dearth of decisions on questions of the jurisdiction of State courts to act as a forum for probate relief to residents of exclusive Federal jurisdiction areas makes it similarly evident that potential legal questions relating to forum and jurisdiction usually remain submerged. So, Chief Justice Bond in his opinion in the *Lowe* case, discussed above, stated (133 A. 729, 734): "It has been the practice in the orphans' court of Baltimore City to receive probate of wills, and to administer on the estates, of persons resident at Ft. McHenry, and it has also, I am informed, been the practice of the orphans' court of Anne Arundel county to do the same thing with respect to wills and estates of persons claiming residence within the United States Naval Academy grounds. We have no information as to the practice elsewhere, but it would seem to me inevitable that the practice of the courts generally must have been to provide such necessary incidents to life on reservations within the respective states." [57]

Several Federal agencies have been granted congressional authority enabling disposition of the personal assets of patients and members of their establishments.[58] This has curtailed

[56] The Uniform Veterans Guardianship Act was approved by the National Conference of Commissioners on Uniform State Laws in 1928, and a revision was adopted by the Conference in 1942.

[57] See *report*, part I, p. 50, and supporting data in appendix A of part I, verifying the accuracy of this belief.

[58] *E. g.—Veterans' Administration:* 38 U. S. C. 16–16j (providing for disposing of personal assets of veteran patients and members who die in Veterans' Administration facilities, and retroceding jurisdiction pertaining to the administration of estates of decedents to the respective States) and 38 U. S. C. 17–17j (providing for vesting by the United States of undisposed personal property of deceased veteran patients—see *United States* v. *Gallagher*, 97 F. Supp. 1014 (S. D. Cal., 1951); *In re Witte's Estate*, 174 Kan. 360, 255 P. 2d 1039 (1953); *In re Gonsky's Estate*, 79 N. D. 123, 55 N. W. 2d 60 (1952); *In re Hendrix' Estate*, 77 Cal. App. 2d 647; 176 P. 2d 398 (1947); *United States* v. *Essex Trust Co.*, 44 F. Supp. 476 (D. Mass., 1942); *United States* v. *Stevens*, 302 U. S. 623 (1938); 11 Comp. Gen. 205 (1931); *Public Health Service of the Department of Health, Education, and Welfare:* 42 U. S. C. 248d (enabling the Surgeon General, pursuant to regulations (see

what otherwise would constitute numerous and pressing problems. However, notwithstanding the holdings in the *Divine, Kernan,* and *Shea* cases, and in several divorce proceedings [59] there appear to exist other serious legal and practical problems relating to procurement by or with respect to residents of exclusive Federal jurisdiction areas of relief ordinarily made available by probate courts. While such relief is in instances essential, the Federal courts, except those of the District of Columbia, have no probate jurisdiction.[60] And because of the possibility that relief procured in a State court may be subject to collateral attack in a different State, it will not be clear until a decision of the Supreme Court of the United States is had on the matter whether even a decree rendered under an enabling State statute (except a statute reserving jurisdiction sufficient upon which to render the relief) must be accorded full faith and credit by other States when the residence upon which the original court based its jurisdiction was upon an area under exclusive Federal jurisdiction.

Miscellaneous rights and privileges. The *Opinion of the Justices,* 1 Metc. 580 (Mass., 1841), discussed at several points above, held that residence on an exclusive Federal jurisdiction

42 C. F. R. 35.41 *et seq.*), to provide for the disposal of money and effects, in the custody of hospitals or stations, of deceased patients); *Department of the Navy:* 10 U. S. C. 6522 (authorizing sale of personal property of deceased naval personnel not claimed by heirs or next of kin within two years to be sold, and covering proceeds, together with any money held in custody, into the Treasury); *Army and Air Force:* 10 U. S. C. 4712, 4713, 9712, 9713 (prescribing disposition of effects of decedent who was subject to court martial jurisdiction); several departments: 37 U. S. C. 361 *et seq.* (providing for settlement with personal representative of the amount due a decedent for pay and allowances or other items—see 1 *Miami L. Q.* 57 (1947)); *Secretaries of Treasury, Army, Navy, and Air Force:* 10 U. S. C. 2575 (providing for disposition of abandoned or unclaimed personal property).

[59] See p. 227 *et seq., supra.*

[60] Wills: *Ellis* v. *Davis,* 109 U. S. 485 (1883); *Farrell* v. *O'Brien,* 199 U. S. 89 (1905); *Sutton* v. *English,* 246 U. S. 199 (1918); see also 21 *C. J.* 121; 25 *C. J.* 695; 43 *Harv. L. Rev.* 462 (1929–1930); 38 *Col. L. Rev.* 136 (1938). Domestic relations: *In re Burrus,* 136 U. S. 586 (1890).

area, for any length of time, would not give persons so residing or their children a legal inhabitancy in the town in which such area was located for the purpose of their receiving support under the laws of the Commonwealth for the relief of the poor.

Numerous miscellaneous rights and privileges, other than those hereinbefore discussed, are often reserved under the laws of the several States for residents of the respective States. Among these are the right or privilege of employment by the State or local governments, of receiving a higher education at State institutions free or at a favorable tuition, of acquiring hunting and fishing licenses at low cost, of receiving visiting nurse service or care at public hospitals, orphanages, asylums, or other institutions, of serving on juries, and of acting as an executor of a will or administrator of an estate. Different legal rules may apply, also, with respect to attachment of property of non-residents.[61]

It has been declared by many authorities and on numerous occasions, other than in decisions heretofore cited in this chapter, that areas under the exclusive legislative jurisdiction of the United States are not a part of the State in which they are embraced and that residents of such areas consequently are not entitled to civil or political privileges, generally, as State residents.[62] Accordingly, residents of Federal areas are subject to these additional disabilities except in the States reserving civil and political rights to such residents (California and, in certain instances, Nevada),[63] when legislative jurisdiction over

[61] *Bank of Phoebus* v. *Byrum,* 110 Va. 708, 67 S. E. 349 (1910).

[62] *Commonwealth* v. *Clary,* 8 Mass. 72 (1811); *Mitchell* v. *Tibbets,* 17 Pick. 298 (Mass., 1836); *Foley* v. *Shriver,* 81 Va. 568 (1886); 6 *Ops. A. G.* 577 (1854); *Op. Sol., U. S. Dept. of the Interior,* M–33356 (Oct. 5, 1943); *Op. A. G., Mass.* (Aug. 30, 1922); *Op. A. G., N. J.* (Nov. 26, 1951); *Op. A. G., Ohio,* No. 94 (1933), p. 91; *Op. A. G., Wis.* (May 8, 1951), to Dist. Atty. of Monroe County; 1 *Kent's Commentaries,* marginal paging 431; *Story, Constitution of the United States,* sec. 1227; see also *United States* v. *Cornell,* 25 Fed. Cas. 646, No. 14867 (C. C. D. R. I., 1819); *United States* v. *Cordy,* 58 F. 2d 1013 (D. Md., 1932); *Ryan* v. *State,* 188 Wash. 115, 61 P. 2d 1276 (1936), *aff'd., sub nom. Mason Co.* v. *Tax Comm'n,* 302 U. S. 186 (1937); see also *State* v. *Mimms,* 43 N. M. 318, 92 P. 2d 993 (1939), *cert. den.,* 308 U. S. 626 (1940).

[63] See *report,* part I, pp. 132 and 178.

the areas is acquired by the Federal Government under existing State statutes. The potential impact of any widespread practice of discrimination in certain of these matters can be measured in part by the fact that there are more than 43,000 acres of privately owned lands within National Parks alone over which some major measure of jurisdiction has been transferred to the Federal Government.[64] It appears, however, that such discriminations are not uniformly practiced by State and local officials,[65] and no judicial decisions have been found involving litigation over matters other than education, voting and holding elective State office, divorce, and probate jurisdiction generally.

CONCEPTS AFFECTING STATUS OF RESIDENTS: *Doctrine of extraterritoriality.*—It may be noted that the decisions denying to residents of exclusive Federal jurisdiction areas rights or privileges commonly accorded State residents do so on the basis that such areas are not a part of the State, and that residence thereon therefore does not constitute a person a resident of the State. This doctrine of extraterritoriality of such areas was enunciated in the very earliest judicial decision relating to the status of the areas and their residents, *Commonwealth* v. *Clary,* 8 Mass. 72 (1811). The decision was followed in *Mitchell* v. *Tibbetts,* 17 Pick. 298 (Mass., 1836), and the two decisions were the basis of the *Opinion of the Justices,* 1 Metc. 580 (Mass., 1841). Subsequent decisions to the same effect invariably cite these cases, or cases based upon them, as authority for their holdings.

The views expounded by the courts in such decisions are well set out in *Sinks* v. *Reese,*[66] where the Supreme Court of Ohio invalidated a proviso in a State consent statute reserving

[64] Letter dated Aug. 24, 1955, from Solicitor, Dept. of the Interior, to Chmn., Interdepartmental Committee.

[65] See *report,* part I, p. 56 *et seq.,* and supporting data in appendix A.

[66] See also p. 220, *supra.* For further discussion of effects of Federal exercise of legislative jurisdiction on residents of affected areas see 44 *Yale L. J.* 1324, 1360 (1935).

a right to vote to residents of a veterans' asylum because of a State constitutional provision which did not permit extension of voting rights to persons not resident in the State. The Ohio court said (19 Ohio St. 306, 316 (1889)):

> * * * By becoming a resident inmate of the asylum, a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relieved from any obligation to contribute to her revenues, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the State of Indiana or Kentucky or the District of Columbia. The constitution of Ohio requires that electors shall be residents of the State; but under the provisions of the Constitution of the United States, and by the consent and act of cession of the legislature of this State, the grounds and buildings of this asylum have been detached and set off from the State of Ohio, and ceded to another government, and placed under its exclusive jurisdiction for an indefinite period. We are unanimously of the opinion that such is the law, and with it we have no quarrel; for there is something in itself unreasonable that men should be permitted to participate in the government of a community, and in the imposition of charges upon it, in whose interests they have no stake, and from whose burdens and obligations they are exempt.

Arledge v. *Mabry,* 52 N. M. 303, 197 P. 2d 884 (1948), (voting privilege denied) and *Schwartz* v. *O'Hara Township School Dist.,* 375 Pa. 440, 100 A. 2d 621 (1953), (public school education privilege denied) are two recent cases in which this doctrine was applied.

Contrary view of extraterritoriality.—The view that residents of areas of exclusive legislative jurisdiction are not residents or citizens of the State in which the area is situated has

not gone unquestioned. In *Woodfin* v. *Phoebus,* 30 Fed. 289 (C. C. E. D. Va., 1887), the court said (pp. 296–297): [67]

> Although I have thought it unnecessary to pass upon the question whether Mrs. Phoebus and her children, defendants in this suit, by residing at Fortress Monroe, were by that fact alone non-residents and not citizens of Virginia, yet I may as well say, *obiter,* that I do not think that such is the result of that residence. Fortress Monroe is not a part of Virginia as to the right of the state to exercise any of the powers of government within its limits. It is *dehors* the state as to any such exercise of the rights of sovereignty there. It does not follow, however, from this immunity of the place from the state's rights of sovereignty, that inhabitants there, especially the widow and minor children of a deceased person, thereby lose their political character, and cease to be citizens of the state. Geographically, Fortress Monroe is just as much a part of Virginia as the grounds around the capital of the state at Richmond,—"Fortress Monroe, Virginia," is its postal designation. Can it be contended that, because a person who may have his domicile in the custom-house at Richmond, or in that at Norfolk, or at Alexandria, or in the federal space at Yorktown, on which the monument there is built, or in that in Westmoreland county, in which the stone in honor of Martha Washington is erected, loses by that fact his character of a citizen of Virginia? Would it not be a singular anomoly if such a residence within a federal jurisdiction should exempt such a person from suit in a federal court? Can it be supposed that the authors of the constitution of the United States, in using the term "citizens of different states," meant to provide that the residents of such small portions of states as should be acquired by the national government for special purposes, should lose their geographical and political identity with the people of the states embracing these places, and be exempt by the fact of residence on federal territory from suit in a federal court? I doubt if it would ever be held by the supreme court of the United States that the cession of jurisdiction over places in states for national uses, such as the constitution contemplates, necessarily disenfranchised the residents of them, and left them without any political *status* at all. In the western territories of the United States, governments are provided on the very ground that no state authority exists. In the District of Columbia, a government is provided under the control of congress. In the territories and the federal district, a condition of things exists which excludes the theory of any reservation of rights to the inhabitants of the body politic to which they had before belonged. I see no reason for insisting that persons are cut off from membership of the political family to which they had belonged by the cession to the United States of sovereign jurisdiction and power over forts and arsenals in which they had resided.
>
> I suggest these thoughts in the form of *quaere,* and make what is said no part of the adjudication of the case. But see *U. S.* v. *Cornell,* 2 Mason, 60; *Com.* v. *Clary,* 8 Mass. 72; *Sinks* v. *Reese,* 19 Ohio St. 306; *Foley* v. *Shriver,* 10 *Va. Law J.* 419.

[67] See also dissenting opinion in *Herken* v. *Glynn,* 151 Kan. 855, 101 P. 2d 946 (1940).

In *Howard* v. *Commissioners,* 344 U. S. 624 (1953), the Supreme Court had occasion to pass directly on the question of extraterritoriality of Federal enclaves, although liability of the occupants of a Federal enclave to taxation by a municipality under the Buck Act, rather than their eligibility to privileges as residents of the State, was the ultimate issue for the court's decision.[68] The court said (p. 626):

[68] See also *Wichita Falls* v. *Bowen,* 143 Tex. 45, 182 S. W. 2d 695 (1944); *County of Norfolk* v. *Portsmouth,* 186 Va. 1032, 45 S. E. 2d 136 (1947); *State* v. *Kelly,* 76 Me. 331 (1884); *Hughes Transp., Inc.* v. *United States,* 128

> The appellants first contend that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. With this we do not agree. When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky. A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed.

The decision in the *Howard* case would seem to make untenable the premise of extraterritoriality upon which most of the decisions denying civil and political rights and privileges are squarely based.

C. Cls. 221, 121 F. Supp. 212 (1954), *reh. granted*, 132 C. Cls. 804 (1955); *Motor Transport Co.* v. *McCanless*, 182 Tenn. 659, 189 S. W. 2d 200 (1945); *Grayburg Oil Co.* v. *State*, 286 S. W. 489 (Ct. Civ. App., Tex., 1926), *aff'd.*, 3 S. W. 2d 427, *rev'd.*, on ground that sales to U. S. exempt from taxation, 278 U. S. 582; *McKesson & Robbins* v. *Collins*, 18 Cal. App. 2d 648, 64 P. 2d 469 (1937); and cases cited in footnote 11, p. 147, *supra*.

Theory of incompatibility.—In some instances, usually where the courts have not been entirely explicit on this matter in the language of their opinions,[69] it can be construed that decisions denying civil or political rights to residents of exclusive Federal jurisdiction areas are based simply on a theory that exercise of such rights by the residents would be inconsistent with Federal exercise of "exclusive legislation" under the Constitution.

Weaknesses in incompatibility theory.—Historical evidence supports the contrary view, namely, that article I, section 8, clause 17, of the Constitution, does not foreclose the States from extending civil rights to inhabitants of Federal areas. As was indicated in chapter II,[70] James Madison, in response to Patrick Henry's contention that the inhabitants of areas of exclusive Federal legislative jurisdiction would be without civil rights, stated that the States, at the time they ceded jurisdiction, could safeguard these rights by making "what stipulations they please" in their cessions to the Federal Government. If a stipulation by a State safeguarding such rights is not incompatible with "exclusive legislation," it might well be argued that unilateral extension of the rights by a State after the transfer of jurisdiction is entirely permissible; for it would seem that the possession of State rights by the residents, rather than the timing of the securing of such rights, would create any incompatibility. And objections of incompatibility with exclusive Federal jurisdiction of State extension of such rights as voting to residents of Federal enclaves would seem answerable with the words of the Supreme Court in its opinion in the *Howard* case, *supra:* "The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to

[69] *E. g.*, *Commonwealth* v. *Clary*, *supra*, and *Opinion of the Justices*, *supra*.
[70] See p. 25, *supra*.

which we must give heed." What is more, truly exclusive Federal jurisdiction, as it was known in the time of the basic decisions denying civil and political rights and privileges to residents of Federal enclaves, no longer exists except as to the District of Columbia.

Former exclusivity of Federal jurisdiction.—The basic decisions and most other decisions denying civil or political rights and privileges to residents of Federal enclaves were rendered with respect to areas as to which the States could exercise no authority other than the right to serve process, and in many of these reference is made in the opinions of the court to the fact that residents of the areas were not obliged to comply with any State law or to pay any State taxes. It will be recalled that until comparatively recent times it was thought that there could not be transferred to the Federal Government a lesser measure of jurisdiction than exclusive.[71]

Present lack of Federal exclusivity.—That period is past, however, and numerous States now are reserving partial jurisdiction.[72] Moreover, beginning in June 1936, by a number of statutes the Federal Government has retroceded to the States (and their political subdivisions) jurisdiction variously to tax and take other actions with respect to persons and transactions in areas under Federal legislative jurisdiction.[73] Consequently, and notwithstanding the definition given the term "exclusive legislative jurisdiction" for the purposes of this work,[74] there would seem at present to be no area (except the District of Columbia) in which the jurisdiction of the Federal Government is truly exclusive, and residents of such areas are liable to numerous State and local tax laws and at least some other State laws.[75]

[71] See p. 59 *et seq.*, *supra*.

[72] See *report*, part I, p. 127 *et seq.*

[73] See p. 190 *et seq.*, *supra*.

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

[75] This fact would seem not only to weaken present application of the incompatibility theory but also to invite questions, under the 14th Amendment to the Federal Constitution, as to the eligibility for State citizenship of persons domiciled on such areas and concerning their entitlement to rights and privileges as residents of the State (*quaere:* may a person be a "resident" for purposes of taxation and not for other purposes?).

Rejection of past concepts.—In *Arapajolu* v. *McMenamin*, discussed above,[76] the Supreme Court of the State of California, taking cognizance of factors outlined above, held residents of areas over which the Federal Government had legislative jurisdiction to be residents of the State. In determining them entitled to vote as such residents, the court stated and disposed of a final argument as follows (249 P. 2d 318, 323):

> Respondents argue in their brief: "The states could have reserved the right to vote at the time of the original cession where such right did not conflict with federal use of the property * * * but did not do so." We cannot follow the force of this argument. The State of California did not relinquish to the United States the right of citizens resident on federal lands to vote nor did the United States acquire those rights. The right to vote is personal to the citizen and depends on whether he has met the qualifications of section 1, Art. II of our Constitution. If the State retains jurisdiction over a federal area sufficient to justify a holding that it remains a part of the State of California a resident therein is a resident of the State and entitled to vote by virtue of the Constitutionally granted right. No express reservation of such rights is necessary, nor could any attempted express cession of such rights to the United States be effective.[77]

Interpretations of Federal grants of power as retrocessions.—In asserting the existence at the present time of "jurisdiction" in the State of California over what were formerly "exclusive"

[76] See p. 222, *supra*.

[77] In *Adams* v. *Londeree* (see p. 224, *supra*), the Supreme Court of West Virginia based judicial recognition of certain civil rights of residents of an area under Federal legislative jurisdiction solely on a ground approximating this, but without actually discussing any possible evolution in this concept of extraterritoriality of such areas.

Federal jurisdiction lands, the court said in the *Arapajolu* case (249 P. 2d 322):

> * * * The power to collect all such taxes depends upon the existence of State jurisdiction over such federal lands and therefore may not be exercised in territory over which the United States has exclusive jurisdiction. *Standard Oil Co.* v. *California,* 291 U. S. 242, 54 S. Ct. 381, 78 L. Ed. 775. In recognition of this fact the Congress has made these recessions to the States in terms of jurisdiction, e. g. 4 U. S. C. A. §§ 105 and 106:" and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State * * *"; 26 U. S. C. A. § 1606 (d): "and any State shall have full jurisdiction and power to enforce the provisions of such law * * * as though such place were not owned, held, or possessed by the United States." [78]

In *Kiker* v. *Philadelphia,* 346 Pa. 624, 31 A. 2d 289 (1943), *cert. den.,* 320 U. S. 741, previously discussed at page 203, above, the Supreme Court of Pennsylvania referred to the Buck Act as a "recession of jurisdiction" to the State when upholding applicability thereunder of a municipal tax to the income of a Federal employee earned in a Federal enclave.[79] A holding to the same effect was had in *Davis* v. *Howard,* 306 Ky. 149, 206 S. W. 2d 467 (1947).

[78] The legislative histories of such statutes (see p. 190, *et seq., supra*), cast little direct light on this subject.

[79] While in this case the court rejected the principle of extraterritoriality, and also held the Federal employee entitled to all benefits of facilities of the taxing municipality in upholding the constitutionality of the tax under the Fourteenth Amendment to the Constitution, the same court in *Schwartz* v. *O'Hara Township School Dist., supra,* apparently reverted to the extraterritoriality doctrine and upheld the denial to residents of a Federal enclave of a right to attend public schools, indicating some influence by the fact that persons involved in the latter case were not actually taxed (but *quaere:* may a State accept a retrocession under the Buck Act and similar statutes on a regional basis?).

Interpretation of such statutes as Federal retrocessions of partial jurisdiction to the States apparently is essential, since States seemingly would require "jurisdiction" to apply taxes generally, and the tax and other provisions of their workmen's and unemployment compensation acts, at least as to persons over whom they have no authority except as may arise from the presence of such persons on an "exclusive" Federal jurisdiction area. Thus, in *Atkinson* v. *State Tax Commission,* 303 U. S. 20 (1938), the Supreme Court held (p. 25) that the enforcement by a State of its workmen's compensation law in a Federal area was "incompatible with the existence of exclusive legislative authority in the United States." And in *S. R. A., Inc.* v. *Minnesota,* 327 U. S. 558 (1946), it stated that the levy by Minnesota of a tax evidenced its acceptance of a retrocession of jurisdiction.[80]

Summary of contradictory theories on rights of residents.— *Arledge* v. *Mabry* and *Schwartz* v. *O'Hara Township School District,* it may be said, represent cases maintaining strictly the principle of *stare decisis* on questions of exercise of State rights by residents of Federal areas. They uphold the doctrine of extraterritoriality of Federal enclaves and the theory of incompatibility between exercise of State rights by residents of Federal areas and Federal possession of jurisdiction over such areas. Under the view taken in these cases the only modifications which need to be made for modernizing the very early decisions upon which they are fundamentally based are those which patently are required for enforcing State laws the extension of which is authorized to Federal areas by Federal laws; in other words, no consequences whatever flow from a Federal retrocession of partial jurisdiction to a State other than that

[80] On the other hand, in the opinion in *Offutt Housing Company* v. *Sarpy County* (see p. 205, *supra*), in holding that language in the Military Leasing Act of 1947 permitting State taxation of Federal property leased to private parties extended to lands subject to the Federal power of "exclusive Legislation," the court said: "We do not hold that Congress has relinquished 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."

the State may exercise the retroceded powers. Under this view, it would seem, residents of areas over which the Federal Government has any jurisdiction can enjoy State rights and privileges, unless reserved for the residents in the transfer of jurisdiction, only if Congress expressly retrocedes jurisdiction over such rights and privileges to the States.

It may also be said, on the other hand, that *Arapajolu* v. *McMenamin,* and to some extent *Adams* v. *Londeree,* the several other cases cited in this chapter upholding the right of persons to privileges under State laws, and cases upholding the right of States to exercise governmental authority in areas as to which the Federal Government has jurisdiction,[81] indicate at least a trend away from the old cases and to abandonment of the doctrine of extraterritoriality and the theory of incompatibility. And this trend in the judicial recognition of the existence of State civil and political rights in residents of Federal enclaves would seem to be given considerable authority first: by the decision of the Supreme Court in *Howard* v. *Commissioners, supra,* rejecting the extraterritoriality doctrine, although, like the similar decision of the Supreme Court of Pennsylvania in *Kiker* v. *Philadelphia,* the *Howard* decision immediately related to a State's rights over individuals in Federal enclaves rather than to individuals' rights to privileges under State law, and second: by present exercise by States of considerable tax and other jurisdiction over Federal enclaves and residents thereof, opening the way to questions of State citizenship of persons domiciled on such areas, and of abridgment of their privileges, under the 14th Amendment. Residents of an exclusive Federal jurisdiction area, it has been held with respect to the District of Columbia, may not be deprived of the constitutional guarantees respecting life, liberty, and property.[82]

[81] See p. 60 *et seq., supra.*

[82] *Callan* v. *Wilson,* 127 U. S. 540 (1888); *O'Donoghue* v. *United States,* 289 U. S. 516 (1933); *Willson* v. *McDonnell,* 265 Fed. 432 (C. A. D. C., 1919).

Chapter IX

Areas Not Under Legislative Jurisdiction[1]

FEDERAL OPERATIONS FREE FROM INTERFERENCE: *In general.*—In *M'Culloch* v. *Maryland,* 4 Wheat. 316 (1819), Chief Justice Marshall enunciated for the Supreme Court what has become a basic principle of the constitutional law of the United States (pp. 405–406):

> If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express

[1] This and the succeeding chapter are included in this text of the law of legislative jurisdiction for the purpose of clarifying certain powers and immunities possessed by the Federal Government with respect to its real property, and operations which may be conducted on such property, not arising from Federal possession of legislative jurisdiction over the property. The broad scope of this subject, and requirements for brevity here, preclude comprehensive treatment of the subject in this work. References largely will be limited to principal and controlling decisions affecting broad legal concepts except as to matters in which most widespread interest has been indicated. In any case, further authorities should be sought in resolving specific questions of law which may arise.