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U.S. territories: Their legal foundations and governance models

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Abstract
Five current permanently inhabited, "unincorporated" territories of the American Federation (the oldest and the most prominent federation of the world) make up what we know as the "U.S. territories". They are like Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands and American Samoa and are similar to one another in many respects. All these localities are the centrally ruled territories like the "Union Territories" in India and "Territories" in Canada and Australia. Most of these are "Insular Possessions" that the United States has acquired from different countries from time to time. In fact, the U.S. territories occupy a unique / exceptional / peculiar position in the American Federal Framework. However, these territories grapple with democratic deficits, lacking full representation in the Congress and political rights enjoyed by the full-fledged States. In such a background, this research paper seeks to study and examine the U.S. territories: their background, legal foundations, governance structures and contemporary challenges.

Keywords: U.S. territories, insular cases, incorporated territories, unincorporated territories, organized territories, unorganized territories

1. Introduction

1.1. Background

Like the other federations of the world the practice of the centrally governed territories is also found in the American Federation besides the constituent units called "States". The U.S. Federation, the world's oldest and most prominent federation dating back to 1887, currently consists of fifty "States", plus the "District of Columbia" and certain centrally administered territories called "U.S. Territories" (they are known as the "Union Territories" in India, "Territories" in Canada and Australia). Unlike the States (federating / constituent units), which have their own constitutions and autonomy protected by the U.S. Federal Constitution, the U.S. territories are not sovereign entities as compared to the States and are governed by the U.S. Congress. These territories are "Insular Possessions" meaning "Islands" acquired by the United States from other countries from time to time (Mishra, 1982, p.11) [3].

One of the most interesting features of the U.S. territories is that they are non-contiguous to the United States and are located strategically and separated from the mainland by long distances belonging to other nations (Mishra, 1982, p.11) [3]. Although it seems that the five major unincorporated territories namely Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands and American Samoa are similar in many ways but there are significant differences among these territories in terms of demography, location, legal status and history (Knoedl and Leubsdorf, 2025, p.2) [8] as under:

1. **Puerto Rico:** It is located in the 'Caribbean Sea', east of Hispaniola and had a total of population of 3,285,874 in 2020.
2. **Guam:** It exists in the Pacific Ocean between Hawaii (previously it was an Insular Territory and later became the 50th State of the Union) and Philippines (previously it was also an Insular Territory and later became an independent nation in 1946.) The population of this territory was 153,836 in 2020.
3. **The Commonwealth of Northern Mariana Islands:** It consists of fourteen islands. Its position is same as Guam in the Pacific Ocean. It had a total population of 47,329 in 2020.
4. **U.S. Virgin Islands:** Its location finds east of Puerto Rico. It covers the Caribbean

islands of St. Croix, St. John and St. Thomas. It had a total population of 87,146 in 2020.

5. **American Samoa:** It consists of five islands as well as two coral atolls in the Pacific Ocean. It is situated in between Hawaii and New Zealand and had a total population of 49,710 in 2020.

Historically these territories were created to govern the newly 'acquired islands' and most eventually they were granted statehood and became independent nations too. For example, starting from the admission of the Southwest Territory as Tennessee in 1796 (Knoedl and Leubsdorf, 2025, p.2) [8] to the insular territories like 'Alaska' (purchased from Russia in 1867) and 'Hawaii' (annexed by the U.S. in 1898) became the 49th and 50th U.S. States in January 3, 1959 and August 21, 1959 respectively (Mishra, 1982, p. 12) [3], making the last expansions of the federation, while several others including the Philippines in July 1946 and the 'Trust Territory of the Pacific Islands' (TTPI) eventually became independent nations or free associations.

It would not be out of place to mention here that similar interesting practice as discussed above is also found in the Indian Federation while granting statehood to the 'Union Territories' (UTs) but with some differences in legal procedures (ordinary legislation under Art.3 of the Constitution in case of India and Congressional action in case of the U.S.). For example, in the past, six of Indian Union Territories like Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh and Goa have been converted into the full-fledged States (Sahoo and Mohapatra, 2025, p. 315) [5], while in case of the U.S. territories, thirty-seven of such territories have been elevated to new States (Peralta, 2017, p. 256) [4a].

2. Legal Foundations of the U.S. territories

The legal foundations of the U.S. territories can be traced back to the 1783 'Treaty of Paris' (a notable agreement that ended the American Revolutionary War), where the Great Britain formally recognized the independence and geographical boundaries of a newly born nation the 'United States' consisting of the 13 'original States' (presently 50 States) and a stretch of land from the 'western border' of those states to the 'Mississippi River'. However, state disputes over that stretch of land continued and were finally resolved after four years in 1787 with the passing of the major Ordinance of the Northwest Territory by the Confederation Congress, thus this nationalized the title over most of the lands (Tauber, 2006, p 149, Peralta, 2017, p. 236) [6, 4]. Upon the formation of the Union and the new Constitution, the Ordinance was rapidly re-enacted with appropriate modifications.

The Federal Constitution grants broad authority to the Congress over the U.S. territories / areas that fall under the United States Sovereignty. There many federal laws related to the U.S. territories codified in the U.S. Code in Title 48 (Territories and Insular Possessions) (Knoedl and Leubsdorf, 2025, p.2) [8]. In fact, Article IV, Section 3 of the Constitution of the United States, commonly known as the "Territorial Clause" lays down the overall constitutional basis for the administration of the U.S. territories. This "Territorial Clause" empowers the Federal Legislature called the U.S. Congress "to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States" (Mishra, 1982, p.13, Hanson, 2006) [3, 2].

Unlike the Part VIII of the Indian Constitution under Articles 239, 239 A, 239 AA, 239 AB, 239 B, 240 to 241 which lays down the specific constitutional provisions for the administration and governance of the "Union Territories" (UTs) (Sahoo and Mohapatra, 2025, p. 315) [5], the "Territorial Clause" (Article IV, Section 3 of the Federal Constitution of the United States) provides broad and unlimited authority to the U.S. Congress developed through the legislative action and the Supreme Court's interpretation. In this connection, once the Chief Justice John Marshall opined that the 'clause' not only granted Congress a property right over the territories-all of them-but also the right of sovereignty, to govern their inhabitants and everything within their borders (Peralta, 2017, p.237) [4].

3. Current U.S. territories and their Governance Structures

The U.S. Federal Government currently governs a total of fourteen territories, three in the 'Caribbean Sea' and eleven in the 'Pacific Ocean'. Among these only five territories are permanently "inhabited", "unincorporated" and have locally elected legislatures and executives with some degree of political autonomy constituting the "U.S. territories" (Harvard Law Review, 2017, p. 1617) and rest nine territories have no native population and are mainly governed for strategic and scientific significance / purposes. The five majors permanently "inhabited", 'unincorporated" territories include: Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands and American Samoa while the "uninhabited" or "sparsely" territories include: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll and Wake Island.

Currently the U.S. territories can be broadly classified into two category pairs as below:

1. Incorporated vs. Unincorporated Territories, and
2. Organized vs. Unorganized Territories

The above-mentioned categories of the territories determine the legal status, governance and the application of the U.S. Federal Constitution. The first category includes two kinds of territories "Incorporated" and "Unincorporated". The "Incorporated" territories constitute the integral part of the U.S. The inhabitants of these territories are the citizens of the U.S. and the U.S. Constitution applies in these territories too (Mishra, 1982, p. 12) [3]. Presently there is only one "incorporated" territory' i.e. 'Palmyra Atoll'. It is one of nine territories without permanent population. It has no local government too. The "Unincorporated" territories are not the integral parts of the U.S. and their citizens are not the citizens of the U.S. These are not fully coming under the Constitution; only certain fundamental rights apply. Most of the inhabited U.S. territories like Puerto Rico and Guam and American Samoa fall under this category.

Additionally, the concept of an "unincorporated" territory is said to be the novel creation of the Supreme Court, advanced through a series of cases decided between 1901(Huus v. New York & Porto Rico S.S. Co.) and 1922 (Balzac v. Porto Rico), commonly referred to as the "Insular Cases" (Tauber, 2006, pp.154 & 155, Harvard Law Review 2017, p. 1620) [6]. In fact, the decisions created the "unprecedented distinction between the "incorporated" territories and the "unincorporated" territories, where the

former territories were "surely destined to become states" and the later ones were given "no such promise of eventual political equality". Prior to the 'Insular Cases', the 'acquired territory' was to be cut into states and admitted into the Union on the basis of equality with the 'original states' in all respects whatever.

As regards the second category of U.S. territories there are also two kinds of territories "Organized" and "Unorganized". The "Organized" territories are the lands under the U.S. Federal Government, but not part of any State or the Federal District. They have an organic act passed by the U.S. Congress that establishes territorial government and a measure of self-governance, but subject to the plenary powers of the Congress under the "Territorial Clause of the Constitution" (Art. IV, Sec.3). At present four of the inhabited territories like Puerto Rico, Guam, Northern Mariana Islands, and U.S. Virgin Islands fall under the "Organized" territories. The "Unorganized" territories, on the other hand, are governed by the Secretary of the Interior and overseen by the U.S. Congress (Hanson, 2006). Unlike the organized territories which have an organic act, the unorganized territories do not have such act and hence there is no formal local government established by the act of the Congress. Most of the uninhabited territories form this category. Interestingly one of inhabited territories i.e. 'American Samoa' with its self-government under a locally adopted Constitution falls under this unorganized category.

Among the five major unincorporated U.S. territories, Puerto Rico acquired by the United Stares in 1898 at the end of the 'Spanish-American War' occupies a very unique place because of its geography, demography and political development. Unlike the other territories, Puerto Rico has many experiences of sustained political movements with demand for statehood (i.e. 51st State). It has a constitution popularly ratified and approved by the U.S. Congress in 1952. The Constitution defines the powers and responsibilities of the three branches of the "Commonwealth of Puerto Rico" (like Legislature, Executive and Judiciary) (Hanson, 2006) [2]. As a commonwealth Puerto Rico provides greater local autonomy as compared to the rest territories. However, though the inhabitants of this territory are the citizens of the United States but they lack voting representation in the Federal Legislature and cannot vote in the Presidential polls.

As regards the judicial system all the major U.S. territories like Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands and American Samoa have their own local court systems. This judicial system in these insular territories makes a balance in local sovereignty with the federal judicial oversight, revealing the unique legal culture and status of each U.S. territory under the U.S. Sovereignty. Now following different structures of local courts are at work in the five current unincorporated U.S. territories: -

(i). The Commonwealth of Puerto Rico: The judicial system in this territory has been set up under the Constitution of Puerto Rico, consisting of three tires like the Supreme Court, the Court of Appeals and the Court of First Instance with Superior Courts (general jurisdiction) and Municipal Courts (local courts). However, the Supreme Court acts as the final court of appeal on the local matters. (ii). Guam: This territory has established its own Supreme Court, acting as the highest local court. It has also District Court System that exercises federal jurisdiction similar to a U.S. District Court. (iii). The Commonwealth of Northern Mariana Islands: Here the U.S. Congress has formed a District Court with federal jurisdiction equal to the U.S. District Courts. The judges are appointed by the U.S. President for a tenure of ten years, but subject to the Senatorial approval. (iv). U.S. Virgin Islands: The territory has its own Supreme Court called the Supreme Court of the Virgin Islands. It acts as the highest local court. There is also a District Court in this territory that handles all the federal matters. However, local trials happen in the Superior Court and all types of appeals arising from the local courts generally go to the Supreme Court of the Virgin Islands with a review from the U.S. Supreme Court on the federal matters. (v). American Samoa: In this U.S territories the judicial system includes the High Court, District Court and Village Court. The High Court of American Samoa has different divisions like Criminal, Civil and Land and Titles and its judges are appointed by the U.S. Secretary of the Interior, while the District Court deals with the lower issues. Moreover, this territory has no federal court and therefore federal matters are taken to the districts elsewhere.

4. Contemporary Challenges

The current unincorporated U.S. territories are facing major challenges including the limited political representation, economic hardship and environmental vulnerability. Though the residents of these territories are the citizens of the United Stares, they have no voting rights in the U.S. Congress and cannot vote in the Presidential Elections. This limited political representation has spurred movements with growing calls for either statehood or independence to resolve their anomalous status. Due to this type of discrimination by the Federal Government, the people of Puerto Rico have rejected their territorial relations through ballot. In fact, the constitutional law that developed during the first half of the twentieth century is presently in conflict with the international obligations that the U.S. has assumed during the second half of the century (Peralta, 2017, p.255) [4]. So far as the economic challenge is concerned the territories like Puerto Rico face severe debt crises and federal oversights boards which impose austerity measures, while shipping restrictions such as the Jones Act raise costs. The territories also face heavy climate vulnerabilities with rising sea levels and extreme weather, compounded by the environmental damages from the military activities, mainly in Guam. Moreover, access to the federal programs and healthcare remains very much limited, thus deepening the socio-economic inequalities in these territories.

5. Conclusion

In conclusion, it can be said that the above analysis reveals the U.S. Congress has plenary powers over all the five major territories, accommodating them through constitutional flexibility and institutional adaptation. However, the persistent contemporary challenges / issues / problems of territories have created tensions between the federal government and territorial governments. In fact, in order to resolve these growing tensions, there are some solutions in the hands of the U.S. Congress like: (i) some of the major unincorporated U.S. territories could be elevated to the status of full-fledged states, similar to the admission of thirty-seven new states to the Union starting from the Southwest Territory as 'Tennessee' in 1796 to the 49th and 50th states like 'Alaska' and 'Hawaii' in 1959, (ii) some of them could be declared as the free associations, similar to

the exiting 'Trust Territory of the Pacific Islands' (TTPI), and (iii) the Congress may recognize full independence of Puerto Rico, similar to Philippines case in 1946.

6. Declaration of Conflicting Interests: The authors declare that there are no conflicts of interests.

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