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Comments

ALASKA AND HAWAII: FROM TERRITORIALITY TO STATEHOOD

When Arizona and New Mexico, the only remaining contiguous territories of the United States, were admitted to the Union thirty-eight years ago, many regarded westward expansion as fittingly closed. Yet today Alaska and Hawaii eagerly await invitations to join the political body as states. Present indications are that their aspirations will be fulfilled soon, despite the fact that both are noncontiguous and one has a population only one-third Caucasian. Hawaii has made repeated attempts to obtain statehood since 1854, and Alaska since 1916.[1] The turning point in Hawaii's prolonged drive came in

[1] In Hawaii, an organized movement for statehood has been carried on since annexation in 1898. This movement had its origin in various proposals dating back as far as the middle of the nineteenth century. Hawaii's delegates have petitioned Congress for admission in almost every session since 1903. Repeated congressional investigations have been conducted. In 1935, a House committee recommended further study. In 1937 a joint committee found Hawaii qualified for statehood, but recommended a plebiscite to ascertain the wishes of the people. The plebiscite, conducted in 1940, indicated that over two-thirds (75,000, composing 85% of the voters registered) of those voting desired

1934, when the Big Five, the dominant economic power which had opposed statehood decided to support the movement.[2] This important shift was due, apparently, to a series of events beginning in the early thirties which, if not countered, might ultimately have resulted in the Big Five's nemesis.[3] Faced by the prospect of closer federal supervision and control and looking for something to detract from unfavorable criticism, the Big Five became ardent advocates of statehood.[4]

Today, time is the sole remaining substantial impediment to ad-

admission. The recent war delayed further consideration. In 1946 a House subcommittee recommended immediate consideration of statehood legislation. The House passed an enabling act for Hawaii in 1947, but the bill died in the Senate Committee on Interior and Insular Affairs in 1948. On Mareh 7, 1950 enabling legislation again was passed by the House. The Senate Interior Committee has agreed to conduct hearings on the bills during this session of Congress. HAWAII STATEHOOD COMMISSION, HAWAII AND STATEHOOD 20-35 (1949); *Hearings before the Subcommittee on the Committee on the Territories on H. R. 236,* 79th Cong., 2d Sess. 546-547, 550c. 725 (1946); SEN. REP. No. ..... (to accompany H. R. 49), 80th Cong., 2d Sess. 11, 15-18 (1948); H. R. REP. No. 254, 81st Cong., 1st Sess. 3-6 (1949); *Hearings before the Subcommittee on Territorial and Insular Possessions of the Committee on Public Lands on H. R. 49,* 81st Cong., 1st Sess. 18-19 (1949); N.Y. Times, Mar. 8, 1950, p. 20, col. 4; Mar. 12, 1950, § 4, p. 7, col. 3.

The Alaskan movement made little progress prior to 1947, when statehood was recommended by an investigating committee from the House. The House passed an enabling act for Alaska on March 3, 1950. *Hearings before the Subcommittee on Territorial and Insular Possessions of the Committee on Public Lands on H. R. 331,* 81st Cong., 1st Sess. 39 (1949); N.Y. Times, Mar. 4, 1950, p. 1, col. 6.

[2] The term "Big Five" is used to designate five corporations, Alexander & Baldwin, Ltd., Castle & Cooke, American Factors, Ltd., C. Brewer & Co., Ltd., and Theo. H. Davies, which act in the capacity of factors or agents for practically all of the sugar plantations and own stock in most of the corporations in Hawaii. Many descendents of the early missionaries own substantial stock in these corporations. What in some respects is almost a feudalistic monopoly has been in existence for over a century. Through a complex system of interlocking directorates the Big Five is able to exert sufficient influence to control most of the Territory's economy. Their sphere of domination extends not only to the two basic island industries, sugar and pineapple, but encompasses such diverse fields as shipping, banks and trust companies, wholesale and retail food and mercantile stores, press and radio, lumber and building materials, public utilities and the tourist trade, among others. See generally KUYKENDALL & DAY, HAWAII: A HISTORY 271-286 (1948); MACDONALD, REVOLT IN PARADISE (1944); BARBER, HAWAII: RESTLESS RAMPART (1941); *Hawaii: Sugar Coated Fortress,* 22:2 FORTUNE 31 (Aug. 1940); *Hearings on H. R. 236, supra* note 1 at 770-821.

[3] These events were highlighted by (1) the *Massie* case, which turned public sentiment on the mainland against conditions in Hawaii. The case, which created a sensation in the mainland newspapers, involved Massie, a young naval officer, who was convicted of the murder of a Hawaiian whom he believed participated in a gang raping of his wife. The general impression created in the mainland was that Hawaii was a primitive lawless place where a woman risked her virtue by going onto the streets unaccompanied. LIND, HAWAII'S JAPANESE 27-30 (1946); N.Y. Times, Jan. 5, 1932, p. 10, col. 3; Apr. 21, 1932, p. 10, col. 6. (2) Assistant Attorney General Richardson's report on the administration and enforcement of criminal laws in Hawaii, which went further and exposed many nefarious social and economic conditions in the islands. N.Y. Times, Apr. 7, 1932, p. 3, col. 1; Apr. 8, 1932, p. 4, col. 1. (3) The Navy's demand for a commission form of government for the Territory, which resulted in the introduction of a bill into Congress to place Hawaii under joint Army-Navy control. N.Y. Times, May 19, 1932, p. 5, col. 6.

[4] BARBER, *op. cit. supra* note 2, at 98-126.

mission.[5] More pressing matters and an election year drive for early adjournment may preclude final action in the Second Session of the Eighty-first Congress; however, admission within the next few years is almost inevitable.[6] Desiring to expedite action on pending enabling legislation, the Territory of Hawaii assembled a constitutional convention on April 4, 1950.[7] This is the first time since 1890, when both Idaho and Wyoming employed the same measure, that a territory has been audacious enough to draw up a constitution prior to congressional authorization. Inasmuch as the problem of creating new states has not been before this nation for almost two-score years, it seems of interest to consider the status of the territory as a political device, the constitutional limitations confronting Congress in legislating for territories, the present governments of Hawaii and Alaska, and a few of the changes that will be effected through statehood.

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[5] Prior to the recent war, the most repeated objection to statehood for Hawaii was distrust of the large (30%) component of the population that was of Japanese ancestry. This apprehension was vehemently expressed by Rep. Rankin (D., Miss.) when he stated that "... once a Japanese always a Japanese .... They violate every sacred promise, every canon of honesty and decency." 88 CONG. REC. 1420 (1942). The splendid record of Hawaii's Americans of Japanese ancestry in the war negated most of the pre-war opposition. See LIND, *op. cit. supra* note 3. Another asserted objection to admitting Hawaii is the economic dominance of the Big Five, *supra* note 2. Further objections have been based upon the large proportion (two-thirds) of non-Caucasions, non-contiguity and the possibility of a strong Communist element. This last objection has led to an investigation by a subcommittee of the House Un-American Activities Committee, which commenced in April 1950. N.Y. Times, Feb. 26, 1950, § 4, p. 8, col. 3; June 26, 1949, p. 38, col. 4. A practical, if not publicly expressed, consideration bearing upon the early passage of enabling legislation is the opposition of southern Congressmen. Their objection is based not so much upon the civil rights issue as upon an unwillingness to have four new Senators decrease the proportionate strength of the southern bloc. N.Y. Times, Apr. 3, 1949, § 4, p. 7, col. 5. Many other factors, such as the disinclination of mainland sugar interests to have greater competition (see text at note 47, *infra*) may serve to delay admission. See generally KUYKENDALL & DAY, *op. cit. supra* note 2 at 287-295; CLARK, HAWAII, THE 49TH STATE (1947); James, *Hawaii's Claims to Statehood,* 63 AM. MERC. 330 (Sept. 1946); Stainback, *Statehood for Hawaii,* 19 STATE GOVERNMENT 243 (Oct. 1946); *Hearings on H.R. 236, supra* note 1.

The principal objection to admitting Alaska is that it allegedly could not support the cost of statehood. This contention has been advanced mainly by the fishing and mining industries, which would probably bear a large portion of the increased expenses. Other objections have been that the population (approximately 100,000) is too small, that the people are not homogeneous, and that the area is mostly wasteland. See generally Gruening, *Why Alaska Needs Statehood,* 21 STATE GOVERNMENT 31 (Feb. 1948); Sundbery, *Statehood for Alaska,* 20 STATE GOVERNMENT 3 (Jan. 1947); *Hearings on H.R. 331, supra* note 1.

[6] Statehood for both Alaska and Hawaii has been advocated by President Truman and many other influential persons. It was a part of the platform of both Republican and Democratic parties in 1944 and 1948. It has the backing of many organizations, such as the Conference of State Governors. The movement has also received the support of Hawaii's organized labor, which has become an important element in the Territory within the past decade.

[7] Governor Stainback's proclamation called for primary elections on Feb. 11, general elections on Mar. 21, and a convention, which assembled in Honolulu on Apr. 4, 1950. N.Y. Times, Nov. 13, 1949, p. 35, col. 3; Nov. 15, 1949, p. 20, col. 3.

The Territory as a Unique Political Subdivision

Our conceptions of the status of territoriality have their inception in the famed Ordinance for the Northwest Territories, a measure adopted by Congress under the Articles of Confederation to provide for governing a large area of land (now the States of Illinois, Indiana, Michigan, Ohio and Wisconsin) ceded to the national government by four of the original states.[8] A clause in the subsequently adopted federal Constitution gave Congress power to ". . . dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ."[9] The First Congress, in re-enacting the Ordinance without substantial change,[10] created a political form as novel to the contemporary world as the republic that established it. The Ordinance granted fundamental civil and political rights to inhabitants of the territories, including local government and representation in Congress by a non-voting delegate. It also provided that, upon meeting certain conditions, the territories were to be admitted to the Union as states. This basic pattern was applied in subsequent years in providing for the government of later acquired areas.[11]

Since the Constitution did not specifically authorize the United States to acquire and govern any area in excess of that which it held in 1789, it was not long before this assumed power was questioned, but the authority was upheld by implication from the express power to admit new states and the provisions empowering the federal government to enter into treaties, carry on war and make peace.[12] Thus, with judicial approval, the United States expanded from the Atlantic seaboard to its present area, encompassing such remote places as Guam and American Samoa.

The power to govern newly acquired areas was derived from the power to make all needful rules and regulations for the territories and other property of the United States, and from the implication that the right to acquire and hold teritory necessitates a supplementary power to govern.[13] The form of government and measure of participation

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[8] OGG & RAY, ESSENTIALS OF AMERICAN GOVERNMENT 434 (1943). It is of historical interest to note that Madison believed that Congress had overstepped its constitutional limitations in enacting the Ordinance. THE FEDERALIST, No. 38 (Madison).

[9] U. S. CONST. Art. IV, § 3.

[10] 1 STAT. 50 (1789).

[11] After 1836, however, organic acts provided for a popularly elected Senate to replace the appointed upper house. OGG & RAY, *op. cit. supra* note 8, at 434.

[12] Hooven & Allison Co. v. Evatt, 324 U.S. 652, 673-674 (1944); Dorr v. United States, 195 U.S. 138, 140, 149 (1904); Dooley v. United States, 183 U.S. 151, 163 (1901); American Insurance Co. v. Canter, 1 Pet. 511, 541 (U.S. 1828).

[13] De Lima v. Bidwell, 182 U.S. 1, 187-197 (1901); Mormon Church v. United States, 136 U.S. 1, 42 (1889); American Insurance Co. v. Canter, *supra* note 12 at 542.

accorded the inhabitants of a territory is within the discretion of the President and Congress.[14]

Congress may legislate directly for a territory or transfer that power to a locally elected body.[15] The relationship between the federal government and a territory is comparable to that between a state and a county.[16] The practice prior to the Spanish-American War was to delegate to the territorial legislature power to legislate with respect to all rightful subjects not inconsistent with the Constitution and laws of the United States.[17] A change in this practice occurred after this war, when federal control was extended to noncontiguous tropical territory inhabited by relatively backward peoples of different races, who spoke a different language and lacked experience in self-government. Following precedent in this situation might have led to undesirable consequences. In order to justify governing these areas differently, the Supreme Court, in the *Insular Cases*,[18] developed a legalistic distinction between a territory "incorporated" into the United States as an integral part thereof and an "unincorporated" territory. The difference is of importance primarily in determining the extent to which constitutional safeguards apply, and also in excluding certain territories from early consideration for statehood.

Although this distinction is now established, it is not clear just when a territory is "incorporated." The line of demarcation is not between an "organized" territory, which has an organized government of its own with a local legislature, and an "unorganized" territory.[19] Both Alaska and Hawaii are "organized," yet so is Puerto Rico, an

[14] Cincinnati Soap Co. v. United States, 301 U. S. 308, 317 (1937); Binns v. United States, 194 U. S. 486, 491 (1904); Mormon Church v. United States, *supra* note 13 at 43; Murphy v. Ramsey, 114 U. S. 15, 44 (1885); National Bank v. County of Yankton, 101 U. S. 129, 132-133 (1879); SPICER, JOHNS HOPKINS UNIV. STUDIES IN HIST. & POLIT. SCI., SERIES XLV, No. 4, THE CONSTITUTIONAL STATUS AND GOVERNMENT OF ALASKA 24-36 (1927).

[15] National Bank v. County of Yankton, *supra* note 14 at 133.

[16] Binns v. United States, *supra* note 14 at 491-492.

[17] BURDICK, THE LAW OF THE AMERICAN CONSTITUTION 286 (1922). "Rightful" legislation has the connotation of "lawful." Cincinnati Soap Co. v. United States, *supra* note 14. Examples of "rightful" subjects of legislation are a levy of a poll tax, Haavik v. Alaska Packers Assn., 263 U. S. 510 (1924); taxes upon water carriers, Inter-Island Company v. Hawaii, 305 U. S. 306 (1938); and a graduated tax upon canning fish, Pacific Fisheries v. Alaska, 269 U. S. 269 (1925).

[18] The leading insular case is Downes v. Bidwell, 182 U. S. 244 (1901), holding that shipments from Puerto Rico were imports within the meaning of the constitutional provision. See also Dooley v. United States, *supra* note 12, and De Lima v. Bidwell, *supra* note 13, which discussed the status of territories acquired following the Spanish-American War. See generally Coudert, *Evolution of the Doctrine of Territorial Incorporation*, 26 COL. L. REV. 823 (1926).

[19] *In re* Lane, 135 U. S. 443 (1890). The distinction between an "organized" territory, which has an executive, legislative and judicial system, and an "incorporated" territory is wide. "Organization" is only of administrative and political significance, while "incorporation" has important constitutional effects.

unincorporated territory.[20] One thing common to all "incorporated" territories is the express applicability of the Constitution. This, apparently, is prerequisite to becoming an "integral part" of the United States. Alaska and Hawaii are considered as the only incorporated territories still remaining, although prominent constitutional writers have cast some doubt upon the status of Hawaii.[21] Just when incorporation occurs is not clear, but it is of little practical consequence insofar as Alaska and Hawaii are presently concerned.[22] An incorporated territory has a status comparable to that of territories as they were known prior to the Spanish-American War; an unincorporated territory approaches the status of a mere dependency.[23] Aside from the limited right of self government, two important incidents of incorporation are greater constitutional protection and, possibly, the "right" eventually to become a state.[24]

The procedure for transforming a political subdivision from a territory to a state is relatively simple. Usually the people of the terri-

[20] Puerto Rico v. Shell Co., 302 U. S. 253 (1937); Cases v. United States, 131 F. 2d 916 (1st Cir. 1942). In 1947 the rights, privileges and immunities of United States citizens were extended to citizens of Puerto Rico to the same extent that they applied in the states. 61 STAT. 772 (1947), 48 U. S. C. § 737 (Supp. 1947). This provision was added to a long list of prohibitions previously enacted to safeguard the civil rights of Puerto Ricans.

[21] 1 WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 494 (2d ed. 1929). The early case of Hawaii v. Mankichi, 190 U. S. 197 (1903), has been cited by proponents of statehood as establishing Hawaii's status as that of an incorporated territory. This case decided that, at a time subsequent to annexation but prior to becoming a territory, a conviction for manslaughter under the local laws, which did not require an indictment or the verdict of a unanimous jury, was not prohibited by the 5th and 6th Amendments. Four separate opinions were written by members of the Court, who split five to four. No majority agreed that Hawaii, upon becoming a territory, had been incorporated. At best the decision is doubtful authority. See BURDICK, *op. cit. supra* note 17, at 302-305. In the most recent case to discuss the point it was said that "Hawaii is still a territory, but a territory in which the Constitution and laws of he United States generally are applicable." Stainback v. Mo Hock Ke Lok Po, 336 U. S. 368 (1949). The implication is that Hawaii is an incorporated territory, as generally assumed. Pending enabling legislation renders the problem moot. No reference was made to it in any of the recent congressional investigations. Alaska, on the other hand, has long been considered as an incorporated territory. Rasmussen v. United States, 197 U. S. 516 (1905).

[22] See discussion in SPICER, *op. cit. supra* note 14, at 24.

[23] A dependency is a territory apart from but subject to the laws of a mother country. BALLENTINE'S LAW DICTIONARY 361 (1930); 26 C. J. S. 718.

[24] O'Donoghue v. United States, 289 U. S. 516, 536 (1933). The Court in Dred Scott v. Sandford, 19 How. 393, 447 (U. S. 1856), said by way of dictum that a territory ". . . is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority . . . ." At least one opinion, however, is that Alaska and Hawaii were not acquired to become states. BURDICK, *op. cit. supra* note 17, at 277. Amendments to the Hawaiian Organic Act, providing that enactment of the Act should not be construed as implying a congressional promise of ultimate statehood, were introduced but defeated. It has been stated that statehood is a right of free men which Congress, having only the power to admit, does not create. Patterson, *The Relation of the Federal Government to the Territories and the States in Landholding*, 28 TEX. L. REV. 43, 56 (1949). This theory is of little practical significance, inasmuch as it admits that the determinative power resides in Congress.

tory petition Congress to be admitted. Assuming that incorporated territories have what has been termed an "inherent right"[25] ultimately to become states, nevertheless it is within the absolute discretion of Congress to decide when they will be admitted. If Congress favors admission, it passes an enabling act, which sets forth certain conditions which must be met by the territory before it becomes a state. Admission may be refused if the conditions are not met.[26] A constitution, which must comply with congressional specifications, must be framed, ratified by the people of the territory, and submitted to the President.[27] If the constitution is satisfactory, an election of state and other officers is conducted by the territory. Upon completion, the President proclaims the results, and the territory is then deemed admitted by Congress as a state.[28] When a territory becomes a state, it is invested with the same powers possessed by other states. Any attempt by Congress to diminish these powers is ineffective,[29] unless the attempted restrictions can be brought within the constitutional powers of the national government.[30]

Constitutional Limitations in Legislating for Territories

The distinction between incorporated and unincorporated territories is also important in determining what constitutional limitations exist in legislating for a territory. Several cases imply that once a territory is incorporated, it is entitled to the same constitutional protection as a state; an unincorporated territory is protected only by "fundamental" constitutional limitations.[31] A complete classification

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[25] The "inherent right" theory is little more than a political claim urged by the proponents of statehood. Congress is still firmly seated in the saddle. See note 24 *supra*.

[26] BURDICK, *op. cit. supra* note 17, at 307-312.

[27] COOLEY, CONSTITUTIONAL LIMITATIONS 56 (7th ed. 1903).

[28] Coyle v. Oklahoma, 221 U.S. 559, 568, 569 (1911). See H.R. 49, 81st Cong., 1st Sess., §§ 2-6 (1949); H.R. 331, 81st Cong., 1st Sess., §§ 6-7 (1949).

[29] McCabe v. Atchison, T. & S.F. Ry., 235 U.S. 151 (1914) (state statute requiring separate railroad coaches for white and colored passengers held within police power of a state, and not void because of provisions in enabling act); Coyle v. Oklahoma, *supra* note 28 (power of Oklahoma legislature to move state capital from Guthrie to Oklahoma City upheld, despite contrary provisions in the enabling act). Although the equal-footing doctrine is not specifically a part of the Constitution, it can be argued that insertion in the Constitution of the provision empowering Congress to make all needful rules and regulations for the territories or other property of the United States was an implied adoption of the doctrine, since it was set forth in the Northwest Ordinance two years prior to the Constitution. See Patterson, *supra* note 24, at 63.

[30] United States v. Sandoval, 231 U.S. 28 (1913) (protection of Indians); Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1 (1888) (regulation of interstate commerce); Pollard's Lessee v. Hagan, 44 How. 212 (U.S. 1845) (disposition of public lands).

[31] Rasmussen v. United States, *supra* note 21; Downes v. Bidwell, *supra* note 18; De Lima v. Bidwell, *supra* note 13; Dorr v. United States, *supra* note 12. See generally Irion, *Areas under the Jurisdiction of the United States*, 17 GEO. WASH. L. REV. 301, 304-315 (1949).

Quaere: Can a territory, once "incorporated," be divested of that status? The

of those parts of the Constitution that are "fundamental" has never been made. The Constitution has been expressly extended by Act of Congress to both Alaska and Hawaii,[32] yet federal legislative power over territories is still considered plenary.[33] This curious anomaly serves to delimit, to a nebulous extent, the restrictions imposed upon Congress by the Constitution. The basic difficulty stems from the fact that Congress is both a national and a territorial legislature, which may legislate in both capacities simultaneously. When it acts as a territorial legislature, enactments unconstitutional as applied to the state are not necessarily invalid as applied to the territories, since Congress is envisioned as legislating on a local level directly for the territories.[34] The extent to which constitutional limitations may be abrogated is still unsettled. It is highly improbable that any of the safeguards of the Bill of Rights may be violated.[35]

The extent to which constitutional restrictions apply is further complicated by the fact that the only reference in the Constitution to territories is that empowering Congress to dispose of or make all needful rules and regulations respecting them.[36] The prohibitions of the Constitution are expressed in terms of "States" or the "United States." The preliminary question becomes, then, one of whether "States" or

answer apparently depends upon whether extending the Constitution to an area is merely making a "rule or regulation," which can later be abrogated in the exercise of congressional plenary power, or whether incorporation is tantamount to an irrefutable extension of the Constitution. Dictum in Duncan v. Kahanamoku, 327 U. S. 304, 318-319 (1946) implies that the latter would be the view of the Court. See generally Coudert, *supra* note 18; Fairman, *New Problems of the Constitution Following the Flag*, 1 STAN. L. REV. 587 (1949).

[32] 37 STAT. 512 (1912), 48 U. S. C. § 23 (1946) (Alaska); 31 STAT. 141 (1900), 48 U. S. C. § 495 (1946) (Hawaii).

[33] See cases cited in note 14, *supra*. The plenary power is derived from the rules and regulations clause of Art. IV, § 3 of the Constitution.

[34] Enactments such as the Employers' Liability Act and certain provisions of the Sherman Anti-Trust Act have been held enforceable in the territories, although invalid on the mainland. Atlantic Cleaners & Dyers v. United States, 286 U. S. 427 (1932); El Paso & N. E. Ry. v. Gutierrez, 215 U. S. 87 (1909). If the legislation is "inseparable," however, it is invalid in the territories if it is invalid in the states. The test of "separability" is whether Congress would have enacted the legislation exclusively for the territories. The Employers' Liability Cases, 207 U. S. 463 (1908).

[35] Dictum in a recent case concerning the legality of suspending the writ of habeas corpus in Hawaii during the war stated that ". . . Congress did not intend the Constitution to have a limited application to Hawaii," and that "The people of Hawai are . . . entitled to constitutional protection to the same extent as the inhabitants of the 48 States." Duncan v. Kanhanamoku, *supra* note 31 at 317-319. See generally Warp, *The Legal Status of the Hawaiian Islands*, 16 TEMP. L. Q. 187 (1942); Anthony, *Martial Law, Military Government and the Writ of Habeas Corpus in Hawaii*, 31 CALIF. L. REV. 477 (1943); Anthony, *Hawaiian Martial Law in the Supreme Court*, 57 YALE L. J. 27 (1947); Fairman, *supra* note 31. Respecting the unincorporated territories, see Balzac v. Porto Rico, 258 U. S. 298, 304-305, 313 (1922) (trial and grand jury provisions not applicable); Iriarte v. United States, 157 F. 2d 105 (1st Cir. 1946); Note, 20 MICH. L. REV. 215 (1921).

[36] U. S. CONST. Art. IV, § 3.

"United States" as used in a particular context is to be given a narrow meaning, as applying only to the states, or is to be interpreted more broadly as encompassing the states, territories and District of Columbia.[37]

It is unlikely that Congress is bound by the express constitutional requirement of uniform treatment of "states" when legislating for either incorporated or unincorporated territories.[38] The pertinent uniformity provisions concern duties, imposts and excises,[39] and the prohibition that ". . . no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."[40] It has been held that the uniformity limitation upon indirect taxation was not violated by a statute that applied only to the states and the District of Columbia.[41] Likewise, Congress, in its capacity as a local legislature, has validly levied a tax upon businesses in an incorporated territory, the proceeds of which were to be used for expenditures within the territory.[42] Nor is Congress prohibited from giving preference to the ports of the states over those of a territory.[43]

The commerce clause, which is applied to incorporated territories as though they were states, need not be uniformily applied to the territories.[44] The extent to which preferential treatment can be accorded the states at the expense of the territories was indicated in *Alaska v. Troy*,[45] which involved the validity of certain provisions of the Maritime Act of 1920. The Act, designed to promote the United States Merchant Marine, provided that "No merchandise shall be transported by water . . . between points in the United States, including

[37] See discussion of Mutual Ins. Co. v. Tidewater Company, 337 U.S. 582 (1949), text at note 83 *infra*.

[38] See generally Black, *Tax Uniformity and the Incorporated Territories*, 26 GEO. L. J. 343 (1938). If a territory is considered unincorporated, the uniformity provisions should not apply, inasmuch as (1) under the law of nations, the rights guaranteed a citizen of a State are not automatically extended to inhabitants of territory acquired by conquest, treaty, discovery or occupation; (2) the 13th Amendment distinguished between the United States and ". . . any place subject to their jurisdiction."; and (3) extending the Constitution to some territories but not to others implies an intent to exclude some from the protection of certain constitutional limitations. BURDICK, *op. cit. supra* note 17, at 300-301. In Downes v. Bidwell, *supra* note 18, at 277, it was said that only the states were protected by the uniformity provisions.

[39] U. S. CONST. Art. I, § 8.

[40] *Id.*, Art. I, § 9.

[41] Sonzinsky v. United States, 300 U. S. 506 (1937).

[42] Binns v. United States, *supra* note 14.

[43] Alaska v. Troy, 258 U. S. 101 (1922).

[44] Inter-Island Company v. Hawaii, *supra* note 17; Clark Distilling Co. v. Western Md. Ry., 242 U. S. 311, 327 (1917); Hanley v. Kansas City Southern Ry., 187 U. S. 617 (1903). Legislation regulating interstate commerce may apply to the incorporated territories by implication, Sun Chong Lee v. United States, 125 F. 2d 95 (9th Cir. 1942), but this is not the case if the territory is unincorporated, De Lima v. Bidwell, *supra* note 13.

[45] *Supra* note 43.

. . . Territories . . . in any other vessel than . . . (one) . . . built in and documented under the laws of the United States and owned by persons who are citizens of the United States . . . (except that) . . . this section shall not apply . . . between points within the continental United States, *excluding* Alaska." (italics supplied).[46] The effect was to preclude the competition of vessels other than those designated in the vital United States-Alaska shipping industry and thereby to increase transportation costs. The Court upheld this statute on the ground that the regulation was one relating directly to commerce.

The power of Congress to enact economically discriminatory legislation has never been seriously questioned, and has been exercised repeatedly. In 1934 Congress passed the Jones-Costigan Sugar Act which, among other things, empowered the Secretary of Agriculture to fix quotas on the importation of sugar.[47] The original enactment even referred to Hawaii as a "foreign" area. Designed to protect the mainland sugar interests, this legislation placed Hawaii in an at least theoretically disadvantageous position. The territory produces approximately 900,000 tons of sugar annually, of which usually 700,000 tons are consumed in the United States.[48] Proponents of statehood have vociferously objected to the quotas as limiting shipments of *refined* sugar to the mainland to 3% of "capacity."[49] However, the bark is worse than the bite, for Hawaii has never refined more than 3% of its raw sugar,[50] and there has been no substantial difference in the total tonnage of *raw and refined* sugar exported to the mainland before and after the enactment.[51] Nevertheless, the Act is indicative of what Congress can do if it sees fit. The Federal Highway Act, which excludes Alaska from federal grants for highway purposes, clearly emphasizes the extent of permissible congressional discretion in denying grants-in-aid to the territories.[52] This Act also excluded Hawaii until it was amended three years after its original enactment. It is therefore apparent that Congress can not only give preference to the states over the territories, but also to one territory over another. Various other enactments have excluded the incorporated territories, only to include them by means of subsequent amendment.[53] Probably

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[46] 41 STAT. 999 (1920), 46 U. S. C. § 883 (1946).

[47] 48 STAT. 672 (1934), as amended, 7 U. S. C. § 608a (1946).

[48] *Hearings on H. R. 236, supra* note 1 at 683-684.

[49] CLARK, HAWAII, THE 49TH STATE 16-17 (1947).

[50] *Hawaii: Sugar Coated Fortress,* 22:2 FORTUNE 81 (Aug. 1940).

[51] *Supra* note 48.

[52] 42 STAT. 212 (1921), as amended, 23 U. S. C. §§ 1-26 (1946).

[53] The Smith-Hughes Act for vocational training was not applicable to Hawaii until amended seven years after its enactment. 39 STAT. 929 (1917), as amended, 20 U. S. C. §§ 11-30 (1946). The territories have been overlooked in appropriations for agriculture extension work until subsequent amendments included them, 38 STAT. 372 (1914), as amended, 7 U. S. C. §§ 341 *et seq.* (1946), as was the case with the Hatch Act

no more than mere oversight was responsible for exclusion in some cases.

Not all discriminatory legislation has been undesirable to all interests within the territories. In 1932 the Hawaiian sugar industry, in order to maintain an adequate supply of cheap labor,[54] was able to exert sufficient influence to incorporate in immigration legislation a provision enabling Hawaii to continue importing Filipinos, if necessary for labor.[55] Until recently Chinese laborers were prohibited from entering the United States from Hawaii, although they could migrate from the United States to Hawaii.[56]

About the only certain thing that can be said concerning constitutional limitations as applied to territories is that they are uncertain. "Fundamental" restrictions, such as those imposed by the Bill of Rights, are applicable to incorporated territories. Beyond this there is no fixed pattern. Discriminatory treatment of territories under the uniformity provisions suggests that, at least as far as economic prohibitions are concerned, Congress may in its discretion choose to regard the territories as "states," or as what they are—a political unit of markedly inferior status.

The Territorial Governments of Alaska and Hawaii

Although it is beyond the scope of this comment to discuss the present economic, social and political situation in Alaska and Hawaii, or the problems raised by dual administration, it is essential to an understanding of the territorial concept to consider a few aspects of local government.[57]

As stated above, the form of government and participation accorded the inhabitants of a territory is within the discretion of the federal government.[58] The organization and operation of the local government, and the limits of its power, are determined from congressional enactments—primarily the organic act.[59] The Organic Acts of Alaska and Hawaii provide for the establishment of a territorial gov-

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for agriculture experiment stations, 24 STAT. 440 (1887), as amended, 7 U.S.C. §§ 362, 386c (1946).

[54] BARBER, *op. cit. supra* note 2, at 104-105.

[55] 48 STAT. 464 (1934), 48 U.S.C. § 1244 (1946).

[56] 30 STAT. 751 (1898), 57 STAT. 600 (1943), 8 U.S.C. §§ 293-296 (1946), repealed, 57 STAT. 600 (1943).

[57] See generally SPICER, *op. cit. supra* note 14, at 82-112. Most federal territorial administrative functions have recently been delegated to the Department of Interior. Previously several executive departments exercised overlapping duties. 53 STAT. 143 (1939), 5 U.S.C. § 133 (1946).

[58] Text at note 14 *supra*.

[59] Public Uility Comm'rs v. Ynchausti & Co., 251 U.S. 401 (1920); *In re* Lane, *supra* note 19.

ernment, consisting of an executive, legislative and judicial branch.[60] The President, with Senate confirmation, appoints the governor and secretary of both territories for four-year terms. The secretary performs duties comparable to those of a lieutenant-governor. The Alaskan legislative assembly consists of sixteen senators, elected for four-year terms, and twenty-four representatives, elected for two-year terms. The territorial legislature of Hawaii is composed of fifteen senators and thirty representatives popularly elected for four- and two-year terms, respectively. Congress regulates suffrage rights, which it can subsequently abridge or modify.[61] The power of the territorial legislatures extends to subjects of legislation not inconsistent with the Constitution, the laws of the United States, and the Organic Acts. The Organic Acts, especially in the case of Alaska, contain numerous restrictions on this legislative power. Many of the limitations of the Alaskan Act were inserted because passage depended upon placating certain "vested" interests.[62] The Alaska legislature, for example, is prohibited from enacting any laws concerning the primary disposal of the soil; from authorizing any bonded indebtedness or creating any debt; from altering, amending, modifying or repealing the fish and game laws passed by Congress and in force in Alaska; and from establishing a county form of government without congressional approval.[63] The amount of general property taxes which may be levied is fixed by Congress. The Trades and Occupation License Tax enacted by Congress in 1900 cannot be altered, amended, modified or repealed by the territorial legislature.[64]

Since the Constitution places the supreme legislative power over territories in Congress, the territorial legislatures are only agents exercising their power at the sufferance of Congress. The governor of the territory must forward copies of all new legislation to the President.[65] Although all territorial enactments are subject to disapproval by Con-

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[60] 31 STAT. 141 (1900), 48 U. S. C. § 491 (1946); 37 STAT. 512 (1912), 48 U. S. C. § 21 (1946). The local governments of incorporated territories are similar to those of the states. Binns v. United States, *supra* note 14 at 491. It has been said that Hawaii was given a form of government more like that of a state than Congress had given any area previously. Alesna v. Rice, 69 F. Supp. 897, 899 (D.C.T.H. 1947). An organic act serves the same purpose as a state constitution. *In re* Lane, *supra* note 19.

[61] Boyd v. Thayer, 143 U. S. 135 (1891); Murphy v. Ramsey, *supra* note 14.

[62] SPICER, *op. cit. supra* note 14, at 70-81.

[63] 37 STAT. 514 (1912), as amended, 48 U. S. C. § 77 (1946). Numerous other restrictions are also imposed.

[64] 37 STAT. 512 (1912), 48 U. S. C. § 24 (1946); 31 STAT. 330 (1900). The federal business license tax does not, however, preclude Alaska from taxing businesses not covered by the federal act. Alaska Fish Co. v. Smith, 255 U. S. 44 (1921).

[65] 37 STAT. 517 (1912), 48 U. S. C. § 88 (1946); Tiaco v. Forbes, 228 U. S. 549 (1913).

gress, they remain valid until abrogated.[66] Federal legislation of the same scope and purpose supersedes similar territorial legislation.[67] Although generally the later of two legislative enactments governs, acts of Congress which are merely inconsistent with the organic act will not be applied to the territories; but those which clearly express a purpose to supervene the organic act are applicable.[68] In spite of the express prohibitions and the congressional veto power, territorial legislation, for the most part, is similar to that enacted by the states.[69]

The district courts of both Alaska and Hawaii are "legislative" courts, created by Congress in the exercise of its territorial power, as contrasted with the "constitutional" district courts created under Article III of the Constitution.[70] Alaska, which has an exclusively federal judiciary, has a district court of four divisions, supplemented by what its governor has called a ". . . disgraceful system of unpaid U. S. Commissioners . . . ."[71] The commissioners are federal officers who are appointed by the district judge and exercise their jurisdiction in over sixty small communities. They are ex-officio justices of the peace, recorders and probate judges, and exercise the powers generally conferred upon United States Commissioners.[72] Their only compensation is the fees they are able to collect, not exceeding $5000 annually, which very few ever reach.[73] The commissioners are subject to some supervisory control of the court appointing them.[74] A statute authorizing appeal to the district court in criminal actions was recently enacted.[75] The court, however, will not otherwise review the judicial action of a commissioner where there has not been an arbitrary use or abuse of his judicial discretion.[76]

[66] Inter-Island Company v. Hawaii, *supra* note 17; Tiaco v. Forbes, *supra* note 65; Atchison, T. & S. F. Ry. v. Sowers, 213 U. S. 55 (1909); Mormon Church v. United States, *supra* note 13.

[67] Davis v. Beason, 133 U. S. 333 (1890); Puerto Rico v. Shell Co., 86 F. 2d 577 (1st Cir. 1936), 37 COL. L. REV. 669 (1937).

[68] Inter-Island Company v. Hawaii, *supra* note 17.

[69] Hawaii has enacted twenty of the mainland's "uniform laws," in addition to other legislation comparing favorably with that of the states, *e.g.*, a "Little Wagner" act, a crippled children's act and a narcotics-drugs act. Alaska has a workmen's compensation law, a territorial employment service, and a department of public welfare, among other things. See generally *Hearings on H. R. 236, Hearings on H. R. 49, Hearings on H. R. 331*, all *supra* note 1.

[70] Mookini v. United States, 303 U. S. 201, 205 (1938); O'Donoghue v. United States, *supra* note 24 at 535; McAllister v. United States, 141 U. S. 174 (1891); American Insurance Co. v. Canter, *supra* note 12; International Longshoremen's, Etc., Union v. Wirtz, 170 F. 2d 183 (9th Cir. 1948), *cert. denied*, 336 U. S. 919 (1949); see Comment, 16 FORD. L. REV. 87 (1947).

[71] Gruening, *supra* note 5.

[72] 31 STAT. 323 (1900), 48 U. S. C. § 108 (1946); Wickersham v. Smith, 7 Alaska 522 (1927).

[73] *Hearings on H. R. 331, supra* note 1 at 47.

[74] United States v. Elliott, 3 F. 2d 496 (D.C.W.D. Wash. 1924)

[75] 54 STAT. 1059 (1940), 18 U. S. C. § 576a (1946).

[76] Moreno v. United States, 70 Ct. Cl. 758 (1930).

The district court for Alaska has the jurisdiction of district courts of the United States, as well as general jurisdiction in civil, criminal, equity and admiralty cases.[77] It is the "supreme court" of the territory,[78] and enforces the laws passed by the territorial legislature as if they were passed by Congress.[79] It must, however, give preference to decisions of the Supreme Court over those of state courts.[80]

The Hawaiian judiciary, which is both federal and territorial, corresponds more closely to that of a state. There is a two-judge federal district court for the territory, which has the jurisdiction of a district court of the United States.[81] There is also a territorial supreme court and four circuit courts. The judges of these courts are all appointed by the President. The territorial legislature, with congressional authorization, has created numerous lower courts, which are similar to those found in most states.[82]

It cannot be said with certainty whether a resident of Alaska or Hawaii has standing to sue in the district courts within the United States upon the ground of diversity of citizenship. In *Mutual Insurance Company v. Tidewater Transfer Co.*[83] a citizen of the District of Columbia brought suit against a citizen of Maryland in the federal district court for Maryland. The sole basis for jurisdiction was predicated upon a statute[84] providing that "The district courts shall have original jurisdiction . . . of all suits of a civil nature . . . where the matter in controversy . . . is between citizens of different states, or citizens of the District of Columbia . . . and any State or Territory . . . ." In 1948 this section was substantially re-enacted as part of the new Judicial Code,[85] and provided that the word " . . . *States,* as used in this section, *includes the Territories and the District of Columbia.*" (Italics supplied.) Two conflicting theories were developed to uphold the statute. Three of the majority based their decision upon the plenary power of Congress under Article I, and held that the diversity jurisdiction of federal courts under Article III was not limited by that article. The remaining two of the majority disagreed with this reasoning; they preferred to overrule prior decisions and hold that "state," as used in Article III, included the District of Columbia. The

[77] 31 STAT. 322 (1900), as amended, 48 U.S.C. 101 (1946). The City of Panama, 101 U.S. 453, 459 (1879); Electrical Research Products v. Gross, 86 F.2d 925 (9th Cir. 1936).

[78] Alaska Pacific Fisheries v. Alaska, 249 U.S. 53 (1919); Steamer Coquitlam v. United States, 163 U.S. 346 (1896).

[79] 38 STAT. 710 (1914), 48 U.S.C. § 91 (1946).

[80] Lindeberg v. Howard, 146 Fed. 467 (9th Cir. 1906).

[81] 31 STAT. 158 (1900), as amended, 48 U.S.C. § 642 (1946).

[82] *Id.* §§ 631 *et seq.*; T.H. REV. LAWS §§ 9601-9689 (1943).

[83] 337 U.S. 582 (1949). See Notes, 44 ILL. L. REV. 541 (1949); 4 MIAMI L.Q. 113 (1949); *cf.* Note, 35 CORNELL L.Q. 196 (1949).

[84] 36 STAT. 1091 (1911), as amended, 28 U.S.C. § 41(1) (1946).

[85] 62 STAT. 869 (1948), 28 U.S.C. § 1332 (Supp. 1949).

complete lack of agreement renders the full import of this decision ambiguous. If in the future the court were to adopt the latter theory, that "state" in Article III includes the District of Columbia, it is unlikely that Alaska and Hawaii would be included within that term, because of the remoteness of these areas as contrasted with the economic, social and geographic similarity of the District of Columbia to the states. However, if the former theory, based upon the plenary power of Congress, were resorted to, then Alaska and Hawaii would probably be treated the same as the District of Columbia.

Although a district court for a territory may have the jurisdiction of a district court of the United States, this does not make it a United States district court.[86] Congressional legislation concerning the federal courts is therefore often confusing. There is no sure way to predict whether the phrase "court of the United States" will be interpreted to include the territorial courts.[87]

The Ninth Court of Appeals has appellate jurisdiction of appeals from all final decisions and interlocutory orders of the district courts of both Alaska and Hawaii, except where a direct review in the Supreme Court may be had.[88] Appeals from final decisions of the Supreme Court of Hawaii in certain cases (*e.g.*, those involving the Constitution or federal laws) are taken to the Ninth Court of Appeals also.[89]

What Statehood Will Accomplish

Because many effects of admitting Alaska and Hawaii to statehood necessarily remain for future determination, this discussion will be confined to some of the more obvious changes accompanying admission.

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[86] Mookini v. United States, *supra* note 70 at 205; Summers v. United States, 231 U. S. 92, 101-102 (1913).

[87] Stainback v. Mo Hock Ke Lok Po, *supra* note 21, held that a federal statute which, among other things, required that a suit to enjoin state officers from enforcing a state statute on grounds of unconstitutionality be heard and determined by a district court of three judges did not apply to Hawaii. International Longshoremen's, Etc., Union v. Wirtz, *supra* note 70, held that the Norris-LaGuardia Act, prohibiting the issuance of an injunction against a labor union in certain situations by *any court of the United States,* applied only to courts created by virtue of Article III of the Constitution, and not to the "legislative" courts of the territories. See also Andres v. United States, 333 U. S. 740, 745 (1948) (federal statute providing for the execution of criminals in accordance with "State" laws held not to include the incorporated territories); Wynne v. United States, 217 U. S. 234, 242 (1910) (homicide statute applicable to areas within the maritime jurisdiction of the United States, except those within the jurisdiction of any state, held applicable to the harbor of Honolulu). There are two conflicting tests applied by different courts to determine what "court of the United States" embraces when used in congressional legislation. They are (1) "legislative intent," and (2) "plain meaning." Under the latter, unless federal courts in the territories are specified, they are excluded. See Note, 18 GEO. WASH. L. REV. 124 (1949).

[88] 62 STAT. 929 (1948), 28 U. S. C. §§ 1291-1292 (Supp. 1949).

[89] *Id.*, § 1293; see 19 HUGHES, FEDERAL PRACTICE 26-28 (1931).

Alaska and Hawaii will join the Union on an "equal footing" with the present states. The political rights of the citizens will be substantially enlarged by participation in national elections, by more effective representation in Congress in the form of two senators from each area and, initially, two representatives from Hawaii and one from Alaska, and by election of the governor and other officials presently appointed by the President.

The legislative powers of the new states will be coextensive with those of present states legislatures. Abrogation of the restrictions presently imposed by the Organic Act will, among other things, enable Alaska to provide for more adequate conservation measures for its fisheries and to create bonded indebtedness. The present dual administration in several fields will be replaced by state administration, which should result in increased efficiency and effectiveness through the elimination of overlapping duties and responsibilities. Education, now maintained partly by territorial funds and partly by federal funds, exemplifies an area in need of the revamping and coordination which may result under centralized state control.[90] Abrogation of the federally imposed Trades and Occupation License Tax will permit Alaska to enact more comprehensive and adequate tax laws. Although the Act is not exclusive, many important industries, such as construction, airlines and oil, are presently not taxed.[91]

Statehood will enable Alaska to remodel its present outmoded and inadequate judicial system to provide more effectively for the needs of its inhabitants.[92] Because territorial courts cease to exist as such when admission occurs, some causes of action must be re-classified as state or federal. Under the present enabling legislation, causes of action arising or criminal offenses committed in either territory prior to admission, but as to which no suit, action or prosecution is pending at the time of admission, must be brought in either a state or federal court, depending upon the nature of the cause of action.[93] Similarly, pending causes will be transferred to the appropriate courts. If existing territorial courts enter a final judgment prior to admission, previously available review of that judgment may be pursued as though the territory still exists.[94]

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[90] *Hearings on H. R. 331, supra* note 1 at 17.

[91] The Territory has haphazardly taxed some of the excluded enterprises, but the taxes imposed are nominal and often do not relate to the volume of business done. Electricity plants are assessed a flat tax of $300 annually, for example, while restaurants pay $15 and water works $50. Taxes on mercantile establishments range from $10 annually for those doing a business of less than $4000, to $500 annually for those doing a business of $100,000. *Hearings on H. R. 331, supra* note 1 at 42-43.

[92] Text at note 71 *supra.*

[93] H. R. 49, 81st Cong., 1st Sess., § 12 (1949); H. R. 331, 81st Cong., 1st Sess., § 11 (1949).

[94] H. R. 49, 81st Cong., 1st Sess., § 13 (1949); H. R. 331, 81st Cong., 1st Sess., §§ 12-15 (1949).

Alaska, becoming automatically entitled to the benefits of the Federal Highway Act,[95] will be assisted in meeting its greatest obstacle to development—lack of an adequate transportation system. As a state, Alaska probably would have received to date over $300,000,000 assistance under this one Act.[96] The abrogation of the discriminatory provisions of the Maritime Act of 1920, which protected absentee monopoly shipping interests,[97] will permit shipping competition and should result in lower rates. Most of the consumer goods imported from the United States are at present carried by ships from Seattle, at rates which have been described as exorbitant.[98]

Hawaii, although receiving more favorable treatment than Alaska, has also found many disadvantages in territorial status. Statehood, for example, will permit the sugar interests, for better or worse, to expand their own refineries without risking the possibility of discriminatory quotas.[99] It is difficult to predict whether statehood will affect in any way the economic domination of Hawaii by the Big Five.[100] Territoriality, with its limited representation of one voteless delegate, has enabled the most wealthy to wield considerable influence on Capitol Hill.[101] Many of the present territorial legislators are labor endorsed;[102] similar endorsement is likely to be given to some candidates for the Senate and House. These representatives can be expected to focus closer attention upon Big Five activities. The growing labor movement in Hawaii has given concern to some people, who detect in it communist tendencies. The current congressional investigation has not proceeded far enough to shed any light upon that problem. Although years of economic oppression might be expected to have driven many to adopt a radical economic and political philosophy, it is unlikely that any substantial communist movement is underfoot.[103] The position of the I.L.W.U. as the dominant labor group is probably explained primarily by the fact that it has been the most active union in organizing workers.[104] However, the possibility that the communist

95 *Supra* note 52.

96 Gruening, *supra* note 5.

97 *Ibid.*

98 *Hearings on H. R. 331, supra* note 1 at 49.

99 Text at note 49 *supra.*

100 *Supra* note 2.

101 James, *supra* note 5.

102 In the 1946 elections, sixteen of twenty-one representatives endorsed by the P. A. C. were elected to the lower house, and six of seven endorsed to the Senate. CLARK, *op. cit. supra* note 5.

103 N.Y. Times, June 26, 1949, p. 36, col. 4; HAWAII AND STATEHOOD, *supra* note 1 at 68.

104 CLARK, *op. cit. supra* note 5. I.L.W.U. membership increased from 900 in 1944 to 32,000 (approximately 30% of the estimated labor force in private industry) in 1946. *Hearings on H. R. 236, supra* note 1.

charges, whether real or fictitious, might be determinative of early admission cannot be disregarded.

Problems of the federal-state relationship will replace those created by territorial status. The question of control of coastal waters, recently highlighted by *United States v. California*,[105] will be of particular concern to Alaska, with its fishing and potential oil resources.

While spawning innumerable new problems, statehood will not solve many existing ones. For example, the aboriginal possessory-claims question—stemming from the congressional declaration that the Alaska natives were to remain undisturbed in their possessory rights—will not be affected.[106] Although settlement and industrial development have been hampered somewhat, the solution to this problem is in future legislation, not statehood as such.[107] The Tongass Timber Act, which authorizes the sale of lands and timber in southeastern Alaska with the proceeds to be held in escrow until possessory claims are determined, has afforded some relief.[108] Nor will statehood immediately affect the rail transportation problem in Alaska. The sole railroad, which charges excessively high rates for running its obsolete equipment the 500 miles from Seward to Fairbanks, will remain federally owned and operated.[109]

The new states will have to assume many expenses presently paid by the federal government, such as part of the cost of the legislature, the salary of the governor and secretary, and the expense of a judiciary. This will burden Alaska more than Hawaii, but there are no indications that both territories are not fully willing and capable of raising the additional revenue.[110] In some fields, such as education,

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[105] 332 U. S. 19 (1947). *Cf.* Takahasi v. Fish Comm'n, 334 U. S. 410 (1948); Toomer v. Witsell, 334 U. S. 385 (1948). See generally Naujoks, *Title to Lands under Navigable Waters*, 32 MARQ. L. REV. 7 (1948).

[106] 23 STAT. 26 (1884), 48 U. S. C. § 356 (1946).

[107] *Hearings on H. R. 331, supra* note 1 at 7-13, 37-50. The fishing and mining interests in Alaska have objected to the policy of protecting aboriginal-possessory claims as placing a cloud upon the title to all land in Alaska. They also have objected to provisions of the proposed enabling act granting four sections of each township to Alaska for support of schools, inasmuch as school land grants are subject to an enactment requiring the state to reserve minerals and permit their extraction by lease only. 44 STAT. 1026 (1927), 43 U. S. C. § 870 (1946). The federal government will retain title to approximately 89% of the land in Alaska. There is little likelihood that this provision of the present enabling legislation will be changed, since it is consistent with congressional policy in the past in admitting new states. The federal government, for example, still retains title to 85% of Nevada, and owns 53% of the land in the eleven western states. See generally N.Y. Times, April 2, 1950, § 6, p. 14, 73-75.

[108] 61 STAT. 920 (1947).

[109] *Hearings on H. R. 331, supra* note 1 at 46.

[110] During the calendar year 1945 Hawaii collected $42,000,000 in tax revenues. *Hearings on H. R. 236, supra* note 1 at 549. $6,000,000 in tax revenues were produced under territorial laws in Alaska in 1948. Alaska will be able to borrow for state purposes, something it is now prohibited from doing. The terriorial legislature recently en-

where Alaska presently bears 94% of the cost, the additional expense will not be great.[111]

The admission of Alaska and Hawaii will benefit the United States as well as the citizens of those territories. Several writers have advocated admission upon the ground that it would improve the position of this nation in the Far East.[112] The theory is that admitting Hawaii, with a population that is two-thirds Oriental, will manifest a willingness to accept Asiatics as equals and dispel much of the distrust engendered by the former "Yellow Menace" policy. This should be especially important in assisting the progress of civil democratic government in Japan.[113] The number of permanent inhabitants of Alaska should increase rapidly following statehood. Settlement will be more attractive if the political, social and economic opportunities are more equivalent to those in the United States.[114] An increase in the population will result in an increase in the available investment capital and the establishment of new industries. The development of the vast natural resources of Alaska would be of benefit to the entire nation. There has been speculation as to how admission might effect the defense of Alaska in the event of a war. The National Military Establishment, while it has not endorsed statehood, has not opposed it.[115] What the effect of adding four Senators from the Pacific area will have upon federal legislation remains to be seen. Admission might create a demand for statehood in other territories, such as Puerto Rico. However, the doctrine of incorporation serves to refute any claims of an "inherent right" to join the Union.

Little can be said in conclusion other than to concur in the statement that " . . . the Territorial state is one of pupilage at best, and may include the mere child as well as the adolescent youth."[116] In the eyes of congressional committees both Alaska and Hawaii are quali-

acted a personal and corporate income tax of approximately 10% of the federal levy. The additional cost of statehood for Alaska has been estimated at between $1,500,000 and $6,000,000 annually. *Hearings on H. R. 331, supra* note 1 at 40.

[111] *Hearings on H. R. 331, supra* note 1 at 45. Education in Hawaii, with centralization of control, surpasses that in most states. Statehood, however, would tend to diminish educational in-breeding by increasing teacher and student exchanges. *Hearings on H. R. 236, supra* note 1 at 584-593, 721-725.

[112] James, *supra* note 5; Sweetland, *Our 49th State—Hawaii?*, 44 ASIA AND THE AMERICAS 410 (Sept. 1944).

[113] N.Y. Times, Mar. 16, 1947, 4, p. 7, col. 3.

[114] *Hearings on H. R. 331, supra* note 1 at 39.

[115] *Id.*, at 24-26. There are, of course, two sides to the question of defending Alaska against possible invasion. An adequate road and rail network would facilitate the defense, but in enemy hands it would alleviate the invaders' logistic problems, and to make Alaska substantially impregnable and probably would cost more than the economy can reasonably bear. See generally Baldwin, *Alaska: Rampart We Must Watch*, N. Y. Times, April 23, 1950, pp. 13-15, 32-34.

[116] Nelson v. United States, 30 Fed. 112, 115 (C. C. Ore. 1887).