

INCORPORATED AND UNINCORPORATED TERRITORY

The terms ^m"Incorporated territory" and "Unincorporated territory" were coined by the supreme court ^{of the United States} in the Insular Cases (1901)¹⁰.

Incorporated territories are those which have become a part of the United States and which are entitled to the benefits of the Constitution as discussed in the preceding section.

Territories may be incorporated by three methods:

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 intention to incorporate said territory, declares an intention to confer political and civil rights on the inhabitants as American citizens."

Territories become a domestic part of the United States by, and only by, formal incorporation as an act of Congress which act may take any one of the above three forms.

what does this mean?

~~The contention that incorporation may not be assumed without express declaration, or implications, so strong as to exclude any other view, by Congress, excludes beyond doubt, the treaty making power from any authority to incorporate a territory into the United States and is supported by the following statement of Justice White;~~¹²

Section 5, paragraph (u) of the Organic Act of Guam reads as follows:

"(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to 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, 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 ^{19th} nineteenth amendments."

The general rule, that the expression of one thing in a statute excludes things not expressed is applicable to the extension of Constitutional Rights to a territory by the Organic Act of that territory.

When a territory is incorporated into the United States, the Federal Constitution applies to and becomes operative in such territory.

This is exemplified by the Alaska 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 Organic Act which stated:

"^S 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."

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.

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 ~~the Constitution with~~ all rights and appert^utenances OF THE U.S.
CONSTITUTION. ~~does~~^{de} 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 intention 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 ^{the} expressed inclusive ¹⁰⁰ therein, provisions of the Federal Constitution, insofar as they can apply, may be made applicable to territories by ~~these~~ methods:~~

1. By express inclusion in the Organic Act of a particular territory;
2. By formal incorporation of the territory into the United States;
3. By general statutory provision applicable to "organized territories".

"When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surround them, it becomes to my mind clearly established that the treaty making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been mooted."¹³

Territory acquired by treaty is regarded as territory appurtenant to the United States, but not as part of the United States within several meanings, such as, for instance, that of citizenship, the judicial establishment, the revenue clauses of the Constitution; yet it becomes 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 a body politic, nevertheless owe allegiance to the United States and become entitled to its protection.

As the treaty of peace with Spain did not express the intention to bring the territories ceded by it into the United States as incorporated territory and as Congress has since the treaty done nothing to incorporate these territories into the United States, they (with the exception of Puerto Rico) must be regarded as unincorporated territory, entitled only to the protection of such laws of the United States and provisions of the Federal Constitution as Congress may deem applicable.