

Blunders of the Supreme Court of the United States

Part 3

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The author has written on two blunders of the Supreme Court of the United States. Recently, the author discovered another one. The author originally decided to write on only two mistakes made by the Supreme Court of the United States. However, the author believes the reader will understand why he chose to include this one.

The third blunder of the Supreme Court of the United States is in the case of *United States v. Wong Kim Ark* (169 U.S. 649, 1898). The blunder occurs at pages 652 thru 653:

“The facts of this case, as agreed by the parties, are as follows: Wong Kim Ark was born in 1873 in the city of San Francisco, in the State of California and United States of America, and was and is a laborer. His father and mother were persons of Chinese descent, and subjects of the Emperor of China; they were at the time of his birth domiciled residents of the United States, having previously established and still enjoying a permanent domicil and residence therein at San Francisco; they continued to reside and remain in the United States until 1890, when they departed for China; and during all the time of their residence in the United States they were engaged in business, and were never employed in any diplomatic or official capacity under the Emperor of China. Wong Kim Ark, ever since his birth, has had but one residence, to wit, in California, within the United States, and has there resided, claiming to be citizen of the United States, and has never lost or changed that residence, or gained or acquired another residence; and neither he, nor his parents acting for him, ever renounced his allegiance to the United States, or did or committed any act or thing to exclude him therefrom. In 1890 (when he must have been about seventeen years of age) he departed for China on a temporary visit and with the intention of returning to the United States, and did return thereto by sea in the same year, and was permitted by the collector of customs to enter the United States, upon the sole ground that he was a native-born citizen of the United States. After such return, he remained in the United States, claiming to be a citizen thereof, until 1894, when he (being about twenty-one years of age, but whether a little above or a little under that age does not appear) again departed for China on temporary visit and with the intention of returning to the United States; and he did return thereto by sea in August, 1895, and applied to the collector of customs for permission to land; and was denied such permission, upon the sole ground that he was not a citizen of the United States.

It is conceded that, if he is a citizen of the United States, the acts of Congress, known as the Chinese Exclusion Acts, prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution, 'All persons born or naturalized in the United States, and subject to the jurisdiction, thereof, are citizens of the United States and of the State wherein they reside.' " United States v. Wong Kim Ark: 169 U.S. 649, at 652 thru 653 (1897).

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According to this case, one who is born in San Francisco, California is a citizen of the United States, because being born in the United States. However, this is not so.

Section 51(1) of the Political Code of California for 1872, Volume I states:

"The citizens of the State are all persons born in this State and residing within it, except the children of transient aliens and of alien public Ministers and Consuls."

<http://books.google.com/books?id=P8k3AAAAIAAJ&pg=PA27#v=onepage&q&f=false>

And, section 51(1) of the Political Code of California for 1874, Volume I states:

"The citizens of the State are all persons born in this State and residing within it, except the children of transient aliens and of alien public Ministers and Consuls."

<http://books.google.com/books?id=xM03AAAAIAAJ&pg=PA27#v=onepage&q&f=false>

Since the city of San Francisco is in the State of California; and since Wong Kim Ark's parents were resident aliens and not transient aliens, then Wong Kim Ark's birth in San Francisco made him a citizen of the State of California and not a citizen of the United States.

In the *Slaughterhouse Cases*, the Supreme Court held that a citizen of a State was

separate and distinct from a citizen of the United States:

“Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respective are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause (Section 1, Clause 2 of the Fourteenth Amendment) under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 74 (1873).

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In addition:

“In the Slaughter-house cases, 16 Wall. 36, the subject of the privileges or immunities of citizens of the United States, as distinguished from those of a particular State, was treated by Mr. Justice Miller in delivering the opinion of the court. He stated . . . that *it was only privileges and immunities of the citizen of the United States that were placed by the [Fourteenth] amendment under the protection of the Federal Constitution, and that the privileges and immunities of a citizen of a State, whatever they might be, were not intended to have any additional protection by the paragraph in question, but they must rest for their security and protection where they have heretofore rested.*” Maxwell v. Dow: 176 U.S. 581, at 587 (1900).

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And:

“ . . . It is, then, to the Fourteenth Amendment that the advocates of the congressional act must resort to find authority for its enactment, and to the first section of that amendment, which is as follows: ‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.’

In the first clause of this section, declaring who are citizens of the United States, there is nothing which touches the subject under consideration. The second clause, declaring that ‘no State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States,’ ***is limited, according to***

the decision of this court in Slaughter-House Cases, to such privileges and immunities as belong to citizens of the United States, as distinguished from those of citizens of the State. Neal v. State of Delaware: 103 U.S. 370, at 406 (1880). [See Footnote 1]

<http://books.google.com/books?id=Y7wGAAAAAYAAJ&pg=PA406#v=onepage&q&f=false>

So now there is a citizen of a State and there is a citizen of the United States:

“We come to the contention that the citizenship of Edwards was not averred in the complaint or shown by the record, and hence jurisdiction did not appear.

In answering the question, whether the Circuit Court had jurisdiction of the controversy, we must put ourselves in the place of the Circuit Court of Appeals, and decide the question with reference to the transcript of record in that court.

Had the transcript shown nothing more as to the status of Edwards than the averment of the complaint that he was a ‘resident of the State of Delaware,’ as such an averment would not necessarily have imported that Edwards was a citizen of Delaware, a negative answer would have been impelled by prior decisions. *Mexican Central Ry. Co. v. Duthie*, 189 U.S. 76; *Horne v. George H. Hammond Co.*, 155 U.S. 393; *Denny v. Pironi*, 141 U.S. 121; *Robertson v. Cease*, 97 U.S. 646. The whole record, however, may be looked to, for the purpose of curing a defective averment of citizenship, where jurisdiction in a Federal court is asserted to depend upon diversity of citizenship, and if the requisite citizenship, is anywhere expressly averred in the record, or facts are therein stated which in legal intendment constitute such allegation, that is sufficient. *Horne v. George H. Hammond Co.*, supra and cases cited.

As this is an action at law, we are bound to assume that the testimony of the plaintiff contained in the certificate of the Circuit Court of Appeals, and recited to have been given on the trial, was preserved in a bill of exceptions, which formed part of the transcript of record filed in the Circuit Court of Appeals. Being a part of the record, and proper to be resorted to in settling a question of the character of that now under consideration, *Robertson v. Cease*, 97 U.S. 648, we come to ascertain what is established by the uncontradicted evidence referred to.

In the first place, it shows that Edwards, prior to his employment on the New York Sun and the New Haven Palladium, was legally domiciled in the State of Delaware. Next, it demonstrates that he had no intention to abandon such domicil, for he testified under oath as follows: ‘One of the reasons I left the New Haven Palladium was, it was too far away from home. I lived in Delaware, and I had to go back and forth. My family are over in Delaware.’ Now, it is elementary that, to effect a change of one’s legal domicil, two things are indispensable: First, residence in a new

domicil, and, second, the intention to remain there. The change cannot be made, except facta et animo. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. *Mitchell v. United States*, 21 Wall. 350.

As Delaware must, then, be held to have been the legal domicil of Edwards at the time he commenced this action, ***had it appeared that he was a citizen of the United States, it would have resulted, by operation of the Fourteenth Amendment, that Edwards was also a citizen of the State of Delaware.*** *Anderson v. Watt*, 138 U.S. 694. Be this as it may, however, Delaware being the legal domicil of Edwards, it was impossible for him to have been a citizen of another State, District, or Territory, and he must then have been either ***a citizen of Delaware*** or a citizen or subject of a foreign State. In either of these contingencies, the Circuit Court would have had jurisdiction over the controversy. But, in the light of the testimony, we are satisfied that the averment in the complaint, that Edwards was a resident 'of the State of Delaware, was intended to mean, and, reasonably construed, must be interpreted as averring, that ***the plaintiff was a citizen of the State of Delaware.*** *Jones v. Andrews*, 10 Wall. 327, 331; *Express Company v. Kountze*, 8 Wall. 342." *Sun Printing & Publishing Association v. Edwards*: 194 U.S. 377, at 381 thru 383 (1904).

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A citizen of the State of California is recognized in the following cases from the Supreme Court of the United States:

"Isaac J. Lewis, a ***citizen of Nevada***, the appellee, on the 15th of January, 1881, brought suit against Harris Lewis, a ***citizen of California***, for the dissolution of an alleged partnership between them, and a settlement of the partnership affairs." *Shainwald v. Lewis*: 108 U.S. 158, at 158 (1883).

<http://books.google.com/books?id=zb0GAAAAAYAAJ&pg=PA158#v=onepage&q&f=false>

"This was a bill in equity, filed by Angelica Wakelee, a ***citizen of the State of California***, against Davis, ***a citizen of New York***, to enforce an estoppel, and enjoin the defendant from asserting, in defence of any suit which may be brought upon a certain judgment recovered by Henry P. Wakelee against Davis, in one of the state courts of California, that the debts upon which such judgment was obtained were not merged in such judgment, and from denying the validity of the judgment, as a debt against Davis, unaffected by his discharge in bankruptcy." *Statement of the Case, Davis v. Wakelee*: 156 U.S. 680, at 681 (1895).

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In addition, a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America, is one who is born in a particular State:
(Before the Fourteenth Amendment)

“It appears that the plaintiff in error, though ***a native-born citizen of Louisiana***, was married in the State of Mississippi, while under age, with the consent of her guardian, to a citizen of the latter State, and that their domicile, during the duration of their marriage, was in Mississippi.” Conner v. Elliott: 59 U.S. (Howard 18) 591, at 592 (1855).

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(After the Fourteenth Amendment)

“Joseph A. Iasigi, ***a native born citizen of Massachusetts***, was arrested, February 14, 1897, on a warrant issued by one of the city magistrates of the city of New York, as a fugitive from the justice of the State of Massachusetts.” Iasigi v. Van De Carr: 166 U.S. 391, at 392 (1897).

<http://books.google.com/books?id=xuUGAAAYAAJ&pg=PA392#v=onepage&q&f=false>

A citizen of the United States, under Section 1, Clause 1 of the Fourteenth Amendment, is one who is born in the United States, not a particular State:

“All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”
Section 1, Clause 1 of the Fourteenth Amendment.

http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html

“The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is: ‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.’ ***While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States***, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence and is gained or lost therewith.”
Edwards v. People of the State of California: 314 U.S. 160, 183 (*concurring opinion of Jackson*) (1941).

http://scholar.google.com/scholar_case?case=6778891532287614638

“That all persons resident in this state, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of

the United States, ***are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.***” (Declaration of Rights) Article I, Section 2 Constitution of the State of Alabama of 1875.

Note: This provision is not in the current constitution of the State of Alabama.

http://www.legislature.state.al.us/misc/history/constitutions/1875/1875_1.html

A citizen of the United States is now a citizen of the territories and possessions of the United States, including the District of Columbia and the federal enclaves in the several States of the Union. Such citizenship is based on political jurisdiction of the United States (government):

“This section [the opening sentence of the Fourteenth Amendment] contemplates two sources of citizenship, and two sources only: birth and naturalization. The persons declared to be citizens are ‘all persons born or naturalized in the United States, and subject to the jurisdiction thereof.’ The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their ***political jurisdiction***, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired.” Elk v. Wilkins: 112 U.S. 94, at 101 thru 102 (1884).

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“To be ‘completely subject’ to the ***political jurisdiction*** of the United States is to be in no respect or degree subject to the ***political jurisdiction*** of any other government.” United States v. Wong Kim Ark: 169 U.S. 649, at (706), 725 (dissenting opinion of Justice Fuller, with whom concurred Justice Harlan) (1898).

<http://books.google.com/books?id=4-sGAAAAYAAI&pg=PA725#v=onepage&q&f=false>

Each State of the Union has political jurisdiction also. Both before and after the adoption of the Fourteenth Amendment:

“The first proposition on which counsel insist, in support of the demurrer is, that this court has no jurisdiction of the case, because it involves the consideration of questions purely political; that is to say, that the main question to be decided is the conflicting claims of the two States to the exercise of ***political jurisdiction*** and sovereignty over the territory and inhabitants of the two counties which are the

subject of dispute. . . .

We consider, therefore, the established doctrine of this court to be, that it has jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated, because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the court may render, affects the territorial limits of the **political jurisdiction** and sovereignty of the States which are parties to the proceeding.” State of Virginia v. State of West Virginia: 78 U.S. 39, at 53 and 55 (1871).

<http://books.google.com/books?id=zMEGAAAAYAAJ&pg=PA53#v=onepage&q&f=false>

reaffirmed in *United States v. Texas* (143 U.S. 621, at 639 thru 640 1892):

“In *United States v. Arredondo*, 6 Pet. 691, the court, referring to *Foster v. Neilson*, 2 Pet. 253, said: ‘This court did not deem the settlement of boundaries a judicial but a political question — that it was not its duty to lead, but to follow the action of the other departments of the government.’ The same principles were recognized in *Cherokee Nation v. Georgia*, 5 Pet. 1 and *Garcia v. Lee*, 12 Pet. 511.

These authorities do not control the present case. They relate to questions of boundary between independent nations, and have no application to a question of that character arising between the General Government and one of the States composing the Union, or between two States of the Union. By the Articles of Confederation, Congress was made ‘the last resort on appeal in all disputes and differences’ then subsisting or which thereafter might arise ‘between two or more States concerning boundary, jurisdiction or any other cause whatever;’ the authority so conferred to be exercised by a special tribunal to be organized in the mode prescribed in those Articles, and its judgment to be final and conclusive. Art. 9. At the time of the adoption of the Constitution there existed, as this court said in *Rhode Island v. Massachusetts*, 12 Pet. 657, 723, 724, controversies between eleven States, in respect to boundaries, which had continued from the first settlement of the colonies. The necessity for the creation of some tribunal for the settlement of these and like controversies that might arise, under the new government to be formed, must, therefore, have been perceived by the framers of the Constitution, and, consequently, among the controversies to which the judicial power of the United States was extended by the Constitution, we find those between two or more States. And that a controversy between two or more States, in respect to boundary, is one to which, under the Constitution, such judicial power extends, is no longer an open question in this court. The cases of *Rhode Island v. Massachusetts*, 12 Pet. 657; *New Jersey v. New York*, 5 Pet. 284, 290; *Missouri v. Iowa*, 7 How. 660; *Florida v. Georgia*, 17 How. 478; *Alabama v. Georgia*, 23 How. 505; *Virginia v. West Virginia*, 11 Wall. 39, 55; *Missouri v. Kentucky*, 11 Wall. 395; *Indiana v. Kentucky*, 136 U.S. 479; and *Nebraska v. Iowa*, ante, 359, were all original suits, in this court, for the judicial

determination of disputed boundary lines between States. In *New Jersey v. New York*, 5 Pet 284, 290, Chief Justice Marshall said: 'It has then been settled by our predecessors, on great deliberation, that this court may exercise its original jurisdiction in suits against a State, under the authority conferred by the Constitution and existing acts of Congress.' And in *Virginia v. West Virginia*, 78 U.S. 39, 55, it was said by Mr. Justice Miller to be the established doctrine of this court 'that it has jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated, because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the court may render, affects the territorial limits of the **political jurisdiction** and sovereignty of the States which are parties to the proceeding.' So, in *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 287, 288; 'By the Constitution, therefore, this court has original jurisdiction of suits brought by a State against citizens of another State, as well as of controversies between two States. . . . As to "controversies between two or more States." The most numerous class of which this court has entertained jurisdiction is that of controversies between two States as to the boundaries of their territory, such as were determined before the Revolution by the King in Council, and under the Articles of Confederation (while there was no national judiciary) by committees or commissioners appointed by Congress.' "

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And in *State of Missouri v. State of Illinois* (180 U.S. 208, at 230 thru 231 1901):

"In *Virginia v. West Virginia*, 11 Wall. 39, a bill was filed in this court to settle the boundaries between the two States. There was a demurrer to the bill. In delivering the opinion of the court Mr. Justice Miller said:

*'The first proposition on which counsel insist, in support of the demurrer is, that this court has no jurisdiction of the case, because it involves the consideration of questions purely political; that is to say, that the main question to be decided is the conflicting claims of the two States to the exercise of **political jurisdiction** and sovereignty over the territory and inhabitants of the two countries which are the subject of dispute. This proposition cannot be sustained without reversing the settled course of decision in this court and overturning the principles on which several well-considered cases have been decided.'*

And, after citing *Rhode Island v. Massachusetts*, 12 Pet. 651; *Missouri v. Iowa*, 7 How. 660; *Florida v. Georgia* 17 How. 478, and *Alabama v. Georgia*, 23 How. 505, the conclusion of the court was thus expressed:

'We consider, therefore, the established doctrine of this court to be that it has

*jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated because in deciding that question it becomes necessary to examine into and construe compacts and agreements between those States, or because the decree which the court may render affects the territorial limits of the **political jurisdiction** and sovereignty of the States which are parties to the proceeding.’ “*

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And, there is the following:

“Section 1333 (a) (3) provides that ‘adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.’ Petitioner argues that state-court jurisdiction over this personal injury case would contravene this provision. This argument again confuses the **political jurisdiction** of a State with its judicial jurisdiction.” Gulf Offshore Company v. Mobil Oil Corporation: 453 U.S. 473, at 482 (1981).

http://scholar.google.com/scholar_case?case=18303575675978186938

Therefore, a person born in a State of the Union is not subject to the political jurisdiction of the United States, but rather, to the political jurisdiction of a particular State.

Political jurisdiction of the United States extends to only the District of Columbia, its territories and possessions, and federal enclaves with the several States of the Union:

“... The Constitution provides that ‘Congress shall have power 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.’ Art. 1, sec. 8.

The necessity of complete jurisdiction over the place which should be selected as the seat of government was obvious to the framers of the Constitution. Unless it were conferred the deliberations of Congress might in times of excitement be exposed to interruptions without adequate means of protection; its members, and the officers of the government, be subjected to insult and intimidation, and the public archives be in danger of destruction. *The Federalist*, in support of this clause in the Constitution, in addition to these reasons, urged that “a dependence of the members of the general government on the State comprehending the seat of the

government for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the confederacy." *No. 43.*

The necessity of supreme legislative authority over the seat of government was forcibly impressed upon the members of the constitutional convention by occurrences which took place near the close of the Revolutionary War. At that time, while Congress was in session in Philadelphia, it was surrounded and insulted by a body of mutineers of the Continental Army. In giving an account of this proceeding, Mr. Rawle, in his *Treatise on the Constitution*, says of the action of Congress: 'It applied to the executive authority of Pennsylvania for defence; but, under the ill-conceived constitution of the State at that time, the executive power was vested in a council, consisting of thirteen members, and they possessed or exhibited so little energy, and such apparent intimidation, that the Congress indignantly removed to New Jersey, whose inhabitants welcomed it with promises of defending it. It remained for some time at Princeton without being again insulted, till, for the sake of greater convenience, it adjourned to Annapolis. The general dissatisfaction with the proceedings of the executive authority of Pennsylvania, and the degrading spectacle of a fugitive Congress, suggested the remedial provisions now under consideration.' Rawle, *Constitution of the United States*, 113. Of this proceeding Mr. Justice Story remarks: "If such a lesson could have been lost upon the people, it would have been as humiliating to their intelligence as it would have been offensive to their honor." 2 Story *Constitution*, § 1219.

Upon the second part of the clause in question, giving power to 'exercise like authority,' that is, of exclusive legislation '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 Federalist observes that the necessity of this authority is not less evident. 'The public money expended on such places,' it adds, 'and the public property deposited in them, require that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated by requiring the concurrence of the States concerned in every such establishment.' 'The power,' says Mr. Justice Story, repeating the substance of Mr. Madison's language, 'is wholly unexceptionable, since it can only be exercised at the will of the State, and therefore it is placed beyond all reasonable scruple.'

This power of exclusive legislation is to be exercised, as thus seen, over places purchased, by consent of the Legislatures of the States in which they are situated, for the specific purposes enumerated. It would seem to have been the opinion of the framers of the Constitution that, without the consent of the States, the new government would not be able to acquire lands within them; and therefore it was

provided that when it might require such lands for the erection of forts and other buildings for the defence of the country, or the discharge of other duties devolving upon it, and the consent of the States in which they were situated was obtained for their acquisition, such consent should carry with it political dominion and legislative authority over them. Purchase with such consent was the only mode then thought of for the acquisition by the general government of title to lands in the States. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained, nor supposed necessary, for the purchase by the general government of lands within the States. If any doubt has ever existed as to its power thus to acquire lands within the States, it has not had sufficient strength to create any effective dissent from the general opinion. The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the general government, with the title, of **political jurisdiction** and dominion. Where lands are acquired without such consent, the possession of the United States, unless **political jurisdiction** be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the States equally with the property of private individuals.” Fort Leavenworth Railroad Company v. Lowe: 114 U.S. 525, at 528 thru 531 (1885).

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“... This brings us to the question whether Congress has power to exercise ‘exclusive legislation’ over these enclaves within the meaning of Art. I, § 8. cl. 17, of the Constitution, which reads in relevant part: ‘The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever’ over the District of Columbia 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.’

The power of Congress over federal enclaves that come within the scope of Art. I, § 8, cl. 17, is obviously the same as the power of Congress over the District of Columbia. The cases make clear that the grant of ‘exclusive’ legislative power to Congress over enclaves that meet the requirements of Art. I, § 8, cl. 17, by its own weight, bars state regulation without specific congressional action. The question was squarely presented in *Pacific Coast Dairy v. Department of Agriculture*, 318 U.S. 285, which involved, as does the present litigation, California's Act and an attempt to fix the prices at which milk could be sold at Moffett Field. We held that ‘sales consummated within the enclave cannot be regulated’ by California because of the constitutional grant of ‘exclusive legislation’ respecting lands purchased by the United States with the consent of the State (*id.*, at 294), even though there was no conflicting federal Regulation.

Thus the first question here is whether the three enclaves in question were 'purchased by the Consent of the Legislature' of California within the meaning of Art. I, § 8, cl. 17.

The power of the Federal Government to acquire land within a State by purchase or by condemnation without the consent of the State is well established. *Kohl v. United States*, 91 U.S. 367, 371. But without the State's 'consent' the United States does not obtain the benefits of Art. I, § 8, cl. 17, its possession being simply that of an ordinary proprietor. *James v. Dravo Contracting Co.*, 302 U.S. 134, 141-142. In that event, however, it was held in *Ft. Leavenworth R. Co. v. Lowe*, 114 U.S. 525, 541, 542, that a State could complete the 'exclusive' jurisdiction of the Federal Government over such an enclave by 'a cession of legislative authority and **political jurisdiction.**'

Thus if the United States acquires with the 'consent' of the state legislature land within the borders of that State by purchase or condemnation for any of the purposes mentioned in Art. I, § 8, cl. 17, or if the land is acquired without such consent and later the State gives its 'consent,' the jurisdiction of the Federal Government becomes 'exclusive.' " *Paul v. United States*: 371 U.S. 245, at 263 thru 264 (1963).

http://scholar.google.com/scholar_case?case=15445050255793327933

"The question presented for determination in this case relates to the effect of proceedings taken under the act of March 3, 1851, to ascertain and settle private land claims in California, upon the claims of parties holding concessions of lands in that State under the Spanish or the Mexican government. By the cession of California to the United States, the rights of the inhabitants to their property were not affected. They remained as before. **Political jurisdiction** and sovereignty over the territory and public property alone passed to the United States. *United States v. Percheman*, 7 Pet. 51, 87." *More v. Steinbach*: 127 U.S. 70, at 78 (1888).

<http://books.google.com/books?id=cWcUAAAAYAAJ&pg=PA78#v=onepage&q&f=false>

"The purpose of the Lands Act (the Outer Continental Shelf Lands Act of 1953, 67 Stat. 462, 43 U.S.C. §761 et. seq) was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act. Section 3 makes it the 'policy of the United States' that the affected areas 'appertain to the United States and are subject to its jurisdiction, control, and power of disposition.' Section 4 makes the 'Constitution and laws and civil and **political jurisdiction** of the United States' apply 'to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.' *Rodrigue v. Aetna Casualty &*

Surety Company: 395 U.S. 352, at 355 thru 357 (1969).

http://scholar.google.com/scholar_case?case=14913666495146396286

Thus, a citizen of the United States is a citizen of the District of Columbia, the territories and possessions of the United States, and federal enclaves within the several States of the Union.

Footnotes:

1. Privileges and immunities of citizen of a State are located in the constitution and laws of an individual State:

“... Whatever may be the scope of section 2 of article IV — and we need not, in this case enter upon a consideration of the general question — the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State under the constitution and laws of that State, the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws.” McKane v. Durston: 153 U.S. 684, at 687 (1894).

<http://books.google.com/books?id=mmkUAAAAYAAJ&pg=PA687#v=onepage&q=&f=false>

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