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# State Regulation and Enclaved Federal Territory

## STATE REGULATION AND ENCLAVED FEDERAL TERRITORY

Army officers on a military reservation within the boundaries of a dry state forwarded orders for liquor through a club secretary to an outstate dealer. While in transit by common carrier under a uniform bill of lading, the shipment was seized by state officers for confiscation and destruction under the Oklahoma Permit Law.[1] A state law made

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33. E.g. less than 1/10 of 1% of the Hooven & Allison Co. purchases of imports were spot purchases. Hooven & Allison Co. v. Evatt, Tax Commr., 142 Ohio St. 235, 237 (1943).

34. See arguments developed in cases cited note 30 supra. Notice the preservation of protection for the privilege of selling as retained in the commerce clause under other tests. See citations note 10 supra.

35. Principal case at 888.

36. Cf. " . . . the test of the original package is not an ultimate principle. It is an illustration of a principle . . . What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation." Baldwin v. G.A.F. Seelig, 294 U.S. 511, at 526-527 (1935) (interstate commerce).

37. The total revenue from real and personal property taxes in 1941 was 4 billion, 5 million; the states' share being 250 million and the remainder going to political subdivisions. "Statistical Abstract for 1943" (1943) 282. Estimated at an average of state ad valorem tax rates of 6 mills to the dollar, $15,263,936 taxes would have accrued to the states in 1940 had the rule been enforced in accord with the minority opinion.

A possible solution of the definition of the termination of the immunity of an import lies in legislation along the line of the Wisconsin exemption of "merchandise placed in storage in original package in a commercial storage warehouse or public wharf." Wis. State (1943) tit. X, c. 70 § 11(37). See also C.C.H. "State Tax Guide Service" (1941) ¶ 52-000.

1. Okla. Stat. Ann. (1941) tit. 37§ 41-48.

Amendment XXI, § 2, gives a dry state the power to forbid all importation of intoxicating liquor into the state or to adopt a lesser degree of regulation than total prohibition. State Board of Equalization v. Young's Market Co., 299 U.S. 59 (1936); Mahoney v. Joseph Triner Corp., 304, U.S. 401 (1937). A state may also require a permit for the transportation of intoxicants in interstate commerce through the state as a means of establishing the identity of transporters, their routes and points of destination and of enabling local officers to take appropriate

possession of intoxicants for personal use received from a common carrier unlawful.[2] The Federal Assimilative Crimes Act adopts the penal laws of a state, in so far as such laws have not displaced by specific acts of Congress, as the governing federal law for enforcement in federal areas.[3] A Federal Court granted injunctive relief to compel the officials to return the liquor and to refrain from interfering with the delivery.[4] Certiorari granted. Held: that carrier acted in good faith and neither the United States, the War Department, nor army officers were represented in litigation, and relief will not be denied on theory that federal laws may in consequence be violated.[5] Dissent: a violation of a police regulation ought not to be furthered by a federal court.[6] Johnson v. Yellow Cab Transit Co., 64 Sup. Ct. 622 (1944).

The Assimilative Crimes Act[7] provides that "whoever, within the

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measures to insure transportation without diversion. Duckworth v. Arkansas, 314 U.S. 390, 396; 138 A.L.R. 1144 (1941).

The Oklahoma statute, enacted to secure the benefit of the Federal Liquor Enforcement Act of 1936 (49 Stat. 877 § 202(b), 27 U.S.C.A. 9 § 221), was identical in wording with the Arkansas statute. Cf. State of Arkansas v. Duckworth, 201 Ark. 1123, 148 S.W. (2d) 656 (1941). Compare principal case at 624.

30 Am. Jud. "Intoxicating Liquors," 383 §§ 232, 239 et seq.; 15 C.J.S. "Commerce," § 99, note 27 at 452.

2. Okla. Stat. Ann. (1941) tit. 37 39 (enacted 1917; actively enforced for more than twenty-five years; constitutionality unquestioned in state courts). The Federal Court held this statute unconstitutional. Johnson v. Yellow Cab Company, 137 F. (2d) 274, 277 (C.C.A. 10th, 1943). Compare principal case: majority opinion at 627, dissenting opinion at 629. Cf. Commission of Texas et al. v. Pullman Co. et al., 312 U.S. 496 (1941).

3. 54 Stat. 304 (1940), 18 U.S.C.A. § 451 and 54 Stat. 234 (1940,, 18. U.S.C.A. § 468; Cr. Code §§ 272 and 289; carried as § 857 of 1940 Supplement to the Military Laws of the United States.

4. Yellow Cab Company v. Johnson, 48 F. Supp. 594 (1943). Decision on the ground that a state has no power to forbid an interstate commerce shipment of intoxicants through its territory; assimilative crimes problem sidestepped. Equitable grounds for granting relief to carrier found under rule in Louisville & Nashville R.R. Co. v. Cook Brewing Co., 223 U.S. 70 (1911).

5. Justice Black: "Considering the difficulty and importance of a correct decision of the novel issues which an attempt to construe this federal statute would present . . . we are convinced that in the interests of the sound administration of justice we should refrain from a complete exploration of these issues in this proceeding, especially since these issues are only collateral," principal case at 626.

6. Justices Frankfurter and Roberts dissenting. The reasoning of the dissent proceeded: Oklahoma statutes make delivery and receipt of intoxicants for personal use as a beverage a crime if the delivery is made in Oklahoma; the Assimilative Crimes Act had made the same acts Federal crimes in the Fort Sill area; the liquor would be illegal and contraband at its point of destination; and an equity court should not aid the accomplishment of illegal acts. See also, dissenting opinion of Circuit Court Judge Murrah. Johnson v. Yellow Cab Co., 137 F. (2d) 274 (C.C.A. 10th, 1943).

7. Constitutionality upheld. Franklin v. United States, 516 U.S. 559 (1910).

territorial limits of a state, within or upon any lands reserved,[8] or acquired[9] for the use of the United States and under the exclusive[10] or concurrent[11] jurisdiction thereof, shall do any act or thing which is not made penal by any act of Congress,[12] but which if committed within the jurisdiction of the state, by the laws in force on" the date mentioned in the Act,[13] "would be penal, shall be deemed guilty of a like offense and subject to a like punishment."[14] By adoption, state penal laws become federal laws in force in the designated places[15] and are not enforceable by the state.[16]

From the history[17] of this act, which has been in effect for more than a century, it will be seen that its purpose was to satisfy a lack of a comprehensive Federal Criminal Code.[18] There are no common law offenses against the United States and the criminal jurisdiction of the United States is derived exclusively from specific statutes.[19]

8. United States v. Pelican, 232 U.S. 442 (1914).
9. Does not apply to purchase at tax sale without consent of state. United States v. Penn, 48 Fed. 669 (C.C.E.D.Va. 1880); after-acquired legislative consent sufficient. United States v. Tucker, 122 Fed. 518 (W.D. Ky. 1903).
10. Const. art. 1, § 8, cl. 17 gives Congress 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." "Other needful buildings" construed to include: custom house, Sharon v. Hill, 24 Fed. 726 (C.C. Cal. 1885); post office, Battle v. United States, 209 U.S. 36 (1907). "Forts" to include: navy yard, United States v. Dolan, 25 Fed. Cas. 887, No. 14,978 (E.D. N.Y. 1865).
11. Whether the national government acquired exclusive jurisdiction depends upon terms of the state legislature's consent or cession. Bowen v. Johnston, 306 U.S. 19 (1939).
12. Query: Must the local law be consistent with Federal policy? The cases have not dealt with this question. Relative to local civil laws, it has been said, "local law not inconsistent with Federal Policy remains in force, until altered by national legislation." James Stewart & Co., Inc. v. Sadrakula, 309 U.S. 94 (1940).
13. United States v. Paul, 6 Pet. 141 (N.Y. 1832); United States v. Barney, 24 Fed. Cas. 1011, No. 14,524 (S.D. N.Y. 1866).
14. United States v. Coppersmith, 4 Fed. 198 (W.D. Tenn. 1880).
15. Sharon v. Hill, 24 Fed. 726 (C.C. Cal. 1885).
16. Washington P. & C. Ry. Co. v. Magruder, 198 Fed. 218 (D.C. Md. 1912); People of Puerto Rico v. Shell Company, 302 U.S. 253 (1937).
17. The forerunner of the instant statute was the act of March 3, 1825, Chap. 65, 4 Stats. 115. Justice Story was the author. 1 Warren, "The Supreme Court in United States History" 440-443; 1 Gales and Seaton, "Debates in Congress, 1824-1825" 154, 157, 165, 168, 335, 338.
18. "This is the most important section of the whole bill. The Criminal Code of the United States is singularly defective and inefficient. . . . Few, very few, of the practical crimes (if I may so say) are punishable by statutes, and if the courts have no general common-law jurisdiction (which is a vexed question), they are wholly dispunishable. . . . Rapes, arsons, batteries, and a host of other crimes may in these places be now committed with impunity." 1 Story, "Life of Justice Story" (1851) 293.
19. See United States v. Britton, 108 U.S. 199 (1882).

The coverage of the Federal Criminal Code is comparatively meager.[20] Congress could have enacted a comprehensive Federal Code to cover all Federal areas without reference to the state in which they were enclaved.[21] Congress chose rather to refer to the penal laws of the state in which the different Federal areas were enclaved as the source for the governing law. The choice was made with regard for state autonomy.[22]

There is a dearth of authority, both in the decisions[23] and in scholarly comment, upon the scope of the Assimilative Crimes Act. It has been held applicable to the "ordinary crimes."[24] It has, directly or by implication, been held inapplicable to "police regulations."[25]

By implication, the majority opinion limits the statute to crimes "involving moral turpitude." The effect of such an interpretation is to make wholly dispunishable certain acts contrary to the public policy of the state in which the federal area is enclaved. Nonenforcement of police regulations in the numerous federal areas[26] within a state would inevitably course backwards to play a part in undermining the policy declared essential by the state. The dissenting opinion supports the application of the statute to "police regulations." It is submitted

20. See United States v. Press Publishing Company, 219 U.S. 1 (1911);
21. Express power given in Const. Art. 1 § 8, cl. 17.
22. 1 Gales and Seaton, "Debates in Congress, 1824-1825" 154 ff.; See United States v. Press Publishing Company, 219 U.S. 1 (1911); James Stewart & Co., Inc. v. Sadrakula, 309 U.S. 94 (1940).
23. See United States v. Press Publishing Company, 219 U.S. 1 (1911); principal case at 626.
24. Assault, State v. Morris, 76 N.J. 222, 68 Atl. 1103 (1908); assault with intent to kill, United States v. Dolan, 25 Fed. Cas. 887, No. 14,978 (E.D. N.Y. 1865); murder, United States v. Andem, 158 Fed. 996 (D.C. N.J. 1908); rape, United States v. Partello, 48 Fed. 670 (C.C. Mont. 1891); adultery, Southern Surety Co. v. State, 34 Okl. 781, 127 Pac. 409 (1912) aff. 241 U.S. 582 (1916); libel and slander, United States v. Press Publishing Co., 219 U.S. 1 (1911); larceny, United States v. Davis, 25 Fed. Cas. 781, No. 14,930 (C.C. Mass. 1829) false pretenses, Biddle v. United States, 156 Fed. 759 (C.C.A. 9th, 1907); embezzlement, United States v. Franklin, 154 Fed. 163 (C.C.S.D. N.Y. 1909), writ or error dis., Franklin v. United States, 216 U.S. 559 (1910).
25. Regulations for shipping vessels, Mitchell v. Tibbetts, 17 Pick 298 (Mass. 1835); regulations for delivery of telegram messages, Western Union Tel. Co. v. Chiles, 214 U.S. 274 (1909); standards for milk, Pacific Coast Dairy, Inc. v. Dept. of Agriculture of California, 318 U.S. 285 (1943) (by implication); prohibitory liquor statutes, Collins et al. v. Yosemite Park & Curry Co., 304 U.S. 518 (1938) (by implication), Crater Lake National Park Co. v. Oregon Liquor Control Commission, 26 F. Supp. 363 (D.C. Ore. 1939).
26. The significance of the problem is indicated by the fact that, according to the recent Byrd report, one-fifth of the area of the United States is now held as Federal land. E.g. National Parks, military reservations, national forests, unappropriated public lands, public buildings, dams, post offices, defense projects, etc. The Assimilative Crimes Act is, if literally applied, applicable to all such areas. It must be noted, however, that the principal case is not a decision construing this statute. See principal case at 626.

that "so long as there is no over-riding national purpose to be served, nothing is gained by making federal enclaves thorns in the sides of the States and barriers to the effective state-wide performance"[27] of the police policy of the state.[28]

Two solutions exist: (1) construe the Assimilative Crimes Act to include "police regulations," or (2) cede jurisdiction to the state. It is suggested that Congress might desirably cede jurisdiction to the State for enforcement of police regulations within Federal areas.[29]

## CRIMINAL LAW

### SELF INCRIMINATION

Defendant petitioner, Samuel Feldman, was convicted under a federal statute[1] of fraudulently "kiting" checks through the mails. Conviction affirmed.[2] Certiorari to determine whether the forced admission in a federal court, of testimony previously given by him in supplementary proceedings in a state court,[3] deprived him of the protection of the fifth Amendment.[4] Held: affirmed. The admission of testimony in the federal court, previously given by the accused in the

27. Judge Murphy in dissent, continued, "Indeed both the federal government and the nation as a whole suffer if the solution of legitimate matters of local concern is thus thwarted and local animosity is created for no purpose." Pacific Coast Dairy, Inc. v. Dept. of Agriculture of California, 318 U.S., 285, 305 (1943). In a concurring dissent, Judge Frankfurter said, "Enough has been said to show that the doctrine of 'exclusive jurisdiction' over federal enclaves is not imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally owned lands within a state." Ibid., 300.

28. The police power of the state is an indispensable prerogative to state sovereignty, and "at times the most insistent, and always one of the least limitable powers of government." Eubank v. Richmond, 226 U.S. 137, 142 (1912); Classon v. Indiana, 306 U.S. 439 (1938); Ziffrin Inc. v. Reeves, 308 U.S. 132 (1939).

29. "The possible importance of reserving to the state jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired." James v. Dravo Const. Co., 302 U.S. 134, (1937).

Congress has expressly ceded jurisdiction to the state over federal enclaves for Workmen's Compensation Laws (Act of June 25, 1936, 49 Stat. 1938, 40 U.S.C.A. 290) and for enforcement of state income, sales and use tax acts (the Buck Act of Oct. 9, 1940, 54 Stat. 1059, 4 U.S.C.A. 13-18).

1. 35 Stat. 1130 (1909), 18 U.S.C.A. § 338 (1927).
2. 136 F. (2d) 394 (C.C.A. 2d, 1943).
3. Feldman was called on as a witness in supplementary proceedings designed to aid in the discovery of assets of a debtor. New York Civil Practice Act, art. 45, § 789. New York immunity statute protected him from further action in that state. New York Laws 1935, c. 630, § 789 as amended by New York Laws 1938, c. 108. § 17.
4. U.S. Const. Amend. V. "No person . . . shall be compelled in any criminal case to be a witness against himself."