

# SOVEREIGNTY

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The purpose of this section is to briefly discuss the effect of the Federal Constitution on territories in general. The effect will be divided into two parts. The first part will enumerate and briefly discuss those provisions of the Federal Constitution from which the federal government in general and Congress specifically is granted the right to acquire and maintain sovereignty of, territory not within the jurisdiction of any of the several states. The second part will describe the precedented means by which Congress has extended rights and app<sup>u</sup>ortenances of the U.S. Constitution to the inhabitants of such territories.

## PART 1

### Provisions of the Federal Constitution by Which the Federal Government is Granted its Sovereignty over Territories

There are primarily three provisions of the Federal Constitution by which the Federal Government is granted its sovereignty over territories.

1. Article IV, Section 3, Paragraph 2

"The Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States...;"

2. Article II, Section 2, Paragraph 2

"He (The President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur...;"

3. Article II, Section 2, Paragraph 1

"The President shall be commander in chief of the Army and Navy of the United States,..."

In <sup>t</sup> The first case, the power of Congress to make all needful rules and regulations, is conspicuously brief. It has been expressed that; "It is a matter of some surprise that the only explicit provision of the Constitution of the United States in regard to the territory not embraced within the jurisdiction of a state is expressed in..."<sup>1</sup> Article IV, Section 3... Governor Morris, who wrote the provision subsequently declared that it was intended to confer power to govern acquisitions of territory as "provinces and allow them no voice in our councils".

In <sup>t</sup> The second case, the treaty making power, is important here because it:

1. Automatically carries with it the power to acquire territory and;
2. A treaty, once ratified by 2/3 of the Senate, becomes the "law of the land" and acquires equal standing with any <sup>act</sup> ~~law~~ ~~duly~~ ~~passed~~ ~~by~~ ~~both~~ ~~houses~~ of the Congress.

A treaty acquiring territory, assumes the same authority as any act of Congress which makes "rules and regulations respecting territory", and is the "Law of the Land: and the law of the territory acquired. This continues until Congress exercises its powers under Article IV, Section III. The fact that this exercise of powers by Congress shall "annul" any provisions of the treaty means that the Congressional Acts are persuasive purely in a temporal sense. The paradox that

the "law of the land" established by a treaty is of a higher priority than the "law of the land" established by Act of Congress <sup>ex vice-versa</sup> is not suggested.

The third provision, "The President shall be commander in Chief of the Army and Navy of the United States, "is included in this analysis because of its powers of persuasion.

In time of war, when it is necessary for the armed forces of the United States to occupy foreign territory, original sovereignty of that territory may be suspended. Since it is never desirable that sovereignty be held in suspension, it is usually passed to the occupying military forces and an "occupational government" is established. Ultimate sovereignty then by virtue of the above quoted provision, rests in the President. If, prior to the ensuing cessation of hostilities, the president should fail to withdraw the occupying military forces and/or return sovereignty to the original government it would be unprecedented for the resultant treaty to remain mute on the subject and cessation of such territory by treaty becomes a <sup>o</sup>precedented possibility.

*new page PART 2*

The Extension of the Constitution of the United States to Territories  
of the United States

The extent to which the Federal Constitution applies to newly acquired territory is considerably discussed throughout the history of the Supreme Court. The fact that the Federal Constitution is not wholly applicable to newly acquired territory, in the absence of the expressed intention of Congress to make

it so, is unquestionably clear.

*There are however, certain*  
~~The~~ fundamental provisions of the Constitution *which* guarantee certain rights to all within its protection. These rights, by repeated decisions of the Supreme Court, have been divided into two classes:

*A.*<sup>1</sup> Artificial or remedial rights which are peculiar to our own system of <sup>f</sup> jurisprudence and not inherent on the natural law; and

*B.*<sup>2</sup> Natural or personal rights to which all should be entitled, enforced in the Constitution by prohibition against interference with them.

Certain artificial rights so set out in the Constitution are, for instance, the right of indictment by grand jury and of trial by petit jury. It has been decided, that rights of this character are not among <sup>g</sup> the fundamental rights which Congress in legislating for a territory not incorporated into the United States, must secure to its inhabitants, just as a State may do away with trial by jury and not be in violation of the Constitution. In harmon<sup>y</sup> with these decisions it has been further held that until Congress shall extend rights of this character to the inhabitants of newly acquired territory, the judicial system prevailing in such territory, **not** the federal system contemplated by the Constitution, is applicable and controlling.

However, in the Insular Cases, <sup>22</sup> as well as in others <sup>33</sup>, where the Supreme Court reviewed nearly the whole range of sovereignty of the United States over its possessions, defining

what laws, statutory and Constitutional, are not applicable to unincorporated territories until Congress shall so extend them, it is made very clear that there are Constitutional rights of a natural or personal nature which Congress can not, in legislating for such outlying territories, deny to their inhabitants. In these cases, the Supreme Court expressed the view that even if the citizens of such territories are not citizens of the United States and are regarded as aliens they are nevertheless entitled to be protected in life, liberty and property and may not be deprived thereof without due process of law.

The fact that all rights and appurtenances of the United States Constitution do not immediately apply to newly acquired territory is best supported by the distinction drawn between the "Several States" and "all territory subject to the jurisdiction thereof" by the 13th, 18th and 21st amendments. The clear intension to include territories in these amendments, excludes them from other amendments and provisions where they are not as clearly and expressly included.

~~In the absence of their expressed inclusion therein,~~ <sup>P</sup>provisions of the Federal Constitution, insofar as they can apply, may be made applicable to territories by three methods:

1. By express inclusion in the Organic Act of the territory in

question. <sup>chip a piece and start a new paragraph.</sup> The general rule that the expression of one thing in a statute excludes things not expressed is applicable to the extension

of Constitutional provisions to a territory by the Organic Act of

that territory. Thus, when Constitutional provisions are itemized,

as they are in Section 5, paragraph (u), of the Organic Act of Guam,

"(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that territory and shall have the same force and effect there as in the United States or in any State of the United States: Article I, section 9, clauses 2 and 3; Article IV, section 1 and section 2,

*indent* ←

clause 1; the first to ninth amendments inclusive; the thirteenth amendments; the second sentence of section 1 of the fourteenth amendments; and the fifteenth and nineteenth amendments."

those provisions which are not itemized are not applicable;

3  
triple  
space → 2. By formal incorporation of the territory into the United States.

When a territory is incorporated into the United States, the

← Federal Constitution applies to and becomes operative in that

← territory. This is exemplified by Alaska's Organic Act which

← stated:

"Sec. 3. That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said territory as elsewhere in the United States;"

and the Hawaii's Organic Act which stated:

"§ 5 United States Constitution. That the Constitution, and, except as otherwise provided, all the laws of the United States, ..., which are not locally inapplicable, shall have the same force and effect as elsewhere in the United States.";

triple  
space → 3. By general statutory provision applicable to "organized territories."

Extension of Constitutional provisions by statutory provisions is synonymous with the organization of a territory and extension of such provisions by their expressed inclusion in the Organic Act.