

Incorporated and Unincorporated Territory

The terms "incorporated territory" and "unincorporated territory" were coined by the Supreme Court in the insular cases (1901)¹⁰⁴ in order to distinguish ~~those territories to which all laws, statutory and constitutional provisions of the Constitution of the United States, and laws passed pursuant thereto, have been extended from those territories to which these laws have not been extended.~~ *between those territories which come under all the provisions of the Constitution of the United States as far as they can be made applicable and statutes passed pursuant thereto, and those territories which do not.*

~~Incorporated territories are those which have become a domestic part of the United States by the extension of such laws.~~ The power to extend these laws and thus incorporate a territory is an exclusive power of Congress which may be exercised through any one of the following means:*

1. By act of Congress in which it is the expressed will of Congress to "incorporate" said territory;
2. By act of Congress which extends the Constitution with all rights and appurtenances to said territory;
3. By act of Congress which, in the absence of any evidence contrary to the intension to "incorporate" said territory, declares an intension to confer political and civil rights on the inhabitants as American citizens.

Once a territory has been "incorporated" into the union by any of the above mentioned means, the Federal Constitution applies to and becomes operative in that territory. This is exemplified by those provisions of the Organic Acts of the territories of Alaska and Hawaii, which are quoted on page _____. It was solely by virtue of these provisions that Alaska and Hawaii were considered "incorporated territories."

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*It is unprecedented for a territory to be incorporated by any other means than an Act of Congress, but there is no evidence contrary to the opinion that a territory may be incorporated by joint resolution.

When the Constitution of the United States with all rights and appurtenances is extended to a territory, and the territory is thus considered *and a domestic part of the United States* to be incorporated into the Union, the territory in question has reached the closest, political relationship to the Union possible short of statehood.

No P The term "incorporated territory", at least when distinguished from the term "unincorporated territory", is concerned only with this political relationship to the Union. The civil and political* rights extended to the inhabitants of an incorporated territory are determined by Congress in the same way Congress determines the extension of such rights to the inhabitants of unincorporated territories. *and are not considered a part of the definition of either term.*

definition Unincorporated territory is *but* territory appurtenant to the United States and not a part of the United States for all purposes; yet it is a territory under the complete and absolute dominion of the United States over which civil governments of different forms may be established. Its inhabitants, though not incorporated into the body politic, nevertheless, owe allegiance to the United States and are entitled to the protection of such laws of the United States and provisions of the Federal Constitution as Congress may deem applicable.

single space { *Civil rights are positive acts of government designed to protect persons against arbitrary or discriminatory treatment by government or individuals. Though the term is often used interchangeably with "civil liberties", the latter generally refers to negative restraints upon government as found in bills of rights. A political right is the right to participate in the management of government and to influence public policy.

~~Incorporated and Unincorporated~~

~~Constitutional Provisions~~

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 ~~from which~~ ^{by which} the Federal Government ~~derives~~ ^{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,..."

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.."

(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".

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The second case, ^N or 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 law duly passed by both houses of the Congress.

A treaty acquiring territory ~~can~~, and often does, assume the same authority as any act or ~~duly passed resolution~~ of Congress ^{which} ~~making~~ "rules and regulations respecting territory", and ~~shall be~~ the "Law of the Land" and the law of the territory acquired. This ~~shall~~ continues ~~to be~~ until Congress shall exercise its powers under Article IV, Section III. ↑

↳ The fact that this exercise of powers by Congress shall "annull" any provisions of the treaty means that the Congressional Acts ^{are} ~~of a higher priority~~ ^{persuasive} purely in a temporal sense. The paradox that ^{THE} ~~one~~ "law of the land" ^{established by a treaty, is} ~~be~~ of a higher priority than ^{established by act of Congress} ~~another~~ "law of the land" ^{is} ~~is not being~~ suggested.

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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} ~~is~~ 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} ~~is~~ established. Ultimate sovereignty then by virtue of the above quoted ^{pro} ~~pro~~vision, rests in the

*See Appendix C

President. If, prior to the ensueing cessation of hostilities, the president should fail to withdraw ^{the occupying military forces} his 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 precedented passibility.

The Extension of the Constitution of the United States to territories of the United States.

The extent to which the federal ^F constitution ^C applies to newly acquired territory is considerably discussed throughout the entire 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 the Congress to make it so, is unquestionably clear.} ~~The fact that the Constitution with all rights and appertenances~~ does not immediately apply to newly acquired territory is best supported by the destinction drawn between the "Several States" and "all territory subject to the jurisdiction thereof" by the 13th, 18th and ^{21st} ~~22nd~~ amendments. The clear intention to include territories in these amendments, excludes them from other amendments and provisions where they are not ^{so} ~~or~~ clearly and expressley included.

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

- A. Artificial or remedial rights which are peculiar to our own system or jurisprudence and not inherent on the natural law; and
- B. Natural or personal rights to which all should be entitled, enforced inthe 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, ^b that rights of this character are not among 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 harmony 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,⁷ as well as in others⁸, 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.