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CASE COMMENTS

STATE POWER TO TAX PERSONALTY
ON FEDERAL RESERVATIONS

The fact that the federal government is the greatest landed proprietor in America is perhaps rendered less striking by the fact that all of its continental holdings are necessarily situated within the physical borders of another sovereign.¹ At once these Federal "islands" or "enclaves" appear to be subject to the authority of two masters, each of whom, within its own particular sphere, is supreme. Although conflicts between the federal and state sovereigns may arise in numerous situations, this comment is primarily concerned with those conflicts arising from states' efforts to tax property located within a federal territory.² An inquiry into this problem will of necessity involve a preliminary examination of the development of federal jurisdiction over such lands.

I. HISTORICAL DEVELOPMENT

It should first be noted that clause 17 of section 8, article I, of the United States Constitution specifically authorizes the federal government to acquire by purchase³ such lands as it needs for the erection of forts, arsenals, dock-yards, etc.⁴ The early Congresses, however, in

¹Excepting the District of Columbia.

²More specifically, may a state levy an ad valorem tax on personal property located in a federally-held territory?

³Acquisition of land by purchase, with the consent of the state concerned, is specifically authorized by the United States Constitution. Questions dealing with the acquisition of lands by the federal government should be distinguished from the related problem covered by this comment—i.e., the acquisition of jurisdiction over those lands to which the United States obtains title. Other modes of acquisition of lands will herein be assumed to exist without attempting to trace their development or to support them by the Constitution. In general, such other modes include condemnation through the power of eminent domain, either with or without the state's consent to such proceedings; donation; and reservation from the public domain at the time a state is admitted into the Union.

⁴U.S. Const., art. I, § 8, cl. 17: "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful buildings . . ." [hereinafter referred to as clause 17]. (Emphasis added.) This particular authorization was not contained in the first drafts of the Constitution. III Farrand, *The Records of the Federal Convention of 1787*, 595, 598 (rev. ed. 1937); II Farrand,

their acts providing for the purchase of lands, did not generally include express requirements for the obtaining of federal jurisdiction.⁵ Evidently, the United States merely purchased lands under the authority of clause 17 and entered into occupancy with but little regard for the problem of legislative jurisdiction. Nevertheless, in 1811, a state court recognized that where the federal government had purchased land under the terms of clause 17, the power of legislation vested in the United States.⁶ Since that time, both federal and state courts have noted that the United States may acquire jurisdiction over state lands by virtue of clause 17.⁷

During this development, the Supreme Court, in *Fort Leavenworth R.R. v. Lowe*,⁸ recognized another method of acquiring jurisdiction—state cession. There, the lands in question had been held by the United States prior to the admission of Kansas as a state, and no retention of jurisdiction was claimed by the United States when Kansas was admitted. Later, Kansas ceded jurisdiction to the federal government, and the Supreme Court of the United States upheld the cession as a valid transfer of jurisdiction. “As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States . . . ; and whatever political sovereignty and dominion the United States has over the place comes from the ces-

The Records of the Federal Convention of 1787, 324 (rev. ed. 1937). However, subsequent proposed drafts did contain an expression of this authority. II Farrand, op. cit. supra, at 509. Even then, though, it seems to have been thought of in terms of being a logical adjunct to the exclusive authority of the federal government over the seat of its administration. The Federalist No. 43, at 219 (Beloff ed. 1948) (Madison). It may be seen from Madison's discussion of clause 17 that apparently little emphasis was placed upon the second part of that clause.

The term “needful buildings” in clause 17 has by judicial interpretation been expanded to include almost any construction necessary for the carrying out of a proper federal function—e.g., court building and customhouse, *Sharon v. Hill*, 24 Fed. 726, 730, 731 (C.C.D. Cal. 1885); locks and dams, *United States v. Tucker*, 122 Fed. 518, 522 (W.D. Ky. 1903); post offices, *Battle v. United States*, 209 U.S. 36, 37 (1908); Indian training school, *United States v. Wurtzbarger*, 276 Fed. 753, 755 (D. Ore. 1921); hotel, *Arlington Hotel v. Fant*, 278 U.S. 439, 451 (1929).

⁵1 Stat. 129 (1790); 1 Stat. 622 (1799); 2 Stat. 496 (1808); 2 Stat. 650 (1811). But see 1 Stat. 452 (1796); 2 Stat. 659 (1811).

⁶*Commonwealth v. Clary*, 8 Mass. 72 (1811).

⁷*James v. Dravo Contracting Co.*, 302 U.S. 134 (1937); *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930); *United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C.C.D. R.I. 1819); *Sinks v. Reese*, 19 Ohio St. 306 (1869).

⁸114 U.S. 525 (1885). Probably there was no distinction made between the words consent and cession prior to 1885. Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, *Jurisdiction Over Federal Areas Within the States—Pt. II, A Text of the Law of Legislative Jurisdiction* 73 (1957) [hereinafter cited as *Committee Report, Pt. II*].

sion of the State"⁹ Transfer of jurisdiction by state cession has since been well established.¹⁰

The United States may also obtain jurisdiction over lands located within a state by reservation of such jurisdiction over the public domain at the time the state concerned is admitted to the Union.¹¹ "Congress might undoubtedly, upon such admission [of the state into the Union], have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation . . . ; that is, it could have excepted the place from the jurisdiction of [the state], as one needed for the uses of the general government."¹²

From the outset, cases dealing with state cession and federal reservation as a mode of transfer of jurisdiction established the fact that the United States, in order to effect a valid transfer, did not have to acquire exclusive jurisdiction.¹³ Rather, states were allowed to make certain reservations of jurisdiction in their cession statutes, and the federal government was permitted to refrain from reserving to itself all jurisdiction, to the end that there was created in fact a *concurrent* jurisdiction between the state and national governments.¹⁴ In this situation the state law, as amended from time to time, continues to govern the ceded area, and thus there is no tendency, due to congressional inaction, for general laws applicable in the area to become obsolete. Similarly, problems dealing with the residency of citizens of the state

⁹114 U.S. 525, 539 (1885).

¹⁰*Bowen v. Johnston*, 306 U.S. 19 (1939); *Collins v. Yosemite Park Co.*, 304 U.S. 518 (1938); *Standard Oil Co. of California v. California*, 291 U.S. 242 (1934); *Battle v. United States*, 209 U.S. 36 (1908); *Benson v. United States*, 146 U.S. 325 (1892).

¹¹*Langford v. Monteith*, 102 U.S. 145 (1880); *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 526 (1885) (dictum). See also 26 Stat. 222 (1890); 34 Stat. 267, 272 (1906), 16 U.S.C. § 153 (1952). It is recognized that this mode of transfer of jurisdiction is of little practical value today. Its sole significance, perhaps, lies in the explanation it affords as regards the jurisdiction enjoyed by the United States over certain lands it already possesses.

¹²*Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 526 (1885). See also *Langford v. Monteith*, 102 U.S. 145 (1880); *Clay v. State*, 4 Kan. 49 (1886).

¹³*Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525 (1885); *Arlington Hotel Co. v. Fant*, 278 U.S. 439 (1929); *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940).

¹⁴See *James v. Dravo Contracting Co.*, 302 U.S. 134, 149 (1937). By definition the term concurrent jurisdiction "is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority." Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, *Jurisdiction Over Federal Areas Within the States—Pt. I, The Facts and Committee Recommendations 14* (1956) [hereinafter cited as *Committee Report, Pt. I*].

are less likely to arise than in a situation where exclusive jurisdiction is in the United States.¹⁵

This was not, however, the result initially as to lands acquired by the federal government under clause 17. Where such purchase is made with the consent of the state concerned, clause 17 gives Congress the power to exercise *exclusive* jurisdiction over the lands in all cases whatsoever.¹⁶ It was early believed that the United States could not purchase lands under this clause unless it did acquire exclusive jurisdiction. This has been the traditional view, from the time Madison sought ratification of the Constitution,¹⁷ through early cases considering the problem,¹⁸ and into the first quarter of the twentieth century.¹⁹ This view was strengthened by a joint resolution of Congress in 1841, providing that thereafter no public money could be expended for public buildings or works on lands purchased by the United States until the state legislature had consented to the purchase.²⁰ This enactment seems to have had the effect of implementing the provisions of clause 17 in suggesting that perhaps the United States did not have the power to purchase lands unless it also acquired exclusive jurisdiction over those lands by virtue of state consent and the operation of clause 17. "For it may well be doubted whether Congress is, by the terms of the Consti-

¹⁵Those persons living in the enclave, in addition to whatever federal status they may acquire, maintain their state citizenship, under which they receive state benefits in return for the performance of state obligations.

¹⁶Although clause 17 uses the words exclusive legislation, the Supreme Court has construed this to be synonymous with exclusive jurisdiction. "The constitutional provision says that Congress shall have power to exercise 'exclusive legislation in all cases whatsoever' over a place so purchased for such a purpose. 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dock-yards, etc." *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930). "[E]xclusive jurisdiction is the attendant upon exclusive legislation. . . . [I]f exclusive jurisdiction and exclusive legislation do not import the same thing, the state could not cede or the United States accept for the purposes enumerated in this clause [clause 17], any exclusive jurisdiction. And such was manifestly the avowed intention of those wise and great men who framed the Constitution." *United States v. Cornell*, 25 Fed. Cas. 646, 648, No. 14,867 (C.C.D. R.I. 1819).

¹⁷The *Federalist* No. 43, at 219 (Beloff ed. 1948) (Madison).

¹⁸*United States v. Cornell*, 25 Fed. Cas. 646, No. 14,867 (C.C.D. R.I. 1819); *Commonwealth v. Clary*, 8 Mass. 72 (1811).

¹⁹*Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930); *United States v. Unzeuta*, 281 U.S. 138, 142 (1930) (dictum).

²⁰Rev. Stat. § 355 (1875), 40 U.S.C. § 255 (1934): "No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatsoever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given." (Emphasis added.)

tution, at liberty to purchase lands for forts, dock-yards, &c., with the consent of the State Legislature, where such consent is so qualified that it will not justify the exclusive legislation of Congress there. It may well be doubted if such consent be not utterly void."²¹

The theory behind the operation of exclusive jurisdiction is that the federal government displaces all state jurisdiction as to the ceded area.²² Nevertheless, it seems that courts have sanctioned the reservation to the states of the right of service of process, both criminal and civil, within such an area.²³ Outside of this right, the state is without jurisdiction. Problems arise, however, from the fact that while Congress has legislated extensively for the District of Columbia, it has not, except in particular instances, legislated for other territories under its exclusive jurisdiction.²⁴ These problems are increased by the fact that

²¹Fort Leavenworth R.R. v. Lowe, 114 U.S. 525, 534 (1885).

²²"In the exercise of such power as to an area in a State the Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative." Committee Report, Pt. I, 13.

²³There seems never to have been any difficulty arising from the state's retention in its consent statute of the power of criminal and civil service of process. Though the reason generally assigned for the support of such a reservation is that it will prevent the federally-owned territory from becoming a haven for fugitives and criminals, it seems that such a reservation has always been valid whether or not a reason was assigned. Surplus Trading Co. v. Cook, 281 U.S. 647, 657 (1930); United States v. Unzeuta, 281 U.S. 138, 143 (1930); United States v. Cornell, 25 Fed. Cas. 646, 649, No. 14,867 (C.C.D. R.I. 1819); Commonwealth v. Clary, 8 Mass. 72, 75 (1811) (according to Surplus Trading Co. v. Cook, 281 U.S. 647, 653 (1930), the first reported decision on this conflict of jurisdiction problem).

²⁴These include: workmen's compensation applicable to persons in enclave, 49 Stat. 1938 (1936), 40 U.S.C. § 290 (1952); unemployment compensation applicable to persons in enclave, 53 Stat. 1392 (1939), 26 U.S.C. § 1606(d) (1952); state law shall apply in cases involving wrongful death or injury of a person in an enclave, 45 Stat. 54 (1928), 16 U.S.C. § 457 (1952); states may impose tax on motor fuels, and sales, use, and income taxes on transactions occurring in an enclave, 61 Stat. 644, 645 (1947), as amended, 4 U.S.C. §§ 104-10 (1952), as amended, 4 U.S.C. §§ 104, 107 (Supp. V, 1958); taxation of leasehold interests in federal property located in an enclave, 10 U.S.C. § 2667(e) (Supp. V, 1958); and retrocession of jurisdiction to the states pertaining to the administration of estates of residents of Veterans' Administration facilities, 52 Stat. 1192 (1938), 38 U.S.C. § 16g (1952).

"With growing frequency the federal government leaves largely unimpaired the civil and criminal authority of the state over national reservations or properties." James Stewart & Co. v. Sadrakula, 309 U.S. 94, 101 (1940). See 30 Stat. 688 (1898) (jurisdiction receded to states over places purchased for branches of soldiers' homes); 49 Stat. 688 (1935), 16 U.S.C. § 465 (1952) (waiver of federal jurisdiction for historic sites); 49 Stat. 2025 (1936), 40 U.S.C. § 421 (1952) (same for slum clearance and low-cost housing under Public Works Administration); 49 Stat. 2035 (1936), later repealed due to liquidation of federal holdings by 60 Stat. 1067 (1946), 7 U.S.C. § 1017 (1952) (same for resettlement and rural rehabilitation); and 50 Stat. 895 (1937), 42 U.S.C. § 1413(b) (1952) (same for acquisitions of United States Housing Authority). This listing is not intended to be exhaustive, but merely indicative of the areas in which Congress has legislated for territories under its jurisdiction.

citizens of such territories are not citizens of the state²⁵ and, while not subject to the obligations of state citizens, neither are they entitled to any of the benefits conferred upon such citizens. They cannot vote,²⁶ stand for election,²⁷ have access as a matter of right to state schools,²⁸ avail themselves of state probate proceedings,²⁹ or be granted a divorce occurred within these areas has been partially cured by congressional enactment,³¹ and by court adoption of a rule similar to that of international law.³² But even this does not solve the problem, as the international law rule presupposes that the new sovereign will act to keep the laws of the ceded areas up-to-date. This has been accomplished to a fairly great extent only in the area of criminal law by the passage of the Assimilative Crimes Act.³³

Thus, where Congress has not by statute allowed the state to act, the fact that exclusive jurisdiction is in the United States precludes any state jurisdiction other than service of process. This was certainly

²⁵"[I]t is not constitutionally competent for the general assembly to confer the elective franchise upon persons whose legal status is fixed as non-residents of the State . . ." *Sinks v. Reese*, 19 Ohio St. 306, 319 (1869). In this case the issue was whether inmates of a federal asylum could vote in a state election.

²⁶*Herken v. Glynn*, 151 Kan. 855, 101 P.2d 946 (1940); *In re Town of Highlands*, 22 N.Y. Supp. 137 (Sup. Ct. 1892); *Sinks v. Reese*, 19 Ohio St. 306 (1869); *McMahon v. Polk*, 10 S.D. 296 (1897).

²⁷Generally, see note 26 *supra*, as the qualifications for holding public office are the same as for voting. But see *Adams v. Londeree*, 139 W. Va. 748, 83 S.E.2d 127 (1954).

²⁸*Schwartz v. O'Hara Township School Dist.*, 375 Pa. 440, 100 A.2d 621 (1953); *Opinion of the Justices*, 1 Metc. 580, 583 (Mass. 1841).

²⁹*Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729, 733 (1926) (concurring opinion).

in state courts.³⁰ The legislative void which might otherwise have

³⁰*Dicks v. Dicks*, 177 Ga. 379, 170 S.E. 245 (1933); *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729 (1926); *Chaney v. Chaney*, 53 N.M. 66, 201 P.2d 782 (1949). The domestic relations problems involving residents of federal enclaves is heightened by the fact that the federal courts will not entertain such suits. "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony . . ." *Barker v. Barker*, 62 U.S. 582 (1858). Interesting problems dealing with the opposite side of divorce may also be imagined, since there is no federal law relating to marriage. See generally Note, 101 U. Pa. L. Rev. 124 (1952).

³¹E.g., see note 24 *supra*.

³²Cf. Committee Report, Pt. I, 15. "[W]hen one sovereign takes over territory of another the laws of the original sovereign in effect at the time of the taking which are not inconsistent with the laws or policies of the second continue in effect, as laws of the succeeding sovereign, until changed by that sovereign." Committee Report, Pt. II, 6.

³³54 Stat. 234 (1940); 18 U.S.C. § 13 (1952). This act differs from the international law rule in that it provides for the application of the state laws in effect at the time of the offense, and not at the time the federal government acquired jurisdiction over the territory. Cf. note 32 *supra*.

so in 1930,³⁴ and it appears to have been true as late as 1934.³⁵ But three years later, in *James v. Dravo Contracting Co.*,³⁶ the Supreme Court made the first significant inroad into the concept of exclusive jurisdiction. The United States acquired lands from West Virginia to erect dams for the improvement of navigable streams.³⁷ The West Virginia legislature, by a general statute, had given its consent to the acquisition of such lands by the United States, but had reserved to the state concurrent jurisdiction.³⁸ The specific question involved was whether West Virginia could impose a tax on the gross amounts received by Dravo from contracts with the United States for the construction of the dams. Even though the acquisition of the lands fell under clause 17, the Supreme Court upheld the validity of the taxing statute, thereby determining that a consent statute does not have to give exclusive jurisdiction to the federal government.³⁹ By dictum, this same principle was recognized by the Supreme Court in 1938⁴⁰ and again in 1940.⁴¹ In 1940, Congress amended section 355 of the Revised Statutes⁴² so that the United States would not be required to obtain exclusive jurisdiction over lands acquired by it under clause 17.⁴³

³⁴*Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930).

³⁵*Standard Oil Co. of California v. California*, 291 U.S. 242, 245 (1934) (dictum), rehearing denied, 291 U.S. 650 (1934).

³⁶302 U.S. 134 (1937).

³⁷"Locks and dams for the improvement of navigation... have been regarded as 'needful buildings' [within the meaning of clause 17] [citation omitted]. We take that view." *James v. Dravo Contracting Co.*, 302 U.S. 134, 143 (1937).

³⁸W. Va. Code Ann. § 3 (1955).

³⁹See *James v. Dravo Contracting Co.*, 302 U.S. 134, 147-48 (1937).

⁴⁰"The States of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders... Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification. It is a matter of arrangement. These arrangements the courts will recognize and respect." *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 528 (1938).

⁴¹"It is now settled that the jurisdiction acquired from a State by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish... This assures that no area however small will be left without a developed legal system for private rights." *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 99 (1940).

⁴²See note 20 supra.

⁴³54 Stat. 19 (1940), 40 U.S.C. § 255 (1952), amending Rev. Stat. § 355 (1875), as amended. "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department... of the Government may... accept or secure from the State in which any lands or interests therein... are situated, consent to or cession of such jurisdiction, exclusive or partial... as he may deem desirable..."

Thus, at the present time, it would seem that the same results are reached whether the United States acquired jurisdiction under clause 17, or by state cession or federal reservation. In either case, the state may retain concurrent jurisdiction, though still not without certain restrictions. The limit on the exercise by the states of their concurrent jurisdiction seems to have been expressed best by the Supreme Court in the *Dravo* case: "We hold that the [state] tax so far as it . . . does not interfere in any substantial way with the performance of federal functions . . . is a valid exaction."⁴⁴

II. THE SPECIFIC PROBLEM

The present status of state lands over which the United States has acquired jurisdiction is not as clear as the foregoing Supreme Court decisions seem to indicate, at least so far as state taxation of private property located on such lands is concerned. This may best be seen in three recent decisions, based on equivalent factual situations.⁴⁵ The International Business Machines Corporation had leased to the United States certain of its machines, which were located on federally-acquired property. In each state there were statutes giving the consent by the state to the transfer to the United States of exclusive jurisdiction over lands within the state acquired by the national government, and in each case the state concerned, or one of its subdivisions, levied a tax on this private property. IBM sought to avoid the tax.⁴⁶

In *International Business Machines Corp. v. Vaughn*,⁴⁷ the Florida Supreme Court reasoned that since the state legislature had ceded exclusive jurisdiction to the federal government, reserving only the right of service of process, the state could not subsequently tax the private property of IBM located on the ceded lands. The state argued that the corporation's property located on an air force base was subject to taxation since not being utilized for one of the specifically enumerated exempted uses mentioned in the Florida constitution.⁴⁸ The Florida court, however, expressly rejected the argument that the organic law of the state requiring taxes to be levied should be taken as a part of the transaction of cession.⁴⁹ "[T]he pivotal point is not 'use' but 'jurisdiction.'"⁵⁰ Thus, since the state had ceded exclusive juris-

⁴⁴James v. Dravo Contracting Co., 302 U.S. 134, 161 (1937).

⁴⁵See notes 47, 53, 64 infra.

⁴⁶In two of the cases, the action was for an injunction to restrain collection of the taxes; in the third, IBM sought recovery of taxes already paid.

⁴⁷98 So. 2d 747 (Fla. 1957).

⁴⁸Fla. Const. art. XVI, § 16.

⁴⁹98 So. 2d at 750.

⁵⁰98 So. 2d at 748.

diction to the United States over the lands involved,⁵¹ "the jurisdiction cannot be disturbed by tax gatherers because the right to tax was not reserved and the consent of the United States to tax was not given."⁵²

One year earlier, a different approach had been taken by the Louisiana Supreme Court in *International Business Machine Corp. v. Ott*.⁵³ As to lands acquired by the federal government prior to February 1, 1940,⁵⁴ the court reasoned that, on the authority of *James v. Dravo Contracting Co.*⁵⁵ and *Silas Mason Co. v. Tax Commission of Washington*,⁵⁶ the United States did not have to accept exclusive jurisdiction, and that the amount of jurisdiction the United States in fact did acquire must be based on how much it accepted, not how much it was offered.⁵⁷ As the United States had made use of various facilities furnished by the City of New Orleans (fire protection, sewerage, water and drainage service, traffic regulation), the court felt that the acceptance of such services was evidence of an intent contrary to exclusive jurisdiction.⁵⁸ "We think, upon further analysis and study, that the rule of *Surplus Trading Co. v. Cook* [citation omitted] it [is?] not to be applied to the instant factual situation."⁵⁹ Thus, the state could properly tax IBM's property.

As to lands within the state acquired after February 1, 1940, the court found that the United States had not accepted either exclusive or partial jurisdiction according to the requirements of Title 40, U.S.C. section 255,⁶⁰ without which it is conclusively presumed that such

⁵¹Reserving only the right of service of process. Fla. Stat. Ann., tit. 2, c. 6, § 6.04 (1953).

⁵²98 So. 2d at 750.

⁵³230 La. 666, 89 So. 2d 193 (1956). The problem dealing with property located on lands leased to the federal government is not discussed here.

⁵⁴This date was critical in the court's mind, evidently, as being the date on which the amendment to Rev. Stat. § 355 (1875), 40 U.S.C. § 255 (1934), was passed. See notes 20 and 43 supra.

⁵⁵302 U.S. 134 (1937).

⁵⁶302 U.S. 186 (1937).

⁵⁷"The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant." 89 So. 2d at 206. The facts of this case do not differ materially from those of *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930).

⁵⁸As to the using of the city's facilities, the dissent mentioned that the court "cannot condemn the Government for using these services on the payment of a small fee." 89 So. 2d at 208 (dissenting opinion).

⁵⁹89 So. 2d at 206. The dissent felt differently, however. "Precedent and authority supports the contentions of the plaintiff: . . . 3. An unreversed decision of the United States Supreme Court—the *Surplus Trading Co. v. Cook* [citation omitted]. This decision is as reliable as the attraction of gravity; there is no shadow of turning." 89 So. 2d at 207 (dissenting opinion).

⁶⁰See notes 43 and 54 supra.

jurisdiction has not been accepted. Therefore, the state may also levy a tax on private property located on these lands.

Although the Florida and Louisiana decisions reach opposite results, there is an element of similarity between them in that each court was looking at a different side of the same coin—i.e., Florida was concerned with the amount of jurisdiction *offered* to the federal government by the state, and Louisiana was looking to the amount of jurisdiction *accepted* by the United States. It should be noted that the United States cannot acquire jurisdiction by a unilateral action,⁶¹ and to this extent the Florida court seems correct in its analysis. But something else is required to complete the transfer of jurisdiction—acceptance by the federal government. The 1940 amendment to section 355 of the Revised Statutes expressly requires formal federal acceptance prior to the transfer of exclusive or partial jurisdiction.⁶² Before this amendment, acceptance was likewise required, but it was presumed from acquiescence by the national government in the absence of an express acceptance.⁶³ Thus, it appears that the Louisiana court, in going a step beyond the Florida court and looking to the amount of jurisdiction accepted by the federal government, has taken a correct approach.

During the interim between these two decisions, the Supreme Court of Georgia decided *International Business Machines Corp. v. Evans*,⁶⁴ which, like the Louisiana decision, permitted the state to levy an ad valorem property tax on the machines leased by IBM to an air force base in Georgia. The court reasoned that since the Georgia constitution denies to the state "the authority to irrevocably give, grant, limit, or restrain this right [of taxation of corporations],"⁶⁵ then the statutes

⁶¹Here it is important to distinguish between the acquisition of land and the acquisition of jurisdiction. The offer by the state (or its consent to federal acquisition) relates to jurisdiction over the lands (governmental control), not to the title of the lands (proprietary control). The consent of the state is not necessary as to the acquisition of land within its boundaries by the United States. Cf. *United States v. Mayor and Council of City of Hoboken*, 29 F.2d 932, 942-46 (D. N.J. 1928).

⁶²54 Stat. 19 (1940), 40 U.S.C. § 255 (1952), amending Rev. Stat. § 355 (1875), as amended. "[A]nd indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

⁶³See *Silas Mason Co. v. Tax Commission of Washington*, 302 U.S. 186, 207 (1937); *Benson v. United States*, 146 U.S. 325, 330 (1892); *Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 528 (1885); *United States v. Cornell*, 25 Fed. Cas. 646, 648, No. 14,867 (C.C.D. R.I. 1819).

⁶⁴213 Ga. 333, 99 S.E.2d 220 (1957).

⁶⁵Ga. Const. art. 7, § 1, par. 1; Ga. Code Ann. § 2-5401 (1945).

ceding exclusive jurisdiction to the United States over the lands in question⁶⁶ must be void "to the extent that they undertake to waive the sovereign right of Georgia to tax . . ."⁶⁷ Even though the United States Constitution authorizes the federal government to accept exclusive jurisdiction where the state consents to the purchase of lands, "that which the State Constitution forbids the legislature to do, the Constitution of the United States cannot require done . . . Nothing in the Constitution of the United States can confer upon the Georgia Legislature, an iota of power to legislate for Georgia."⁶⁸

Like Louisiana, Georgia reaches a result different from that of Florida, but here the two courts are looking at opposite sides of another coin. The Florida decision seems to indicate that the state can exercise only those powers it has specifically reserved in the cession or consent statute. This holding, when considered in conjunction with the Florida constitution,⁶⁹ must necessarily indicate that when a cession takes place, the territory so ceded ceases to be governed by the constitution. It becomes, in effect, a federal island free of any state control or regulation. As the constitution of Florida does not apply—since the striking down of such a tax does not violate the constitutional requirement that a tax be levied on corporate property within the state—it then must follow that the ceded territory is "outside" the state.⁷⁰

The Georgia court was faced with the same problem. In the Georgia constitution, as in the Florida constitution, there appears to be nothing forbidding the cession to the United States of exclusive jurisdiction over lands acquired by the federal government. But here the court

⁶⁶Ga. Code Ann. §§ 15-301 (25), 15-302 (26), 15-303 (1945).

⁶⁷99 S.E.2d at 225.

⁶⁸99 S.E.2d at 222. Another "argument" put by the court follows: "We would never for one second deliberately render a judgment today that we would not be perfectly willing to follow tomorrow. If we would not today be willing to follow it tomorrow, we certainly will not render it today. It is inconceivable that this court would ever uphold an act of the legislature which surrendered the sovereignty of Georgia over every foot of Georgia's land. Such a ruling would even abolish this court. The legislature has no such power. The fact that we would not so hold is a compelling reason for our refusing to rule today that it can surrender sovereignty over a part of Georgia's territory." 99 S.E.2d at 223. Such an argument was presented in the Ninth Circuit in 1929. The court there countered that "such a contingency is possible, but improbable, and the situation must be met when it arises. Suffice it to say that no such question is here involved." *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F.2d 644, 645 (9th Cir. 1929).

⁶⁹"The property of all corporations . . . shall be subject to taxation . . ." Fla. Const. art. XVI, § 16.

⁷⁰This point is not specifically discussed in the opinion. However, it may be what the court had in mind when, in speaking of the exemptions from this taxation, it said: "But the pivotal point is not 'use' but 'jurisdiction'." 98 So. 2d at 748.

did not look at the effect of such a cession, once it was made, for if it had, it would seem that the Florida approach would not have violated the Georgia constitution—i.e., if the lands ceded were “without” the state, then the constitution would not be applicable to those lands.⁷¹ Rather, the court seems to have assumed that any lands actually within the physical borders of the state were under the effect of the state’s constitution, and, consequently, the right of taxation could never be surrendered as to those lands.

III. THREE COINS IN THE FOUNTAIN

Which one will the High Court bless? It would appear a confusing anomaly to say that the United States Supreme Court would affirm each of these decisions, were they presented on appeal. Yet, in spite of the resultant dichotomy, a synthesis might lie in just this confusion. It is, of course, pure speculation to imagine what the Supreme Court—or any court, for that matter—would do with a specific problem that might come before it, but in that speculation is found the joy of prophecy or the pangs of error.

If IBM appealed the Louisiana decision, it would have to overcome the strong argument that the United States did not accept exclusive jurisdiction over the lands in question. As regards those lands acquired after the 1940 amendment, it seems that the state’s position is sound, if, as was determined by the Louisiana court, the United States had not complied with the terms of the amendment in formally accepting jurisdiction. As to the lands acquired before the amendment, IBM is in a better position in that no express acceptance is required, and in that acceptance was generally presumed.⁷² But a presumption is rebuttable. Here, there was no federal act stating that the United States had exclusive jurisdiction;⁷³ the national government had made use of city-offered utilities;⁷⁴ and the state’s action in taxing the property of IBM was not inconsistent with the federal purpose in holding the lands.⁷⁵ The state might tender another valid argument based on the

⁷¹Georgia may not tax property located without its territorial jurisdiction. *Davis v. Penn Mut. Life Ins. Co.*, 198 Ga. 550, 32 S.E.2d 180 (1944); *National Mortgage Corp. v. Suttles*, 194 Ga. 768, 22 S.E.2d 386 (1942); *Suttles v. Northwestern Mut. Life Ins. Co.*, 193 Ga. 495, 19 S.E.2d 396 (1942); *Montag Bros., Inc. v. State Revenue Commission of Georgia*, 50 Ga. 660, 179 S.E. 563 (1935).

⁷²*Fort Leavenworth R.R. v. Lowe*, 114 U.S. 525, 528 (1885); *United States ex rel. Bowen v. Johnston*, 58 F. Supp. 208, 209 (N.D. Cal. 1944), *aff’d*, 146 F.2d 268 (9th Cir. 1944), *cert. denied*, 324 U.S. 876 (1944); *United States v. Watkins*, 22 F.2d 437, 440 (N.D. Cal. 1927); *Pound v. Gaulding*, 237 Ala. 387, 187 So. 468, 470 (1939).

⁷³See 89 So. 2d at 206.

⁷⁴See 89 So. 2d at 206.

⁷⁵See 89 So. 2d at 205.

fact that the United States seems anxious to exercise only that amount of jurisdiction needed to perform its operations, since the federal government has grown so large, and its holdings expanded so extensively, that in the modern-day world it cannot efficiently manage each separate area under its exclusive jurisdiction.

If the tax commissioner were to appeal the Florida decision, IBM could offer a cogent argument for affirmance. The contemporary view recognizes that the United States does not have to acquire exclusive jurisdiction over the lands it needs for its operations.⁷⁶ Nevertheless, when a state does cede exclusive jurisdiction in accordance with the terms of the Constitution, then the federal government does have exclusive jurisdiction. As *Surplus Trading Co. v. Cook*⁷⁷ has not been overruled, the state is without authority to levy the tax in this situation. Since the Florida Supreme Court appeared to be aware of the effect of the decision in *James v. Dravo Contracting Co.*,⁷⁸ IBM could meet in advance the argument that the Supreme Court should vacate the Florida decision on the ground that Florida felt compelled by its interpretation of constitutional law to hold that the United States had to have exclusive jurisdiction over the lands in question.

If IBM should appeal the Georgia decision, the Supreme Court might affirm it as well. The actual reasoning in the Georgia decision presents only a part of the argument that the state would have to use before the Supreme Court—i.e., that although the act of the General Assembly appears to have given exclusive jurisdiction to the United States, it in fact did not. The state, under its constitution, did not have the power to pass such an act, and therefore, to the extent that the act was violative of the Georgia constitution, it was void. The state's position is strengthened by the Supreme Court's statement in *United States v. Unzeuta*: "The terms of the cession, to the extent that they may lawfully be prescribed, determined the extent of the Federal jurisdiction."⁷⁹ If this argument is accepted, then Georgia would appear to be on safe ground, since it would have no difficulty in showing that it is not necessary for the United States to have exclusive jurisdiction in order to perform its functions on the air force base.⁸⁰

When this problem of jurisdiction is viewed from the federal side, there appears to be little doubt that even though the United States has

⁷⁶*James v. Dravo Contracting Co.*, 302 U.S. 134 (1937); 54 Stat. 19 (1940), 40 U.S.C. § 255 (1952).

⁷⁷281 U.S. 647 (1930).

⁷⁸See 98 So. 2d at 749.

⁷⁹281 U.S. 138, 142 (1930). (Emphasis added.)

⁸⁰See note 76 *supra*.