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U.S. Territorial Expansion: The Constitutional Roles of Congress and the President

The United States has expanded significantly from the original 13 colonies to its present-day borders. Over time, new territories have become part of the nation. Some of these territories would eventually achieve statehood, one—the Philippines—would become an independent nation, and some retain territorial status today. The U.S. Constitution is silent on the process for expanding the nation's territorial holdings. The Supreme Court has recognized that “determination of [American] sovereignty over an area is for the legislative and executive departments,” but it has never prescribed an exact procedure or delineated the precise roles of these branches.

This In Focus provides an overview of the constitutional roles Congress and the President have played in territorial expansion historically and provides considerations for Congress if it seeks to pursue or limit territorial expansion in the future. Although domestic constitutional law is the subject of this In Focus, territorial expansion may also implicate various international law principles that are generally beyond the scope of this product.

Select Historical Precedents

On separation of powers questions involving the proper roles of the political branches, the Supreme Court has stated that historical practice shapes constitutional interpretation and that “long settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions’ regulating the relationship between Congress and the President.” For this reason, Congress may find it useful to consider historical examples of U.S. territorial acquisition when evaluating its role in any future acquisitions. The following examples illustrate a variety of procedures but are not exhaustive. Additionally, these examples focus on how these territories became part of the United States rather than how the political statuses of the territories were ultimately resolved, if at all. (For more information on that issue, see CRS In Focus IF11792, *Statehood Process and Political Status of U.S. Territories: Brief Policy Background*, by R. Sam Garrett (2024)).

The Louisiana Purchase

Some of the earliest questions regarding the acquisition of new territory arose in 1803 during Thomas Jefferson’s presidency amid the potential purchase of New Orleans and other French lands in the Americas. Jefferson initially took the position that, due to the Constitution’s silence on territorial acquisition, a constitutional amendment would be required to provide authority to obtain new territory. Jefferson proposed such an amendment that would have permitted acquisition of Louisiana specifically but not new territory generally.

Jefferson ultimately relented in his constitutional position, and his proposed amendment was never ratified. His administration negotiated a treaty with France for the sale of the territory for \$15 million. The Senate consented to the United States’ ratification of the treaty on October 20, 1803. Congress then passed additional legislation to appropriate money to pay for the purchase. The authority of the United States to acquire new territory has largely been considered settled ever since.

Guano Islands Act of 1856

Congress preemptively authorized the President to expand U.S. territory with the Guano Islands Act of 1856. That law permits U.S. citizens to take possession of uninhabited, unclaimed islands with guano deposits, which the President may then proclaim as “appertaining to the United States.” The Supreme Court upheld the constitutionality of this act in an 1890 case, *Jones v. United States*. Jones argued his criminal murder conviction was invalid because the Guano Islands Act was unconstitutional and the United States thus lacked jurisdiction over Navassa, the island where the murder took place. The Supreme Court disagreed, upholding the statute and Jones’s conviction, ruling that the acquisition of territory through discovery was an inherent power possessed by all nations that Congress could exercise through legislation.

The Alaska Purchase

Beginning in the 1850s, Russia expressed an interest in selling its land in present-day Alaska to the United States. Following the Civil War, Secretary of State William Seward negotiated a treaty with Russia to purchase the territory for \$7.2 million dollars. The treaty was concluded on March 30, 1867, and approved by the Senate on May 28. Russia transferred Alaska to the United States on October 18. It would be more than a year after ratification—and more than nine months after the territory was officially transferred to the United States—before Congress passed an appropriation to pay for the purchase, on July 27, 1868. (Congress was primarily occupied by the impeachment of President Andrew Johnson in the interim.)

The Annexation of Hawaii

The United States recognized Hawaii as an independent nation on July 6, 1844. Following the overthrow of Queen Lili’uokalani in 1893 by a group of businessmen (aided by the American minister and U.S. military troops), the provisional government led by those businessmen sought annexation of Hawaii by the United States. President Benjamin Harrison negotiated a treaty to annex Hawaii, but before the Senate consented, President Grover Cleveland took office and withdrew the treaty. In 1897, President William McKinley negotiated a new treaty to annex

Hawaii, but the treaty lacked the necessary votes for Senate approval. Instead, in 1898, Congress passed a joint resolution—requiring only a majority in both the House and Senate rather than a supermajority in the Senate for treaty consent—to annex Hawaii. The annexation was controversial at the time, and Congress passed a joint resolution in 1993 apologizing for the United States’ role in the overthrow of the Kingdom of Hawaii a century earlier.

American Samoa

After the end of the Second Samoan Civil War, the United States, Great Britain, and Germany ratified the Tripartite Convention of 1899, delineating colonial interests in Samoa. In 1900, the *matai* (or chiefs) of Tutuila ceded the island to the United States. Following the first Samoan cession, President McKinley issued an executive order to govern the territory through the U.S. Navy. A similar cession, for the islands of Manu’ā, concluded in 1904. Congress enacted legislation in 1925 annexing the geographically separate Swains Island to the political territory of American Samoa. In 1929, Congress passed the Ratification Act, confirming the Samoan cessions negotiated decades earlier.

The Northern Mariana Islands

The nation’s most recent expansion occurred in 1986 when the Northern Mariana Islands joined the United States, officially as the Commonwealth of the Northern Mariana Islands (CNMI). Following World War II, the United Nations held in trust certain Pacific islands previously held by Japan and designated the United States as trustee to administer them. This Trust Territory of the Pacific Islands included the Northern Mariana Islands. In a 1975 referendum, nearly 80% of Northern Mariana Islands voters were in favor of joining the United States. The United States and the Northern Mariana Islands negotiated a covenant to enter into political union, which Congress approved in a March 24, 1976, joint resolution. Pursuant to the approved covenant, President Ronald Reagan issued a proclamation terminating the trust agreement and establishing CNMI as part of the United States beginning November 3, 1986.

Relevant Constitutional Principles

The above historical precedents demonstrate that Congress has played a significant role in the acquisition of new territory. Many territorial acquisitions have been accomplished through the treaty-making and Senate approval process established by Article II, Section 2 of the Constitution. Beyond Senate consent to the executive-negotiated treaties, Congress has also at times enacted legislation or passed a joint resolution acknowledging that a new territory had become part of the United States, particularly in cases where the peoples of the territory had (at least arguably) indicated a voluntary desire to become part of the nation.

Once a territory becomes part of the United States, Article IV, Section 3 of the Constitution provides Congress the power “to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” Unlike Congress’s authority over the states, which is limited, this authority has

been interpreted by the Supreme Court to be general and plenary, akin to the general police powers of the states themselves. The Court held in 1899 that, with respect to territories, “Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a state might legislate within the state.”

Congress has used this broad power both to establish governments for new territories and to resolve the political status of these territories in ways other than statehood. (A separate constitutional provision allows Congress to admit new states into the union.) This power also permits Congress to legislate on narrower issues, such as the minutiae of day-to-day territorial governance.

Acquisition may implicate other congressional powers as well. Where the United States has negotiated the purchase of territory, Congress has legislated separately to provide an appropriation to cover the cost of the purchase. The Spending Clause of the Constitution authorizes Congress to legislate to pay the debts of the United States, and the Appropriations Clause generally prohibits any part of the government, including the executive, from disbursing funds from the Treasury except pursuant to an appropriation enacted by Congress.

Finally, if sovereignty over a particular territory is disputed, it is unclear to what extent courts might intervene. Courts may deem such disputes to be “political questions” that are left to Congress and the executive to resolve on their own. The Supreme Court has intervened in disputes involving recognition of *foreign* states, but it specifically distinguished such cases from recognition of sovereignty *domestically*. Although the Court has held that recognition of foreign states is an exclusively executive power, it has continued to reaffirm that recognition of United States territory is a shared responsibility of Congress and the President. Where Congress and the President agree, courts are likely to treat that determination as conclusive, but it is less clear how courts may treat any executive-legislative disagreement.

Considerations for Congress

Despite the Constitution’s silence on territorial acquisition procedure, historical practice and other constitutional powers have consistently provided a role for Congress in recognizing the addition of new territory to the United States. Legislators who seek to promote or limit U.S. territorial expansion thus have tools to influence government policy. Proponents of expansion could directly authorize the President to take actions to acquire additional territory, pass legislation recognizing territory as part of the United States, or appropriate funds for the executive to take necessary steps for territorial acquisition. Legislators opposed to expansion may decline to approve any relevant treaties or vote against any legislation that would seek to establish American sovereignty over new territory. They could also pass appropriations legislation that precludes the use of funds on territorial expansion.

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