Legislating for American empire: the U.S. Congress and territorial policy

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Legislating for American Empire
The U.S. Congress and Territorial Policy

by

Timothy Lindberg

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Abstract:

The United States has always administered territorial governments and the primary entity entrusted with this authority is the United States Congress. This dissertation, using an American Political Development framework, seeks to uncover the variety of ways in which Congressional decision-making over territorial policy has shifted. The goal is to understand how the United States Congress worked toward establishing and maintaining an American Empire via the use of territorial policy. A variety of causal mechanisms causing are investigated, including the demographic targets of policy, partisan conflicts, changing norms and rules of Congress, pressures from other branches or the states, national security challenges, emerging technology, and the tensions in protecting minority rights.

This dissertation argues that there have been four eras of American territorial policy. During the Experimental Empire (1787-1861), the U.S. Congress awkwardly developed a system for territorial governance by adopting a tiered system that would slowly provide more autonomy to territorial residents. The Continental Empire (1850-1912) saw the desire for admitting states lessen. This was due to a number of factors including a slower pace of settlement in the arid mountain west, less desirable policy targets, such as Mormons in Utah and Catholic Hispanics in New Mexico, and a growing bitter partisanship over most political issues.

The Insular Empire (1898-1959) era emerged with the acquisition of a variety of overseas territories. Most of these new territories were already populated by non-white people, used to non-republican governments, which led Congress to treat them more paternalistically than they had most other territories. Finally, the Informal Empire (1960-current) no longer requires the American political system to acquire new lands, but enforces a cultural, military, economic, and political influence over much of the rest of the world.
This dissertation argues in the end that territorial policy has shifted and reflected various changes in American politics, both internal and external to the U.S. Congress which has operated to create and maintain an American empire throughout the country’s history. The primary purpose of this project is to show how this has occurred through the use of territorial policy and how it operated during various periods of time and how and why it shifted.
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Chapter 1 – Introduction and a Theory of the Role of Congress in American Political Development

In 1787, the United States was formed from a collection of 13 former British colonies, with a population numbering in the low millions, almost entirely living within 100 miles of the Atlantic Ocean. Today, the United States spans 50 states and a wide variety of territorial properties ranging from the densely populated island of Puerto Rico to numerous isolated and uninhabited atolls in the Pacific Ocean. The extension and expansion of the United States, which began with the initial passage of the 1783 Northwest Ordinance, led to the creation of what is widely considered the American empire by historical scholars. While the stories of brilliant diplomacy, controversial purchases of land, and Presidential war making tend to be the most well-known instances of the expansion of the United States, the body given complete control over the administration and management of any territory outside of state boundaries is the United States Congress. The United States Constitution, in Article IV, Section III, grants the power to Congress, “to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States…” Over time, the Supreme Court has repeatedly read this provision as empowering Congress with near universal control over territorial possession. Given the absolute importance of Congress in terms of territorial policy and control, it is surprising then how infrequently, especially over the past century that this topic has been studied. In most discussions of American empire and expansion in modern scholarship, Congress plays a secondary role, if any.

This study seeks to examine the role of Congress as a fundamental institution in American political development focused on revealing the patterns and over time in the realm of
American territorial policy. The issue of territorial policy is a relatively clear example of an area where Congress’ legislative role is preeminent. In addition it has also been present, if not important, throughout all of American history, and has been wrapped up in many of the most vital political questions that have faced the nation.

The key to understanding the role of Congress in this regard, then, is to identify factors which lead to significant and lasting shifts in territorial policy choices, what effects those shifts produced in regards and how this then helped to shape the overarching development of the American political system. Thus, this project proposes to, formally and directly, connect the shaping of the American empire to the action of the United States Congress, not only strengthening modern scholarship, but filling out and adding to the contributions of previous authors whose efforts have gone underappreciated and un-replicated. In particular, the driving question of this project revolves around what has been Congress’s role in empowering and transforming the creation of an American empire over the course of American history via its use of territorial policy, and how this reflects broader changes in American Political Development.

In other words, how did the United States Congress helped to “make America” via the creation of an American empire through the establishment and maintenance of a territorial system largely controlled by Congressional authority. The rhetoric and actions taken by Congress, via its members and leaders, is crucial to understanding how the American empire came to exist and, perhaps even more importantly, why. Benefitting from previous efforts from American Political Development scholars, this study examines the impact Congress has had on American state building and political development using the case of territorial policy as a focus.

Territorial policy is used in this case because it is both relatively unique in its importance to shaping American political development and because it highlights the way in which Congress
operates and shapes American government. After all, it allowed in particular Congress and the Executive to literally shape the United States, both geographically and politically, as it expanded. Given the relative importance throughout American history and the connection to numerous contentious issues, territorial policy is one of the most salient issue areas. It is relatively unique in this regard. But it is also typical, because, as with most other policy areas, much of the decision-making power lies within the federal legislative branch. While the Executive was primarily involved in crafting expansionary moves, such as treaties and war, it was the legislature that decided upon the contours of what rights and responsibilities were given to territories and it was the legislature that guided many of these territories toward eventual statehood. As an issue then, territorial policy is both unique and typical, in ways that make it an ideal policy case to study for APD.

This study will operate using the assumptions from a number of APD scholars. In particular, the work of Paul Pierson in defining the importance of sequencing and path dependence, especially as it relates to policy development. Pierson has written that politics is marked by four features: multiple equilibriums, the fact that even small events can have enormous and lasting consequences, a critical role for sequencing, and the importance of inertia, in that feedback loops create ever more resistant equilibriums. As related to the current project, this means that the choices which Congress makes regarding territorial policy and the development of an American empire may have variable effects, create or affect different equilibrium, and add to the inertia of certain processes depending upon the sequencing in which they take place. Once set in a path, it becomes harder to break free from that evolving development. Like a winding river, it may take different routes around obstacles in its way, but it cannot circle back upon itself and end up in the exact same space or time as it was. Decisions
made at one point in time affect decisions available to actors and institutions at another time. Path dependence, Pierson argues, is important because “it recognizes that political development must be understood as a process that unfolds over time…” and it stresses that these processes “are embedded in institutions – whether formal rules, policy structures or norms.”

Another set of APD scholars, Orren and Skowronek, in their seminal *The Search for American Political Development* (2004) defined political development as: “a durable shift in governing authority.” The importance here is recognizing that there are certain catalysts that drive these shifts, which are long-lasting and affect how and what is available as action for political institutions. While the ambiguity of the concept of what is “durable” and what is meant by “authority” in this definition are problematic theoretical concepts, in this study I adopt their perspective as a driver to distinguish between a variety of eras of empire-building via territorial policy. In other words, at certain points, the efforts and intent of Congress shifted, for a significant period of time, from what had previously been the equilibrium of policy-making. Investigating how these shifts occurred and why, and combining them with Pierson’s construction of path dependence, will help to illuminate the role that Congress played in creating American empire over the past 200 years.

With this as a guiding principle, and using previous scholarly work as a foundation for the divisions, I delineate four different periods across American history as guideposts for significant changes in Congressional territorial policy. This is not to assume that only changes occurred at these break or that these periods overlap within other policy areas as well. Given the relative importance of territorial policy across American history, however, the shifts in Congressional policy decisions toward the territories is both reflective of and spurred political development more broadly. In other words, shifts in territorial policy are just one example of
patterns in Congressional development, but they are likely to line up with important external and internal events. Within each of these periods of development Congress tends to take on a particular role in crafting territorial policy and therefore in how they help to shape the growth and substance of the American political system.

The periods, briefly summarized (more detail provided later), are the early stages of territorial governance (east of the Mississippi development), the Western territorial period (continental expansion from the 1850s until Spanish-American War), the period from 1898 until the admittance of Hawaii and Alaska as states, and then the post-World War II period. While some important shifts and decisions are obviously made within each of these periods, there are relatively clear shifts in the overall direction of Congressional territorial policy that demarcate these periods from one another.

Whether found within periods or as a breaking point between them, there are a variety of reasons that might produce a shift in territorial policy. Wars, major conflicts between states, changes in party control of government, changes in leadership of Congress, aggressive executive action, and economic unrest are all viable factors that might lead to a significant and lasting shift in Congressional development of territorial policy. Sources of shifts will likely be overlapping and intertwining, although at times may be relatively clear. What these sources are and the strength of their pressure can be extrapolated from a combination of resources available: Congressional legislation, Congressional rhetoric, newspaper accounts of legislation/debates, committee minutes and actions, and various primary sources external to Congress (personal letters, diaries, autobiographies, etc.).

One of the key goals of this research project will be to ensure that identification of a possible source of the shifts is not overlooked because of a narrow methodological/theoretical
perspective, meaning that the sources can be found in diverse areas. This leads me to consider internal as well as external sources of influence in order to identify lasting shifts. Different eras of American history and different controversies will both have an effect on the sources and reasons behind shifts. Increases in technology, growth of executive branch capabilities, completion of the continental American nation, and population growth (and type) are all important factors in the ways different periods of time might be different.

Controversy also matters. Many of the most important territorial questions were raised regarding personhood, citizenship, and legal/constitutional rights. Ironically, in many ways, as America itself has become more open with civil rights, the questions of differences in rights between continental, state-born U.S. citizens and territorial residents (even those with American citizenship) has become less of an important national issue. An important factor to mention here is the role that economic questions are wrapped up within these questions of rights. The issue of slavery was as much (if not more so) a question of economics as it was human rights. The Insular Cases mostly dealt with economic questions of trade and taxes, not with natural human rights. Thus, it appears that while questions of rights and what it means to be American have been preeminent throughout territorial policy, they secure broader interest and appeal when they overlap with important economic based issues.

Having outlined the broad strokes this study proposes to unearth, the following sections serve to highlight the value of this project to existing scholarship and the understanding of territorial policy, Congress, and American political development.
American Political Development

This project deals with the concept of development or change over time, specifically searching for lasting shifts in governing authority. Within this understanding this research project proposes to examine Congressional history to uncover the “durable shifts” of APD in the role that Congress plays within the American political system. Through the use of an issue area, territorial policy, in which Congress has a distinctively dominant role over the length of American history, these shifts may be more easily identified and their impact on American Political Development more easily established. Given Congressional policymaking authority, shifts in their policy choices would have a broad effect on how the political system treats expansion and the governance of territorial lands. In other words, connecting the rather specific actions of Congress within this one policy realm should reveal significant constructions of the overall political process and how it has changed over American history.

American Political Development began with a few scholarly pursuits to return the political state and its institutions and processes to the center of historical studies, especially as historians turned toward social history, focusing on bottom-up perspectives. From this, APD has expanded broadly, somewhat to its methodological detriment\(^5\), but remains a strong subfield within political science. At the same time, APD tends to be both methodological and theoretical and it is not necessarily clear, from study to study, which of these is the more important focus. Overall, however, the concept of APD can be derived from Orren and Skowronek’s definition of, “durable shifts in governing authority.”\(^6\) This extends into questions regarding how and why these shifts occur, in what areas of governance they occur, and what long-term changes (i.e. the durable aspect) they create. Beyond this admittedly still ambiguous theme, APD tends to be less
worried about strict chronology, focusing more on themes or specific cases. Additionally, APD scholars usually take a longer perspective, ranging anywhere from a short period of a couple decades to an examination such as Skowronek’s *The Politics Presidents Make* (1997) or Tichenor’s *Dividing Lines* (2002), which span all of U.S. history.

Thus, the theory of political development is one that searches for patterns, cycles, and disruptions. In pulling back on the perspective to see from a bird’s eye view the flow and contours of a political system, institution, or groups of agents, political development can illuminate not only what changed over time, but give us insight into why and how. The moments of shift or change are key considerations of the research, sometimes even becoming patterns in and of themselves over time. American Political Development, however, is more than just historical political research in a guise. It is not a practice of studying history solely within its contemporary setting nor is it a focus on narrative and getting the story down. This is a distinction that APD scholars must make in order to distinguish their work from much of the excellent scholarship within the history discipline. Political development scholars “ask the specific question of how and why the political landscape has changed over time, and what significance these changes have had.” This requires historical accuracy, outlining of institutions and actors, and an understanding of the political discourse, but it cannot stop its theory-building exercise at that point. “APD’s primary interest…lies in grasping processes of change conceptually, in general terms, and in considering their broader implications for the polity as a whole.” Thus APD is about what happened and why, but because of how it relates to what came before, what came after, and what it might mean for now or the future.

This approach encourages an emphasis on periodization, something with which this project follows, yet periodization is a conceptual challenge for the goals of APD. Scholars have
moved away from overarching synthetic eras linking together American development into fewer eras in favor of a more disjointed and layered periodization. This provides a more realistic, if not more complicated, vision of how political patterns overlap and interact with one another. Orren and Skowronek (2002) highlight the example of how we view the Progressives of the early 20th-century as both promoters of aggressive government and democratic ideals, while also supporting segregation and white hegemony. Thus there is, to use the language of Rogers Smith, both an ascriptive and republican stream of development overlapping during this period. The theoretical lens provided by APD allows scholars to consider these at the same time, while investigating patterns which occur in just one or both of the streams as they intersect or spread apart.

Dodd conceives of shifts in political development arising out of what he terms metacrises: “behavioral dilemmas unresponsive to resolution through the operation of existing epistemological principles, structures, and procedures.” Thus patterns or cycles occur because society changes, sometimes slowly, at other times more quickly, but as it does the political system and its rules tend to remain more stable, leading to a mismatch between the reality of a society and the way in which the dominant actors and institutions believe it does (and should). Within each of these periods, there are short-term cycles of adjustment that occur, which are only briefly disruptive, and easy to incorporate within the epistemological paradigm. At a certain point, however, this obsolete worldview creates an environment in which the divergence between reality and prevailing epistemology proves to be too great for the society to handle and a metacrisis occurs. Examples of these could be revolutions, civil wars, and severe economic or social disruption. The U.S. Civil War is a prominent historical example as was the Great Depression. While Dodd’s focus is across an entire society, this theoretical framework can apply
more specifically, to a particular institution, a policy arena, or a regional culture. Thus, it is important to this study to realize that the shifts to be discovered are caused by a deviation between reality and the political viewpoint. This is easy to imagine when thinking about territorial policy where a group of men from the existing states were making decisions affecting settlers on the far frontiers of the country, most of the time without any understanding of the reality of life on the “other” edges of America.

American Political Development and Congress

The purpose of using APD approaches to examine Congress is instructive, as scholars have previously demonstrated shifts in the role that presidents\textsuperscript{12} and the Supreme Court\textsuperscript{13} have played. As Katzenelson and Lapinski note, however, there have been few attempts to examine Congressional history with APD methods: “Working with a particular appreciation for temporal dynamics and the operation of policy feedback, APD can utilize its kitbag of subjects and tools to probe how the content at issue in lawmaking intersects with the legislative process to produce policy outcomes that define the character of the country’s political regime.”\textsuperscript{14} (emphasis added) Thus, a focus on Congress and its policymaking role, can illuminate not only how but why the modern United States exists in its current form. This is true, not just from a geographical perspective, but from a political one as well, since it was within the power of the legislative branch of the United States to stave off expansionist tendencies or to shape the ensuing territories in drastically different ways than historically occurred. Thus, within a policy area, such as territorial policy which spans all of American history, using APD research methods can be particularly enlightening. If the goal is to uncover the main shifts in Congress’s role, it is imperative that the researcher is able to identify the shifts as well as the underlying impetuses for
them. This is more easily done when the period is elongated temporally and retains some salience throughout that period, as is the case with territorial policy.

What does all of this mean for the U.S. Congress and its role within the APD scholarship? What can APD methods and theory add to research on Congressional history? Primarily the added value will come from the way in which APD investigates themes, specifically the idea of revealing long-term patterns that help to explain how and why a particular governing structure has developed the way it has. One of the areas in which APD has been lacking thus far, surprisingly, is long-term examinations of the U.S. Congress, with many studies taking shorter perspectives, focusing more broadly than just Congressional activity, or focusing on internal processes of Congress, rather than its external influence. This doesn’t mean that Congress has been neglected, but that as a specific unit of study, its role in the political development of the United States has been underdeveloped within existing scholarship. Many scholars, across political science and history, have sought to discuss Congress within an historical context. Yet, these efforts, while informative and useful to an overarching perspective on Congress’s role in APD, are not equivalent and an APD approach to Congress will provide additional value to previous scholarship, particularly if that approach covers a longer period of time and highlights Congressional actions and their external impact.

In 1984, Thompson and Silbey wrote that scholars of the U.S. Congress have, “from the beginning, undertaken highly detailed studies of great leaders, individual bills, and momentous confrontations among legislative blocs – efforts that have produced a stunning corpus of work.”15 This acknowledgment begins the set of edited works of The Congress of the United States, 1789-1989. The 1980s were also the period of germination of the APD subfield, which would expand greatly by the early 1990s. The goal of Thompson and Silbey’s article is to highlight the overall
focus and findings of research (up to the early 1980s) on 19th-century legislatures, specifically the U.S. Congress. In this they note a focus on biographies, Congressional roll-call analysis, and an overall emphasis on legislative behavior. What this research has meant to the study of Congress is that, “Such efforts have paid off handsomely; a cumulative perspective is emerging out of the quantitative legislative histories of the last decade and a half.”

Given that research on historical Congresses could only grow since the 1980s (and it has) it is clear that a lot of research has been done. As noted by Thompson and Silbey, however, this research does not cover all themes or topics equally. They say that using all of these studies, “it would not be hard to dig out a running history of the United States Congress. It would be highly detailed, interesting, and important. But it would be incomplete.” This remains true, albeit not because of a lack of scholarly attention to Congress as an entity, but rather because few, if any, studies have directly examined the role of the U.S. House and Senate in shaping American Political Development. This does not mean, however, that historical research on Congress has been stagnant. As Swift and Brady note, “Never before has Congressional history received so much attention.” They point to the usefulness of historical scholarship because it produces a more dynamic and holistic account of institutional development, especially the changes over time. As they note, “Congressional scholars are particularly prone to the ahistorical use of history,” meaning that they tend to see Congress as a static entity, solid within a specific space and time. Historical scholars, while not always escaping this restraint, tend to be more likely to use a dynamic approach. As Swift and Brady argue, “To explain Congress past, present, and future, history suggests that we must recognize the institution’s considerable experience with and capacity for change.” Next, I will outline some of the highlights of what has been done in Congressional historical scholarship, as well as examining specifically what would be helpful in
an analysis of the role of Congress using APD methods and within territorial policy over American history.

Historical research of the American Congress is hardly lacking, as noted above, but this doesn’t mean that it is particularly interested in American political development. Before discussing some of the works on Congressional history that relate more directly to this current project, it is helpful to outline a few major themes that run through a variety of historical scholarship on Congress. Four strains will be discussed here, and while not exhaustive of the possible dissections, they provide a foundation of what motivates historical scholarship on Congress, demonstrating in the process, that a long-term APD approach is missing from these efforts.

First, some scholars examine historical examples or time periods because there are no modern equivalents to survey. Despite this, the authors will argue that studying these examples are important for understanding current political situations or they may occur again in the future and scholarship now may help to understand the why and how of that future occurrence. One example of this is Hirano’s article on the effect of third-parties on Congressional roll-call votes. Since there have only been a couple of short periods in American history where more than two parties held even a nominal amount of Congressional seats, and none in decades, Hirano must use an historical example. Yet, doing so can give us some perspective on what might happen if a third-party became successful enough to influence a small number of House seats (a remote but hardly implausible assertion). In particular, Hirano is interested to see if third-party strength leads to a desire to co-opt third-party issues within major parties by examining Congressional behavior. In doing so, he argues that, “Congressional roll-call-voting patterns provide an observable measure of whether or not legislative change their positions on third-party policies
after a third party is formed.”20 This clearly can only be observed if there is third-party influence strong enough to motivate this change. Thus Hirano uses the example of the Populist Party in the late 1800’s, which covers a relatively short overall period and focuses on only that slice of time.

Secondly, as the adage “those who fail to learn from history are doomed to repeat it” implies, scholarship has studied historical examples to show that in fact the same thing as happening now (or recently) has happened before and is not a novel development in politics. Additionally, many of these articles point out that some modern theoretical assumptions are inaccurate, primarily because they don’t take into account the historical development of modern processes. For example, Swift and Brady point out that the dominant paradigm in Congressional literature regarding modern trends such as incumbency safety, may not be as clearly modern as they are proposed to be. They argue that, “Because historically stable factors cannot supply the causal dynamic for the development of contemporary phenomena, the answer to this question has critical implications for the [theories’] explanatory power.”21 They point to an article by Garand and Gross (1984) that questions the importance of factors in the mid-20th-century toward declining competition in Congressional elections because, “it is clear that there has been a long-term trend toward Congressional safety since 1932, and perhaps even since 1894,” and “the incumbency-based explanations of the post-1965 levels of Congressional safety which dominate the literature must be viewed as suspect…Post-1896 trends require us to look for explanations that are applicable to a long time series.”22 Thus, taking a more broadly historical perspective on a modern trend can open up greater levels of theoretical development and produce new investigations.

Third, there is the practice of using historical examples to reexamine particular expectations regarding Congressional behavior, practice, or development. These investigations
can be to challenge expectations regarding modern Congresses or to challenge prevailing historical assumptions. One example of this is John Resch’s examination of the Pension Act of 1818 as a case of contentious politics over a policy that did not play out in the way Congress had hoped. He notes that, “Historians have identified the importance of the pension act as a precedent for later veterans’ programs,” but that “Scholars, however, have overlooked the act’s political, cultural, and social significance.” In focusing on these aspects, Resch argues that the act’s importance goes beyond just simply acting as a template for later veterans’ programs. He observes that it actually had the impact of contributing, “to the transformation of the memory of the revolutionary conflict from a long and dirty war into an epic struggle for republican ideals.”

Fourth and finally, scholars focus on the beginnings of a procedure, rule or aspect of institutional structure or decision-making. For example, Jason Roberts (2010) points out that the Committee on Rules in the House and its ability to use special rules to influence policy making decisions are vitally important parts of the modern chamber, yet scholars tend to look at data from the post-World War II era in an attempt to explain its importance. Roberts argues that to gain a more nuanced perspective on the role that special rules play, we must return to the origins, in this case looking at Congresses from 1881-1937. He argues that, “The results reveal the House to be an institution that rapidly moved from a body that occasionally had difficulty transacting even routine business to one that can efficiently dispose of major legislation in less than a day and on a predictable schedule.” This shift, however, came nearly a hundred years ago, rather than during the modern Congressional era and examining the original motivations for these changes, Roberts argues, revises the prevailing theoretical arguments among Congressional scholars.
While the above mentioned strains are important additions to an historical understanding of Congressional development, they don’t necessarily speak directly to the benefit of a long-term theory of overall political development in the way that APD scholars define it. There has been some scholarship in this area, examining Congress with a broader temporal perspective. While not specifically APD, Elaine Swift notes in her article entitled “Reconstitutive Change in the U.S. Congress” that, “Although Congress is not a static body, Congressional scholars usually see it that way. Most focus their research on a stable aspect of the institution.”

She argues that this stunts the theoretical depth of these studies because it either ignores or understates the importance of institutional change. This is important for her, because legislatures play “vital roles in maintaining democracy. These roles include representation, conflict resolution, policy making, and executive oversight and restraint.” Without a full grasp of how these roles shift and the reasons for those shifts, it is harder to understand our legislative institutions. In this particular article, Swift is interested in reconstitutive change, which she labels a “marked and enduring shift in the fundamental dimensions of the institution.”

These shifts are thus long term, lasting at least a few decades, and they are deep, “synonymous with clear and significant breaks from past patterns on every one of the chamber’s fundamental dimensions.” Foreshadowing the language that Orren and Skowronek used, Swift highlights five sources for these changes: the Congressional agenda, the electorate, political parties, the institution’s vision or beliefs about what role it should play in government; and a group of reconstitutive leaders in Congress. This theoretical lens uses both internal and external factors to explain changes in the institution. It is, however, relatively demanding in its criterion in looking for changes, thus not counting more gradual, but hardly less important, transitions or shifts as reconstitutive. It also highlights only a specific period of early American politics,
thereby lacking the ability to tie together a cohesive narrative about American political
development. Swift’s goals, in creating a theory of reconstitutive change therefore are not
identical to the goals of APD scholarship which tries to explain more broadly how a political
system or structure shifted, whether that shift was abrupt or more gradual, focusing more on the
enduring aspect of the change and its impact on the political development of the system as it
lived on.

Another example comes from a preeminent Congressional scholar, Robert Remini. While
obviously only focused on one of the chambers of Congress, Remini’s *The House* does a
fantastic job of leading readers through the highlights of over 200 years of this legislative
institution. In the foreword to the book, Remini notes that to write even a 500-page treatise on
the U.S. House, many editorial choices would have to be made, and so he states, “[I]t would be
best to concentrate on explaining to the average reader how the House evolved from a fragile
union of a handful of states in 1789 into the towering edifice for democracy and liberty that it is
today. I was especially anxious to capture as much as possible the human drama involved in that
evolution.” Within this story, however, is a narrative not of the political development of an
institution, but the historical development of it, focusing not on the politics per se, but the
cultural, social, and human realities of it. In doing so, Remini provides both a more
encompassing and less instructive narrative. There is of course, nothing wrong with this task, but
it is not the same as highlighting the role of Congress within the development of the American
political system. He does mention the overall accomplishments of Congress, despite their mired
reputation, in that they were responsible for

“[R]epresenting free people of every race and creed; they built roads, canals, highways,
and railroads; they ended slavery and child labor; they created Social Security, the G.I.
Bill, Medicare, and voting rights protection. They guided the country’s expansion
westward across a three-thousand mile continent and passed the Homestead and Morrill
Land Grant Acts. They aided the nation’s evolution from an agricultural to an industrial society. They made possible the transformation of a fragile collection of individual states into a colossus that presently dominates the globe. They have served the American people extremely well.  

There is no doubt that the U.S. Congress played an integral part in all of the aforementioned gains, while also working in fits and starts or just plain slowly at times. Yet, what Remini’s book does not do, because it was not intended to, is to examine how these various legislative actions, which spurred American growth, helped to develop and shift the way in which the American political system operated.

Perhaps the primary work that specifically deals with Congress over much of American history from a political (rather than primarily historical) and APD perspective is Eric Schickler’s *Disjointed Pluralism* (2001). In this book, he analyzes the institutional structure of Congress across a hundred year period between 1890 and 1990. Within this time frame, he pulls out four specific periods each lasting at least a decade and focuses on change within three particular areas of institutional structure: rules and procedures, committee system, and leadership. He seeks out changes in these areas because, “it offers an important window into the dynamics of legislative institutions.” For each of the changes he finds, Schickler asks a series of questions: “who sought the change, what interest or interests were pursued through the change, how was the change adopted, and what its implications were for Congressional operations and outcomes.” To complete this task, he relies on both quantitative data, such as roll calls and bill sponsorship, as well as qualitative data, such as floor speeches and newspaper reports.

*Disjointed Pluralism* does much to advance not only the way in which scholars can examine institutional change over long periods of time, but more specifically how and why the U.S. Congress shifted. Yet, Schickler’s perspective is internal, looking within the actions of Congress to observe and explain changes in the structures of Congress. This is different from a
project that seeks to explain changes in Congressional policy and decision-making due to the actions and arguments made by members of Congress. Shickler’s book looks inward toward institutional change, while the study here regarding territorial policy looks outward toward the impact this change has upon policy decisions and power within the broader political system. Both are necessary for a full understanding of the role of Congress within American Political Development, but they have different goals.

Finally, it is important to acknowledge that there has been some important, but rare, scholarship on the role that Congress has played specifically in territorial policy and politics. Very few of the numerous books and articles written regarding territorial policy and the politics of expansion have focused on the role of Congress within that structure, relying more heavily on the actions of the executive, the reality of territorial experience, or the interplay between the bureaucracy, the military, and the branches of government. One example of a more focused look at Congress comes from Sparrow’s article “Territorial Expansion” in the edited volume *The American Congress* (2004). Intended as a cursory examination of territorial politics during the 19th-century, Sparrow devotes minimal time to any particular topic, but does provide meaningful contributions to the idea that Congress had an important role to play within not only the politics of territorial development, but American political development more broadly. He notes that while presidential actions were the impetus for much of the technical land acquisition, “the actual absorption of these new regions into the United States proper did require Congressional action,” including setting of boundaries, governmental structures, legal systems, and rights for the settlers.

Sparrow then discusses some of the challenges faced by Congress in this arena, particularly the need for suppression or assimilation of Indians, incorporation of foreign
nationals, a system for allocating land, and not least a program for territorial administration\textsuperscript{38}. At the end of the brief essay, Sparrow outlines four lessons gleaned from the process of Congressional policy on territorial expansion. He reflects that Congress rarely provided sufficient funding, there was no real unified structure to territorial development, Congress had a casual attitude toward applying laws universally, and that goals of Congress were rooted in partisan and sectional concerns\textsuperscript{39}. These are important considerations that stem from a complexity of interacting factors over the 19\textsuperscript{th}-century, but they are neither fully explained in the short essay nor are they sufficient explanations of the shifts in territorial politics over time. While Sparrow, a noted researcher in the area of territorial politics, certainly had little room to work with in the short expanse of this article, a broader, deeper, and more theoretically rigorous examination of his initial arguments would be beneficial to not only the study of territorial politics, but of Congress as well.

Thus, scholars have not ignored Congress, nor have they ignored its history. It is not that prior studies of the U.S. Congress have failed to examine political development, policy development, or institutional change. It is not that they failed to examine Congress over longer periods of time. What they have not yet fully explored is the intersection of these by looking outward on the impact Congress has had on the broader American political system. What is surprising about this fact is that there have been numerous studies of this type that look not specifically at the legislative branch, but incorporate it as an actor within the political drama unfolding over American history. A specific examination of only Congress, but looking outward, rather than inward, and examining a long period of time, rather than a few decades or less, has much to offer the existing scholarship, even if many of the specifics it examines have been investigated previously.
As Swift and Brady claim, “[H]istory can be used as the laboratory that scholars of the modern Congress otherwise lack,” and that the long history of Congress can, “provide ideal testing grounds for theories chiefly informed by contemporary, i.e., static, institutional conditions.” This is also true about historically informed theories that retain a static nature because they cover a shorter temporal period. It is within this broader, yet specifically restrained (Congress as the unit of analysis), perspective that will allow for new possibilities to open for scholarship. Looking at territorial policy is but one of numerous possibilities but it is an important and intriguing one. The tools of APD can thus help to define and investigate some of the points that Congressional scholars have been making (or missing), especially in highlighting and tracing long-term shifts, not just from one decade to another, but from one century to another.

Therefore, combining the concepts of Congress’s role in American policymaking and the scholarship in American Political Development, this study will focus on how Congress was able to shape territorial policy over time to fit with the desire to create an American empire which would eventually fill up land between the continent’s coasts and then move beyond them. The policy decisions that eventually arose and the arguments made for and against those decisions provide evidence for how Congress was able to shape American Political Development over the nation’s history. One of the reasons this is even more timely and important is that other political entities in the American system have been subject to similar treatment by APD scholars recently, leaving Congress out of the central picture and focusing instead on other actors, institutions, or ideologies within American history.
Corresponding Theories of Influence in American Political Development

This project’s primary assumption is that Congress is, if not the chief, one of the most important actors of change in American policymaking. As described above, this dominant policymaking role is a powerful tool in shaping the American political system over time. Using territorial policy as a focus, this study will argue that it is in fact the policymaking power of Congress which gives it this ability to shape political regimes. While choosing a policy that Congress should be dominant in obviously biases me toward finding Congressional influence as important and effective, I argue that this approach will highlight a starting case and should not be taken as conclusive evidence that Congress has, or will, be dominant in any particular policy arena. In fact, many policy areas have only arisen in great importance since the advent of the modern presidency which has a much more influential role in policymaking and legislative actions. Yet the Congressional impact in territorial policy marks it as a prime candidate for influencing American political development and while this might not be replicative in other policy areas, territorial policy has been one of the most important and sustained political challenges in American history. The use of territorial policy as a focus overall is based upon my assumption that Congress will be a dominant force in shaping the durable shifts APD scholars search for. Congress, however, is not the only institution which has been examined in this way. Other approaches to American Political Development have posited other institutions as the driving forces behind change. This section will briefly highlight a few of these analogous theories of political development.

Stephen Skowronek, one of the pioneers in Political Science of the American Political Development subfield has written two major works delineating forces for change in American history. His first, Building a New American State (1982), focused on state-building through
institutional innovations around the turn of the 19th-century. He chose the cases of reform of civil service, reorganization of the army, and national regulation, “because any given state can be readily identified by its civil service, its army, and its regulation of the economy.” He concludes that while during the previous period, covering the early to mid-19th-century political parties and courts were the driving forces, slowly a bureaucratic and centralized state apparatus began to emerge, although its implementation was staggered and coexisted, albeit tenuously, with the state of parties and courts. This creation of a bureaucratic, more centrally regulated state was created by an amalgamation of political actors inside and outside of the government and within all of the political branches.

Skowronek’s second major contribution to the concept of a primary actor of change in American history was made in The Politics Presidents Make (1997). This work, which has been updated and reissued, highlights the Executive of the United States as the one actor so fully important within American politics that they can rearrange the political environment. While less about institutional change, than about political regimes, this theory hinges upon the idea of authority. Skowronek notes, “the power to recreate order hinges on the authority to repudiate it.” In other words, to reassemble American politics, an actor or institution must have the authority to deny the power of the existing regime and the only place this can be found in American politics is within the presidency. A key concept in his theory is that presidents are constitutionally set up for failure. Only a handful of presidents have been able to successfully recreate American politics, but only the presidency is capable of being an agent of this massive political change, not Congress.

Another candidate for affecting major changes in American politics is the bureaucracy, and most poignantly, the bureaucracy as independent from the presidency. Daniel Carpenter
expanded upon this perspective in *The Forging of Bureaucratic Autonomy* (2001) argues that, “agencies with established reputations and independent power bases can change the terms of legislative delegation.” While he is not arguing that bureaucracy is *the* most powerful actor in the political system, he does make the case that given certain conditions they can come to dominate the legislative discussion on a particular issue. The three major conditions he outlines are: 1) that the bureaucracy is politically different from the politicians and interests that seek to control them, 2) that they develop unique organizational capacities to act, and 3) that they must have political legitimacy to act on the issue. Within the parameters of the modern American state, roughly the past 100 years or so, he claims, “The brute fact of modern politics is that myriad national programs begin and end in the hands of federal agencies.” In this case, there may be little involvement by courts, the president, or Congress within the overall process of many of these programs.

Finally, the Supreme Court has received attention as a primary actor within the American political system as a source of authority and political development. Kahn and Kersch offer an edited volume of work whose “primary concern is with the development of constitutional doctrine (and meaning) as elaborated by the Supreme Court.” The chapters cover the length and breadth of American constitutional construction and offer a number of case studies, not all in agreement, over how and why constitutional shifts occur due to the influence of the highest court in the U.S. political system. In particular, the position of the Supreme Court within American political development reflects the external and internal constraints that it works within. The authors argue that while a political branch, the Court has a unique role within the system and therefore scholarship focused on other institutions, which seeks to link courts to political events, tends to overlook this distinction, “in an effort to more easily assimilate them [the courts] into
models designed with other institutions in mind. Here, because we are looking at courts, we put courts first…” They do this because it is the interplay of these factors, whether external or internal, which are particular to the Courts that constrain or allow them to create constitutional change. After all, influences are shaped by and help to shape the paths that development ultimately takes. It is not that the Court is the sole arbiter of constitutional change, but the Court is in an inherently select position, because of its distinct role within the U.S. political system, to affect resilient constitutional shifts.

In a similar perspective, Whittington argues that there must be an authoritative interpreter of the Constitution, for it helps to maintain order and to realign concordance on political values and principles. Without such a mechanism, “the constitutional order would threaten to dissolve back into political discord.” The federal court system, and in particular the Supreme Court has accepted this role willingly, typically with the consent of other powerful political entities. Yet, Whittington notes that since judicial supremacy in general, and the dominance of it by the courts, “cannot simply be assumed to exist then it must be politically constructed.” The process of that construction throughout American history is the core of his narrative. Just as with the presidency in Skowronek’s theory and the argument made in this dissertation regarding Congress, Whittington claims that, “The judiciary may assert its own supremacy over constitutional interpretation, but such claims ultimately must be supported by other political actors making independent decisions about how the constitutional system should operate.”

The main contention of my project is that Congress has, for the most part, been left out of this larger APD discussion of institutions which have shaped American development. This is not because particular studies have not discussed the role it has played or that Congress as an institution is undervalued in political science or historical scholarship, but simply because it has
yet to be fully explored using APD methods as Skowronek (1997; 2008) did for the presidency or Kahn and Kersch (2006), and Whittington (2007) for the Supreme Court. In fact, it is precisely because Congress should be investigated as a primary shaper of American political development that this project is an important addition to existing scholarship in both APD and the Congressional literature.

**Corresponding Theories of Influence – Streams in American Political Culture**

Another area of existing scholarship dealing with long-term American political development that is important to examine here is that which discusses major “streams” in American political culture. These are important as a corollary to my study because they highlight the overarching influences upon the actual institutional development that occurs and help to explain better the reasons behind major changes. The most influential and notable of these streams was introduced over half a century ago by Louis Hartz, who proclaimed a thread of liberalism that ran throughout American history. This liberalism (not to be confused with modern American liberal political ideology) refers to the ideals of classical liberalism as espoused by thinkers such as John Locke. It revolves around the conception of a limited government system that protects individual rights and freedoms. He points to the lack of a feudal background in American history that allowed our political system to develop with a relative lack of social hierarchy and a fundamental individualism that drove what is commonly referred to as American exceptionalism.

A scholarly work that introduces competing cultural explanations is Rogers Smith’s *Civic Ideals*, which brings forth the conceptions of both republican and ascriptive streams. Liberal and republican political institutions and ideologies were espoused from the Founding era on,
leading to an increasingly egalitarian conception of politics and political society. Yet, at the same time, Smith notes a parallel, but counteracting stream which relies on undemocratic notions of superiority. “U.S. leaders always fostered senses of what made Americans a distinct ‘people’ that relied in part on inegalitarian ascriptive themes.” These ascriptive notions can be seen in the nativism of the Whig Party, scientific racism prevalent throughout the 19th-century, and today’s discrimination against homosexuals, just to name a few examples. For Smith, then the republican and liberal cultural streams come into conflict with the ascriptive stream, leading to a sort of swaying back and forth of the societal status afforded to particular groups of citizens. There is a link within Smith’s historical narrative to territorial policy as he marks the Spanish-American War as the beginning of the Progressive Era, but adds that this introduced a new racial hierarchy in citizenship (as the Insular Cases showed) with the addition of new territorial areas.

Expanding upon this, writing with Desmond King, Smith rejects the idea that racial injustices are aberrations in American history, but rather that they have been and continue to be a consistent feature of American political order. Yet, they note that there are two competing racial orders: the first being a set of “white supremacist” orders and the second a set of “transformative egalitarian” orders. King and Smith note, additionally, that while an important contribution to American political development, Schickler’s book is notably lacking in attention to racial dimensions of Congressional politics. The proposed project here, however, takes into account racial aspects of American history in numerous ways, from dealings with Native Americans, to the issue over slavery, and to the lack of desire toward statehood for the mostly non-Anglo American Southwest.

Finally, James Morone provides an important addition to Hartz and Smith, with his Hellfire Nation which reclaims the importance of Christianity in crafting American political
culture. In this view, he notes, “The nation develops not from religious to secular but from revival to revival. The moral fervor mixes with the American social chaos: new people keep arriving, and each new immigration stirs fears of moral decline.” Similar in some ways to Smith’s ascriptive stream, Morone notes that there is pendulum effect at work, whereby claims of moral inferiority strip groups in society of good standing, while to, “win back those rights, simply reverse the process: cry out that good people face injustice.” (4) The United States was founded as a profoundly religious society, even if the government promoted religious freedom, and thus it is unsurprising that religion would have played an important role in American political culture. Again, issues of territorial expansion and management have ties to religious conceptions of American exceptionalism and the providence-based Manifest Destiny. Morone (2003), Smith (1997; 2005), and Hartz (1995) work to form a triad of major cultural themes that each can be seen reflected in territorial policymaking.

**Policymaking “Role” of Congress**

Congress plays a part in our political system, which has been crafted by the setting in which it exists as well as by the other actors within the political system. In terms of Congress, this role consists of the space within the political system, at any point in time, in which they can produce policy and the actions that Congress, via its members, take to produce policy within this space. This space is constrained by the Constitution, by the other branches, by potential public reaction, and by the members of Congress themselves and the rules (party-based or institutional) that they abide by. Within these limitations, however, Congress has many choices, that if taken could lead to drastically varied outcomes. Thus, it is important not only to understand the space within which policy is created, but also which policies are actually enacted and then enforced.
Congress can and has changed its role over time. It is expected to perform its role, but this role is also partially and significantly shaped by Congress itself. While Congress is restrained, it is not trapped, and over time may help push the boundaries of its role in various directions without external pressures forcing it to do so.

This role, however, is unimportant if it cannot or does not have the strength to affect change within the broader political system and in the case specifically examined here, the realm of territorial policy. While it should not take much convincing that the United States Congress under the current Constitution is empowered to create and reform legislative initiatives, this by itself does not ensure that these legislative choices will have an impact on the broader American political system and that this can or has effected significant shifts in policymaking, as I will argue in this project. As will be shown below, however, territorial policy has been one of the areas of American policymaking that has nearly unanimously been under the complete control of the legislative branch. Not only does Congress claim this status, but this has been confirmed by the Supreme Court numerous times throughout history as well as been adhered to by the executive branch, which at times has held temporary control over military occupations in territorial areas, but only with the express consent and oversight of the U.S. Congress. Thus, at least in this policy area, Congress has been able to define the contours of its role without significant restraints outside of the Constitution and its own internal construction of members.

At the same time, it must be stated that just because Congress has this authority, does not mean it exercises it effectively or does not willfully neglect its responsibilities in this policy realm. Congress has various disincentives to deal with territorial policy unless otherwise pressured, especially since none of the voting members of the House and Senate represent a territorial entity or ever have. Without an electoral incentive to push them to deal with territorial
policy, changes came about largely via partisan and ideological incentives. In particular, as we will see, slavery and then the growth of a strong divisiveness between the parties by the late 1800’s would contribute greatly to the politics surrounding territorial policy decision making. Overall, however, Congress did not face the same pressures on policy in this realm as they might in other arenas, such as the balance of federalism, foreign policy, or tariff rates, all of which would more directly affect constituents and therefore produce effective electoral incentives on lawmakers.

Yet, the fact that Congress, when it chooses to, holds primary authority within this policy realm does allow for a more robust study of Congress’s role than other policy areas which could be considered. This is because there is very little complication due to inter-branch power struggles or issues of federalism, and responsibility for policymaking can easily be applied to one set of actors, rather than numerous institutions who might share in the blame for poor policy choices. While this does not mean that it is necessarily frequently clear what the role or purpose of Congressional actions in territorial policy are, the primary political body that is responsible for the direction and strength of that policy realm is constant and particular.

Bringing forth the role of Congress as a theoretical concept is important because it reflects the reality of the political structure. The Constitution specifies three branches, with separate and shared powers. Congress, as one of these coordinate arms of the political system is defined in many ways by its relationship to the executive and judicial branches. At the same time, Congress has significant room to initiate change within the system. They are the “First Branch” as outlined in the Constitution and without their initiating actions the other branches would be paralyzed, as both the Executive branch and the Courts require passage of legislation to function. As noted above, while the United States Congress is hardly an understudied institution,
a lot of attention is primarily focused on internal processes, such as rules, the committee system, leadership, and parties. This is true of both historical Congressional scholarship and modern. Additionally, scholarship has tended to take snapshots pictures of Congress, even within historical periods or not provided a depth of causal explanation despite temporal breadth. This study, recognizing the substantial historically focused scholarship on Congress which exists, attempts to move beyond previous efforts. Here, the desire is to track how decisions and arguments made by Congress have influenced the direction American development has taken over the past two and a quarter centuries.

Thus, my intention in defining a “role” for Congress is to understand the contours of the decision-making space in which Congress operates, creates policy and enforces their will within the political system. Important in this conception of “role” is that it is both constructed externally and internally, providing outlets for numerous sources for change. In relation to a policy area, then, Congress may demonstrate particular tendencies to passing legislation with certain means or ends that change over time. These might change because of a shift in constitutional rules, the aggressiveness of the executive branch, a switch in party control of one or both of the houses of Congress, or any other myriad influences. The point is that this role does shift, and the revealing of how and why it shifts is the primary objective of this study. In other words, when Congress decides to substantially and lastingly shift their policy-making role, how does it change, why does it change, and what affects does it have on the larger political system and society as a whole? Just as important, when Congress tries to shift their role, but fails to create a durable shift, what factors restrain their efforts?

In examining the role of Congress, therefore, I am assuming that Congress as an institution, though a collective body made up of many individuals, can be viewed as a single
entity representing stable and relatively clear policy making desires. Since this project presumes that Congress as a whole has a role within American political development, it follows that an assumption must be granted that this role has some character of unity and clarity. While I do not expect that all members of Congress will agree with decisions made, the locus of Congress’s role becomes what is the final policy decision made and perhaps just as importantly, why. While policy actions are obviously the most important evidence of Congress’ role, political rhetoric is also a piece of the puzzle of determining why Congress takes a particular action. While rhetoric may not always be backed up by actions, rhetoric linked to subsequent action is likely to be genuine and therefore indicates powerfully what the motives might be behind those actions. In cases where rhetoric is not followed by similar action, there also may be significance to the rhetoric beyond hollow words. It is important, then, to examine, for the purposes of unearthing and examining the fullest narrative possible, both rhetoric of members of Congress as well as actions taken by individuals, committees, and the full chambers with regards to territorial policymaking.

With this assumption of the impact on American Political Development of Congressional policymaking also must be recognition that political parties, coalitions, sectional splits, and individual political leaders all can and at times do significantly influence policy decisions. All of these factors are viable causal mechanisms for shifts in the tenor and salience within a policy arena. The literature on the effects of parties and leaders in Congress has been particularly potent over the past two decades. In Party Influence in Congress, Steven Smith notes that recent theories in these areas, “usually have a central analogy in mind – parties are like teams, or firms, or cartels, or coalitions. As teams, firms, cartels, or coalitions, Congressional parties form to pursue certain objectives or goals held in common by their members.” These common goals
include both electoral and policy goals, which have been widely examined by numerous scholars. While most of these studies focus primarily on the post-World War II Congresses, enough evidence exists to reasonably assert that some combination of electoral and policy goals have been concerns of individual members of Congress, their leaders, and the parties throughout much of American history. These goals, then, are important shapers of the actions of Congress, as well as the eventual policy decisions that are made.

An important additional constraint on Congressional activity is the way in which rules and norms affect the creation of policy, especially in an institution like Congress which must rely on collective action to get anything done. Many Congressional scholars have focused on the creation and changing of significant rules and norms of the institution. By rules I am referring to the specific institutional tools that regulate how members can interact officially, in committees, on the floor, as a member of the leadership, etc. When identifying norms, I am referring to the operations that occur within Congress due to tradition. They can relate to rules, but they may exist as unwritten but widely acknowledged practices. Norms are more easily described when broken, such as when a junior member of Congress submits legislation that a more senior member was about to submit, or when a member calls out the president during a speech to Congress. While rules and norms can be extremely powerful factors limiting or relaxing the policy making abilities of Congress, they do not, by themselves, provide the picture of how Congress’s decisions, over time, lead to broad policy development or major shifts in policymaking. They are a piece of the puzzle, to be sure, but not sufficient to see the entire picture.

The Madisonian system of checks and balances, federalism, public opinion, the Constitution, goals of Congressional members, parties, leaders, and internal structures can all
affect the ability of Congress to investigate, care or debate topics, enact legislation, and respond to clear policy failure or success. Thus, any study of policymaking within the federal legislative branch of the United States must take into account and be continually cognizant of these factors.

**Congress as a Dominant Policymaker**

Congressional dominance in territorial policymaking will be outlined further below, but first it is imperative to examine why Congress is an important focal institution in American policymaking, especially prior to the early 20th-century, when much of the most controversial decisions regarding territories were made. As has been argued above, it is the ability of Congress to be a key, if not dominant, force in policymaking which gives it the tools to affect American Political Development in meaningful ways. To begin with, while obvious, it should be stated that the preeminence of Congress in policymaking stems directly from the Constitution and historical practices of republican systems of government. Directly after the Preamble, the Constitution launches into Article One with, “All legislative Powers herein granted shall be vested in a Congress of the United States…” Given its placement in the Constitution and its clear vestment of power, Congress has tended, in most cases, to assume dominance in legislative affairs of national salience. Lowi notes that in addition to the Constitution which centered policymaking in the legislative branch of the government, “The development of political parties strongly reinforced the constitutional tendency toward Congressional dominance.”59 While it has, and continues, to share some of these powers with state governments, the federal court system, and of course the President, there is little doubt that Congress maintains the primary role in legislation.

As Joseph Cooper noted, in the electoral system through the late 1800s, “dominance of the party system conferred dominance of electoral politics, and it was Congress that reaped most
of the benefits." These benefits allowed Congress to remain dominant in dealing with Presidential attempts to influence legislation. This was especially true following the Civil War and the ineffectiveness of President Johnson to bully Congress, which nearly ended in him being the only President to be convicted of impeachment. The weakening of the party system by the early 20th-century and the rise in importance of the mass public as a source of political pressure began to move power toward the presidency. Yet this process was staggered and halting, moving toward a more presidency-centered American politics slowly, if steadily.

Despite this overall shift, Congress does retain a significant role in crafting policy in American politics. Even post-World War II presidents, while important to shaping the legislative agenda, have only have been able to play a marginal role in legislative decision making. While presidents and other interests may have greater influence over the legislative process, this does not mean that the most important decisions are not made by members of Congress themselves. As was obvious with Obama’s attempts to push for passage of a comprehensive health care reform package in 2009, Congress can and does have a tremendous effect upon the final policy passage, and this despite a partisan advantage in both the House and the Senate. As Fleischer and Bond found when examining presidential success in the legislative arena, the different constituencies and pressures put upon the president and Congress make it much more difficult, even in the late 20th-century, for the president to be the dominant actor in legislative decision making:

“When the president enters the legislative arena, he has less control. He may write some important scenes in the script, but other scenes have already been written by legislative actors. Moreover, the stage has already been set; the actors have already been cast. He must perform with the props on the set, on a timetable set by Congressional leaders and committees.”
This is due partially to the institutional memory of Congress, which because of long-serving members remains stronger than that of the presidency. But it is also due to the fact that while the president may be the only official elected by the entire nation, members of Congress as a whole represent more interests and do so more effectively because, “Congress acting collectively must consider the preferences of a wider set of interests than does the president, because each of the smaller constituencies has an active advocate in Congress.” Thus, even in the modern Congressional-presidential relationship over policymaking, the president is active and important, but arguably not the dominant force, and certainly has limited control over the final policy decisions.

Looking back over American history, the balance is usually much more in Congressional favor in dominance over policymaking. This is particularly the case in territorial policy. While presidents have been strongly connected with the important and salient acquisitions of territorial expansion across American development, these actions were only the beginning of a long process, and arguably not the defining piece. Bartholomew Sparrow, writing on the subject, acknowledges the importance of acquiring lands, but argues “that the crucial part of territorial expansion came after the government’s acquisition of new regions.”

He lists five major challenges involved in territorial expansion, all of which were the domains primarily of Congressional policymaking. The first is the suppression, removal, or assimilation of the Native American populations. Second is the incorporation or absorption of foreign nationals who lived in these new regions. This was particularly important with the area around New Orleans, the American Southwest, and all of the inhabited island possessions. Third, there had to be a system for the allocation of land to individuals and companies. Fourth, while obvious, there had to be a system for setting up territorial administration, regardless of the
complexity and self-sufficiency of that system. Finally, for most territories, they had to be prepared for inclusion in the Union. Sparrow argues that, “These were more than details, of course; they were the core, practical realities that determined the effectiveness of the United States’ territorial expansion.”\textsuperscript{66} And in these areas, Congress was the dominant policy actor.

This does not mean, however, that Congress has been uniform internally in what should be done in terms of territorial administration. In fact, some of the most controversial questions in American history, in particular the slavery question, have played out in territorial policy. This was especially the case in issues relating to upcoming statehood decisions. Due to the important effect each new state would have on the balance in the Senate, “entry of new states was always caught up in the major political conflict of the existing Union.”\textsuperscript{67}

Party conflict also mattered. Early in American history, the Democrats looked to expand the American frontier westward quickly with cheap lands and low interest rates for loans. The Whigs, conversely, sought to limit western expansion and wanted land to be sold for a profit that would benefit the existing states\textsuperscript{68}. There were also many different rhetorical arguments made within Congress, even within the same political party. What would this expanded American nation look like? Why was expansion not only constitutionally allowed, but beneficial to the nation as a whole?\textsuperscript{69}

In addition to the balance of presidential-legislative policymaking power, it is important to note different types of policy that Congress has developed and how these are reflected through territorial policy over American history. Theodore Lowi, in \textit{The Personal President}, describes the first century and a half of American federal policymaking as that of the patronage state. Patronage, in this sense, went beyond simple political appointments to include public policies which rewarded party faithful. These encompassed internal improvements, economic safeguards,
land and even territorial expansion. This patronage state worked up until the aggressive presidency of Franklin Delano Roosevelt pushed the federal government to take on broader conceptions of public policy. In the 1930’s, Lowi argues, a Regulatory State and a Redistributive State were created through new types of policies, such as regulations on banking, labor practices, and public utilities (Regulatory) as well as Social Security and public administrations dealing with housing, agriculture, and financial issues (Redistributive). These new policies required coercion of the federal government, either with promise of penalty or incentive for action. While Lowi’s purpose is to demonstrate how the patronage state restrained strong presidents, it is important to note that territorial policy, while of great importance during the period of the strong patronage state, frequently involved more coercion from the federal government than states experienced given the unique legal relationship between Congress and territorial areas and residents. Thus, while Lowi notes that territorial policies were patronage in nature in the arena of territorial policy there were aspects of both redistribution and regulation in decisions made by the U.S. legislature.

Why Territorial Policy?

Considered above, but not fully explained is the reasoning behind choosing territorial policy as the policy arena for this study. After all, the fundamental question I am attempting to answer is how Congress has shaped American Political Development, not just how their administration and management of territories have reflected this work. Thus, it is important to consider what the choice of territorial policy provides as well as what it limits. Before delving into that task, it is prudent to also note what, exactly, I mean by “territorial policy” within this study. A description of all American territories could conceivably refer to all possessions that
are governed by the federal government without state interference, which would broadly encapsulate diplomatic embassies in foreign nations, military bases abroad, insular possessions, the District of Columbia, US owned maritime waters, and the quasi-sovereign lands of Native American tribes.\footnote{71}

This study is only interested in those areas traditionally considered territories, namely the insular possessions of the United States. Primarily, this means any significant possessions from which Congressional control is constitutionally derived from the Territorial Clause (Article IV, Section III). As Allan Erbsen highlights in a constitutional law review of constitutional spaces, territories are a sub-type of all federal government properties, thus while all territories are properties, not all properties are territories.\footnote{72} This territorial label then does not apply to tribal reservations or the District of Columbia, which have other constitutional relationships. I also omit all minor or non-land based conceptions of possession in territorial policy, removing diplomatic properties, military bases, and off-shore waters. I am still interested in possessions held by military occupation, such as Haiti, the Dominican Republic, and Cuba in the early 20th century, but only because Congress chose to leave these possessions in such a status and for all intents they were governed as American territories, just under military, thus executive, control. Territorial policy then refers to a broad and diverse set of possessions (for a comprehensive list, see Appendix 1) from the western land cessions of the 1780s to the control over uninhabited Pacific Ocean atolls currently. Now that the political scope of the policy area has been outlined, the question remains as to why it is important and can tell us anything noteworthy today.
Reason #1: Territorial Policy Literally Created the United States

First is the historically obvious fact that territorial policy is fundamental to the creation of the modern United States. There were 13 states, not even the entire eastern seaboard that joined the original Union under the Constitution. Only a handful of additional states were made through annexation (Vermont, Texas, California, and West Virginian) or direct statehood (Kentucky). Every other state spent at least a short time under the direct control of Congress as a territorial entity, some areas under numerous different territorial apparatuses. While it could be argued that any expansion of the United States could have remained completely sovereign from the Union, until it desired to become part of it OR could have been incorporated immediately as a co-equal state, neither of these possibilities were ever considered practical objectives of Congress. Thus, some structure of territorial government was required of these expanses of new lands. In most early cases this was simply due to the fact that the population in these territorial lands was so sparse as to not require or have use for a developed government. In subsequent cases, this also included areas inhabited by non-Anglo populations that were perceived as not being ready for republican institutions and a justice system on the American model. There was to be at the least a transition period. Territorial policy therefore was integral to forming the geopolitical United States of the 21st century.

Reason #2 Territorial Policy has been a National Political Concern since the Founding Era

Related and implicit in this importance to American geographical creation, territorial policy is relatively distinct in the fact that it was a national political concern from the start. While not as salient over the past half-century and arguably less important now than it had been prior to World War I, territorial policy has been one of the constant policy concerns of Congress.
throughout American history. This makes it a preferable choice in this study for two separate reasons. The more obvious of the two is that if my study looks to discover shifts over the breadth and length of American history, only a policy area that has been existent and relatively consistent in importance throughout the entire time is suitable. Territorial policy, it can be argued is neither the only nor the most consistently salient issue, of Congress throughout American history. Issues of tariffs and trade, immigration, military activity, and internal improvements have all been long lasting in American history. Why not select one of these policy areas? While specific arguments can be made for and against each of these as an alternative, territorial policy does not involve direct issues of federalism or the sharing of legislative decision making with state governments, making it a good fit for this project. This does not mean it is without flaw, and in some sense, because it has all these characteristics it becomes a rather unique issue, considering the overarching important of federalism in American history, leading to questions about the strength of its application to other policy areas.

**Reason #3: Territorial Policy has Maintained a Relatively High Saliency**

Beyond reaching throughout the length of American history, a third reason that territorial policy is a preferable issue choice is its relatively constant saliency. While recently attention may have waned (at least in terms of traditional territorial issues), through much of the nation’s past, there have been shifting, but consistently important controversies in territorial lands that required Congressional attention. Certainly, as with any policy realm, there are peaks of salience, such as the initial land cessions of the Trans-Appalachian region, the slavery issue, and the annexation of Puerto Rico, Guam and the Philippines, but Congress was taxed with decisions regarding territories for much of its history. After these peaks of national concern, the territories remained
and required some attention via territorial policy for their continued administration. Despite the waxing and waning of prime salience, the fact that territorial policy retained some importance for so long allows for stronger and more enlightening case studies, because the questions become why is Congressional policy changing or different, rather than why is it absent.

**Reason #4: Territorial Policy has been a Factor in Many Major Issues in American History**

Territorial policy, in addition to shaping the creation of the geographical United States and running the length of the country’s history, is also an underlying factor in many of the most controversial issues that have plagued the nation. A primary example is the issue of slavery. While the contestation between abolitionists and slavery sympathizers was fundamentally about morality and practically about economy, it was decisions regarding territorial policy that eventually pushed the south to secession. The expansion of territorial lands without slavery, and then the broken compromises over admitting slave and free states, combined with Taney’s majority opinion in the *Dred Scott* case (which was as important to territorial policy as it was to slavery) to produce a stalemate only a terrible war would resolve. Another example is the importance of the equality of each state in the Union. While this was originally established in the Constitution among the 13 signatory states, there was no guarantee during the Constitutional Convention that new territories would eventually become fully equal states, guaranteed two Senators and at least one House Representative. In fact, even Thomas Jefferson, at one point, thought the western lands would become sovereign nations, working in conjunction with the United States in trade and sharing culture and ethnic identity, but separate in government. Thus, it was not until the Constitution was ratified and the Northwest Ordinance’s objectives codified and then realized that the idea of co-equal states being created out of federal territorial lands was
solidified. This also highlights how significant the decisions made in the *Insular Cases* were seen to be at the time, because it overturned the long-held tradition of the purpose of territorial status and affirmed Congress’s right to *not* create co-equal states from territorial properties.

*Reason #5: Territorial Policy has reflected Many Major Ideological Themes in American History*

In addition to its undeniable intersections with major political controversies in American history, territorial policy also reflected major ideological themes. Perhaps the most important of these was the idea of Manifest Destiny. While evident in the earliest period of American expansion, the concept did not become fully developed until the 1840s, by which time the United States was reaching to the Pacific Coast. Manifest Destiny mixed the religious Providence of the American (read: Anglo-Saxon) people with the perception that hard work and innovation were drivers of economy to create a pervasive sense of American exceptionalism. It was morally right that Americans should occupy the United States because they brought God, liberty, republican government, and civilization with them, in ways positively unique in the world. As artfully imagined by Charles Sanford, the premises of this Manifest Destiny, “were articulated with ardent conviction a chosen people divinely appointed to occupy the largely vacant lands of the New World, that they had a special mission from God…that savages and other enemies who resisted conversion could be righteously exterminated as creatures of Satan, and that this mission manifested itself in the unfolding of providential history…”73 This Manifest Destiny, arguably, provided at least rhetorical, if not deeply held convictions toward a system of territorial governance that advanced through stages from Congressional control to self-autonomy.
It should be noted that this project is not concerned with the admittedly fascinating narratives of territorial acquisition. Rather the interest is solely in the Congressional rule over the administration and management of the territories following acquisition. While the primarily executive branch driven acquiring of territory over American history has garnered much contemporaneous as well as scholarly attention, arguably the decisions behind how to set up territorial governments and the reasons behind various levels of self-autonomy granted to these governments both crafted and reflected American political development in very important measures. In numerous instances, the expansion of the country was less influential than what patterns of development and acceptance of statehood followed the expansion. For example, Kansas may have been added as just another empty space included in the massive Louisiana Purchase in 1805, but as a territory, it became vitally symbolic of the sectional rivalries spurred on by slavery. It was the acquisition that enabled this outcome, but it was decisions made by political actors, many of them Congressional leaders, that actually shaped the conflict. In other words, the politics of territorial management, as well as that of territorial expansion, were both integral pieces of the creation of the modern American empire. While both are examples of a particular type of policymaking, it was the choices of Congress, as the legislative branch, which many times had as much, if not more impact than the original important decisions of executives to expand into new territories (and even in many of those cases, Congress was a chief ingredient in executive actions).

Why this Project is Important

With this backdrop, the questions of American empire, the idea of American exceptionalism, and the creation of territorial policy and the resulting territorial development, are
inarguably important ones for the study of the history, politics, and even culture of the United States. Yet these topics have been dealt with by previous scholars. Why is it that this particular examination of these topics, using Congress and APD, becomes an important addition to this existing work?

First, the emphasis on Congressional role in territorial policymaking is distinct from previous efforts to study the topic. While Congress has been the focus of other scholars, the scope has been broad and the perspective from a distant vantage. Territorial policy has also been examined, but from a detailed perspective that misses some of those broad strokes, and there have been works that have looked more specifically at the actions of territorial governments and residents, rather than the federal role. This study proposes to combine these perspectives by using in-depth case studies that exemplify, across American history, the role that Congress has played in American political development. Thus I benefit from the strength of studies, like Farrand’s\(^4\) which details legislative efforts, with the general scope of Willoughby\(^5\). This study, then, will produce the first example of a broad temporal examination using APD methodology, of Congress’s policymaking role in American politics. While previous studies have examined policy areas\(^6\) using APD, and others have studied Congress historically and across large periods of time, there has yet to be a major study that connects these two important, yet distinct threads.

A second reason that this project provides additional value is that full studies of policy areas across American history can potentially provide historically significant contributions to researchers across broad fields of study. While this study pertains specifically to political systems and institutions, territorial policy has broad implications for not only the United States but other nations dealing with current or previous issues of colonialism. There have been previous studies that have examined a single policy area throughout history and these have
expanded the understanding of not only that policy area but how American policy making has affected the nation’s political culture, institutions, and ideology.

A prime example of another study that examined a specific policy topic across American history is Tichenor’s Dividing Lines, regarding immigration policy. His chief purpose was to explain policy patterns and variations in immigration policy, just as mine are to find those parallels within territorial policy. Yet, what Tichenor notes as his secondary concerns reflect strongly on lasting issues in American politics. The first of these additional concerns is to “Highlight the capacity of both restrictive and expansive immigration policies to transform the American political landscape.” Territorial policy had similar concerns, as a more fluid, flexible policy orientation toward the territories allowed them effective and rapid preparation for statehood, but as additional sectional and party-based motivations drove territorial policy creation, statehood was a more distant (or non-existent) goal. Tichenor’s second additional concern was to “Consider what immigration policymaking in American political development reveals about how different generations of government officials have interpreted the demands of liberal democracy and political community in the United States.” Again, in territorial policy a parallel can be drawn to the ways that political office holders in Congress who could vote, none of which represented the territories of the United States, interpreted their role as representing, indirectly, the interests of areas seen legally and constitutionally inferior to states and under complete federal control.

The above parallels are mentioned to emphasize the importance that examining particular policy areas across American history can have for producing a greater understanding of why certain decisions were made and how policymaking evolved to reflect modern day concerns. Just as immigration reform and federal immigration regulations in the 21st century are a reflection of
prior decisions made in immigration policy throughout American history, territorial policy decisions regarding Puerto Rico, Guam, and the American Samoa made today can be explained more fully by reaching back to previous periods of territorial policy and management.

Third, this study will provide additional material for discussions regarding the evolution of American ideology and the conception of American exceptionalism. Manifest Destiny and imperialism based upon American exceptionalism have both been cores of significant and contested areas of political and historical study. It is important to understand how and why Americans have portrayed these controversial tendencies, and where they began. Within the realm of territorial policy, there has been considerable conflict over these issues, yet at the same time, a continual march toward their realization throughout American history. This study will provide greater insight into how these American ideologies were revealed through the actions of the chosen representatives of the people within the legislative policymaking branch of the United States government.

Finally, given that a primary purpose of a legislative body within a representative democracy is to represent the people of the society, territorial policy is intriguing because of its divergence from democratic principles in this regard. Some territorial policies have had tremendous greater impacts, such as those involving slavery in the territories, setting up trading and tariff regulations, dealing with Native Americans or non-Anglo-Saxon populations or distributing federally owned land. Yet, most territorial policy only directly impacted one or a small set of territories at once, and tends not to affect states uniformly or significantly.

Regardless of the importance, in this policy realm, members of Congress are making final decisions on areas that they do not represent in any official sense. Few decisions they make regarding the territories will have any impact on their electoral success or their power within the
federal government. Only in the case of the House are territorial delegates even selected, and in this case, they have minimal rights, especially the further back in American history one goes. Regardless of their role, however, final votes are taken only by members of Congress who represent states or districts within states, not by those whose task is to represent residents of the territories.

While there are obvious complications from this representational arrangement, it is surprising how effective Congress became at territorial governance, even if it was halting and inefficient. By the mid-1830s much of the framework that would guide territorial government creation until the Spanish-American War was in place. The *Insular Cases* finally decided upon the preeminence of Congress in territorial policy, but this was hardly unprecedented since they had been dominant since before the Constitution was ratified.

There were problems, however. Congress rarely allocated sufficient funds for the territorial governance, leaving some areas very politically unstable. Additionally, many times rules developed early for the fertile plains and eastern farmlands were unworkable for the arid western mountain lands. This was particularly problematic in the surveying and allotting of federal lands, which were based upon plot sizes suitable for fertile farmlands. In the west, these plots were simply too small for profitable agricultural uses.

Territorial policy is an intriguing study of how an undemocratic system of representation is overlaid upon one of the most democratic institutions in the world (at least at its founding), and what that means for representation. When, why, and how did these voting members, whose constituents were not living in the territories, desire to take precious time in the legislative schedule to administer and oversee territorial governments?
American Imperialism and Empire

Lastly in this introductory chapter it is beneficial to explain how this project views the overarching purposes that the U.S. has had towards its territorial possessions. The United States, this study will argue, has consistently maintained imperialist tendencies. By imperial, I am referring to the conception of sovereign control of one political unit over another, although this can be de facto or de jure, and need not be explicit within any sort of institutional structure. Instead, imperial can refer to the influence of American businesses across the globe today, just as appropriately as it can apply historically to the proclamation of the Monroe Doctrine. In both of these examples, the underlying conception is that Americans have a right to demand attention from international actors and in some sense, command a level of superiority over them. This is not necessarily to mean that this arrogance is borne out of malevolence or even consciously purposeful authority, but there is unquestionably an aura, ever since the founding of the country, that Americans are different and special in the world.

Related to, but in an important sense distinct from imperialism is the term empire. Empire is not just the actual manifestation of imperialist attitudes, but requires an awareness of the existence of that relationship. Whereas a culture or political system can be considered imperial and yet not actuate these ideals into a system of empire, once an empire has been established it becomes ignorant to deny what that entails. While Americans may argue that our historical empire has been one of benign enlightenment, bringing positive values and growth to those places we have controlled, this does not deny the existence of an empire. In this sense, empire simply refers to the actual relationship between a sovereign nation and any political body it commands authority over that is treated differently from the main body of the nation. In this
definition, the District of Columbia would be considered an inferior entity within an American empire, as would Puerto Rico, Guam, American Samoa, and so on.

Thus, imperialism and empire in American culture have highly negative connotations that are inescapably intertwined with the empire building of the former European superpowers such as Great Britain, France, Spain, and Portugal. While Americans outwardly disdain the concept of imperialism it is an apt description of American ambition from the very beginning of our national history. Thomas Jefferson declared his desire for the United States to become an “Empire for Liberty”, imagery that continues to be reproduced today with the desire to spread democracy and topple dictators. The use of the term imperialism to describe American political development from the founding era on is used quite purposefully in order to portray a number of important truths regarding American politics.

First and primarily, it is used in this project to imply a sense of continuity in American political development. That is, while the reasons for and the typology of, imperialism shifts over time in American history, its existence is continuous. While history and political science introduction textbooks claim an era of isolationism prior to World War I, American politicians were able to expand the area of the country following the Revolutionary War, the Mexican-American War, and the Spanish-American War, and partially through the threat of future incursions, were able to secure the enormous Louisiana Purchase. We actively sought the purchase of Alaska from the Russians, supported a coup against the royal Hawaiian family which lead to the acquisition of those islands as American territory, and even at one point sought to procure much of the land that now comprises the northern half of Mexico. All of these events occurred prior to World War I, the proposed break point with isolationism. While it was true that America tended to stay closer to home with its imperialistic ventures, this does not make
those ventures any less imperialistic. Simply because we were not sailing halfway around the world to acquire far flung territories does not dismiss the fact that we were continually, through the end of World War II, acquiring land through war, purchase, and claims of right by settlement. It is toward highlighting this continuity that this project uses the terms empire, imperial, imperialistic, etc.

The second reason for purposely using these labels is that, while a discomforting idea for many Americans, the conception of America as imperialistic is also accurate. We sought these new lands out, moving methodically across the North American continent, at times tempted by the promise of a united continent through the acquisition of Canada and northern Mexico. Our imperialism might have taken a different route and been done for and via different reasoning than those of the European empire-building nations, but in the end, the United States actually has maintained permanent control over much more territory than any of those countries as the 21st-century whittled away at the European based empires. While nearly all of those lands that were once part of the U.S. empire have been incorporated fully as part of the nation as member states, there remain millions of residents of the U.S., both citizens and nationals, that live in areas with unequal political rights as compared to the 50 official states. It is worth noting here that not only was much of the land that those 50 states currently occupy originally organized as territories with less than full rights of self-government, major portions of the western part of the continent, as well as the areas that now comprise the states of Hawaii and Alaska, remained in this subordinate state for many decades. It is the existence of these long-term imperial statuses, as well as the continued existence of territories without full rights of self-government, that makes the claim that American political development as reflected in territorial policy has not been imperialistic, a dangerously misapplied one.
Finally, a third major reason for applying the label of imperialism upon the American nation, is that it pushes scholars to examine what exactly this distinction implies for American political development. While this project is particularly concerned with this conception, the scope here reflects mainly that of Congress, with some interest in the ways in which other actors in the political system, as well as the residents of the territories (or of states), respond to the territorial policy making of Congress. Other scholars, who confront the topic of U.S. territories from other angles, would also benefit from an examination of the concept of imperialism as applied to the U.S. expansion.

This project, then, purposefully, and genuinely argues that labeling the U.S., throughout its history, as an imperialistic nation, is necessary and accurate. This is not meant to arouse attention because of the spark that a term such as empire brings to bear in modern usage, but rather simply as an indicator of a long-standing, continuous, meaningful, and useful label regarding American political development. With different rhetoric and underlying assumptions than their European counterparts, American policymakers drove first west and then globally with the intent to settle or assimilate and create areas suitable for the democratic republican tradition. Thus, this study’s reliance on terms associated with imperialism is meant to be a reflection of that continuity and purpose.

1 See Kluger, Seizing Destiny and Nugent, Habits of Empire.
4 Orren and Skowronek, The Search for American Political Development, 123.
6 Orren and Skowronek, The Search for American Political Development.
7 Orren and Skowronek, The Search for American Political Development, 10-11.
9 Orren and Skowronek, The Search for American Political Development, 6.
10 Dodd and Jillson, eds. The Dynamics of American Politics, 335.
11 Dodd and Jillson, eds. The Dynamics of American Politics, 336-337.
32 Remini, The House, viii.
33 Remini, The House, 503.
34 Schickler, Disjointed Pluralism, 18.
35 Schickler, Disjointed Pluralism, 19.
36 Schickler, Disjointed Pluralism, 19.


Smith, *Civic Ideals*, 471.


Of particular note are the series of *Insular Cases* decided in the early 20th-century, most notably *De Lima v Bidwell* and *Downes v Bidwell*. For an excellent investigation of the impacts of these cases see Sparrow’s *The Insular Cases and the Emergence of American Empire* (2006)


Lowi, *The Personal President*, 35.


Edwards, *At the Margins*.

Presidents, for example, have used executive orders and, more recently, signing statements, to make legislative proclamations (see Cooper, 2002, Mayer, 2002, and Rozell 2010).

Fleisher and Bond, *The President in the Legislative Arena*, 234.

Fleisher and Bond, *The President in the Legislative Arena*, 235.


This study will not investigate the relationship between the US government and tribal lands, but one of the best examinations of the status of this intriguing framework from a theoretical perspective is Kevin Bruyneel’s *The Third Space of Sovereignty* (University of Minnesota Press, 2007)


See discussion of Tichenor’s *Dividing Lines* later in this chapter.
Chapter 2 – Territorial Periods and Causal Mechanisms of Shifts

Congress has thus been creating territorial policy since 1787 (and the Continental Congress before that) and continues today, albeit with typically much less fanfare and controversy than in the past. Scholarly attention to the issues dealing with the acquisition and administration of United States territories has waxed and waned. There was a particularly notable period after the Spanish-American War ended and suddenly the U.S. was in control of the Philippines and Puerto Rico, which were both well populated by non-Anglo-Saxons, in direct contrast to all of the territories acquired to that point in time in American history. A series of Supreme Court cases, titled the Insular Cases, were decided in the first decade of the 20th-century that not only cemented Congressional authority over all aspects of territorial policy, but created a basic outline for which pieces of the Constitution, “followed the flag” to these outlying areas. The surrounding period of time sparked an enormous scholarly interest in the way that the federal government had acquired and managed territories. The conception of America as an imperialist power also became more pronounced as it was unlikely that either of the large populated islands acquired after the Spanish-American War would ever become U.S. States.

Once the initial interest in the Insular Cases faded away, the topic for the most part was forgotten by historians, political scientists, and law journals. Especially following the Legislative Reorganization of 1946, the issues dealing with territories were buried deep within Congressional committees that had very broad jurisdictions. There was then a revival in the topic more recently, mostly by historians interested in two related but distinct questions. The first dealt with American imperialism and the second with the procurement of American lands. Those examining the issue of imperialism pointed toward the current situation of global
hegemony that the United States has enjoyed since the end of the Cold War, and built an argument that it is Americans have cultivated and maintained an imperialistic bent toward their expansion. With the second, historians, especially with the recent trend of social historical revisionism, have pushed to highlight the role that aggression, deceit, and arrogant attitudes of “manifest destiny” have played in American territorial expansion.

**Literature on Congressional Territorial Policy**

Modern scholarship has tended to neglect Congress when specifically discussing the creation of territorial policy and Congress’s role in the development of the American political system in terms of territorial policy. It has favored looking at what America is now, and much of it labels the modern United States as an empire or at least imperialist. While some of these studies, most notably Walter Nugent’s *Habits of Empire* (2008), look to the past for answers, the spotlight is typically on aggressive executive actions, diplomatic exchanges, and the initial acquisition of new territory, rather than the administration by Congress following acquisition. While the methods and purposes behind territorial expansion are an important aspect of American empire building, by themselves they can tell us very little about *how* these territories were shaped in order to prepare them for whatever long-term political status they would eventually occupy (whether statehood or perpetually territorial). After all, acquisition means little to the application of labeling governmental relations, which are based on the treatment of territorial lands after acquisition or during occupation. It is this period, arguably, that is more indicative of the American political system than the initial acquisition. Treaties, wars, and annexations may have added the space, but it was then up to Congress to fill in the details about the relationship to the federal government and the existing states.
Other recent studies, which are of only tertiary interest to this project, examine imperialism under the modern presidency\(^2\), the economic interests of Americans abroad and the military actions taken to protect them\(^3\), and/or the aggressive and comprehensive foreign policy of the post-World War II United States\(^4\). While these works may not be central to my argument, I believe that they largely reflect the natural growth of the territorial expansion and policymaking of the 19\(^{th}\) and early 20\(^{th}\)-centuries. In this sense, they provide evidence that territorial policy remains influential, if in a dramatically transformed shape. These studies, for the most part, however, do not attempt to reach back to uncover the roots of this imperial activity\(^5\). Territorial studies, examining the breadth of American history must connect these two different conceptions (territorial expansion and American imperialism and empire-building), and as I will discuss below, some have, but not using Congress as their focus.

Historical scholarship, particularly from the late 1800s to the 1970s, on territorial policy provides a richer and deeper understanding of the enduring impact that this area has had on American politics. Of the studies done during this time, three of them stand out as the most applicable to the current project. The first, and oldest, of these is from the esteemed American historian, Max Farrand, who wrote numerous studies of territorial issues in the late 1800s. Of note is his essay, “The Legislation of Congress for the Organized Territories of the United States,”\(^6\) which remains the most complete and succinct examination of legislation enacted by the federal government during the country’s first 100 years. Most important to this project are his observations on the motivations behind Congressional actions, especially assertions about experimentation in the territories with policymaking. While the original intentions of Congress were to be relatively hands-off toward territorial government, Farrand claims that, “more and more Congress specified the way in which the government should be administered.”\(^7\)
reasoning behind this was experience. “Experience is the best teacher,” and thus, “The inhabitants of a Territory were not to be permitted to enact laws for themselves until they had become familiar with the way of doing things in the original States, and when they were allowed a measure of self-government it had to be exercised under a framework of government modeled on that which our fathers had found to be good.”

Farrand’s work is also useful because he created an appendix with a comprehensive listing of legislative acts enacted that dealt directly with territories.

The second important piece of historical scholarship I will highlight here is William Willoughby’s *Territories and Dependencies of the United States* (1905). Willoughby, with the advantage of writing after the Spanish-American War and the initial batch of *Insular Cases*, is able to acknowledge the dramatic change in long-term territorial objectives which Farrand had been unable to. He remarks that these acquisitions have reopened for discussion fundamental principles, “such as those which declare that no government can be justified that does not rest upon the consent of the governed, that there should be no taxation without representation, that no true liberty can exist that is not guaranteed by the right of trial by jury, etc…” At the same time, however, he does note that stability has marked the federal government’s overall experimentation with territorial policy, even with the newest territorial possessions.

As will be outlined below, while Farrand’s periods of territorial development follow more closely the changes in organic acts organizing the territorial governments and their powers, Willoughby focuses on issues of expansion and growth, although he does so with an interest in the legislative role, rather than the executive or military. These two approaches point to the strengths and limitations in meta-level and micro-level examinations of Congressional policy over time. Farrand details specific legislative acts while Willoughby’s project follows the
overarching growth of American territorial expansion. This project will synthesize both of these approaches in order to flesh out more fully a comprehensive vision of Congress’s role in American political development of territorial policy.

The third, and final, work I will highlight here jumps forward to the 1960s, but remains rooted in examining a similar time period as Farrand and Willoughby’s research. Published in 1968, Jack Eblen’s *The First and Second United States Empires: Governors and Territorial Government, 1784-1912* is an in-depth look at the operation of the officials and territorial governance structures of the territories which would eventually make up the contiguous United States. While Eblen discusses the role of Congress in shaping territorial policy during this period, his focus is on the territories themselves, rather than Congress. The depth of his study, however, and the emphasis on the development within various territories of the frontier political structure is particularly useful because the Northwest Ordinance provided for progressive stages of political autonomy during the life of each territory.

In addition to these three scholars, there were during the 20th-century, also prominent attempts to compile comprehensive research on the topic of territorial development. Particularly notable was the compilation of the *Territorial Papers of the United States* by Clarence Carter, working with and for the National Archives. This enormous set of primary resources continues to be the single most impressive and important undertaking regarding territorial policy in the United States. Yet, Carter’s focus was on reducing the barriers to scholarship on territories, not formulating theories of territorial policy. While the impact of the *Territorial Papers* has been considerable, and much research has been stimulated because of it, its use in this project is solely as a reference.
**Previous Period Schemas**

When dealing with extensive periods of time, it is a common practice to create a scheme of periodization based upon distinct trends, shifts, or significant events. Numerous scholars dealing with the history of territorial development have advanced such schemes, each with varying perspectives and reasons for doing so. Despite their differences, a closer examination of each of these periodization schemes produces underlying consistencies that link together important episodes in American territorial development.

<table>
<thead>
<tr>
<th>Author Name</th>
<th>Year</th>
<th>1st Period</th>
<th>2nd Period</th>
<th>3rd Period</th>
<th>4th Period</th>
<th>Overarching Lens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farrand</td>
<td>1896</td>
<td>1787-1836</td>
<td>Post 1836: Wisconsin Territory Organic Act</td>
<td></td>
<td></td>
<td>Legislation for territorial administration</td>
</tr>
<tr>
<td>Willoughby</td>
<td>1905</td>
<td>1783-1853 Mexican War</td>
<td>1853-1898 Up to end of Spanish-American War</td>
<td>1898 – 1905 Annexation of Hawaii</td>
<td></td>
<td>Acquisition of territory and expansion of United States</td>
</tr>
<tr>
<td>Eblen</td>
<td>1968</td>
<td>Mississippi Valley Empire: 1787 - 1848</td>
<td>Trans-Continental Empire: 1848 -1890s</td>
<td>Oceanic Empire: 1890 - ~ 1920</td>
<td>Global Empire 1920s – 1968</td>
<td>First and Second empire with emphasis on governors</td>
</tr>
<tr>
<td>Nugent</td>
<td>2008</td>
<td>Continental: completed ~ 1850</td>
<td>Post-Civil War through WW II</td>
<td>Global: Cold War era</td>
<td></td>
<td>Empire building</td>
</tr>
</tbody>
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One major reason for differences between periodizations has to do with the particular perspectives each scholar is interested in analyzing. Another, related difference comes from the fact that some of these scholars were writing in the late 19th-century or the dawn of the 20th-century, at the final peak of interest in territorial development in the United States, as opposed to
those writing more recently, who have the benefit of hindsight of what occurred with American possessions following the Spanish American War and the long-term impact of the *Insular Cases* decisions. While the following section deals with each of these period schemas in turn, Table 2.1 gives a quick overview of all of the periods of territorial governance.

Max Farrand, writing just a few short years prior to the acquisition of a number of island territories following the Spanish-American War (plus the annexation of Hawaii), only saw two major periods of territorial development. The first occurred between 1787 and 1836, an era where the national Congress was still attempting to work within the framework of the Northwest Ordinance of 1787 to determine how best to organize territorial governments. They had a number of opportunities to experiment, in areas varying in culture, population, geography, and industry. By 1836, Farrand argues, Congress had finally arrived at a set of standards that they would stay relatively close to until at least the time of his writing in the late 1800’s. With the organic act establishing the Wisconsin Territory in 1836, Congress had a working model, which would be used for all of the following territories during that century (or at least until 1898). While likely an artifact of when he wrote the book, it is important to note that far more than any of the other scholars discussed here, Farrand emphasized the role that the Civil War played in solidifying Congressional control over territorial areas. Later scholars will downplay this moment for what occurred because of the decisions made in the *Insular Cases*.

Chronologically, the next scholar writing was William F. Willoughby, who wrote a reader designed for high school students (or introductory college courses) on the issue of territorial acquisition and expansion in 1905. This of course gave Willoughby the benefit of sensing the impact of the post Spanish-American War possessions as well as the first (and most important) of the *Insular Cases*. With this in his purview, he adds a third period in his theoretical
framework. This third period began abruptly when the United States extended itself into the Pacific Ocean and the Caribbean Sea following the events of the Spanish-American War and the annexation of Hawaii. Within just a few short years, the United States went from only having added the purchase of Alaska since the 1850s to controlling Hawaii, the Philippines, Cuba, and Puerto Rico. All of these new areas were well populated, primarily by non-white, non-Anglo Saxons.

The third period brought with it dramatic shifts. For Willoughby, this shift not only meant a new status of territorial land had been created, but these territories were of a similar nature to those of the European empires that the United States had for so long kept itself from emulating (at least publicly). The next two scholars, however, were inclined to argue that imperialism had recurrently been the fact of territorial expansion and governance, even if it originally appeared different from European colonialism.

Jack Eblen, writing in the late 1960s, breaks up territorial history into four periods, labeling each as an empire building era\textsuperscript{13}. The First Empire, which he labels as the Mississippi Valley Empire, lasted from 1787-1848. Settlers would move the frontier westward, but the impetus behind this was the expansion of an agricultural, self-sustaining, population, rather than something more industrial. Eblen’s second period, which he labels as the Trans-Continental Empire was noteworthy because by 1848, all of the lands that would eventually comprise the contiguous United States were under federal government control. Thus, it was a period of expansion of population, government, and industry, but not especially of acquisition of land (except for of course the vast empty expanse of Alaska). Eblen’s third period, the Oceanic Empire, covered the relatively short, but transformative, time between the late 1890s and about 1920. This Oceanic Empire comes to an end around 1920, which reflects the emergence of the
United States as a world power and its primary creditor (9). It was at this point that Eblen’s fourth (and arguably current) period began, the Global Empire.

Eblen points to a specific break for each of the four periods he outlines, and provides distinct differences between them. At the same time, however, he posits an overarching theme that has run throughout American territorial development. Reflecting the growth over time of the wealth and power of the United States, he points to a shifting policy that at its core was about protecting American interests, regardless of the rhetoric used. First, it was the ‘containment’ policy of the Monroe Doctrine, moving toward aggressiveness toward expansion in the southwest and Pacific coast regions, then toward a ‘containment’ of communism.

Published in 2008, Nugent’s *Habits of Empire*, has the added benefit of the passage of time over the previously analyzed scholars14. Yet, despite the forty additional years since Eblen wrote on the subject, Nugent divides his periodization of American empire-building into just three phases. The first was a period of continental expansion, which he places completion of just after 1850. The second phase included the acquisition of a number of small Pacific Islands and Alaska during the mid-19th-century, and then resuming with multiple acquisitions of the 1890s (Hawaii, Samoa, the Philippines, Guam, Puerto Rico, and the Panama Canal Zone). A third phase of empire-building appears with the globalization of American interests following World War II, stretching up through the current War on Terror.

While this periodization of Nugent’s is a cursory consideration of his overall project, it also serves to frame his argument that America has been a nation with imperialist aspirations. As he notes, “The lessons learned in the first phase (continental), and reinforced in the second phase (offshore), have been shapers of the third, the global or virtual empire of today. Thus we have always been an imperial nation, and remain so, but the shape of the American empire has shifted
Nugent’s focus, again, is the relentless desire for control, for pushing into and through new boundaries, whether by controlling directly or by securing and protecting vested economic interests.

**Periods of Territorial Policy**

Building off of these previous efforts to outline distinct periods in American history of territorial policy and American expansion, this research project will argue that American politics, as driven by Congressional actions, has experienced four eras of territorial policy and, by extension, empire-building. These four eras help to outline the distinct patterns that have arisen due to Congressional policymaking in territorial administration. They integrate important considerations from previous schemas in order to highlight both continuations within periods but also the important shifts that separate one period from another. These four eras are outlined briefly below, with summary explanations of what makes them distinct from one another and what occurred during the time periods specific to territorial policy.

**Experimental Empire (1787 – **approx. 1861**)**

The first territorial policies were actually enacted by the Continental Congress acting under the Articles of Confederation via the Northwest Ordinance of 1784, which was updated and reenacted as the more prominent Northwest Ordinance of 1787. During this first period land expansion happened extremely quickly, from the land cessions of a number of the original states through the Louisiana Purchase and the wars with Spain and Mexico that ceded much of the modern continental United States. All of the land east of the Mississippi was incorporated into states during these 80 years, as well as a small number of Midwest states west of the Mississippi. The main impetus behind the westward expansion was the idea of creating an American nation
that had sufficient agricultural production and means of transporting that production to the world markets. Control of the Mississippi River was one of the chief reasons for the Louisiana Purchase and the subsequent oust of Spanish forces from New Orleans and Florida.

Slavery was arguably the most important political issue dividing the nation over this period, which manifested itself particularly strongly in the battle over which territories would be allowed to have slavery and which would be free from the institution. It is no coincidence that the initial era ends around the same time as the breakout of the Civil War, as the driving reasons for post-bellum expansion were subtly, if importantly, different. For comparison to other eras, this initial period saw the creation of a majority of the non-original states, including both those that were first territories and a small number that were directly annexed as states. The states of Maine, Vermont, Kentucky, Ohio, Tennessee, Mississippi, Indiana, Illinois, Louisiana, Michigan, Missouri, Alabama, Arkansas, Florida, Wisconsin, Iowa, Oregon, Minnesota, Kansas, California, and Texas were all created prior to the Civil War, with a handful more states joining them by the end of the Reconstruction Era. Figure 1 shows the number of territories in existence
in any given year between the mid-1790’s and the acquisition from Denmark of the Virgin Islands in 1917. From this it is clear that prior to the Civil War there were fewer territories at any moment for Congress to administer than there were following the Civil War, but at the same time they had created 13 states from former territories by 1850. Combined with the original 13 states as well as Texas, Vermont, Kentucky and Maine which all skipped territorial status, this means that by 1850 the United States already had 30 of its current 50 states. The first period, therefore was marked by more rapid ascension to statehood and, of course, smaller sized states than the period following the Civil War, which saw more territories in existence at any moment, but this was primarily due to the fact that these territories were suspended in territorial status for longer periods of time. The average length of time spent in territorial status for those areas that had achieved statehood by 1861 was 12.5 years, while for those territories created by 1850 but not achieving statehood until at least 1862, the average wait was 33.5 years, a nearly three-fold increase. Only settlers in Michigan and Florida Territories had to wait at least two decades in the early period, while, after the Civil War, eight territories spent at least 25 years in that status.

It should be noted here that previous scholars have remarked on the importance of the development of the Wisconsin Territory’s Organic Act creating that territory in 1838. This is because the provisions of that act would provide the template for nearly all subsequent continental territorial governments. While this does introduce an enticing motive to end the first period in the mid-1830s (or at least at the inclusion of Wisconsin as a state in 1848) and then create a second period that lasts until the Civil War, this research project will argue that rather than becoming a separate shift in territorial policymaking, Wisconsin was simply the culminating enterprise of the initial experimentation into creating territorial governments in the United States.
Notes: The Northwest Territory was the first territory created, followed by the Southwest Territory. These covered all of the British possessed lands assumed by United States after Revolutionary War. The territories directly to the West of the Mississippi were added following the Louisiana Purchase. Of particular note is that New Orleans Territory contained much of the Louisiana Purchase lands EXCEPT for the Territory of Orleans (which would become New Orleans) until 1812 when it became the Missouri Territory.
Thus, it was not a shift in policymaking, but only a plateau of early trial and error in territorial administration. More importantly is that the general contours of territorial policy more generally would remain the same until the Civil War and its lasting aftereffects dramatically shifted Congressional pressures on territorial administration and in particular rapid ascension to statehood.

Despite these factors this study will incorporate the importance of the Wisconsin case, by including it as one of the chosen territorial studies, and also by examining the initial creation of the Northwest Territory and Indiana Territory and comparing them to later territorial governments, thereby investigating the persuasive of the claim that Wisconsin was a culmination of early territorial policymaking.

The argument for the first period then, revolves around the experimentation of territorial government setup as well as the fulfillment of the initial promises of territorial policymaking, which were to rapidly expand the United States and produce fully coequal states as quickly as feasible. This combined with the specter of slavery which overrode some legislators’ concerns about the readiness of territories for statehood. Together, the initial experimentation, rapid expansion, and end of slavery as a problem, created a dramatic shift in territorial administration before 1850 and after 1870, with the intermediate period an overlap of these two eras. The Mexican-American War and the Civil War played critical roles in bringing about these shifts in territorial policy and this period can be seen as overlapping with that of the Continental Empire, which began with the acquisitions in the Southwest, but reached its peak after Reconstruction.

Continental Empire (1850-1912)

Following the conclusion of the Civil War, the United States was faced with many difficult questions, especially in how to reincorporate the states which had seceded. There was
also no longer an impetus to admit states as a set of one slave and one non-slave. Instead what replaced slavery as a major concern in statehood battles was that of party, leading to the splitting of the Dakotas, the admission of the Dakotas along with Montana and Washington in the same year, and then the later combinations of Idaho and Wyoming in 1890 and finally New Mexico and Arizona in 1912. Regardless of the reasons for statehood admissions, there are institutional reasons why decisions over territorial organization and then subsequent admission for statehood were frequently so hotly contested. In particular it was a combination of the low threshold for admittance (majority vote in Congress and acceptance by the president), a basically unfettered level of discretion over the process for Congress, and the fact that statehood admission was irreversible (Glassman, Chapter 3). The difference between antebellum admissions politics and post-1865 politics was the fact that slavery was a pressing concern which pushed for new state creation, while partisan politics was primarily a deterrent to new state creation, as one party was inevitably to be harmed by the admission of a new state, unless it was balanced with the admission of another state of opposite partisan composition. This was the one of the primary factors that led to longer periods of territorial status during this period, especially for territories in the desert southwest and in the Rocky Mountains.

Another factor was geographical. During the initial phase states were quickly carved from territorial land areas due to rapid population expansion and the desire to grant land to willing farmers. Once the more fertile areas of the Midwest were settled, it took a longer time period for some of the drier and less agriculturally productive (at least in terms of crop yield) areas to be populated. Farmers and ranchers required far larger plots of land to successfully manage a productive enterprise, making it more costly and given limits on federal land grants, nearly unworkable.
Figure 2.3: Continental Empire (plus HI/AK)

Hawaii Territory 1900-1959

Alaska Department 1867-1884
District 1884-1912
Territory 1912-1959

Texas Republic 1836-1845; Statehood in 1845

Indian Territory 1834-1907

Oklahoma Territory 1889-1907

Dakota Territory 1861-1889 (split into North and South Dakota then)

Washington Territory 1853-1889

Oregon Territory 1848-1859 (part of 1st era)

Idaho Territory 1863-1890

Utah Territory 1850-1896

Colorado Territory 1861-1876

Arizona Territory 1863-1912

New Mexico Territory 1850-1912

Montana Territory 1864-1889

Wyoming Territory 1868-1890

Nevada Territory 1861-1864

California Statehood in 1850
Finally, there were also significant and controversial concerns about the number of non-Anglo-Saxon/English-speakers in some of the Southwestern areas of the U.S. and the practices of the Mormons in Deseret (Utah).

This second era, despite these constraints, includes the assimilation of the remainder of the continental United States as full-fledged members of the Union. Yet they did lead to much longer temporal periods between creation of territory and statehood admission. As noted previously, while it took most territories west of the Mississippi less than 20 years to advance from territorial organization to statehood most areas in the mountainous west spent at least 30 years in territorial status, including 62 for New Mexico, 46 for Utah, and 49 for Arizona. It should also be noted that two areas that the United States took de facto, if not de jure, control over during this period were the islands of Hawaii and the vast former Russian land in Alaska. They were the precursors to greater expansion abroad, but would remain distinct in American
history for numerous reasons, eventually becoming the only two non-contiguous fully incorporated states. Yet, neither of these territories is here considered part of the second era, instead being entities of the third era, post-1898 (See the map in Figure 2.3 above).

The Insular Empire (1898 – 1959)

This period saw two developments occur that differentiated it dramatically from the previous two. First, all of the territory acquired during this period of time was unconnected by land to the continental U.S. Second, beyond Hawaii and Alaska (special cases), none of the other acquisitions during this period would become states. The importance of the decisions in the Insular Cases, starting in 1901, which redefined, or at least defined much more explicitly, the relationship between territories and the U.S. as a political entity, cannot be overstated as an impetus for Congressional management over territories after the Spanish-American War. The Insular Cases were a reflection of changing perceptions of manifest destiny and colonization by U.S. policymakers, and allowed the creation of non-temporary territories which could be held indefinitely in that status, without the possibility of becoming states. This was an extremely important shift for the creation of the modern U.S. empire. (See Figure 2.3 for HI and AK, Figure 2.4 for remaining territorial possessions).

The final full acquisition of territory during this era occurred in 1917 when Congress approved of the purchase of the Danish section of the Virgin Islands. Outside of this period, following World War II, the U.S. helped to administer the Northern Mariana Islands as a U.N. trust territory. In the early 1970’s the islanders sought to tighten their relationship with the central U.S. polity and voted to become a commonwealth possession, allowing them a non-voting House delegate, but no other federal representation (similar to Puerto Rico). It was during this third era, of expansion beyond the contiguous and continental U.S., that the debate over the
intentions of American imperialism seemed to have finally reached a conclusion, at least in terms of taking possession of new lands. Since the admission in 1959 of Alaska and Hawaii as states, very little has changed in either the relationships or conceptions of territorial regulation in the United States. What did change, however, by 1960, was how the American empire would continue to be extended, despite this technical stability.

*Informal Empire (1960 – today)*

This final period has seen no major additional territorial additions, but also no major changes in territorial holdings or their governance. Since 1972, besides minor acquisitions, such as military bases, the U.S. has neither increased nor decreased its legal possessions in the world. It has, however increased in the number of regime changes influenced directly/indirectly by U.S. military and intelligence agencies (which had begun in the late 1890’s in Hawaii). Additionally, this era saw the final stage of the creation of the American commercial empire which extends to nearly every corner of the globe. Economic considerations for U.S. corporations in far-flung areas of the world influence how policymakers view the actions of other nations, which had not been true prior to the 20th-century. While this type of empire building has been typically the most researched and controversial in recent scholarship, I will argue it has also become the next evolutionary stage for American territorial development, less influenced by Congress and the people of the United States than in previous eras, but no less powerful or important for American history. Within this study, the informal empire will not be examined in depth, nor will any case studies be undertaken. The conception of this fourth empire is that it is felt but not seen, at least not in legal sense. That is, the United States no longer requires additional land to expand settlement. This has been replaced with a new transformed Manifest Destiny that emphasizes economic expansion and ideologically driven interests over spreading de jure sovereignty.
Causal Mechanisms for Shifts in Congressional Role

Arguably the most valuable contribution of APD scholarship has been the added value of a greater understanding of the mechanisms which actually cause shifts to occur in whatever institution, ideology, or region that is being investigated. The theoretical arguments for these causal mechanisms, their power to cause shifts, and their historical context all differ between studies, unsurprisingly, but the existence of some sort of explainable and testable mechanism is one of the key contributions of APD scholarship, which has allowed greater discussions of the ways in which decisionmaking and institutional authority shifts from one period of time to another. For example, Skowronek discusses the idea of three different patterns of change in looking at presidential history. There is first, a persistent pattern when a new president takes office and attempts to make their mark on the political system. The second is the emergent pattern of continually changing (and usually expanding) resources and independence for the president over American history. From Washington as a government manager to presidential independence even from the bureaucracy they technically oversee, the presidency has impressively and undoubtedly transformed over the past two hundred some years. Finally, Skowronek highlights the recurrent patterns of partisan regimes, which have a very cyclical relationship throughout American history. In the abstract, therefore, each president encounters three different institutional patterns, only one of which they have much control over themselves.

In another example of causal mechanisms, Tichenor argues that there has been a pattern of expansive and restrictive immigration policies and that these two patterns can be subdivided further in terms of whether these expansive or restrictive ideals pertain to admissions and/or rights of immigrants. In creating this framework, Tichenor outlines four different processes for
how and why shifts occur to create either expanded or restricted immigration policy. First is the unique ability within the American system for policy networks to pursue their goals and how their opportunities to do so change over time to be more constricting or more open. As he puts it, this is important because, “To understand the possibilities of major policy innovation requires knowledge of how immigration activists have exploited new institutional openings in American governing institutions. Equally striking is the extent to which the guardians of existing immigration policies have consciously built and actively maintained institutional supports for their policy regimes.”

Secondly, Tichenor suggests that immigration policy has been influenced by the creation and eventual recreation of political coalitions that do not necessarily follow the patterns of partisan or ideological groupings most would assume. A third process is the role of professionals within the policy realm, especially since the Progressive Era of the early 20th-century. That is, since this is a policy arena, and a complex one at that, which combines both the need to balance practical analysis with political concerns, experts have played an important role in how immigration policy shifts. “Privileged expertise,” Tichenor says, “has long influenced the very framing of immigration as a national political issue, breathing life into a dominant immigration narrative that resolves competing ‘causal stories’ and helps shapes concrete policy responses.” Finally, as would be expected in a policy realm directly impacted by external events, international crises “have served as important catalysts for major immigration reform, altering the incentives and capacities of political actors to break policy stalemates.” These four processes, then, together weave patterns into the narrative of immigration policy over American history, constraining as well as broadening the abilities of actors to successfully pursue their policy goals.
Patterns are also evident in the long history of territorial policy in the United States by the national legislature. Given the theoretical conception of Congress’s role as outlined in Chapter 1, the four time periods I proposed, and reflecting the work of APD scholars in previous scholarship similar to that just examined, the following is a consideration of a number of processes within the American political system that act as causal mechanisms for shifts in Congress’s role in territorial policy.

It is important to narrow down the conceptualization of causal processes and for this project, seven are identified and investigated within the case studies that follow. These seven processes will be highlighted as they cause shifts in territorial policy both within and between the periods outlined in the preceding section. None of these processes, however, are independent of the others, as they all work together to define the role that Congress has within the American political system as it relates to the territories.

**Figure 2.7: Causal Processes Affecting Territorial Policy in Congress**

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<thead>
<tr>
<th>Relation to American Political System</th>
<th>Relation to Congress</th>
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<td>➢ Federalism</td>
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<td><strong>Consequential</strong></td>
<td>➢ Policy Targets</td>
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<td></td>
<td>➢ National Security and Order</td>
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<td></td>
<td>➢ Democracy and Rights</td>
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<td></td>
<td>➢ Technology</td>
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The overarching story here is about the way in which a variety of ever-present and ever-changing pressures define the decision-making opportunities available to Congress. Figure 2.7 shows how these seven different processes outlined above can be viewed in terms of whether they are external or internal in their relationship to Congress itself and then whether they are themselves an inherent aspect of the American political system or a consequence of that structure.

**Fundamental Mechanisms**

There is one prominent mechanism which is both fundamental to the U.S. political system and is external to Congress that manifests as important in this study. The American system of federalism combined with checks and balances, keeps one branch from becoming too powerful and maintains equilibrium between state and federal power. At times, however, there are controversies which reflect either the abuse of this balance by one entity or the inability of one part of the system to resolve a conflict themselves. Thus, the first process is that the changing contours of the system of horizontal as well as vertical checks and balances, and their overall structure, has shaped the ability of Congress to enact territorial policy. Checks and balances, in this case, are not static, but evolve over time to give certain governments, institutions, actors, or branches more or less agency. This is a mechanism, therefore, in the sense that as the balance shifts, it changes the space in which Congress can operate and the choices it has available to it for creating American territorial policy.

In some cases this might be due to interstate conflict which creates pressure on the national government to act in the best interest of the country as a whole. For example, following the conclusion of the Revolutionary War and the treaty with the British, the United States was
granted a large (ambiguously bordered) area of land, which was subsequently claimed by various states. These claims were at times overlapping or indeterminate and the potential for state conflict to escalate to armed confrontation over these claims was real enough that first the Continental Congress and then the Congress under the Constitution felt pressure to react to these situations. They first successfully pressed the states to surrender their claims to these external lands, and then created numerous frameworks for their governance, starting with the Northwest Ordinance of 1784 and culminating in the 1787 version which is one of the most significant documents ever produced by the United States government. Thus, Congress was pressured into acting as an arbiter of state conflict and a manager of federal lands outside of the boundaries of any state.

In addition to acting as a referee of state-based conflict, Congress is also just one of three major political branches acting on the national level. At times, then the legislature must respond to executive or judicial actions which may or may not reflect the prevailing policy goals of Congress’s territorial desires, and at times may be destabilizing. This was frequently the case with the actions of aggressive presidents which often led to the acquisition of new territories, regardless of the sentiment of elected officials in Congress. These acquisitions have primarily occurred following military engagements, with the major exception being the Louisiana Purchase. The Mexican-American War and its aftermath, which directly or indirectly provided most of the western United States was the first example. A second major action was the Spanish-American War of 1898. Just as the Mexican-American conflict basically concluded American continental expansion, the Spanish-American War was a leap toward American territorial lands beyond the North American continent. The acquisition of control over the Philippines, Puerto Rico, and a number of small islands following the war provided a new source of Congressional
policymaking pressures. The question of what to do with these already populated, distant lands created a fundamentally different policy framework than had existed for the lands within the continental United States. While Congress may have been opposed or at least divided on many of these questions of expansion and acquisition, they were at times forced into a situation due to executive action where they had to make policies decisions regarding new territorial areas. Many of the historical studies of American expansion, unsurprisingly, focus on the role that the president played in those decisions, particularly Nugent (2008).

While the presidency has been a disruptive influence in territorial policy, the Supreme Court has also had numerous opportunities to affect the course of policy goals as well. In many cases, the judiciary has acquiesced to Congressional prerogatives and sided with an expansive reading of the Constitution’s Territorial clauses. The most important example of this were the Insular Cases of the early 20th-century. Following the Spanish-American War the U.S. suddenly found itself with a number of territorial possessions unlike anything they had administered previously. The Philippines, Guam, American Samoa, Puerto Rico, and Cuba were relatively densely populated, their inhabitants did not speak English, did not have experience with American political and legal systems, and most were far from the shores of the continental U.S. The pressure to grant territories statehood within Congress had been waning since the Reconstruction Era, but up to this point it was still assumed that Congress’s control over the territories was to be temporary, a stopgap between acquisition of the land and incorporation of its people and boundaries into the Union as a full-fledged member state. The Insular Cases, reflecting this growing uncertainty in Congress over the acceptability of this process for these new territories embraced what is now termed the Incorporation Doctrine, which allows Congress to designate territories for which only certain fundamental Constitutional provisions apply
(unincorporated) and territories where full Constitutional protected are employed (incorporated).

That it was these new insular possessions which received unincorporated status and the
remaining continental territories which were deemed incorporated was hardly a surprise, but
these cases highlight how the Supreme Court played a role in defining the space within which
Congress could enact and apply territorial policy.

The Madisonian system, which creates separate realms of authority for states and national
governments and requires the cooperation and checking of each of the three national branches of
government, is outlined within the U.S. Constitution, was operational from the beginning of U.S.
history, and works whether or not Congress itself is a key factor in the process at any particular
time. In other words, Congress can choose to be passive within the system of check and balances
and federalism, but it would not cause that system to stop existing.

A second mechanism identified here is fundamental to the system, although not
necessarily entrenched in Constitutional provisions, but is internal to Congressional operation.
Congress can emphasize shifts in policy agenda and rhetoric, but only can act upon them to the
extent that internal arrangements allow them to. While most constraints upon territorial policy
come from external sources, as a complex institution, the national legislature within the
American system acts to restrain itself in numerous ways. A second process, therefore, acting
upon territorial policy are the rules and norms associated with the Senate and the House. Some
of these rules are structured by the Constitution, specifically the emphasis toward conservatism
in the Senate and populist urges in the House, and the checks which each chamber has assigned
to them. Most others are imposed by Congress upon itself. While the Senate and the House each
has their own set of procedures, whether explicit or not, these voluntary arrangements have a
strong impact upon the choices available to Congress regarding territorial policy at a given time.
There are two primary aspects of rules and norms that pertain to Congressional territorial decisions to highlight here: the committee system and Congressional leadership.

Shifts in policy choices and design may occur due to the level of importance of issues based upon their placement within committee jurisdiction, the power of those committees assigned legislative items, and the overall structure of the committee system in successfully enacting legislation. Specifically, issues with their own committee “home” will tend to receive more attention and therefore greater policy action. While Congress as a whole is responsible for passing legislation related to territorial policy, many of the decisions were and continue to be made in committees first. While the modern system of standing committees did not arise until the early 1800s in Congress, committees which dealt specifically with territories were not formed until 1825 in the House and 1844 in the Senate. Until this time, the issues dealing with specific territorial policy were handled by a variety of committees depending upon the salience and topic of the issue. For example, legislation in the House related to land sales was typically handled by the Committee on Public Lands, while legislation related to relations with Native Americans was handled by the Committee on Indian Affairs. Select committees, prominent during the early period of Congressional history were formed to deal with specific controversies within the territories, such as dividing and specifying territorial boundaries.

Yet, the specific territorial focused committees, once in full operation, were at times able to provide strong direction on general territorial policy. This became especially important as the conflict over slavery rose to a crescendo. After the Civil War, the two committees dealing with territories did much of their most important work. Yet, by the end of World War I, territorial policy was declining in overall importance. This fact, combined with the committee reorganizations in the Senate in 1921 and the House in 1946 led to the incorporation of the interests of the two Committees on Territories into less specialized committees with broader jurisdictions. While the growth and decline in importance of the Committee on Territories in both chambers reflected the level of tension in territorial policy decisions, it also meant differing levels of Congressional importance put on making decisions in these areas. Thus,
committee jurisdiction and specialty mattered to and reflected shifts in Congressional territorial policymaking. As Baumgartner and Jones argue there are two mechanisms that can shape changes in Congressional behavior. First, external actors can pressure Congressional committees to alter their jurisdictions, and second, internal actors can “push their committees and subcommittees to become active in new areas when they think there is a potential political payoff from the new activity.” Committees play a powerful organizing role in Congressional policymaking.

The other major contributor to structuring opportunities for territorial policy decisions within the structure of Congress itself is the role of leadership. While there are specific leadership positions within both the House and the Senate that provide for institutional direction, it is not solely these actors that can affect policy, especially when viewing one policy area as opposed to the overall quality, quantity and type of legislation enacted by the chambers. In terms of obstacles for territorial policy, a lack of direct voting representation in the federal legislature was of paramount importance. While territories were eventually provided with a non-voting delegate in the House, they have never had any real representation in the Senate and even the House delegates were rarely able to assert their will on legislative goals for territories, although some worked tirelessly to do so. Outside of the delegates, a small number of influential Congressional actors had tremendous impacts on territorial policy, especially as it related to slavery, aggression toward and expansion into Mexico, and insular expansion after the Spanish-American War. Examples of leaders in territorial policy, for varying reasons, include Stephen A. Douglas as Chair of the Senate Committee on Territories in the 1850s or Secretary of State (and former U.S. Senator) William Seward who played an influential role in acquiring, through purchase from Russia, the vast territory of Alaska. These leaders, through their influence, helped define the direction of American territorial policy. While not likely to be singularly responsible for overall shifts, these few important individuals can provide an initial, sustaining, or final boost toward a particular policy path.
Consequential Mechanisms

The rest of the mechanisms which will be highlighted as affecting the creation of territorial policy and the development of American empire exist as consequences of the American political system. Each of these is dependent on the existence of factors outside of the core of the Constitutional framework, although they are affected by it.

As with most policy discussion, geography and socio-religious factors were influential. A third process, therefore, is how the changing realities of the geographical and sociological targets of territorial policy affected the decisions made by Congress. Early territorial expansion involved rapid population growth across the fertile and material resource rich region between the Appalachians and the Mississippi River valley. While there was constant concern over what to do with American Indians who called this area their home and particularly along the major rivers there were pockets of Spanish and French settlers, for the most part this area was neither densely populated nor did Americans find much resistance to their spreading toward the Mississippi. All of this changed with the acquisition of the western half of the country. Arid lands, a need for large-scale farming and ranching, mining, and the mountainous terrain all required a shift from initial territorial policy which focused on providing small plots of mostly fertile land and did not adequately account for the existence of specific pockets of extremely valuable mineral extraction sites.

More pressing were concerns regarding the demographics of these western areas. In many of the northern areas, the population was too sparse to recommend movement from territorial status to statehood, given the requirements for more complex levels of self-government and the costs associated with it. The people were also, in many ways, seen as unruly and
unlawful, the image of the American “cowboy”, which might make for good cinema, but didn’t make for stability and order. Conversely, in many of the southwestern areas, the population was Spanish-speaking, non-Anglo, and predominately Catholic, remnants from the long Spanish control over those lands. With a different language, a society based on Catholic values, and different governing traditions than the American model, these populations were seen as both unprepared and undesirable subjects for statehood.

Thus, in both of these cases, Congress felt less pressure to advance these areas through the stages of territorial government. They also continued to tailor certain legislative requirements depending upon those who would be affected by it within the territories. Schneider and Ingram explore how the construction of policy and how it is perceived within the political system is highly dependent upon the targets of the enacted policy. They envision this construction as perceiving policy targets as either deserving or undeserving and then their overall suitability of policy burdens or benefits as based upon this status as well as whether they have stronger or weaker political power within the system. Figure 2.5 shows this theoretical conception.

**Figure 2.5: Schneider and Ingram’s (1997) Social Construction of Policy Targets**

<table>
<thead>
<tr>
<th>Political Power</th>
<th>Social Constructions</th>
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<tbody>
<tr>
<td></td>
<td>Deserving</td>
</tr>
<tr>
<td><strong>Stronger</strong></td>
<td>Advantaged</td>
</tr>
<tr>
<td><strong>Weaker</strong></td>
<td>Dependents</td>
</tr>
</tbody>
</table>

84
In their concept it is the advantaged that are most likely to be targeted with beneficial policy and deviants who are most likely to be targeted by burdensome policy, while contenders and dependents should see supportive rhetoric but fewer effective burdens or benefits\(^{26}\).

In the Continental Empire of territorial expansion, therefore, the social construction of policy targets from Congressional perspective can be seen in Figure 6 which uses Schneider and Ingram’s framework.

**Figure 2.6: Policy Targets during Continental Empire Era**

<table>
<thead>
<tr>
<th>Political Power</th>
<th>Social Constructions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deserving</td>
</tr>
<tr>
<td>Stronger</td>
<td>?</td>
</tr>
<tr>
<td>Weaker</td>
<td>Anglo-Protestant Settlers</td>
</tr>
</tbody>
</table>

Without a clear group to legislate on behalf of within the category of advantaged policy targets, Congress during this period felt little pressure to press for beneficial territorial policy. In fact, most accounts of western territorial administration point to the ambivalence, if not outright hostility, toward territorial inhabitants, especially in the cases of the Mormons and continued poor treatment of American Indians.

Just as the targets of policy may shift, the rhetoric and motives for policy can change. Baumgartner and Jones (1993) describe this as the policy image, or “[h]ow a policy is understood and discussed.”\(^{27}\) During critical periods of what they call punctuated change,
meaningful and sweeping change occurs within the political system. These forces are not tied to a singular effort, “but are the result of multiple interactions among groups seeking to propose new understandings of issues, political leaders seeking new issues on which to make their name, agencies seeking to expand their jurisdictions, and voters reacting to the whole spectacle.” In this framework, then, it is not that the conditions surrounding the policy change, but that the ideas of policy formation and motivations change. Political leaders seek new language and ideas to shift toward a different policy structure, thus disrupting the status quo.

As Schneider and Ingram put it, “Public policy is not a means of solving problems or even resolving conflicts among competing perspectives, but is instead an instrument of power that can be used opportunistically by each faction to further its own legitimacy, popularity, or future power position. Interaction patterns are confrontational and competitive rather than discursive and cooperative.” Congressional factions, members, committees, and leaders can thus all help to shape the perspective of a policy realm. This can be seen in the ideological shift from Jefferson’s vision of an “Empire of Liberty” to a broader image of “Manifest Destiny.” It was not enough that the United States was free, but by divine resolution it should bring this American ideal to as many areas of the world as it was able to, and in doing so, should be seen as a savior of sorts. This would lead to an emphasis on preparing people for American style institutions different than that seen in previous decades.

Members of Congress, of course, since the early 19th-century, have also all been members of political parties. While the American party system was not envisioned or desired by the leaders of the Constitutional Convention in the 1780’s, it has been a reality of American politics for over 200 years now. While the strength of parties, their ideological cohesiveness, and their roles in structuring political society have all changed over time, their impact on policymaking
cannot be understated. *A fourth process affecting territorial policy therefore is the configuration, ideology, and strength of the party system in the U.S.* Congress is structured by party divisions, floor votes are frequently seen as referenda on partisan unity, and party platforms direct the national political agenda. More specifically, prior to the Progressive era reforms, parties also had strong influence on territorial policy via the selection of federal officers within the territories, since those positions were considered patronage posts for a large portion of the 19th-century. Parties also structured debates over expansion, the extent of acquisition, and the treatment of territorial inhabitants. Finally, parties mattered within the territories, since Congressional party balance affected how they were treated and a Congressional majority at odds with the partisan balance of a particular territory could result in more burdensome policy decisions, a lack of financial support, or outright Congressional ambivalence of territorial problems. This mechanism is the only one which is consequential, but internal, meaning that parties are not a necessary component of the American political system, but affect congressional policy decisions *a priori* since they exist regardless of the policy questions at issue.

Not every aspect of territorial policy was shaped simply by institutional structure or concerns. There have been a number of processes whose interactions with the political system have significantly shaped territorial administration and management. These should be considered extra institutional in the sense that they do not rely on a particular political institution for their importance and may affect and be affected by events outside of the political system altogether. *The first of these, the fifth process affecting territorial policy, deals with the ever constant anxiety over national security and the maintenance of law and order.* From the conversations immediately following the end of the Revolutionary War, territorial policy was tied up with concerns regarding securing American borders.
Whether it was worry over the possibility that Spain, France, or Great Britain would be able to convince frontier settlers to oppose centrally imposed American authority, the fact that western territories were populated by foreigners and Native Americans, or the question of who controlled commerce and travel on the major interior rivers of the North American continent, legislative decisions were motivated by the reality of a massive ambiguous interior frontier. While the borders would change over the 19th-century, these overall concerns did not diminish. In fact, one of the primary reasons for acquiring overseas possessions following the Spanish-American War in 1898 was for military advantage in the Pacific and Caribbean regions. Not only were there concerns regarding foreign invasion or influence, but many of the frontier regions were considered lawless, although much of this can be laid upon the inconsistency with which Congress appropriated funds for territorial judiciaries and law enforcement.

From the Jeffersonian proclamation of an “Empire for Liberty” to George W. Bush’s efforts to install a representative democracy in Iraq in the 21st-century, American expansion has centered on the ideological tenets of democracy and elected representation. Rather than a narrative of progress, however, there have been waves of extension and restriction in applying the ideals of democracy, civil rights, and the protections afforded by the Constitution to Americans, whether living in the territories or not. A sixth process affecting territorial policy is how these waves helped to delineate what rights and responsibilities territorial governments and residents had over time. From the controversial Sixth Article of Compact denying slavery in the Northwest Ordinance of 1787 to the complicated status of Puerto Ricans as citizens of the United States but Puerto Rico itself as an inferior political entity under the U.S. Constitution, questions regarding territorial policy have hardly been relegated to practical questions of economy and politics, but have had important impacts on political theory, especially in terms of what it means
to be an “American,” how the rights of the Constitution are defined and applied, and whether the
U.S. Congress has the ability to restrict the supposedly natural rights embodied in the Bill of
Rights. In fact, one of the most important aspects of this process is how territories, who have
never had full, meaningful, voting representation within the institution that had decision-making
control over their existence, were able to influence the political system to respond to their needs,
respect their human rights, and provide for their welfare.

Finally, a sometimes overlooked, but vitally important aspect of any discussion of
processes affecting policy is that technological change over time. The story of American growth
in the world from the Revolutionary period into the 21st-century is tightly interwoven with the
story of the rapid increase in the quality of transportation and communication during the same
period. *Therefore a seventh process to include here is that of the impact of technological change in determining territorial administration and expansion policies.* As Howe vibrantly argues in
his Pulitzer-Prize winning *What Hath God Wrought*, the primary forces for democracy in ante-
bellum America were enhanced by significant developments in both communication, especially
the telegraph and in transportation, where first steamboats then trains transformed the way
people interacted with their world. By themselves, these inventions did not change the goals of
territorial policy, but they encouraged certain decisions over others, influenced the decisions over
which internal improvements the federal government would fund in the territories, and allowed
for a world-wide American empire to exist by the early 20th-century.

**Methodology**

**Case Studies**

Given the temporal length and the territorial breadth of this study as a whole, I use a case
study approach to provide a useful vantage point for uncovering broader implications of change
in American political development, while reducing the research to a manageable undertaking. I take, as a starting point, Gerring’s definition of a case study as, “an intensive study of a single unit for the purpose of understanding a larger class of (similar) units.” While a broad overview of territorial history through the lens of Congressional actions might provide a substantial number of examples in which Congress impacted territorial development, using a detailed examination of territorial policy in a select group of cases will allow greater revelations about the scope and depth of territorial policy and its impact on American politics. It should be acknowledged here, however, that this study, which looks at a number of territorial cases, also has made a tradeoff in terms of causal inference strength versus descriptive inference strength. In particular, this case study approach attempts to balance the strength of causal effects versus causal mechanisms, losing some explanatory power on both of these extremes. In choosing a number of cases across American history, I am forsaking the great depth of causal mechanisms which might be provided by a single (or one per era) case study approach while gaining greater explanation of causal effects, or being able to see what Congressional decisions in certain cases set them on course to do in later cases (or at times, with other territories during the same period).

Thus, given the scope of this project, and the concerns of balancing quality and quantity of evidence in support of my claims, I have chosen seven cases across the first three periods outlined above, three in the first, two in the second, and two in the third. In addition I will provide a discussion regarding the fourth period and its connections to the past as well as its meaning in the twenty-first century. When selecting cases, I followed criteria that attempted to balance the tension between exemplary and typical cases. While there were dozens of territories to choose from across the three periods, given all the variances in geography, economy, culture,
and politics (both at territorial and national levels) it is hard to designate any territory as prototypical of any era. Still, in each of the periods, consideration was given to attempt to select cases that exemplified both the development from previous eras and the specific challenges which arose during the period of concern. There was a desire, as well, to select at least one case which demonstrated how the processes of Congressional territorial policy interacted with significant policy concerns or political problems in other realms, such as slavery, immigration/assimilation, and foreign policy concerns, especially as related to the idea of American imperialism. Thus within the three major eras of territorial policy development I am examining, I have selected cases that are significant both for the ways they typify Congressional policy in the era, but also for the ways in which they represent unique factors affecting policymaking.

**Table 2.2 Case Selections**

<table>
<thead>
<tr>
<th>First Era</th>
<th>Second Era</th>
<th>Third Era</th>
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<tbody>
<tr>
<td>✤ Northwest Territory (1787-1803)</td>
<td>✤ Wyoming Territory (1868-1890)</td>
<td>✤ Puerto Rico (1898-current)</td>
</tr>
<tr>
<td>✤ Wisconsin Territory (1836-1848)</td>
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</tbody>
</table>

**Case Selection**

*First Era (Experimental Empire)*

While the Articles of Confederation were repudiated as inadequate by the new U.S. Constitution, the Northwest Ordinance of 1787, with minor changes and no debate, was reaffirmed. It was clear that there was some level of agreement among many of the most
important political figures of early American history regarding the preliminary structure which
the western territories would take. Thus, by necessity, the first case must be the Northwest
Territory, as it reflects the primitive efforts at territorial policy as envisioned within the structure
of a republican democracy. As prelude to this case, a discussion of the parameters set out by the
Northwest Ordinance of 1787 (and its predecessors, the Ordinance of 1784 and the Land
Ordinance of 1785) will be outlined. These early legislative efforts reflected assumptions of
federal legislative authority, and allow for a clear comparison to the realities which quickly
revealed their deficiencies.

The Northwest Territorial government was in place by July 1788 and, with minimal
changes, the 1787 Ordinance was reenacted by the new U.S. Congress in 1789. For the next
eleven years, this massive territory (encompassing the modern states of Ohio, Indiana, Illinois,
Michigan, Wisconsin, and a portion of Minnesota) remained in the first, district, stage of
government, relying on a territorial government consisting of a governor, a secretary, and three
judges, all of whom were frequently absent or negligent in their duties. This early phase,
however, reflects two major themes that would resonate beyond the first period of territorial
government: 1) the need for governmental structure and legitimate authority on the frontier and
2) the relative inattention that Congress paid to these problems. By including the Northwest
Territory, therefore, as a case, I can gauge where territorial policy started from and reflect on the
changes over time.

The first opportunity I will take to do this happens right away, as I will segue from the
original Northwest Territory to the slowly partitioned off Indiana Territory, which initially
contained all of the former Northwest excluding Ohio, but by 1809 would be reduced down to
the modern state of Indiana. It would continue in territorial stage until 1816. This means that my
The initial two cases in reality stretch from 1787 until 1816, although in varying forms. The reason for selecting Indiana Territory as the extension to the Northwest Territory case was to highlight one of the first states that experienced the entire territorial process as outlined by Congress, including the carving out of a specific area (as opposed to the much larger and ambiguous Northwest). Indiana was the second state crafted from the Northwest Territory, but the first to experience territorial government on a small scale. Thus, Indiana serves as a first look at how well the Northwest Ordinance of 1787 and subsequent efforts by Congress operated for territorial government.

The third case during the first period of territorial governance signals a culmination of early Congressional efforts. Wisconsin Territory (1836-1848) marked a point during this first period where Congress had a much more maturely developed policy outline for the territories. While this doesn’t mean that there was necessarily significant stability or established institutional authority by this point, there were a large number of key components of territorial governance that were mostly settled by the mid-1830s and were first captured in depth within the Wisconsin Territory Organic Act. This Act would serve as a primary template for territories through the rest of the 19th-century, just as the Northwest Ordinance had for the territories before. Wisconsin Territory also serves as a more typical case during the first period. It was not caught up in the growing conflict regarding slavery and was not especially unique in its population, geography, or politics. Thus it was not, during its tenure, regarded by Congress as a site of major legislative reform. Yet, the Territory serves as an important case to highlight how territorial policy had changed over the first 50 years of the experimentation of imperial expansion.
Second Era (Continental Empire)

In terms of major political events, the Civil War clearly separates the first and second periods as defined in this project. Yet, the reason for this choice has little to do with the importance of reunification, instead reflecting the slowing of the pace of westward expansion. This was due to a number of factors, the first of which was the geographical size of the West, which, even excluding the states bordering the Mississippi still held almost half of the land of the continental U.S. Another was the geographical features and climate, being more arid, lacking water sources, and being much more mountainous than the East or Central Plains areas. Finally, while there had been the challenge of Native American populations and small, but influential French and Spanish settlements in the expansion toward the Mississippi and into Florida, the West presented a new level of complexity. There were large settlements of Spanish-speaking Catholics in the Southwest, the dominance of the Mormon Church in Deseret (Utah), and some of the most aggressively resistant Native tribes. These non-Anglo-Saxon, or at least non-Protestant, groups posed new threats to the continued expansion during the latter half of the 19th-century.

While only twelve territorial governments were erected after the end of the Civil War in the western continental U.S., the cases available represent a variety of concerns. Thus, choosing is both an exercise in caution and in curiosity, as the territories selected to illuminate the second period were chosen specifically to reflect these differing conditions. The first, New Mexico Territory (1850-1912) holds the distinction as the longest lasting territorial entity within the contiguous United States. It was actually formed prior to Kansan statehood, and well before the Civil War began, but ended up not attaining its own ascension to full union until well into the following century. This was due primarily to its population. Having been secured during the
Mexican-American War, the issue of slavery was critical to the early existence of New Mexico Territory (which at its beginning encompassed nearly all of present day New Mexico, Arizona, and part of Colorado). Its existing population was, when compared to other western territorial areas, quite sizeable, but primarily consisted of Spanish-speaking former Mexicans, who found themselves on U.S. soil after the war. Early on there were significant efforts to push New Mexico quickly to statehood as a compromise over the slavery issue, but this deal fell apart (eventually leading to secession) and after the Civil War, without the prospect of slavery expansion, Congress saw little reason to allow New Mexico statehood. This only intensified after Arizona and Colorado Territories were split off by the early 1860’s, leaving New Mexico Territory at the borders of the present-day state. While Colorado Territory would achieve statehood by 1876, the much more Hispanic New Mexico and Arizona would not enter the union until 1912. This was a break with earlier Congressional practice, which pushed expansion toward relatively rapid statehood, especially since New Mexico Territory had more than enough residents to be eligible for territorial advancement from the antebellum period. Congress procrastinated, delayed, and outright blocked attempts at statehood. While some of these actions were veiled by reasons regarding institutional and political development (or lack thereof), others struck more clearly at the core of the hesitation, namely the primarily Spanish-speaking non-Anglo-Saxon Catholic residents. Unlike with the French settlers, who at least had been European natives, or the Native Americans, who could be forcibly assimilated or moved, Congress was divided over this new obstacle to expansion and primarily decided to wait, rather than act.

Utah Territory was given consideration as a case here, given that it also faced resistance from Congress, which forced it to remain in territorial status for decades. This resistance, however, stemmed from opposition to select practices, primarily polygamy, of the Mormon
Church, rather than specifically to the ethnicity or culture of the territorial residents. While this opposition was in some ways similar to that encountered in New Mexico Territory, it was also unique due to the relative specificity of Congressional opposition, rather than a more general concern borne from a complex and deeper prejudice. While the interplay between the national government and the Mormon Church, which controlled much of the political and social conditions of the Utah or Deseret Territory, is fascinating, due to the uniqueness of this overall situation, Utah was not chosen as a case for this project.

Another territory during this period that faced unique circumstances was Oregon. Even more so than Utah, the conditions surrounding the acquisition and development of Oregon do not present a useful case for this research project for a number of reasons. First, Oregon was settled by Easterners earlier than other western territories (organized, 1848, and achieved statehood, 1859, the same years as Minnesota), given its relative fertility to the dry mid-continental west and its location as a trading and shipping port on the Pacific Coast. Second, the strategic military importance of the area, combined with the international complexities of the region, with ownership rights contested by Great Britain, led to more immediate concerns regarding foreign interference. Third, Oregon followed a significantly different pattern of territorial political development than other territories in any of the eras outlined in this study. It gained a significant amount of self-government from the beginning as Congress was far less worried about controlling the settlers politically than ensuring simply that the territory was American owned, since many in the federal government believed this was the best way to contest British intrigue in the Pacific Northwest. Oregon Territory, for these reasons, was also not chosen for inclusion as a case, despite its obvious historical importance.
Before outlining the second case chosen, one more consideration should be noted, specifically the role of California and Texas. While among the most important acquisitions during the mid-19th-century, neither of these areas are included in this research project at all, since they were never under territorial management of Congress and were annexed directly to statehood when they joined the union, after each had considered itself an independent republic prior to annexation. With these claims of sovereignty, while controversial, it was unsurprising that they were annexed wholly into the union as states with full rights, rather than as territorial entities. The leaders within Texas and California would have balked at “starting over” in terms of self-government, and the acquisition of both was far too important to the United States to risk losing them to rejoin Mexico.

This brings us to the announcement of the second case during the second period of territorial governance, the Wyoming Territory (1868-1890). The Territory, which fluctuated in size, including much of current-day Colorado at times, exemplifies the other major obstacle western territories faced in becoming states, which was the issue of low population. Despite its immense size, the Wyoming Territory had very few settlers, even by the time it achieved statehood.\(^{33}\) Ironically, the lack of overall population was much less of an issue for Congress than the complications of the more populous but ethnically Hispanic population in New Mexico. Despite the much later creation of the Wyoming Territory, therefore, it received statehood nearly 25 years earlier than its southwestern neighbor. This case, then, provides an example of Congressional territorial policymaking, given low populations, slow settlement growth, and the vastly different living conditions of the arid west. The concerns there were lack of settlers, rather than who the settlers were. That this was less problematic demonstrates the importance and influence of racial and cultural prejudice of American politics.
Third Era (The Insular Empire)

The Northwest Ordinance of 1787 proclaimed that upon achieving statehood, territories would be equal to the existing states. Although it did not explicitly guarantee that territories would actually reach statehood, this was broadly assumed as the goal of territorial expansion and was confirmed through the Civil War and Reconstruction periods. It was not until the acquisition of Alaska in the 1860s that the U.S. owned territorial lands which would not be seen as an obvious candidate for statehood. While Congress continued to grant statehood to contiguous territories into the early 20th-century, what started with Alaska was further cemented after that Spanish-American War when the United States acquired numerous overseas possessions, both close to the mainland and very far away. Thus, what is considerably different about the third period of empire building and territorial policy is that Congress no longer saw the ultimate design of each territory as that of becoming a political body coequal with existing states. Instead, Congressional policymakers were clearly not going to grant this status to the Philippine Islands or Guam (perhaps not even Hawaii or Alaska). The controversy over whether or not Congress had the ability to force territorial possessions into indefinite secondary status was reinforced by the Supreme Court’s decisions in the Insular Cases, which allowed Congress to create separate categories of territorial possessions. The first of these was whether a territory was incorporated or unincorporated, referring to the incorporation of the full set of Constitutional guarantees. The second was whether a territory was organized or unorganized, which broadly reflected the development of the local political structure. The third period, beginning around the turn of the 20th-century, was thus a sharp demarcation from earlier practice, but in some ways, a natural
progression from decisions Congress had been making regarding territorial governance for decades.

With these considerations in mind three different groups of possible cases during this period unfold. The first group includes Hawaii and Alaska, only similar in the fact that they were both to achieve statehood, the only third era territories to do so. In nearly every other aspect (indigenous population, geography, purpose behind acquisition, and even how they were acquired) the two territories were distinct from each other. Yet, the fact that they are the only non-contiguous U.S. possessions to achieve statehood makes them politically more important, at least in terms of the current project, to group together than any other aspect which differentiates them. The second group includes the various territories that involved only temporary American control, whether legislative or military. Falling into this category are the Philippine Islands, Cuba, Nicaragua, the Panama Canal Zone, Haiti, and the Dominican Republic. Finally, the third group includes those territories that have remained a part of the American empire to this day but have not yet and likely will never achieve statehood. Most notably is Puerto Rico, but also Guam, American Samoa, the US Virgin Islands, and a smattering of uninhabited rocky islands and atolls throughout the world’s oceans.

More than in the previous two periods of territorial expansion, few of these cases appear to be suitable for the purposes of this study. First, while important as a historical reality, those territories which were held by military occupation, such as Haiti and Cuba, do not allow for extensive legislative policy analysis. Additionally, territories that do not have relatively substantial populations (or no population) are of less importance both to American history, but also to territorial policy. This leaves few choices, primarily Hawaii, Alaska, Puerto Rico, the Philippine Islands, Guam, and American Samoa. From this list, it makes the most sense to select
one of the two territories that achieved statehood and one which has or did not. The selection of Alaska and Puerto Rico\textsuperscript{35} provide the richest opportunities to highlight the obstacles facing Congressional territorial policy during this third empire.

Alaska is unique in that it is the only one of these territories connected by land to the contiguous United States, and also the only one with a colder climate. Resource rich, Alaska was purchased for prospective military and economic reasons, not for settlement and remains one of the least populous states in the U.S., with by far the lowest population per square mile\textsuperscript{36}. Yet, enough American legislators were convinced by Secretary of State William Seward that purchasing the barren wasteland in the late 1860s from Russia made some long-term sense. Classified first as a military department, then as an ambiguously defined district, and finally as a territory, Alaska demonstrates a very different political evolution than prior territorial possessions. The long, slow path of Alaska toward statehood also displays the growing resistance in the American political system to creating more states, especially from land separated from the union and without local pressure for political development.

This leaves us with a final case for the third period, from amongst those inhabited possessions which remain in some form of territorial status. From these Puerto Rico is clearly the most desirable choice. First, unlike Hawaii, it has never become a state, and maintains its status as a U.S. Commonwealth, a system largely self-governed but also not equal with the states under the Constitution. Second, Guam and the American Samoa are small islands, with relatively small populations\textsuperscript{37}. While this, by itself, is not a reason to dismiss them as useful cases, it does lead to a relative lack of national salience of issues regarding those places. Since Congress represents the people of the existing states and not the territories, any area that rarely ever garners attention in the mainland, represents a more difficult study.
This leaves the Philippine Islands and Puerto Rico to choose from. The Philippines, while a rich (and largely tragic) case in American treatment of an ethnically different native population, was largely a case involving military action, overseen much more closely by the executive than the legislative branch of the federal government. Although this situation did provide a strong example of the role non-legislative territorial officials played in American imperialism, it is also a particularly complicated case, especially as compared to Puerto Rico. Thus, Puerto Rico is the stronger candidate for inclusion for this project. Aside from the reasons not to choose the Philippines, the primary positive reason for deciding on Puerto Rico is the fact that an incredible amount of research exists on its relationship with the United States, especially the cultural and political implications. This interest in Puerto Rican politics has been constant since control of the island was transferred from Spanish colonialism to American empire following the Spanish-American War. Thus it provides a stronger case for the continued tension between practical realities of political relations and the theoretical implications of a democratic republic holding a subunit in secondary status, regardless of the relatively benign imperial bond, as least historically speaking.

Outline of Dissertation

Having discussed the selection of the cases for this project, the outline for the remainder of this dissertation is as follows. Part I of the dissertation, containing the current chapter and the introductory theory, first identified the aim of the project, situating it within the literature and backdrop of American political development scholarship. Then this section developed a periodization scheme and outlined the argument for case selection within these periods.
Next Part II will cover the cases of the era up to the Civil War of initial expansion. Chapter 3, “The Territorial Experiment” examines how Congress chose to initially set up the process of territorial creation, a route to statehood, the administrative structure, and rights and responsibilities of territorial inhabitants and government under the Northwest Ordinance. It will follow the trials of this early period of territorial policy making including the design of the territorial delegate’s role, early tensions between appointed officials and territorial residents, and the challenges of administering a vast and remote frontier. This examination will continue in Chapter 4, “Adolescent Territorial Policy”, through the creation and subsequent admission of Indiana Territory, the second state to be carved out of the Northwest Ordinance, and the first which had been unconnected to the 13 original states.

Chapter 5, “The Old Northwest is Done” highlights how the Organic Act of Wisconsin Territory, which would serve as the foundational model for territories over the next half-century, was a culmination of the early experimentation in territorial administration that had started with the Northwest Ordinance’s original passage under the Continental Congress in 1784. Wisconsin Territory also provides an example of a model territorial experience in that it existed in its specific form for 12 years, was an area with fertile agricultural lands, forests, and only rolling hills, and remained relatively politically calm. Congressional debate over the creation of the territory in 1836 and the drive for statehood that was successful in 1848 was comparatively low pressure. It seemed that Wisconsin might be an example for other territories in terms of administration and policy.

Part III of the dissertation, moves into the post-bellum Second Era of western continental territorial expansion. While most western territories had been created before Reconstruction, the end of the compromises over slavery policy and the reassertion of legislative authority in the last
half of the 19th-century, reveals a dramatic shift in territorial policy. In Chapter 6 “Big Sky, Few People” an examination of Wyoming Territory demonstrates how Congress was willing to forgive low population densities in some western areas in favor of statehood, given the strength of political leadership in the territories and a lack of undesired inhabitants. Chapter 7, “Race, Religion, and Territory”, focused on New Mexico Territory, reveals what happened when Congress was not as enthusiastic about extending the Union to areas with non-Anglo-Saxon populations, especially those who were also Catholic and non-English speaking. While Deseret Territory, which eventually became Utah, clashed with Congressional policymakers over the influence and practices of Mormonism, at least the settlers were European stock and spoke English. In New Mexico, despite a sizeable population from organization (one larger at all times than Wyoming), it took over six decades for statehood to be achieved. The chapters of Part III thus highlight the changing causal mechanisms for territorial decision-making following the end of the tension over slavery and the settlement of the less arid East.

The transition from continental expansion and all of its challenges to non-contiguous territorial policy marks the Third Era examined here in Part IV. Chapter 8, “The Last American Frontier” Alaska’s drawn-out journey from military district to statehood is considered. A cold, relatively lifeless, mass of land, Alaska was purchased from a financially strapped Russian government in 1867, yet did not technically have a territorial government as was practiced elsewhere under U.S. control, until 1912. Thus much of the significant territorial decisions made for the territory occurred after the turn of the 20th-century. While the military value of Alaska has shifted over time, discoveries of valuable resources over the period of American control of the land have had a tremendous impact on Congressional policy decisions, even after statehood. Alaska represents the first foray into possessions outside of the mid-Northwestern hemisphere
continental U.S. and its journey highlights the differences in territorial intentions as reflected in administration and policy between the second and third eras of territorial policy.

Chapter 9, “Domestic, in a Foreign Sense” emphasizes this transition between eras even more starkly in looking at the role that Puerto Rico has played in territorial policy. As the most prominent remaining territorial possession of the U.S. in the 21st-century, and the only remaining Caribbean possession left from the post-Spanish-American War era, Puerto Rico has experienced a vastly different territorial experience than any U.S. entity had during the 19th-century. The complicated, sometimes beneficial, sometimes constricting, modern position of Puerto Rico within the American political system reflects in many ways the culmination of the original conception of empire as it runs through American history. No longer is incorporation into the Union as a state an even implicit guarantee for territorial entities. The turbulent experience of this island and its inhabitants under American control has far reaching consequences for American imperialism just as it also reflects well over two centuries of territorial policy by the U.S. Congress.

Part V brings readers back around and encourages connecting the narrative regarding Congressional territorial decision-making to arguments regarding American Empire into the 21st-century. In Chapter 10, “Informal Empire” the growth of American influence in the world since the end of World War II is briefly described as an indirect extension of the territorial expansion which had preceded it. No longer is it necessary for the U.S. to have legal possession over a geographical space to have cultural, if not also political, control over it. This chapter will link the arguments of the rest of the dissertation with those being made by recent scholars who identify and argue for the existence of a modern form of imperialism practiced by the U.S.
Chapter 11, “Territorial Politics in the American System” analyzes the impacts of interactions between Congress and external institutions and actors, abstracted from specific historical contexts, within territorial policy and connects these interactions to a broader consideration of Congress’s role within the American system, especially at it relates to limitations on its authority. Chapter 12 then closes the dissertation with a brief review of the project’s aims and provides readers with a set of conclusions as well as questions for further investigation.

Comment on Sources

This study relies on qualitative analyses using multiple territorial case studies to highlight both unique and standard features of territorial policymaking across various periods of American history. Through the use of extensive primary documents, focusing on the ways in which Congress initiated, debated, and enacted (or refrained from enacting) territorial legislation, this study constructs qualitative narratives that reflect a deeper and more thorough understanding of the underlying processes that led to decisions, the causes of which cannot be appreciated using primarily quantitative methods. With this qualitative approach it is necessary to consult both secondary and primary sources widely, especially given the broad temporal scope of the project. The primary sources, many of which are from the early period of American history, are variable in their quality and accuracy. For example, early accounts of the House and Senate were compiled from second-hand records and are not necessarily considered exact descriptions of the content of floor debates. Another example is that newspapers written in the 1800s were of highly inconsistent quality, especially as relates to journalistic standards of the late 20th-century. Editors might print articles without checking their accuracy and many would resort to highly partisan
and sometimes vicious attacks against political opponents. Additionally, the materials available in each period increase in quantity and overall quality as we move toward the present, meaning that the sources used to highlight each case may differ due to what is considered the most accurate representation of Congressional policymaking during that period. Every effort has been made to ensure that the sources used in this project are accurate with any possible controversial evidence noted as such. Readers will have to make their own conclusions as to how persuasive that evidence is, but the quantity and quality of sources for territorial policy are somewhat limited, especially prior to the Civil War period.

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1 That act merged six committees in the House, including the Committee on Territories into the Committee on Interior and Insular Affairs which was again reorganized in 1993.
2 Cox, Rise and Fall of the American Empire, 2012.
3 See Atwood, War and Empire: The American Way of Life, 2010; Ferguson, Colossus: The Rise and Fall of the American Empire, 2005.
5 See Ferguson, Colossus: The Rise and Fall of the American Empire, 2005, for a good counterexample to this.
10 For a discussion of how Carter’s research did shift historical perspectives on territorial research, see Bloom’s edited volume, The American Territorial System (1974).
12 Willoughby, Territories and Dependencies of the United States, 1905.
15 Nugent, Habits of Empire, xv.
17 Skowronek, The Politics Presidents Make, 8-10.
19 Tichenor, Dividing Lines, 8.
20 Tichenor, Dividing Lines, 9.
21 Tichenor, Dividing Lines, 9.
22 For examples, see Fenno, Congressmen in Committees, 1995; Deering and Smith, Committees in Congress, 1997; and King, Turf Wars, 1997.
23 Baumgartner and Jones, Agendas and Instability in American Politics, 195.
24 See articles found in Bloom (1974) for more information on this role.
26 Schneider and Ingram, Policy Design for Democracy, 109.


For a methodological extrapolation of this, see Gerring, John “What is a Case Study and What is it Good For?” 2004.

The 1890 U.S. Census counted 62,555 residents up from just 20,789 in 1880. As a comparison, New Mexico, had over 60,000 residents in 1850, Utah had over 40,000 in 1860, and Colorado, after being separated from other territorial entities and given the mining rushes, reached 200,000 residents in the early 1880s. (http://lwd.dol.state.nj.us/labor/lpa/census/1990/poptrd1.htm)

The one exception here, of course being Puerto Rico, which at times has been at the forefront of discussion for achieving statehood.

While Puerto Rico is the most likely candidate for statehood among the current remaining U.S. territories, even if this is achieved, the path to and reasons for this development will differ in important ways from Hawaii and Alaska. Therefore, I am confident, even if Puerto Rico becomes the 51st state, that as a case in this project, it would retain its importance.

Only Wyoming, North Dakota, and Vermont have smaller populations, and the persons per square mile were 1.2 versus 87.4 in the U.S. as a whole. Wyoming, the next least densely populated state has 5.8 persons per square mile.

In a post-WWII population surge Guam’s population exceeded 60,000 and today stands at about 160,000. American Samoa has hovered between 50,000 and 60,000 for the past three decades.
Chapter 3 – “The Territorial Experiment” - Northwest Territory

Territorial policy in the first 25 years following the assumption of independent government in America was largely based upon the desire for orderly expansion, controlling the conflict with Native American nations, and instilling republican virtues in the frontier. As with many political documents of that period, the Northwest Ordinance was, in the abstract, a powerfully democratic and progressive statement of the country’s ideals. In practice, however, territorial policy followed a balancing act between democracy and autocracy and between supporting hardworking settlers and potential profits through speculation. While national politicians realized the importance of settling the west, setting up what Jefferson labeled an “Empire of Liberty”, the project of nation-building involved matters more pressing than the difficulties faced by territorial officials, frontiersmen, and land speculators. While Congressional action occurred in reaction to some issues, notably policy regarding land sales and a slow response to inadequate civil administration, the national government remained in loose control over what happened in the territories beyond military affairs.

Still during this period, the U.S. Congress under the new Constitution began to frame its role more precisely throughout the realm of American politics. Within the concerns of territorial policy they delegated much of the oversight to the executive branch, allowing the president to largely handpick territorial administrators, and governors reported to both the Secretary of State and the Secretary of War regarding their dual positions. The Congress importantly shifted its understanding of what land policy should look like. Originally the desire was for western lands to bring in vast revenues to a government burdened with assuming state debts from the
Revolutionary War. When this didn’t occur, however, legislators modified the goals of the policy
to that of settlement to drive economic growth, a path that would bring in tax revenue and serve
the greater societal good. By 1800, therefore, Congress had established basic guidelines and
experimented with foundational concepts of territorial governance. The view of a continental
American empire, however, was not yet developed and policy decisions reflected this
understanding.

Creating Territorial Policy as a National Security Doctrine

The United States at its formation was largely a coastal Easterly-facing nation of peoples,
living within a couple days’ horse ride from the ocean. There were only scattered settlements in
the interior of the original states, and almost no Americans living in the vast Ohio River Valley
or near the Mississippi, which was the initial western border. Yet, there was an understanding
that, unlike in the British colonies, westward expansion was desirable and likely unavoidable.
While few leaders in the 1780s could have comprehended the rapidity of growth that would take
place over the next few decades, they realized that the national government would need to
manage the growth of the frontier. After convincing the states to surrender their vast claims to
the interior lands of the new country, Congress set itself to the task of crafting an American
version of empire. From the start, this was conceptualized as temporary, with the primary
purpose to prepare for the inclusion of new states.

This project, however, would require the creation of an administrative government that
could effectively manage a massive area, sparsely populated, with the constant threat of hostile
Native Americans and the machinations of foreign agents. This preoccupation with expansion
and security led Congress to imbue territorial governors with autocratic authority and combine
the civilian and military functions in one person. In the case of the Northwest Territory, Governor St. Clair became known as much as for his military endeavors as for his civilian administration. National security was simply the paramount concern. Even land policy, which initially Congress had hoped would produce a financial boon to the national government, shifted toward rapid expansion instead. The settlement of the interior as a barrier to foreign or Native menaces, and the economic boost it gave the economy, were far more valuable than the inconsistent gains that land sales brought.

*Constructing Territorial Authority*

Willoughby, writing in the early 20th-century about the lasting legacy of the Northwest Ordinance of 1787 proclaimed that, “Next to the Constitution itself, it is the most important organic act of the Federal Government.”¹ Considering that this ordinance formed the framework of all the organic acts of territories which would later become states and it served as the basis for political government, civil rights, educational emphasis, and a system for distribution of the vast properties, Willoughby has a strong argument. No other act, save perhaps the Judiciary Act of 1789, has more thoroughly impacted American history in such a consistent and long-lasting manner. Yet, at the same time, Eblen notes that the Ordinance is interesting because, “In light of the aura of intrigue that has surrounded the Ordinance, it is thus surprising to see how its history is apparently nothing more or less than that of a rather ordinary piece of noncontroversial legislation.”² Unlike many other landmark legislative initiatives, it was the details of, not the purpose, necessity, or goals of the Northwest Ordinance that spurred Congressional debate and controversy. A framework, such as the Northwest Ordinance was seen as critical to 18th-century Congressional leaders.
While the scope of Congressional power over territorial policy has been the source of significant controversy at times, the authority of Congress, as the representative body of the national government, regarding territorial policy, has been widely agreed upon and is rooted not only in the Constitution, but also in the sovereign rights of nations and British precedents familiar to the founding generation. It was the combination of the sovereignty theory and the practices of the British (and other European) empires, that led the delegates at the Constitutional Convention to an uncontroversial inclusion of specific language giving Congress the right to legislate for territorial areas. The narrative leading to this conclusion is important to briefly include here.

The British, obviously no strangers to the problems inherent in administering colonial territories provided a number of practical examples for early American government practitioners. In 1763, the British Parliament, in response to issues of the expanding western settlement and dealing with the Native Americans, created the Proclamation Line of 1763. This effectively marked off the trans-Appalachian
region and created an Indian reservation. The next year, the Plan of 1764 was enacted, which divided the western territory in two large districts, each of which would be administered by an Indian superintendent. As Merk notes, “The program of converting the new West into an Indian reserve was intended to be temporary. Closure of the region was to continue only until an orderly advance into it could be worked out.”3 This ideal of temporary autocratic rule would be carried over into the early American republic and play an important role in the first stages of territorial development. These early British programs, however, would be completely dropped in 1768 after a change in ministry in the English parliament4. British officials were worried about the spread of settlers into the Appalachians and beyond because of the clashes that would inevitably occur with Native Americans and the difficulty which would occur regarding land claims. These same concerns would enter into the calculations taken for territorial policy in the early American experiment.

After the completion of the Revolutionary War, the newly founded states formed a weak national government under the Articles of Confederation. One of the major concerns, both within individual states, and across the confederation, was the role that western lands would play. A few of the original states, primarily Georgia, North Carolina, Virginia, and Massachusetts, claimed enormous (and at times overlapping) jurisdiction over the western lands which had been procured from Great Britain following the Treaty of Paris in 1783.

In 1780 the Continental Congress had recommended “to press upon those states which can remove the embarrassment respecting the western country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the stability of the general confederacy”, noting reasons such as “public credit and confidence”, “support of our army”, “present safety” and “future prosperity”5.
Following the Treaty of Paris, which helped to solidify legally many of these American-based land claims, the states also began to acquiesce to the 1780 plea of Congress. As part of these cessions the states called upon the legislature to respect various conditions. For example, in the March 1784 cession act of Virginia, the land is given for, “the common Benefit of the Union”, but it must be used to carve out eventual republican states, that French and Canadian settlers within the territories who had been citizens of Virginia would “have their possessions and titles confirmed to them and be protected in the enjoyment of their rights and liberties”, and certain lands should be set aside for specified groups of Revolutionary War Veterans.

To deal with the large amounts of ceded lands that were granted by the states to general control, the national legislative body realized it must devise a plan of administration for these federally owned areas. Their first attempt at this was the Ordinance of 1784, which “Gave the appearance of Congressional noninterference, yet it set up a loose empire.” This move, however, became controversial because it was not obviously clear where the Continental Congress had established the right to acquire and or administer lands not owned by the states. It was not an ability noted in the Articles of Confederation which created and limited (severely) the Continental Congress. The arguments made for this power stem from the foundation of national sovereignty, and strike at the heart of what the union of the states under the Articles was meant to indicate. The lands were ceded by the individual states for the express purpose that they be used for the common good of the nation, as infantile as it might have been at the time. As Farrand noted in 1896, “The acquisition of this territory rested upon acts so directly and expressly connected with the establishment of the Confederation that the acquisition was itself one of the fundamental conditions of union.” The central claim then is that since every nation has a sovereign right, first to acquire and second to administer, lands it controls, and the states
had voluntarily given up their claims to these areas, the national government did not require an expressly stated mandate to take actions to create policies for the administration of these vast areas of land.

This contention apparently was sufficient enough to appease state governments who, through their representatives in the Continental Congress, approved of the Ordinance of 1784. Three years later the Continental Congress enacted the Northwest Ordinance of 1787, which technically repealed, but in effect, expanded upon, the 1784 Ordinance. This later Ordinance was also created the same year that delegates from the states met in Philadelphia at the Constitutional Convention. While it was reenacted by the US Congress, acting under the US Constitution, in 1789 with slight modifications, what Willoughby had claimed as the most important piece of federal legislation in American history was actually crafted prior to the Constitution’s ratification.

All of these efforts focused on two primary concerns of early American nationalists. The first was that of security and order on the frontiers. Interactions between settlers and Natives were inherently tense and as traditional tribal lands were encroached upon hostilities only increased. Additionally, an orderly land policy was required in order to minimize disputes over land claims and to ensure that settlement occurred in a fashion which best served national interests. As Frymer notes, the various laws passed in this early period, “empowered the federal government to intervene to prevent the many violent encounters between settlers and states with Indian nations…and provide government officials with more time to mobilize further institutional warrants before moving forward with territorial expansion.” Not only were they worried about settlers fighting with the Natives, but also about frontiersmen allying with foreign nations, who at least nominally controlled the lands west of the Mississippi River, north of the
Great Lakes, and south of Georgia. Congressional debates centered upon not only the threat of all-out Indian War but the rebellious potential of settlers and the possibility of their defection.

With these concerns, national political leaders forged ahead assuming sovereign power over attaining and controlling territory. Despite the apparent sufficiency of this sovereignty theory for the legislators in the Continental Congress, the framers of the Constitution did realize that it was prudent to make an explicit provision for the stronger federal government they were creating to be able to govern territorial lands. It was specifically mentioned in the Virginia Plan, introduced by Edmund Randolph on May 29, 1787. The initial plan contained only one provision dealing with territorial holdings. Later during the convention there was very little actual discussion regarding the issue of territorial administration and control.

The Committee of Detail, which was tasked with specifying and clarifying provisions, eventually created what was to become the New State and Territorial Clauses of the United States Constitution. Article IV, Section III in its entirety reads:

“New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

This outlined that Congress has the ability to admit, as it sees fit, new states, without limitation on number, size, etc., but that only with the consent of Congress and the impacted state legislatures could a state be either carved out of an existing state’s boundaries or be created from the combination of two preexisting states. While the majority of existing states were created
using the State Clause, the latter provision has rarely been utilized, with the defining exception being the creation, during the Civil War period, of the state of West Virginia, which had been a part of Virginia since the colonial period. Even this action has been widely criticized in American history as unconstitutional since West Virginia seceded from the rest of Virginia, which had joined the Confederation.

This Territorial Clause ensured that sovereignty and control over the ceded western lands and the ensuing territorial governments which would be erected there would be entirely within the national government’s authority. While by 1787 this did not engender strong opposition among the drafters of the Constitution territorial policy remained a potentially contentious issue between the states and the national government (as well as between the states themselves). After all, the creation of territories, the admission of new states, and the number and size of these could easily reignite the divisions which had threatened to deny the creation of a Constitution in the first place such as east versus west, north versus south, large versus small. Thus, the drafters realized that the legitimacy of territorial policymaking needed to rest with the national government in order to plan with national interests in mind and with the power to settle disputes between states.

The Territorial Clause also allows the Congress to dispose of territorial lands (which has primarily meant in practice managing them for private sale) and making any legislative rules affecting their administration. What is significant is that this clause does not specify that Congress has the power to add territory, regardless of any implications to that end. Generally, it would be assumed that a governmental body which can dispose of something can also acquire it, but a more explicit power was not written into the Constitution. This would become a constitutional question for President Jefferson when faced with the question of the legality of the
Louisiana Purchase in 1803. Yet, the precedence of the cessions of states starting in the 1780s, would seem to argue that the Founders of the Constitution assumed the federal government retained this ability under the U.S. Constitution. That underlying theory of sovereignty would persuade even a constitutionally conservative president, such as Jefferson, that acquiring massive amounts of new territory was defensible for a nation by virtue of its inherent power.

The other portion of the U.S. Constitution which, while not directly mentioning territories, would have a great significance to them was Section IV of Article IV. This section guarantees a republican form of government to every State in the Union, but does not provide any such guarantee for territorial possessions, which as specified in the preceding section are under the complete control of Congress. This mattered because the original plans for territorial administration called for a particularly autocratic form of initial government, and even throughout the territorial phase, Congress retained a final, and binding, veto power on all territorial decision making. While republicanism would be eventually granted to territories, it was not guaranteed throughout the process.

*Early Territorial Plans*

As noted above, the British during the middle of the 18th-century did attempt to formulate some rudimentary policies regarding the administration of the vast interior lands of the eastern half of North America. After the American colonists had defeated their former imperialists, they were faced with similar challenges, albeit ones that had only grown over the ensuing decades given growing inland settlement and interactions between Natives and white settlers. The first attempt at territorial administration under the Articles of Confederation was the Ordinance of 1784, primarily authored by Thomas Jefferson. While a significant step toward dealing with the
western frontier, the Ordinance was hardly a plan for government at all, laying down only the basic framework and leaving the rest to be determined later. Thus, it didn’t actually create a system of administration, but only a shell of what would be necessary for effective governance of the territories. The plan called for the creation of a number of small states carved out of the western lands, which would proceed through four stages, from a basically non-governmental beginning until they were accepted into the union as coequal to the original 13 states. It was seemingly designed to work for the people of the territories, but still retained authority in the national legislature. As the plans for the West moved forward, it would be toward more Congressional interference, not less.

Despite the roughness of the 1784 plan, it did contain a number of significant foundations for future territorial governance. First, it set the precedent that territorial governments would begin life at a stage of diminished democracy and then move toward the sovereignty of statehood. Second was the principle that these territorial entities were completely under the purview of the federal government. Third was the understanding that the lands within the territories remained property of the United States until sold. Fourth the territories would receive a republican form of government (a stipulation incorporated into the Constitution for states, but not territories, a few years later). Fifth, they were to be treated similarly to states in that authority over them protruded from the Articles of Confederation and in how federal debt would be assumed by them. Finally, the Ordinance of 1784 allowed these territorial governments a Congressional representative, who could debate, but not vote\textsuperscript{10}.

The committee report of the 1784 Ordinance was subjected to discussion in the Continental Congress, which importantly consisted of discussion to strengthen Congressional authority over the territories which would be created. An amendment, offered by the
Massachusetts’s Elbridge Gerry allowed “That measures not inconsistent with the principles of the confederation and necessary for the preservation of peace and good order among the settlers…may from time to time be taken by the United States in Congress assembled.” While only in place until the territory had crafted a temporary government, this promise laid out two enduring values of territorial governance, one democratic and one practical.

The democratic value ensures that “principles of the confederation”, the limits proscribed by the Articles of Confederation and the Declaration of Independence were to be recognized in territorial areas. At the same time, if in the vague and broad interests of law and order there were practical reasons to curtail certain liberties temporarily, actions could be taken that might otherwise violate rights. While republicanism and democracy were theoretical constructs by which the American government was founded, the reality of the frontier was far removed and security and stability were of more pressing practical necessity there. Thus, the same political elites that had written the Declaration of Independence and fought against an imperial overseer realized that there would be no way to instantly bridge this gap without some transitional period of quasi-democracy. Moving forward, these competing principles would be highlighted in the outline and implementation of the Northwest Ordinance of 1787.

The Ordinance of 1784 was never actually implemented, although it was enacted by the Continental Congress. This chiefly reflected two practical obstacles, one geographical and the other political. The geographical obstacle was that there was so much land to be surveyed before it could be distributed. While the subsequently enacted Land Ordinance of 1785 outlined and pushed forth with a plan of survey, the limited resources of the federal government and the vagaries of primitive surveying across vast tracts of otherwise unmarked lands severely curtailed this process. This was such a widespread problem that Henry Knox, the Secretary at War,
complained of the slow pace of surveying, noting that even if the pace were to double, “very few of those [war veterans] entitled to the land will be living.”¹²

The political obstacle was that the cession of the western lands had been held up until early 1784, just before the Continental Congress created a committee (chaired by Thomas Jefferson) to draw up a plan for temporary government of the West, which would become the Ordinance of 1784. Therefore, Congress had only recently been able to really think about this problem as a whole. While Jefferson had called for a large number of states, the immense size of the ceded areas and the small populations made this ideal an increasingly unworkable one for other members of Congress. In 1785, after a tour of the West, James Monroe returned “convinced that Jefferson’s Ordinance should be changed,” because the states were too small in size and the population requirement (equal to or greater than the least of the original states) was too large¹³.

*The Northwest Ordinance of 1787*

This led to a prolonged revision process which eventually resulted in the passage of the Northwest Ordinance of 1787. First, the number of proposed states was reduced, with Congress eventually settling on three to five to assuage the desires of Northerners and Southerners, who differed in their assumptions about whether Western states would support Southern agrarian and slave interests or those of the more industrial and anti-slavery North. Second, Jefferson’s four-stage process would be refined to three stages: a rough district stage, a partially democratic second stage, and finally admission to the Union. Additionally, Congressional powers over the territorial governments were increased, while at the same time, more specific guarantees of individual rights were outlined.
The Northwest Ordinance of 1787 was enacted during the same summer in which the U.S. Constitution was written. It overturned, but in effect revised and extended, the Ordinance of 1784. The Northwest Ordinance is seen by many scholars as one of the most important acts ever passed by the American federal legislature. Pease refers to it as, “second only to the Constitution of the United States,”¹⁴ and Remini calls it “one of the most important, progressive, and far-reaching legislative acts in our history.”¹⁵ The Ordinance of 1787 took the basic framework of

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<th>Table 3.1 First-Stage Government</th>
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<td>• Governor – appointed by congress; three year term; absolute veto barring congressional nullification; Commander in Chief of militia; appointment of “magistrates and other civil officers” for the “preservation of the peace and good order”; adopt laws with a majority of judges</td>
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<td>• Secretary – appointed by congress; four year term; recorded, preserved, and submitted acts and proceedings of the territorial government to Congress; (unofficial) act as governor when the appointed governor was absent from the territory</td>
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<tr>
<td>• Three Judge Court – appointed by congress; serve during good behavior; two must be present to form a court, having common law jurisdiction; adopt laws with governor</td>
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the Ordinance of 1784, added some of the most important aspects of republicanism, and sprinkled it with administrative necessities borne from the experience of political leaders, especially since 1784. In particular, they focused on ensuring greater Congressional control over the actions of the territorial government, recognizing that both Indians and whites (whatever their ethnic background) were in need of strong armed government until they were accustomed to and ready for democratic and republican institutions, such as were found in the existing states.

The Northwest Ordinance also cemented the states as a union, rather than just a confederated collection of sovereign entities. This shift was reflected prior to the Ordinance by the agreements of the landed states, most prominently Virginia, to cede their claims to the western lands accrued via the treaty which ended the Revolutionary War with Britain. The
authors of the Northwest Ordinance when setting forth the articles at the end of the act, announced, “that the following Articles shall be considered as Articles of compact between the Original States and the People and States in the said territory, and forever remain unalterable, unless by common consent, to wit.”16 As Remini notes, “It was a new concept of Union. No longer was the United States a static collection of independent states quarreling among themselves over vested rights. This new concept was a dynamic expression of an expanding country controlled by a central government…”17 The Northwest Ordinance thus became part of the glue, along with the forthcoming Constitution, which held not only the states to one another, but the immense western frontier to the United States as a whole. Considering the value of the Mississippi River for trade and travel for those who lived west of the Appalachians, this promise was assurance that the fledgling American government would neither allow the settlers to press on without structure, or allow foreign nations to procure the loyalties of these western frontiers people.

Yet, the Northwest Ordinance was not simply a theoretical binding of the existing states to one another and the western territories to the states. It was an overarching plan for governmental administration, for how to build republican democracies in the “wild”. The Ordinance spelled out a process through which these frontiers could (and presumably should) become part of the union, on equal footing with the original thirteen states. It first, rather than attempting to divide the vast territory, created a single temporary district18, with the assumption that it would be further divided as necessary.

For each of the territories there would be a Congressionally appointed governor, with a three year term, a Congressionally appointed secretary, with a four year term, and a Congressionally appointed three judge court. During the initial stage of government, these five
appointed officials would constitute the entire executive, legislative, and judicial powers, answerable only to Congress for their actions. They were somewhat constrained because they could not create new laws, but could only adopt existing laws from the states. The governor was granted near autocratic powers as well, with an absolute veto (barring federal Congressional rebuke), was assigned as commander in chief of the militia, and would have the ability to enable, upon proof (via a census) that at least 5,000 free males resided in the territory, advancement to the second stage of governance. While the strong veto unsurprisingly produced frequent complaints from territorial residents, the ability to certify proof to reach the second stage of territorial governance became almost as controversial since governors at times refused to recognize these petitions in order to maintain their dominant role in the first stage of territorial governance. Yet, despite these strong powers, “the intention of the first stage is to keep lawless settlers in line, and to gain law-abiding settlers for the territory.”

**Table 3.2 Second-Stage Government**

- Upon reaching 5,000+ free males and governor certification
- Representation in a general assembly – One representative for every 500 free males up to 25 reps (after which the ratio is regulated by the legislature
- House of Representatives – Two-year term; U.S. citizen 3+ years and reside in district OR district resident 3+ years; own at least 200 acres
- Legislative Council – 5 members; 5 year terms; chosen by congress via 10 names nominated by the territorial house of representatives
- Council and House, by joint ballot, elect delegate to congress
- Delegate – Only elected federal representative; right to debate, but not vote, in congress
- General Assembly: Consists of governor, legislative council and house of representatives
- Original legislation must be passed by a majority in the house, then in the council, and then by the governor (who retains a full veto)
- Governor extends his powers by being able to “convene, prorogue and dissolve the General Assembly, when in his opinion it shall be expedient”
All of these first stage officials must reside within the territory and there were relatively significant property requirements attached to each position. They needn’t live within the territory when appointed, but afterwards must move there. In fact, to ensure that these officials were knowledgeable regarding republican institutions and the laws of the states, the president and Congress would typically appoint easterners born and living outside of the territories at the time of their appointment\textsuperscript{21}. Yet, the requirement of residency and property ownership was “a classic precaution against the abuse of power…they would not be making laws wholly for others and would have a personal interest in the welfare of the territory.”\textsuperscript{22} In every stage of government, those officials who are appointed by Congress are required to take an “Oath of Affirmation or fidelity, and of Office.”

Once the territorial governor has certified that at least 5,000 free males reside within the territory, a time and place for elections of a house of representatives is set, with at least one representative for every 500 free males, up to 25 total representatives. The representatives serve two-year terms and must be residents of and own at least 200 acres of land within the district they are to be elected from. This lower house then submits a list of 10 nominees for the legislative council to Congress. Of these 10 nominees, Congress appoints five as the upper house, or legislative council. The governor, the House of Representatives and the council make up the general assembly of the territory. It is at this point that original legislation can finally be created and enacted within the territories, with the assent of a majority of each chamber within the general assembly and the assent of the governor (who retains an absolute veto within the territorial government).

These enacted laws must be approved by the U.S. Congress, despite the representative nature of the second stage, highlighting the importance of Congressional control that members of
the Continental Congress sought in the late 1780’s. The territorial administration, intended to be a primer for frontiersmen in republicanism, was still to be closely overseen by representatives in the existing states. Thus, while democratic to some extent, the second stage governments outlined within the Northwest Ordinance were still checked by a group of men unaccountable to the constituents of the territories. For example, the ability of Congressional nullification was used with regularity to ensure territorial governance was in line with Congressional desires and demands.

*The Articles of Compact*

While the initial sections of the Northwest Ordinance create the structure of the institutions of government and what powers the officials have, the document was not simply one of administration. To the political leaders of the eastern states there was more to republican theory than setting up governmental institutions and actors. There were certain habits, rights, and beliefs that also came along with republicanism. A certain number of these would be introduced in the six articles contained in the remainder of the Northwest Ordinance.

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<th>Table 3.3 Articles of the Northwest Ordinance</th>
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<td>1st: Freedom of Religion</td>
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<td>2nd: Writ of habeas corpus, trial by jury, proportional representation, prohibition against cruel and unusual punishment, due process, just compensation for takings, and contract protection</td>
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<tr>
<td>3rd: Education forever encouraged; good faith toward Indians including due process</td>
</tr>
<tr>
<td>4th: Territory and subsequent states remain part of Confederacy in perpetuity; territories pay expenses and taxes as apportioned to states; general assembly cannot interfere with public lands or tax U.S. property</td>
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<tr>
<td>5th: Three to five states should be formed</td>
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<td>6th: Slavery banned (not retroactive)</td>
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The first article guarantees religious freedom, the second writs of habeas corpus, trial by jury, proportionate representation, common law judicial proceedings, prohibition on cruel and unusual punishment, compensation for public takings, and guarantee against contract interference. These protections could be found in most state constitutions at this point, and as history would show, they would be contained within the U.S. Constitution and the Bill of Rights. Thus, many of the most important negative rights afforded to citizens within the states were also afforded to residents of the territories, despite the otherwise particularly authoritative form of government.

The third article begins “Religion, Morality, and knowledge being necessary to good government and the happiness of mankind, School and the means of education shall forever be encouraged.” Given that the Land Ordinance of 1785 set aside one lot within each township for the maintenance of public schools, this prescription hardly seems novel. Yet, it was an integral piece of republican ideals, and one that was future-oriented since education was of relatively little value to most frontier settlers. As Cayton notes, “The articles of the Ordinance, moreover, prescribed the establishment of a society that was in many ways the antithesis of that already on the frontier.” Education, including the ability to write and read, was of limited value to settlers who spent much of their time hunting, fishing, tending small fields of crops, and surviving the harsh elements. The Northwest Ordinance was an outline of a society to be, not a society that existed.

The fourth article begins by stating that “The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America.” This clause, in connection with the opening comments to the articles section setting a “compact between the Original States and the People and States in the said territory,” create an intriguing
situation. The Northwest Ordinance was, despite its historical importance and titular designation as an ordinance, only a standard law under the Articles of Confederation, rather than a binding constitution. Yet, the Ordinance of 1787 (and its subsequent reaffirmation under the U.S. Constitution in 1789) ensured the fundamental importance of this law as a contract between peoples and governments. It also, as stated above, ensured a new understanding of union, because in stating that territories could not secede from the confederacy, it defined the theoretical reasoning why states could not secede either.

The fourth article also outlines the fiscal relationship between the territories and the federal government, such as requiring them to pay a part of the federal debts and a proportional part of the expenses. Taxes were to be apportioned as they are within the states. The Continental Congress, impoverished and looking to the West as a potential future source of tax revenue, wanted to ensure that they could be required to pay their fair share, while also assuring territorial settlers that they would not be asked to pay more than citizens of the states. At the same time, the fourth article prohibits territorial legislatures from interfering with the disposal of public lands, taxing property of the United States, or taxing non-residents higher than territorial residents. These prohibitions were both protections against potential populist reactions to government oversight\(^{24}\) as well as allowing the federal government to be the primary beneficiary of land sales.

The fifth article then outlines that “not less than three nor more than five States,” shall be created from the Northwest Territory. Again, this was a change from the Ordinance of 1784 which (according to the cession requirements of Virginia) called for a significantly larger number of relatively small states. While Jefferson and others had wanted smaller states, believing that republican governments work best on smaller scales, practical concerns led
legislators to revise this down to a few larger states in the Northwest Ordinance. As noted above, James Monroe called for the smaller number, “partially to insure the dominance of the eastern states and partially to make it easier for the western states to achieve the requisite population to become self-governing.”

To this end, the lands incorporated into the original Northwest Territory would end up forming five full states, Ohio, Indiana, Michigan, Illinois, and Wisconsin, and included part of Minnesota.

Finally, the sixth article, which had been struck out of the original Ordinance of 1784, prohibited slavery and involuntary servitude. This was obviously pushed for by northerners and abolitionists, but perhaps more surprisingly, was not strongly contested by southerners. The decision was most likely a combination of the fact that southerners assumed that territories in the southern cessions would be allowed slavery (as the 1787 Ordinance legally was only binding in the Northwest Territory) and of being wary of potential competition from slave labor in the new territories. Either way, the sixth article was not considered retroactive or applicable to the offspring of existing slaves, so that slavery continued within specific portions of the Northwest Territory. Additionally, an 1805 act in Indiana Territory circumvented this prohibition by requiring “voluntary” contracts of indentured service to be signed by slaves brought to the territory.

The Northwest Ordinance reflected a number of important political realities of the early national American government. First, it demonstrated the tensions between the idealistic democratic rhetoric of the Founding Era with the practical challenges that faced 18th-century political elites. By specifically detailing the rights which are to be enjoyed by residents of the territories, it implies that in fact the remainder of Constitutional principles may not apply.
needful Rules and Regulations” this meant that the national government could use strong force in the territories to ensure compliance and order. At the same time, it further cemented which rights were seen as foundational, including freedom of religion, due process and other criminal defendant protections, contract inviolability, and the importance of education for a moral society. At the same time, however, the Ordinance was a contract which basically outlined that western societies needed paternalistic oversight in order to learn how to become proper members of a republican nation. It prescribed authoritarian leadership, strict limitations on political rights, and the ever present threat of Congressional nullification of political acts taken in the territory, even after the more self-governing stages were achieved.

The Ordinance of 1787 also reflected the abstraction which national leaders saw in the vast western wildernesses. These lands were unoccupied in their view, ripe for expansion and settlement by Anglo-Americans. Natives were a temporary challenge to be careful of and the few French and Spanish settlers could be appeased easily via minor land grants and declarations of non-intrusion on their rights. Thus, the policy targets at this early time were virtuous settlers, hardworking Americans who would take up the task of expanding American democracy by farming the land, going to church, and building communities. Elites were worried about unrest on the frontier and conflict with Natives. They struggled with how to treat speculators, since many of them engaged in the practice. Yet, overall, the Ordinance of 1787 was written with the perspective that what the territorial residents needed most was a foundation of republican democracy that would be able to teach them how to build a stronger society in harmony with the Union and its ideals. Targeting social policy recipients would occur with more directed and specific legislation later on.
Implementing the Ordinance of 1787

The Northwest Ordinance was put in to effect immediately. To the military on the frontier, this assurance of governance could not come any sooner. In mid-April of 1787, just a few months prior to the enactment of the Northwest Ordinance, Henry Knox, the Secretary of War, wrote to the President of Congress about the issue of armed frontiersmen taking public lands by force, “If such audacious defiance of the power of the United States be suffered with impunity a precedent will be established, to wrest all the immense property of the western territory out of the hands of the public.”27 The solution, Knox notes in a letter just days afterward, would be to “direct the commanding officer…to take immediate and efficient measures for dispossessing a body of men who have in a lawless and unauthorized manner taken possession of Post St. Vincent in defiance of the proclamations of authority of the United States…”28 This, along with the recent memories of Shay’s rebellion in Massachusetts, served to remind the political elites of the government that people were easily spurred against governments that they found lacking in legitimate (and effectively strong) authority. In Philadelphia, this led the authors of the new Constitution to place more power in the central government. In the Continental Congress, the Northwest Ordinance provided strong powers of governance and full Congressional oversight, to ensure that the national desires for imperial expansion and the forms it would take would be followed.

Yet, the beginning of territorial government was anything but centralized in authority, at least in practice. The governors, despite their ultimate powers, along with the other appointed officials, were unable to convince many settlers of their legitimate authority, especially since most settlers rarely had any contact with civil government officials. The first or district stage of the Northwest Ordinance simply did not match the reality of having five officials oversee a vast
inland territory. As Eblen notes, “Tightly centralized administration was impossible for territorial officials, whose multiple responsibilities in large territories could not all be fully met.”

Despite the Northwest Ordinance’s enactment under the Articles of Confederation, it was obviously seen as an effective tool for the future by the U.S. Congress under the new Constitution, for it was reenacted on August 7, 1789, without debate. The only changes were that the President, with the consent of the Senate, was to appoint officers, in line with the Constitution’s process of executive branch and judicial appointments, and that the territorial secretary was officially given the right to be acting governor when the territorial governor was absent. Thus, the initial framework of the American colonial empire was unceremoniously assented to a second time.

**Land Sales**

Congress saw the vast western lands as not only a source of republican and commercial expansion, but as a source of revenue. While as early as 1785 the national government had begun a centralized effort to survey western land cessions, the immensity of the task was daunting. There were numerous reasons that a plan of growth, structured via land policy, was desirable. As Onuf succinctly notes, “Proponents of western development suggested that overly rapid, unorganized settlement in advance of, and at the expense of, the development of markets and transportation facilities would retard long-term population growth.” Or as Frymer argues, through land policies designed to restrict or encourage population growth, “the strategic planting of peoples could aid in expanding borders and securing territory without over-taxing an early American state…” Thus, economic growth, the expansion of western population, and the security of the nation were tied up in Congressional land policy in the territories.
In considering early land policy, Congress saw a variety of purposes and goals. Given that the national government was still under an incredible debt from the Revolutionary War, one of the purposes was to use the western lands to reward veterans. Thus, bounty lands were a primary way for a cash poor, but land rich, central government to secure its borders while also reducing its financial burden. The federal government, however, still had to have a policy in place to survey lands, parcel them out to veterans, and to ensure proper legal claims were upheld. These grants were quite large, including a million acres contracted out to Cutler and Sargent for bounty lands in the Ohio River Valley. This was much easier envisioned than implemented. While the state of Virginia ceded lands to the federal government to be used partially in fulfillment of veteran’s bounty lands in 1784, many soldiers were still waiting to get surveyed lands in 1790 when the U.S. Congress repealed a 1788 military land act and enacted a new law. This act revised the potential locations for the military lands, so that they would be taken from better overall stock, a reaction to the fact that there was noticeable variation in the quality of land throughout the western reaches. Overall, just the Virginia cession tract would end up allotting four million acres, larger than the size of Connecticut, to Revolutionary War Veterans, and an estimated 61 million acres,
roughly the size of the state of Oregon, were given to veterans via federal land grant programs over American history.\(^{35}\)

Another goal was to raise revenues overall for the central government via outright land sales. This was complicated by a number of factors including the cost of surveying and selling the lands in the first place. Surveying required men to literally stake out the wilderness, into square plots.\(^{36}\) The goal was to create townships equaling 36 square miles, or six miles by six miles, and further dividing those into 36 sections, each of one square mile or 640 acres. While natural obstacles such as hilly terrain, rivers, large boulders, thick groves of trees, swamps, etc. blocked the surveyors, they went about their duty, plotting out the enormous region between the Appalachians and the Mississippi River. They did so using a system of chains, which had been measured out to a specific length such that eighty chain lengths was the equivalent of one mile. In the Land Ordinance of 1785, Congress prescribed that surveyors would mark out the chains on to trees, which were plentiful throughout much of the early land cessions. Thus, looking at a map of modern-day rural Indiana or Illinois one can see roads crisscrossing at the edges of sections and townships just as they had been laid out in the late 18th-century.

After the townships had been surveyed, they were ready to be sold. This was something which Congress longed for since the prevailing belief was that rapid land sales would boost settlement as well as fill the federal government’s coffers. The initial results, however, were incredibly disappointing. In July of 1788 the Continental Congress authorized a land sale to commence at either New York or Philadelphia.\(^{37}\) As Linklater notes in his book on U.S. surveying, the initial New York sale only managed about 100,000 acres and just over $100,000 for the U.S. Treasury. There were two primary reasons for this poor result, one being the cost and the other being the quality of the land. As originally planned in the sale, the smallest parcel
available was an entire section, a full square-mile of land, payable at $1 an acre or $640, which must be paid in full, in cash, hardly something frontiersmen could afford. Additionally, compared to much of the cultivated land East of the Appalachians, there were serious questions about the quality of the surveyed land. How fertile was it? How rocky? How many obstacles would need clearing? There was unmistakably a great stock of wood for crafting tools and homesteads, but in some places the growth was so thick that it would have hindered, not helped agricultural ventures. Since the persons buying the lands only had rudimentary knowledge of what lay on them, Linklater argues, “picking the right square in the grid became a lottery.”

If surveying and selling the vast western land concessions weren’t enough of an issue for American policymakers, there were additional challenges, primarily brought on by the fact that these lands were not in fact devoid of human life. There were three types of persons already living on stretches of western lands: the Natives who had been there for centuries, non-Anglo Europeans, primarily French settlers in the Ohio River Valley, and the first frontier settlers from the Eastern states, who were squatting illegally on public lands not yet claimed by anyone. Not only was this situation ripe for conflict between these three groups, but also proved problematic for land policy, because while all three of those groups had varying legal and moral claims to lands, there were wealthy Eastern speculators, among them some of the Founding Fathers, who looked toward those lands as financial boons. As Onuf labeled it, this was the problem of squatters, speculators, and settlers. “The rapid movement of unauthorized settlers and speculators across the Ohio jeopardized Congressional authority in the region and threatened to embroil the frontiers in Indian warfare.”

A particularly important early test of American land policy occurred with the French settlers of Kaskaskia and Vincennes along the Ohio River. Under British rule they had been
largely tolerated and ignored, but the American push to settle the frontier west of the Appalachians brought them into direct conflict with settlers and speculators looking to buy up and use the lands all around the fertile river valleys. In ceding those lands Virginia had conditioned the transaction upon Congress’s protection of the French settler’s rights to land and liberty. Yet, given the importance of land speculation and the initial hope of Congress to procure a financial boon from it, they commanded Governor St. Clair to inquire into the legality of the claims, requiring some evidence or proof, “either by Records that have been preserved in the Country or by authentic writings in the Possession of the parties…” a difficult task considering the understandable rudimentary record keeping of a small settlement hundreds of miles inland⁴⁰. Despite the challenges, Congress did provide the French of that area a respectable acreage for each household and for the village to hold in common, both of which had been petitioned for by the long-standing residents.

While settling the land and making a profit for the U.S. government were primary goals of the early Congresses, speculation in lands, which many of the early political leaders were involved, was another impetus for land policy decisions. Enormous land purchases were granted by Congress to speculator groups, including one to the Ohio Company and another to Symmes and his associates. The Ohio Company, which counted Rufus Putnam⁴¹, Manasseh Cutler⁴², Samuel Parsons⁴³, and Winthrop Sargent⁴⁴ amongst its primary investors, was able to purchase one and a half million acres in the eastern section of lands north of the Ohio River, using depreciated currency at rates reduced far below those that the Continental Congress had asked for in general land sales. Yet, they were required to follow the Land Ordinance of 1785, and reassured Congress that the settlers in this region would be hard-working New Englanders⁴⁵. Seeing that success, Symmes⁴⁶ and his associates petitioned Congress for a similar grant of land
in 1787. While the initial request was made for a million acres, they were only able to purchase approximately 330,000 acres, albeit priced at just 66 cent per acre. Congress, through these sales, was able to garner some quick financial return, but at a greatly undervalued rate with depreciated currency.

While many early political leaders engaged in some level of land speculation, whether in the territories or the states, it was primarily seen in a negative light by public officials. This was not due to the private land purchases or the democratic implications of allowing enormous grants to go toward groups who would not be physically settling the land. Instead, as Onuf points out, policy makers were wary because, “By preempting prime sites at nominal prices and waiting for rising demand to make them valuable, speculators would be enriched while Congress would gain little return for its investment in organizing and protecting the West.”

Speculators, just like squatters, threatened the planning of Congressional policy makers to harness land policy to settle the territorial lands in ways that would both financially benefit the nation and protect its borders.

Finally, land policy was designed with republican ideals in mind. Beginning in the Land Ordinance of 1785, and threaded throughout territorial history, land surveyors were to set aside tracts within each township for public purposes. The 1785 Ordinance calls for one lot within each township to be reserved, “for the maintenance of public schools.” In 1787 a committee report on the sale of lands called for, “Not more than two complete townships to be given perpetually for the purposes of an university…” As part of a committee report in 1788, regarding the plots of lands to be granted to the long-standing French-Canadians of the Vincennes area, the Continental Congress resolved that two tracts of land be set aside, one for religious ministry and the other for educational institutions. Whether in land grants to private
groups or in general land sales, policy makers were keen toward ensuring that institutions, such as schools and churches, which would mold moral and law-abiding citizens, were planned for.

Early land policy decisions were influenced primarily by two mechanisms. The first was a concern over national security and maintaining order on the frontier. By attempting to rein in rapid expansion and to direct settlement to the most appropriate regions, Congress tried to reduce the risk of war with tribes or other colonial powers. As noted below, military and Indian affairs consumed much of the attention of early territorial governors rather than civil administration. The Old Northwest in the first few decades of American existence was a relatively rough and lonely place to live, where homesteaders fended off a variety of natural and human threats.

A second mechanism dealt with the targets of land policy. While the Northwest Ordinance itself was abstract in its treatment of the settlers of the frontier, the reality was that there was a lot of land and a lot of money tied up in the western territories. Speculators bribed and coerced legislators to provide beneficial terms, while political leaders attempted to balance their desire to profit off the sale of the lands (both individually and as a nation) with their contempt of unscrupulous business ventures. On the other end were impoverished settlers, some from Eastern states whose only chance to own property was to move West, others recent immigrants from Europe. They had little, if any, cash, and looked to make money off the land by improving it and making it suitable for agriculture. They petitioned Congress incessantly with pleas of preemption rights to lands they had illegally claimed. Again, national legislators had to balance their desire for settlement and sympathy with Americans desiring property (after all, a propertied man was seen as the epitome of virtue to men such as Madison) against the rights of the proper land claimants, who purchased enormous lots as speculators, looking to sell to individual settlers for great profit. In the framework of Schneider and Ingram’s social
construction of policy, speculators were undeserving and strong, while settlers were largely deserving but weak. Thus, land policy never entirely enhanced or supporter either group as Congress continued to balance the tensions while experimenting with various land policies.

Authority and Law in the Northwest Territory

The Northwest Territory in 1789 stretched across the modern states of Ohio, Indiana, Michigan, Illinois, Wisconsin, and the section of Minnesota east of the Mississippi River. While there were likely no more than a few thousand white American citizens living on the lands, they were themselves spread out across much of the southern expanses of Ohio, Indiana, and Illinois, near to the great rivers of that area. In addition there were thousands of Natives throughout the region as well as a sprinkling of French settlers and some trappers and Indian traders. This was the situation in which the initial appointed officials for the territory found themselves. One governor, a secretary and three judges to oversee the vast wilderness, maintain civility between the settlers as well as the settlers and the Natives, and attempt to administer some form of a basic governmental and legal system.

Given the broad language of the Northwest Ordinance, however, territorial officials were from the beginning unsure of the limits of their powers. This was exacerbated by Congressional indecisiveness on settling these issues. For example, while the governor and judges were to use existing state laws within the territories, rather than create their own novel legislation, they frequently disagreed over the limits of this restriction. The first governor of the Northwest Territory, Arthur St. Clair, interpreted the rule strictly, worrying that if laws were not directly transferred from state codes and applied to the entire territory as prescribed, Congress would censure their application. That this also ensured his dominance in legislative authority was an
additional benefit. The judges, however, lacking copies of most state codes from which to copy, and with the particular needs of the territories, claimed that, “the territorial laws had to be consistent only with the republican principles of the original state codes.” This confusion was never well resolved by Congressional action. Instead the judges tried to find the best and most suitable codes to adopt, reducing as far as possible the need to confront St. Clair. Still, practical considerations led them to extrapolate and recombine certain existing state laws to better fit the realities of the basic government on the frontier that was needed.

A second major concern over the powers dealt with who exactly needed to be present to legitimately adopt legislation. Early executives claimed that they were solely necessary for the executive action of approving of adoption, while the judges claimed that a majority was necessary, and therefore the three judges, even in the absence of the governor, should be able to adopt legislation. This was further complicated by the clear veto that the governor held over territorial business. The tensions between the judges and the acting executive, whether it was Governor St. Clair or Secretary Sargent, led Judge Symmes to complain noisily about the problem of adopting and passing laws.

The ordinance providing for the government of this Territory is silent on many points with respect to the powers and duties of the principal officers… Yet we conceive there would be an acknowledged impropriety in requiring them to assemble at one place for the purpose of legislating at another – Nor do we think it either reasonable or proper that three officers of government should make a tour of some hundreds of miles to visit one officer, when he, as but one person, might more easily come to the other three. Besides, Sir, the legislature is sufficiently ‘complete’ without the addition of a fourth person…

While the judges eventually got some of their way, Congress did not disapprove of any law simply because of concerns over the executive authority to adopt such a law.

An additional problem arose when Governor St. Clair spent much of his appointed time outside of the territory, or at the least, away from where the judges were meeting. Since the
Governor, or in his stead, the Secretary, carried the territorial seal with them, no official business could be completed, including adopting laws, appointing local officials, or conducting executive legal business, such as pardons and warrants. This was exacerbated in the early Northwest Territory since it had no formal seat of government or any archives. This had the practical consequence that whenever the person carrying the territorial seal traveled, the possibility of governing went with them, regardless of whether this was simply to a remote area of the territory or outside of its boundaries. Although he was not the only appointed executive to be scolded by the President, Governor St. Clair was perhaps most notable. As early as 1791 President Washington chastised St. Clair in a private letter to watch his behavior closely “for there are not wanting persons who would rejoice to find the slightest ground of clamor against public Characters…” It did not take long, however, for the frustration of long and imprudent absences by St. Clair to lead President Washington to a more official admonishment. Writing to the Secretary of State in March of 1793, the President complained that the absenteeism of St. Clair and some of the judges was “a great means of encouraging a spirit of riot & disorder, by relaxing the energy of the Laws…” and that if the Governor did not return promptly, “I shall be under the disagreeable necessity of issuing a peremptory order for that purpose…” Altogether, Eblen estimated that St. Clair was only available to administer civil duties about one-tenth of his term, omitting from that total his frequent, and supposedly incapacitating, illnesses.

Even when the Secretary of the Territory did hold the official seal in the governor’s absence it was unclear what powers they assumed. Some officials took this to mean they held the full powers that were assigned to the governor, while others were less sure. Even Winthrop Sargent, who was well known for his autocratic rule and terse demeanor, concernedly wrote to Governor St. Clair (who was absent from the territory at the time) in August 1790, “Some
Regulations which I conceived to be very necessary should have been made by my own Authority but from a well founded Apprehension that such Authority might be questioned in a Manner injurious to Government…”

Despite all of these concerns progress was made as the governor and judges did approve some laws for the new territory. Given the importance of securing authority over as much of the territory as possible, the first law, published in July of 1788, was for the establishment and regulation of the territorial militia, which the governor was given full command over according to the Northwest Ordinance. The second, published in August, established the general courts system. These were followed by a number of laws outlining criminal prohibitions and penalties, a certain necessity for a newly created government. The basic framework was thus set for the enforcement of civil and criminal violations. Despite this early flurry, Governor St. Clair was absent during much of the following year, which combined with the death of one of the three judges (whose position was not filled timely) “prevented the Adoption & Publication of Laws” during the year, according to the acting governor, Territorial Secretary Winthrop Sargent.

While the earliest laws of 1788 were approved by Congress, one of the laws enacted in late December of that year, the Limitation Act, a law limiting the times of commencing civil actions and instituting criminal prosecutions, was to be the first disapproved territorial act. It was nullified because Congress, “deemed [it] unfair and contrary to established practice.” Even though the Limitation Act was passed in late 1788 it took until May of 1792 for Congress to finalize their disapproval. This lengthy delay was not abnormal considering that it took considerable time for copies of enacted laws to reach Congress on the Atlantic coast and then more time for it be handled by a Congress preoccupied with what it saw as much more pressing demands.
In effect, this meant that territorial officials had significant control over the legislative process during the first stage and that settlers had little recourse to enacted laws, save to petition Congress to examine laws and nullify them, hardly a typical priority of most members of Congress. Combined with the governor’s absolute veto, this meant that settlers had minimal control over the legislative process, because laws could be vetoed by the governor or be nullified by the federal Congress. In the same 1792 act which they disapproved of the Limitation Act, Congress confirmed the authority of the territorial Governor and judges to repeal their own laws, thus providing them with even greater autonomy, although at least it came with the benefit that laws which were a nuisance could be more easily removed as well\textsuperscript{65}.

Another concern, for both the government officials and the general residents of the territory was the abysmal state of record keeping and lack of awareness of government actions. As noted above, the official government in reality traveled wherever the seal went, whomever it might be with. Thus, if it were removed to the far western villages, settlers in modern-day Ohio would have been hundreds of miles removed from it. Additionally, all of the records of governmental actions were to be kept by the Secretary of the Territory. Without a seat of government or a place to store these records, there was very minimal accessibility for anyone not traveling with the secretary at the time. For the average settler, however, the most problematic challenge was that laws passed by the governor and judges were unknown, even to local magistrates who were supposedly bound by them. Governor St. Clair noted this challenge in his 1791 report to the Secretary of State calling for a printing press in the Territory. Not only was there no easy way to publicize the proceedings (there being no regular newspapers covering the territory), magistrates were not given copies by the Secretary and even if they were, they were all in English, a language which many of the settlers at that time could not read or write in. In fact,
St. Clair translated many of the documents into French himself. In May of 1792, Congress took the first step in trying to rectify this situation by requiring the Secretary of State to print laws of the Northwest Territory, delivering 200 copies of such, plus ten copies of the U.S. statutes and delivering them to the Governor and Judges to distribute amongst the residents of the Territory.

While only a basic framework appeared to be needed to administer civil government in the vast, but sparsely populated, Northwest Territory, it was not clear that the government supplied via the federal appointees was adequate. The blame for this can be spread around and falls upon the territorial appointees, Congress, the president, and the impracticality of the situation. Early on in territorial administration, it was a balancing act between the desire for order and security on the borders and the reality that government of any type would be relatively ineffective. What Congress provided was a highly autocratic, yet relatively impotent form of government that was barely able to function properly and consistently.

Conflicts between territorial officers in the first few years of the Northwest Territory demonstrated that Congress had neither provided enough guidance nor considered fully even the basic needs of a frontier society. It also revealed that tensions within the territories themselves, outside of any considerations or actions by Congress were going to have an impact on territorial policy. A less domineering governor might have placated tensions with the judges in adopting legislation for the territory creating less of an issue for the executive and legislative branches. Congressional action, which in these cases was negligible, helps to illustrate that the specifics of territorial policy were less important than the contours of building a fledgling republic. That it lay primarily with executive departments to resolve these tensions show that legislators did not view the problems as necessitating a more direct response. This would not remain the case in all
circumstances and even in the early stages, as noted above, there were some minor efforts to defuse intra-territorial disputes.

*The Earliest Territorial Delegates*

While the Northwest Territory, partially due to the whims of Governor St. Clair, did not reach second stage governance for over a decade, the Southwest Territory, which was much smaller (present-day Tennessee), reached second-stage by the early 1790s. Along with the creation of a house of representatives and a legislative council, this also meant residents of the territory would finally have federal representation in the form of a territorial delegate. This delegate was unique in this sense, being the sole national representative of the territory, and the only federal official who was elected, rather than appointed.

The problem with the delegate position began with the fact that the Northwest Ordinance simply stated, “...a Delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary Government.” This “Congress”, initially meant the Continental Congress, but was never further specified under the new U.S. Constitution, which contained two chambers, with different powers from the legislature under the Articles of Confederation. This produced the question of whether or not the delegate (of which there was to be only one) would be seated as a nonvoting member in both the Senate and the House, or just one, and if one, which. Additionally, the Northwest Ordinance failed to specify any of the abilities, privileges or duties of the delegate (beyond the ability to debate, but not vote), presuming him to have a similar role to that of the colonial agents under the British regime.
This was the situation when, in 1794, the first elected territorial delegate, James White of the Southwest Territory, arrived before Congress and provoked debate within the House over his proper place and role within the national legislature. First was the issue of where he would be officially seated and accorded recognition. While he was a representative of the territory and the Ordinance of 1787 had called for his placement in Congress, he was elected in a similar manner to U.S Senators, through a ballot of the legislature, rather than direct elections, as was the case for House members. Other members wished him seated immediately, for as Mr. Dayton put it, “he had a right to a seat, founded on an original compact, which gave it to him.” This second perspective would prevail, and James White would be seated as the first territorial delegate in U.S. history.

After the House had affirmed the recognition of territorial delegates, the Senate decided against seating Mr. White, thus solidifying the precedent that territorial delegates to Congress were to be only afforded rights as nonvoting members of the House of Representatives, a role they continue to perform into the 21st-century. Despite refusing to seat territorial delegates, the Senate had no issue in agreeing to House bills providing White with franking privileges and the same pay as other members of the House. Over the next couple of years additional traditions would be established. Territorial delegates were not appointed to standing committees, though not specifically barred, but they did serve on, and chair, select committees. Additionally, despite no official prohibition, delegates tended only to speak on the floor on matters directly concerning the territories. This was mainly as a precaution against overstepping their perceived role strictly as delegates for the territories and thus risking their already limited presence in the House. They frequently had to fight to ensure that territorial concerns were even acknowledged
by the rest of the House, given the myriad of other issues that faced the country, some being more successful than others.

From the beginning, the rules of Congressional structure and practice shaped the type of representation that territories would receive. Arguably, had James White attended the Senate first, delegates might be seated in the upper chamber, albeit still without voting rights, in the 21st-century. Despite the potential path dependence of those early decisions, however, the initial rights afforded to territorial delegates were based upon common understandings of representation at the time. While delegates could not vote and were sought typically only on issues directly related to their constituents, they were given franking privileges and paid the same as their colleagues. The common view at that time was to treat them as agents, responsive to the needs of an otherwise unrepresented people, but not a representative responsible for the greater good of the nation. These traditions, formed during the colonial period, held sway among early members of the House and led to a largely uncontested effort to seat delegates with meaningful, if relatively diluted, privileges.

**Governor as Civil and Military Leader**

The Ordinance of 1787 gave the territorial governor great civil power, but it also granted that person command over the militia, which was a significant force on the American frontier given the small size of the standing army. Early governors, such as St. Clair, even led military campaigns. In addition to these roles, the territorial governors were appointed simultaneously as the Superintendent of Indian Affairs. This practice was begun just months after the reenactment of the Northwest Ordinance, when Congress granted Governor St. Clair this position, noting that as governor he was to make, “Every exertion…to defeat all Confederations and Combinations
among the tribes, and to conciliate the white people inhabiting the frontiers towards them.”  

This was a response to the anxiety earlier noted in the House that mutual hostilities between Natives and white settlers, if not stopped, “must soon produce a strong confederacy of the Indians on the frontiers, and all the calamities of a general Indian war…” These fears over mutual hostility led to Congress authorizing the territorial governors, as Superintendents of Indian Affairs, to issue permits to persons who wished to travel into lands held in reserve for Natives.

For early territorial governors, Eblen argues, they considered their civil duties secondary to their roles in Indian and military matters: “They reasoned as long as white settlement depended on Indian removal their main purpose in the territories was to wrest land from the Indians.”  

As Superintendents, governors even sometimes had different jurisdictions to oversee since territorial boundaries and those of Indian districts were not always congruent. Additionally, Congress made the governors responsible to two different administrators, depending upon their role: the Secretary of State for territorially appointed officials and the Secretary of War for the superintendents and of course in military issues. Early territorial governors were forced to perform many roles, conflicting at times and all pressing them for time. Thus, even when St. Clair was within the Northwest Territory, he was frequently dealing with military or Indian issues, rather than civil administration.

Congressional appropriations in terms of treaties with Indians, trading, and buying up lands, far outweighed those made to the territorial governments. Governors were largely responsible for handling these appropriations and determining where gifts and monies were to go, yet the military commanders would actually distribute these on the ground. Given that the governors had no direct control over federal military commanders, this created a great source of
tension in territorial affairs. The challenges both to the governors themselves as well as to their effectiveness as executives within the government of territories would continue on until 1834 when Congress separated the two offices permanently.

1 Willoughby, Territories and Dependencies of the United States, 28.
2 Eblen, The First and Second United States Empires, 47.
4 For a brief, but insightful look at this issue see Merk’s History of the Westward Movement Journals of Continental Congress, Volume 18, 806-807.
6 Eblen, The First and Second United States Empires, 23.
8 Eblen, The First and Second United States Empires, 24, for discussion of this and other amendments.
10 Pease, “The Ordinance of 1787”, 167.
14 It should be noted at this point that while the Northwest Ordinance only pertained to the lands Northwest of the Ohio River (present day Ohio, Indiana, Michigan, Illinois, Wisconsin, and part of Minnesota), it was assumed to be applicable, with a few significant changes (such as the permitting of slavery), to the Southwest Territory, which was all of the ceded lands south of the Ohio (primarily modern day Tennessee).
15 All of the congressionally appointed officials in the Northwest Ordinance were originally to be appointed by the Continental Congress. After it was reenacted by the U.S. Congress under the new U.S. Constitution these officials were to be nominated by President and confirmed by Senate (similar to other executive branch officials under the Constitution).
17 While not an official requirement, the practicality of early territories having so few learned men and congress desiring persons of known repute, very few congressionally appointed territorial officials were born or lived extended portions of their lives beforehand in the territories which they governed.
20 Not long into the 19th-century, some of these issues were at the forefront of tensions between the federal government and the states, e.g. McCulloch v Maryland (1819).
22 Eblen, The First and Second United States Empires, 52.
uncontroversial, it was certainly not seen as unimportant, having been restored while Congress was setting up the entire federal system.


36 The importance of surveying and the measurements to make it happen are explained in great detail in Andrew Linklater’s *Measuring America*.


41 Putnam was a decorated military officer and was appointed to be a Northwest Territory judge after Parsons died.

42 Cutler was a clergyman who was through both oral and financial persuasion was instrumental in getting the Northwest Ordinance passed through the Continental Congress.

43 Parsons served in colonial government, fought in the Revolutionary War, and was appointed as the original Chief Justice for the Northwest Territory.

44 Sargent was Secretary of the Northwest Territory from 1788 through 1798 when he took on the appointment as Governor of Mississippi Territory, which he held until 1801 when Republican President Jefferson dismissed the Federalist Sargent.

45 Onuf, Peter, *Statehood and Union*, 42-43.

46 Symmes was a member of the Continental Congress before becoming one of the original judges of the Northwest Territory.


49 Onuf, *Statehood and Union*, 33.


54 This discussion is available in more length in *The Northwest Ordinance, 1787: The Bicentennial Handbook*, 44-45.


56 “Judge Symmes and Turner to Acting Governor Sargent” Carter, Edwin *Territorial Papers Volume 2*, 303.

57 Eblen discusses this in more detail throughout his book *The First and Second United States Empires*, particularly here from page 73.


60 Eblen, *The First and Second United States Empires*, 75.

61 “Secretary Sargent to Governor St. Clair” Carter, Edwin, *Territorial Papers Volume 2*, 300.

62 Texts of the laws can be found in Pease’s *Laws of the Northwest Territory, 1788-1800*.


64 Eblen, *The First and Second United States Empires*, 93.


68 For a brief, but excellent review of early territorial delegates, see Jo Tice Bloom’s, “Early Delegates in the House of Representatives,” in John Porter Bloom’s edited volume, *The American Territorial System*. 
It is worth noting that the right of debate, but not vote, was in Jefferson’s draft for the Ordinance of 1784, as well as Monroe’s 1786 draft, but falls out of all other drafts until the final revision of the Northwest Ordinance on July 11, 1787. (credit to Carter’s footnotes in Vol. 2 Territorial Papers, 45.)


Harrison, the first delegate from the Northwest Territory, chaired a select committee on public lands issues in the territories just after being seated.

Journals of the Continental Congress, XXXIII, 712.


Chapter 4 – “Adolescent Territorial Policy” - Indiana Territory

Indiana Territory in many ways saw a continuation and evolution from the experiences faced by the larger Northwest Territory before it. Congressional leaders sought to better define the role of territorial officials, revised land policy to create a better balance between settlers and speculators, and began to consider and experiment with bounding territories as they created new ones and admitted Ohio. Many of these early decisions created precedents for later territorial policy. Universal male suffrage, for instance, was to become standard in territories before it was widely allowed in the states, and gubernatorial powers were already being tempered by the powers afforded to second-stage territorial legislatures.

Still, Congress did not see territorial policy as terribly pressing. The lands of the Northwest Territory were filling up more quickly than many had anticipated, but temporary territorial status in these regions was widely expected. The concerns of territorial residents and officials occasionally garnered Congressional action, especially when delegates pressed for it, but many members of Congress were disinterested since upon admission the residents of new states would be able to enact legislation generally as they pleased. The inability of slavery proponents to get Congressional approval (despite repeated select committee reports calling for it) for allowing slaves in Indiana Territory combined with the expanding male suffrage indicates that Congress was extending and protecting civil liberties within the territories consonant with the rhetoric of democracy.

The case of Indiana Territory highlights the importance of early territorial policies, the already cementing rules and norms of the national legislature, the impact of the targets of policy
on the final decisions made, and the expansion of the ideals of liberty and the sovereignty of the people. It represents a relatively “easy” case of policy implementation. The major national political disruptions during this period were the acquisition of the Louisiana Purchase and the War of 1812, both of which affected Indiana Territory, but less directly than most of the other territories at the time (or even the existing states). As a guide, however, for investigating pressures upon early territorial policy, however, Indiana serves as a strong reminder that Congress’s role in the U.S. political system was still being developed and this was reflected in the ways in which they interfered with territorial affairs and perhaps more importantly, the times they remained disengaged.

The national security concerns of the Northwest Territory clearly continued during the period after Indiana Territory was divided from its parent entity. Yet, the rapid expansion into Indiana meant that securing the borders against hostile “others” became less and less important. Considering the reduction in concerns over foreign influences, the oppressive nature of the unelected government became increasingly obnoxious for territorial residents. The clamor for a more responsive and effective administration did lead the U.S. Congress to respond and slowly democratize territorial politics, including providing an elective legislative body and broader male suffrage.

Concerns over slavery as a national issue also grew during this period. Indiana’s central geographical position, and its north-south orientation, led to some territorial leaders to pressure Congress to allow slavery in the territory, despite the prohibition in the organic act (arising out of the Northwest Ordinance). They argued that it would entice settlers to the territory if they were guaranteed the right to keep their slaves. The struggle toward this goal demonstrated the growing importance of Congressional norms as well as the operation of checks and balances. While
slavery in the northern territories had some allies in Congress, passage of laws through both the House and Senate faced considerable opposition.

**Indiana Territory Founded**

Given the vastness of the western cessions, which encompassed the Southwest and Northwest Territories (and spread out to an ambiguously specified western border), and the rapidity of the settlement by actual persons, it did not take long for Congress to be pressed to divide up the territories and create states, as had been presumed and outlined in the Northwest Ordinance. On June 1, 1796, the Territory of the Southwest was transformed into the state of Tennessee, marking the first transition from territory to state under the American colonial system. This first example was a relatively easy transition given that the territory’s size allowed

![Figure 4.1 Indiana Territory 1800 and 1803](http://www.mikechurch.com/wp-content/uploads/2013/05/Indiana-Territory.gif?33471f)
its borders to remain stable while moving into statehood. The 1796 admission statute simply stated, “That the whole of the territory ceded to the United States by the State of North Carolina, shall be one state…” The same could not be said of the divisions of the far more extensive Northwest Territory.

On May 7, 1800, a division of the Northwest Territory into two governments was enacted. The effort had begun due to an inquiry into the effectiveness of the courts of the territories given the vast distances between the small settlements spread throughout the area. In March of 1800, a committee tasked with this inquiry reported back that, “most of the evils which [territorial residents] at present experience are…to be imputed to the very great extent of country at present comprised under their imperfect government.” The report mentions that this has resulted in a lack of criminal courts such that it attracts, “the most vile and abandoned criminals, and at the same time deters useful and virtuous persons from making settlements in such society.” Additionally, the disconnect from civil administration leaves foreign nations able to send agents who, “can find sufficient interest in exciting or fomenting insurrection or discontent…”

This led Congress to enact a division creating Indiana Territory encompassing the enormous western lands, while leaving the Northwest Territory as modern Ohio plus the part of lower Michigan running in a straight line north from the boundary between Indiana and Ohio. While this enabling act was brief since it largely referred back to the Northwest Ordinance for its provisions in creating the Indiana Territory, Congress did at least specify formal seats of government for both newly defined territories, Chillicothe for the Northwest (Ohio) Territory and Vincennes for the Indiana Territory. The capitals could be changed in the future by the General Assembly.
In 1803 Ohio was split off from the rest of the Northwest Territory, marking the second state created from the western land cessions and the first under the 1787 Ordinance. While there was intrigue surrounding the final boundaries of the admitted state, it had the effect of expanding Indiana Territory to include all of the area within the original Northwest Territory minus Ohio, meaning a return of eastern Michigan to the vast territory. Two years later, Congress created Michigan Territory, which included all of the lower as well as a part of the upper peninsula, again leaving the rest in Indiana Territory. Finally, the boundaries were set nearly identical to those of the state of Indiana by the creation in 1809 of the Illinois Territory. Indiana Territory therefore went through three massive changes in terms of size between 1803 and 1809.

The Louisiana Purchase and subsequent territorial entities created from it did not directly impact the borders of Indiana Territory (although it did so for later territories carved from the original Northwest Territory), the western reaches of which remained intact following the expansion. Since this chapter deals with Indiana Territory throughout this period, it should be impressed that at varying times this meant an area ranging between about 95,000 and 625,000 square kilometers.

_Land Policy – Lessons Learned_

By the early 1800’s, Congress had begun to learn from its earliest missteps in territorial administration. In terms of land policy, Congress quickly realized that land sales were simply not going to be a path to immediate financial boon. Instead, preparing for the rapid expansion of settlement by providing more accessible land purchases would boost economic growth and secure the frontiers far more effectively. Thus, while the smallest tract of land available for purchase during public lands sales prior to 1800 was a full section, or 640 acres, in 1800 this was
reduced to 320 acres, to 160 in 1804 and to 80 acres in 1820. Additionally, the costs of the land, both overall and up front, changed, with the government reducing the cost per acre and no longer requiring a full down payment. Instead they arranged a payment schedule which could be paid over a series of years. This made a strong impact on the largest group of settlers, who were of medium means, but were cash poor. By 1832, in fact, the government was selling public lands in parcels as small as 40 acres, which gave rise to some of the most iconic American aphorisms, such as “40 acres and a mule” or the “Front 40th”.

In addition to a reduction in cost and size of required land grant purchases, Congress also realized the practical importance of having land offices within the territories themselves, rather than requiring purchasers to travel to a major city within the states, as it had with the earliest land sales. This made it slightly more difficult for potential absentee landowners to make purchases since they would have to procure a local agent for the purpose and made it much easier for families or groups actually moving to or settled on the land to purchase claims. An 1804 act for public sale of Indiana Territory lands established land offices in Detroit, Vincennes, and Kaskaskia, which would sell sections at two dollars per acre, excepting lots for schools and those which contained primary waterways and mineral deposits. An amendment, proposed numerous times would have
designated a small portion of the proceeds from that land sale for constructing public roads throughout Indiana Territory. While it eventually failed, it indicated that at least a sizable minority in Congress believed that providing territories with greater funding for internal improvements was an important way to drive development of the region. It was clear, given the changes noted above, that the legislature realized that the previous system was too heavily biased toward cash-rich speculators. As they moved away from believing that revenue from lands sales was going to be a boon, they also realized that speculators were sitting on land that could be cultivated and settled by cash-poor migrants. Opening up land offices in the territories and reducing the required lot size purchases targeted the individual settlers over the wealthy Eastern entrepreneur. It did not disallow speculation but at least it shifted the burdens of acquiring land away from the actual residents of the territory.

Along with the relocation of land sales to the offices on the frontier, however, came the problem of corruption and fraud. Since land was abundant but the pay to land officers relatively low, it was a ripe condition for scamming, which hurt both the U.S. Treasury and legitimate settlers paying full price for their claims. A series of letters regarding fraud in the Indiana Territory started in mid-year of 1807, complaining that one of the federally appointed receivers in Vincennes, Nathaniel Ewing, had sold lands below market value to a buyers group he was a part of, by bribing others to allow them the sale. One of the men unwilling to accept the bribe complained that he was told, “that if I did not bid for the land they would get it for two dollars, and that if I would not they would give me forty dollars, which was as much as they had given any of the rest.” Implicated in these schemes was Governor Harrison as well as other territorial officials. In April of 1808, the Secretary of the Treasury, Albert Gallatin, wrote to President Jefferson that while the charges against Ewing and Harrison were overall disproved, and that as
individuals they should be allowed to bid on lands, “yet it appears to me extremely improper that they should become members of companies for the same object.” Gallatin recommended that Jefferson notify land sales officers in the territories that this behavior would not be tolerated in the future. None of the territorial officials implicated in these land scams were removed from office over the incident.

The problems of settling the land continued beyond corruption. Squatters outpaced the desire and actions of Congress in terms of land sales, so that they consistently petitioned for some right of pre-emption to the lands they had developed. These families, primarily emigrating from the states, would set up on public lands, without any cash and facing possible eviction from the U.S. government as well as all of the safety concerns of living on the frontier. Having little money even after improving the lands, due to the lack of commerce in the territory, they pleaded with Congress to provide them some way to keep their lands from speculators. As one petition argues, “Your petitioners (sic) acted in the double capacity of cultivators of the soil and defenders of the frontiers…”

While Congress provided for some pioneers to present their claims to boards at land offices, the policy details did not always match up with the reality of the frontier settlements. A memorial from Peoria settlers objects to their land claims being rejected due to jurisdictional issues and despite their long-standing tenancy, asking Congress, “Is it not the interest of the Government to Strengthen and encourage this Settlement to a certain extent?” Congress, by the second decade of the 19th-century, had realized the importance of rapid settlement over immediate financial gain, and had adjusted some of their land policies to the shifting goals, but they still dealt with the original fundamental problem of squatters, speculators, and settlers.
Overall, then, during the existence of Indiana Territory, Congress had enacted new policies making it easier for settlers to acquire land and improve it, more difficult for speculators, and had continued discouraging squatting. Conversely, however, they did little to dissuade the corruption and fraud that occurred in surveying and selling land and men with money and connections were able to purchase the best lands for themselves first. While the executive branch scolded some officials, Congress had little discussion and less action in providing relief to settlers who saw these actions occur around them helplessly.

**Suffrage Requirements**

The Northwest Ordinance specified that while all free males of majority age shall count toward the ascension to second-stage government, only those men holding at least fifty acres of land within a specific district and either a resident of the district and a citizen of the United States or a resident of the district for two years were eligible voters. While this was not overly restrictive considering most states had similar property qualifications in the late 1700s, it dramatically reduced the impact that most settlers had in determining governmental actions in the territories.

The first expansion of the suffrage in the territories occurred in January of 1808 when Congress provided Mississippi Territory residents who lived in towns and had a lot worth at least $100 to vote, rather than just those with at least 50 acres. A month and a half later, the same suffrage was extended to Indiana Territory. There was no recorded debate on the Indiana suffrage question and only mention of a soundly defeated amendment offered by Rep. Rhea of Tennessee. These were not the first attempts at an expansion of voting rights, however, as numerous bills over the two previous Congresses had floundered in both the Senate and the
House for lack of support. In an ironic twist in fact, an 1806 committee report primarily focused on suspending the Sixth Article of the Northwest Ordinance to allow slavery in the territory, also recommended that *every* free while male of at least 21 years of age who has established residency should vote for the General Assembly.\(^{13}\)

The following year, during the same (2\(^{nd}\)) session of the 10\(^{th}\) Congress that would agree to divide Indiana Territory from its western lands (which would become Illinois Territory), a bill was passed to enable all those eligible to vote for representatives of the General Assembly to vote for their territorial delegate.\(^{14}\) Prior to this act, the legislature has selected the delegate, similar to the way in which U.S. Senators were chosen in the states. The House had received a petition regarding this issue just weeks beforehand, which pointed to the intrigue within the legislature in choosing a delegate the past session, which ended up leading to a protracted legislative session, thereby increasing the territorial debt.\(^{15}\) Thus, it appeared that Congress was responding favorably, if slowly, to the idea that the territorial delegate should truly be a representative of the voters, rather than of the legislature, thus improving democratic accountability.

Even with these changes, voters clamored for more reforms. Just a few months after Congress had extended the suffrage for a second time in two years, by allowing for popular election of the delegate, petitions arrived calling for more. Clark County petitioners asked that Congress further extend voting rights to all free men of at least 21 years of age who have completed some militia duty and paid their taxes, thus no longer requiring any property ownership at all. In addition, they ask that the legislature be given the power to appoint most territorial officials in lieu of the governor. Since these appointees are eligible to win election to the legislature, the citizens worry that, “the Executive may have an undue influence and prevent
the wishes of the Majority from being known…”\textsuperscript{16} A different petition asks that the vote be given to any free male of age who has paid any tax or completed militia duty, conveying language similar to those of the Revolutionaries, “That we are compelled to contribute to our county and Territorial taxes and withal do militia duty and are at the same time Deprived of haveing (sic) even an indirect voice in the Appointment of the men who are entrusted with the disposal of that money which is gathered…”\textsuperscript{17}

In 1811, Congress enacted some of these desires. All free white males, of age, who paid either a county or territorial tax, and had resided in the territory for one year, were eligible to vote for the council, the house, and the delegate. While maintaining a relatively strict residency requirement, this act removed all property requirements and only maintained a standard of tax-paying status for voting. In order that this be enforced, and given the problems with the 1809 contested election for delegate (see below), sheriffs could be fined a thousand dollars for non-compliance with the provisions of the act\textsuperscript{18}.

Congress, in that same bill, provided that “any person holding…any office of profit from the governor of the Indiana territory (justices of the peace and militia officers excepted) shall be ineligible to, and disqualified to act as a member of the legislative council or house of representatives, or as a delegate to the Congress…”\textsuperscript{19} This helped to reduce the influence the governor might have over members of the general assembly. A separate bill, which did not make it out of the House, would have guaranteed popular election of local sheriffs by the same electorate, a power otherwise assigned to the governor or the general assembly\textsuperscript{20}. Thus, between 1808 and 1811, the United States Congress shifted significantly toward greater voting rights in the territories, particularly in Indiana Territory. While this opened up the franchise to include many new voters, this did not mean that Congress had given up control over territorial politics as
it continued to provide governors and other appointed territorial officers with strong political powers.

While most states would abandon all property requirements for voting by the middle of the 19th-century, it was the western states and territories where white male suffrage was most progressive. Kentucky did not have property requirements upon entering the Union in 1792 and by 1820, when every non-original state except for Tennessee had no property requirement for voting, four of the original thirteen states had done so. While Congress was predominately made up of representatives from the states which still enforced those restrictions on their own constituents, they opened them up to territorial residents. Ironically then, a man who paid his taxes, but owned no land in Indiana in 1811 could vote for his territorial representatives and a delegate to Congress, but a man in his same position in Virginia held no voting rights at all. Extending these privileges to white males in the territories appears to be a confirmation of the “Empire of Liberty” ideal, but it was not done solely to strengthen democracy. Legislators worried that the restrictive suffrage, in the sparsely populated territories, would result in the accumulation of power in the hands of a small oligarchy. They also sympathized with the argument that men, who were willing to fight to extend the borders of society and cultivate the wilderness and paid taxes for the privilege, should be awarded the vote. Regardless of the motives, it is clear that the belief that universal white male suffrage was productive encouraged Congress to act positively.

Second-Stage Government Achieved

In 1805 Indiana Territory was granted second-stage government, when the territory had an estimated population of 14,500. This was considerably fewer than the approximately 45,000 people living within the entire Northwest Territory in 1799 before it had been divided. In 1809,
when Illinois Territory was created, leaving Indiana Territory largely to the current state borders, Illinois was the last U.S. territory to begin existence in the district-stage\textsuperscript{22}. As outlined in the Northwest Ordinance the shift to second-stage government required a number of important changes. First, the governor would have to call for elections to the House of Representatives as well as provide a list of suitable candidates for the council (the upper house) to Congress for appointment. Following those actions, the general assembly elects a delegate to Congress from the territory. Given the restrictive initial suffrage conditions, this effectively meant that only a very small portion of a territory’s residents had full direct influence on the government.

Second-stage government was a double-edged sword for many within the territories. Even with restrictive suffrage, it was still far more democratic than the district stage which gave almost complete policy making control to the federally appointed governor and judges. At the same time, Congress provided only a minimal amount of support to the territorial governments, meaning that a move from a relatively informal structure, to one where a formal group of elected and appointed officials convened on a semi-regular basis. The early territories were forced to cover the additional costs of the legislative sessions, a practice which Congress changed later on. This meant not only higher taxes, but also a government, as Eblen writes that would, “possibly for the first time, effectively enforce their collection, both of which were necessary for the efficient operation of representative governments in territories that had to finance themselves.”\textsuperscript{23}

If this weren’t reason enough, given the difference in population density between the more settled and outlying areas of a territory, many residents worried about being dominated by a majority not representing their interests, a situation worse than an autocratic governor whose main goals were for security and order within the entire territory.
For example, in Mississippi Territory in 1800, a petition was sent to the Senate from a substantial group of residents opposing the transition to second-stage government, for which they were, “totally unprepared; and, as they conceive, wholly incapable of sustaining it.” The petitioners complained of already burdensome territorial taxes and a population so sparse that the two largest counties only provided a total of 236 electors. They warned that unless the situation is reversed and the territory sent back to district stage governance, “Discontents, dissentions, accumulation of taxes with a disposition to resist regular government, and general confusion,” are just a few of the difficulties that would occur. The overarching concern was that a small group of wealthy landowners would dominate the territorial government at the expense of all others whose taxes would increase.

In Indiana Territory, the main concerns came from residents of the western lands who knew that the more densely populated region near the Ohio River Valley would dominate a second-stage government. Their concerns were amplified over the slavery issue, which divided the pro-slavery west from the abolitionist east. They petitioned Congress to instead divide the territory and place them with the northern section of the Louisiana Purchase. In 1808, a particularly forthright memorial from these inhabitants exclaims that second-stage government has only caused them to be “chained by an unnatural and destructive alliance,” in which, “interests, real or fancied, are not only separate but opposite…” The requests went unheeded, although the residents only had to wait until 1809 when they became part of Illinois Territory, which returned to the district stage.

While these petitions were forwarded to select committees on these topics in the House and Senate, and discussion occurred on bills regarding division of territories and the appropriateness and timing of second-stage government, Congress as a whole did not appear to
take action based upon the recommendations of territorial residents. Whatever action did occur, there were proponents and opponents lined up ready to praise or condemn it. Some residents feared the additional taxation, while others looked forward to greater local control over policy. The legislature of the second-stage government would provide a stronger check on the governor, but it also meant that the more populated regions of the territories would have more power. Since at this early stage Congress did not pay for the expenses of the territorial legislature and for the most part the effects beyond the territory of the transition were minimal, there was typically little initiative for legislators, who after all didn’t represent the territories themselves, to argue for or against second-stage government. When action did occur, it was typically due to the efforts of either determined governors or delegates in the House.

The First General Assembly of Indiana Territory met in late summer of 1805. Despite the opposition to second-stage government from many throughout the still massive territory, the first session of the Indiana legislative assembly, “simplified the county court system in a sensible manner, provided a court of chancery, and appointed a committee to codify the laws,” while also better regulating certain fees, establishing a territorial weights and measures system, and legalizing a system of indentured servitude which de facto introduced slavery to the Territory, even if it were in a somewhat limited form. While initially there was harmony between the governor and the general assembly, this changed slowly over the first two legislative sessions. Within a few years of second-stage government, the elected officials began to oppose the appointed Governor Harrison more frequently, a divide that would grow over time.

While a more detailed survey of the territorial legislature is outside the scope of the current project it is important to point out that by 1805 it is clear that Indiana Territory was able to transition successfully to second-stage government, something which was granted by a
Congress somewhat divided on the issue. It is also important to highlight the transition, since Congress must give its assent to the shift, even though no formal delegate from the territory, who is not appointed, exists at that time to provide members of Congress with information on the status of the territory. Given the overall lack of information (or abundance of misinformation) which members of the House and Senate from the states had regarding the political and social realities of the frontier and its needs, this was a sensitive point in territorial policy.

Territorial Officials

The first delegate from the Northwest Territory was approved of in early 1800, just months before Congress divided the region. The recently elected delegate of the Northwest Territory, Benjamin Harrison, was appointed to be the governor of the newly created Indiana Territory at the time. Harrison had also been a primary contributor to the bill which divided the territories and chaired the committee which reported it. During the period between Harrison’s election and his appointment to Governor of the new Indiana Territory, Congress had enacted a bill providing the same franking and compensation privileges to Harrison as a territorial delegate that was enjoyed by other members of the House, the same as had been extended to White as the first territorial delegate. Two years later, with the tradition solidified Congress took a more practical approach and finally enacted a general law providing the same privileges to all future territorial delegates.  

Indiana Territory was granted a delegate to the House in 1805 upon transitioning to a second-stage government. From then until statehood was granted in 1816, the territory would see three different delegates serve its interests. The first two, Benjamin Parke and Jesse Thomas, were selected, as was the procedure under the Northwest Ordinance, by the territorial general assembly. Jonathan Jennings, however, was elected (and subsequently re-elected) by the
territory’s eligible voters, and was the first such delegate in the lands of the Old Northwest Territory, to be popularly elected.

There were two important aspects to the success of these three delegates over the course of their service to Indiana Territory. The first was the diligence and efforts they put forth on behalf of territorial residents and the general assembly within the House. The second was the relationship with the governor. Since Harrison would serve from 1800 to 1812 in that capacity all three delegates had to deal with the rather strong-willed and opinionated governor.

All three delegates were able to bring about significant changes they believed were vital to the territory’s success and democratization. Some of these efforts were important to most residents, not just the most wealthy and influential ones. Parke served on the initial House committees which reported out a bill to expand the suffrage in 1808. He also worked successfully to increase territorial officials’ pay and he opposed the division of the territory as detrimental to its political strength nationally. Additionally, while unsuccessful, he fought to legalize slavery in Indiana Territory as a way to encourage migration there, which would drive economic growth and led to faster statehood. Thomas succeeded Parke in 1808, but due to his own efforts, only served one year. Thomas was successful in pushing toward a division of Indiana Territory, which split it off from the newly created Illinois Territory. This provided boundaries more closely approximating existing states and was the most populous region at that time in the remaining Northwest lands. Thomas was also effective in his efforts to further expand suffrage in the territory as well as getting the position of territorial delegate to be popularly elected.

Thus, in 1809, Jonathan Jennings became the first widely elected delegate from the territory, albeit in a contested election (see below for details), and would be reelected until
statehood was achieved. Jennings was instrumental in a number of additional reforms which provided popular elections for the council, lower house, and delegates in 1811. Jennings was also the first delegate to serve that was completely opposed to the Harrison administration and he was supported by the strongly anti-slavery sections of the territory. Jennings consistently warned the House of Harrison’s conduct, supporting inquiries into not only his civil administration but also his role as Superintendent of Indiana Affairs. Jennings would be elected the first governor of the State of Indiana and later served in the House again, as representative of that state, until 1830.

Territorial delegates utilized their privileges in the House to strengthen their efforts. They brought forward petitions and request from their constituents, introduced bills, and served frequently on select committees that dealt with issues related to the territories. While they were not typically the chairs of these committees, they were almost always included on them. While Congress had begun to create permanent standing committees before 1800, territorial issues remained largely separate (save for land sales and military and Indian Affairs) thus requiring the formation of select committees to deal with issues. This occurred with suffrage and slavery in Indiana Territory. The rules of the House, therefore, tended to limit the attention that chamber gave to territorial concerns, and the Senate, even less so in this period. At the same time, when issues did arise, the creation of a select committee did provide the topics with added weight since there was no chance that a report or bill might get trapped and never at least proposed to the larger House. Delegates were not always effective, and much of their influence depended upon their political skill and enthusiasm. They were, however, the main source of information regarding the status and needs of the territories and as such competent delegates did make a difference.
While particular actions taken by delegates might be criticized by territorial residents, much of the criticism of the appointed officials, particularly of the governors, came from the general populace. One of the most frequent complaints by territorial residents throughout the 19th-century was abuse of power by the governors. Congress originally had granted the governors four specific powers: the ability to convene, prorogue, and dissolve the General Assembly at will and the power of the veto over territorial legislation. Of these, the most often complained about was the veto. While district-stage governors were targets, the complaints typically escalated upon a territory’s conversion to second-stage government. It was then that governors were directly vetoing popularly enacted legislation. In fall of 1808, the Indiana Territorial House issued a resolution directing the elected delegate to seek a repeal of the governor’s absolute veto and power to prorogue and dissolve the General Assembly. They instead ask that the governor’s powers mirror those of the president according to the U.S. Constitution. Nothing came of these earliest complaints, as Congress did not begin limiting the governor’s vetoes until the 1820s.

This was probably due to a couple of different factors. The first was that governor vetoes were infrequent and typically for sufficient reasons. Through 1902, estimates put veto numbers at around two per year, highlighted by a few specific cases where standoffs between governors and territorial legislatures led to much more frequent usage. For early territories the average was even lower. While the reasons for vetoes were mixed and accusations of impropriety were frequently lodged by territorial legislators, Eblen notes that, “governors vetoed bills as illegal invasions of their prerogatives, as inappropriate legislation, and for being in conflict with higher authority, meaning acts of Congress or the Constitution.” One of the most frequent usages was to veto private legislation, such as divorce or incorporation bills, which most governors saw as
improper. Eventually Congress would agree with them, but it was not until the middle of the 19th-century that they would explicitly prohibit such legislation.

A second factor lending itself to the lack of Congressional attention to complaints regarding the governor’s veto can be assigned to the general neglect Congress gave to territorial affairs overall during this early period. Congress only nullified a small number of territorial actions prior to the 1820s, and none enacted by territorial legislatures under the second-stage governments. By the end of the 19th-century in fact, it appears that Congress passed less than 40 total nullification acts, much fewer than gubernatorial vetoes. As Eblen observes, “the machinery of federal nullification worked slowly. Moreover, it was irresolute, and many territorial laws escaped nullification altogether or remained in force for considerable lengths of time before they were disallowed.” Overall, Congress appeared to support governors’ efforts to veto legislation. The true impact of the veto power, even when combined with Congressional nullification, however, was not as predominant as residents made it out to be and most legislation, whether proper or not, passed undeterred. Most were not repealed or struck down until after statehood was achieved. In many ways the governors acted as limited checks on the self-governing power of the territorial residents, especially under second-stage government. Congress supported them indirectly as way to ensure that legislation in the territories did not contravene national policy goals and did not jeopardize property and contract rights.

Regardless of complaints towards their conduct, the pay appropriated by Congress for both appointed and elected officials in the territory was never enough to cover actual expenses. Grievances regarding this situation began early in the history of the Northwest Territory and would run throughout the primary era of territorial history. Governor St. Clair estimated his travel costs to be about $500 a year just to visit most of the major villages during each year,
which were spread over hundreds of miles, while he was paid $2,000 a year for his role as both Governor and Superintendent of Indian Affairs. At times territorial legislatures provided extra compensation to officials, at least when relations with them were more stable and peaceful, to offset Congressional inadequacies in pay.

Some Congressional action did occur on this front for specific territorial officials during the first decade of the 19th-century. Delegate Parke from Indiana Territory led the way on pushing for increased salaries for territorial officials. He was successful in getting the pay for judges raised from $800 to $1200 a year in 1807 and then later the same year, in the next Congress, was able to get an increase in the pay for territorial secretaries up to $1000 per year. Both of these laws applied to all of the existing territories at the time. Territorial legislatures, however, when applicable, were compensated out of territorial taxes, rather than Congressional funding during this early period. It was not until 1822 that Congress would agree to pay for travel and salary of territorial legislatures, first in Florida Territory.

A Contested Election

In May of 1809, eligible male voters in Indiana Territory were allowed to directly vote for the first time for a delegate in the House. This first election, like much of Indiana Territory politics at the time, revolved around the issue of slavery. Thomas Randolph, the attorney general for the territory announced his candidacy first. Randolph was supported by the pro-slavery leaders in the territory, including Governor Harrison. His primary opponent was Jonathan Jennings, supported by the anti-slavery eastern sections of the territory. After a vicious, if short, campaign season, Jennings emerged victorious in the popular election, winning by a small margin over Randolph. While Governor Harrison certified the results on July 1, 1809 and
Jennings would apply for the seat to Congress later that year, Harrison was clearly not satisfied with the results and Randolph was encouraged to challenge the election. The challenge was initiated sometime in July, and in a letter to Jennings on the 25\textsuperscript{th} of that month, Randolph notified him that he was contesting his selection\textsuperscript{38}.

Jennings was seated in the House on November 27 while his certificate of election was referred to the Committee of Elections, along with, on December 4, a memorial from Randolph. Thus, for the first time in American history, a territorial election was contested in the U.S. Congress. On December 22, 1809, the Committee of Elections reported back in favor of Randolph and recommended that Jennings seat be vacated\textsuperscript{39}. According to the committee report, there were three primary allegations to the contestation. The first was that Governor Harrison never had authority to call for the elections, a technicality arising from the various laws which had been enacted authorizing him to do so under both the 1805 and 1809 divisions of the territory as well as the extension of suffrage requirements. Given that it was the governor’s power to dissolve the legislature and recall it under the new provisions, and he did not, Randolph made the technical, although tremendous claim that the election was, in its entirety, null and void.

The second and third allegations were more specific, and if not less technical, had potentially more direct impact on the validity of the election. One of these was that, as certified by the clerk of Dearborn County, residents of two districts were prevented from voting due to a mistake of the sheriff. The other was that an election return from another district of the same county was unsigned, a violation of territorial law, although the House report notes that the results of the election were certified as accurate by territorial election judges. Given the relative
closeness of this election, these allegations appeared to be relatively serious and the House seemed to treat them as such.

The report did provide Jennings a chance to respond to the allegations. According to the report he only addressed the specific claims, arguing that the overall election was not invalid regardless of concerns over the governor’s authority. In a separate letter, Jennings went into great detail of his reasoning toward this conclusion, in particular noting that the laws enacted by Congress gave authority to the governor to apportion members to the House of Representatives until a new General Assembly was organized in order to do the same. Just because this had not occurred as of the time of the election, Jennings, argued, did not make the entire process, and therefore the election, illegal and void\(^{40}\). The issues in Dearborn County, he notes, are insufficient obstacles to his election, because the unsigned return was later certified as being accurate by territorial officials and the two districts which were prevented from voting had no more than fifteen voters show up, “who, if they had all voted for the petitioner…would not have altered the state of the poll…” Finally, he alleges that the election in Knox County, a stronghold for slavery, where Randolph received all of the votes cast, “was not conducted according to law…”

The Committee of Elections began its own proposal by importantly holding that, “The committee…considered it to be their duty to investigate the authority under which the election for a delegate to represent that Territory was held…” They find that, according to the order in which actions had been taken and Congressional acts that were to be followed as such, there was a defect in the authority of the governor to call for elections in the spring of 1809. They note that, “It cannot be admitted that the Governor of a Territory may, by his own authority, supply a want or defect of a law of Congress, on his own opinion of liberal construction, expedience, or
necessity; to sanction such assumption of power by a vote of this House, would set a dangerous precedent.” Therefore the committee recommended that Jennings’ seat be vacated.

The House, as a whole, spent a great deal of time discussing the election scattered across a few days in late December of 1809 and early January of 1810. Unfortunately, no records of this extensive debate exist, but a number of recorded votes were taken. An amendment to the original resolution, which would have struck out the terms “being without authority of law” in reference to the election, was defeated 45-51. This was followed by a vote on the overall resolution, which was heavily defeated, 30-83. Finally, a motion by one member to recommit the report was defeated with again only 30 members in favor.41

Despite a lack of recorded discussion on the topic, the votes appear to indicate that the House as a whole either did not believe that the authority granted the governor was actually questioned or at least was reasonably confident that the measures taken to call for the elections were done in good faith. It is also likely that members of the House did not see a need for a second election, which would simply create more expenses for Indiana Territory. Finally, it is reasonable to believe that some members of the House were eager to see Jennings seated over his proslavery opponent, especially given the headaches Governor Harrison had caused in his frequent clamoring for slavery to be introduced in Indiana Territory.

The Committee on Elections, which had been permanently enshrined in House rules since the 1st Congress, was created to certify the credentials of all members of that body. Contested elections were a normal occurrence, if not frequent, and the first contestation happened in the 1st Congress. What was different, of course, about the delegate election in Indiana Territory, was that Congress controlled the process through which the delegate was chosen (and the existence of the delegate at all). While the House could reduce or increase its own size via legislation, it could
not remove all representation from states. It could do so in the territories. As the narrative above demonstrates, however, the House treated the contested election in Indiana Territory as it would similar incidents in the states. There was likely less overall pressure on members to side with Randolph, as that would require a new election, but the Committee Report gives strong evidence that members of the House took the allegations seriously and were concerned about the potential confusion that had arisen from the inconsistent laws governing the process through which the election took place within the territory. If a committee specifically created to deal with such contests had not existed and did not already have traditional rules about investigating and reporting on disputes, perhaps the House might have dealt with the delegate election differently. Instead, they treated it the same as they would an election challenge from a state.

Slavery’s Early Days in the Territories

Despite the Sixth Article in the Northwest Ordinance which stated that, “There shall be neither slavery nor involuntary servitude in the said territory,” as early as 1788, the Continental Congress exempted the French inhabitants of Kaskaskia and Vincennes from the requirement. A committee report in September noted that, “it was not the intention of Congress to violate by said Ordinance but merely to restrain the Settlers in future from carrying persons under Servitude into the Western territory…” Governor St. Clair, of the Northwest Territory, in his 1791 report to the Secretary of State highlighted the benefits of this construction, mentioning that a number of Spanish settlers within the American lands had removed themselves due to fear of losing their slaves. Since it was his belief, and seemed to be that of Congress in the past, that only new slaves were not permitted, he had tried to calm the concerns of remaining slave-owners. Yet, he did
note that the Northwest Ordinance’s prohibition on introducing slaves “will prevent many People from returning who earnestly wish to return…”

Efforts to allow slavery in the northern territories were constantly promoted by officials, both appointed and elected, from Indiana Territory. An 1804 House committee, responding to a memorial from Governor Harrison and a convention of Indiana Territory residents, did suggest that the Sixth Article of the Northwest Ordinance be suspended for ten years as long as the slaves were not from foreign importation and their offspring were to be emancipated upon reaching the age of 25 for males and 21 for females. The report was rejected, but calls for a suspension of the ban on slavery would continue. In the meantime, Governor Harrison and the appointed judges took it upon themselves to adopt a Virginia code which allowed for indentured servants, an adoption which was not overruled by Congress. Territorial legislation in 1807 was again approved, allowing for a limited, but obvious, form of slavery.

On the national scene, in late 1805, a second House committee on the same original petitions from Governor Harrison and the convention was assembled to report back on the current prospects for introducing slavery to Indiana Territory. Reporting in February of 1806, the committee reiterated a strong recommendation, noting that it would increase immigration, especially from the slaveholding states bordering it and that was “almost universally desired in that Territory.” Perhaps most tellingly, although unsurprisingly given the attitudes toward slavery at the time, the committee report stated that this wasn’t even a question of slavery versus freedom, “inasmuch as it would merely occasion the removal of persons, already slaves, from one part of the country to another.”

In 1806 the House was faced with a memorial from the General Assembly of Indiana Territory, arguing again for suspension of the Sixth Article. They claimed that since territorial
residents had no representation in Congress and were not consulted when the Northwest Ordinance had been approved (or reenacted), and slavery was an accepted practice throughout the United States, it was a violation of their rights as citizens. They also made the assertion that due to the “soil, climate, and productions of the Territory, it is not believed that the number of slaves would ever bear such proportion to the white population, as to endanger the internal peace and prosperity of the country.”48 A select committee was appointed, chaired by Benjamin Parke, the first delegate to Indiana Territory report on those memorials. The report, issued just a few weeks later, argued that a suspension of the Sixth Article “would operate an immediate and essential benefit to the Territory” and would ameliorate the overall burden of slavery by further diluting the density of slaves in one region of the country49. This report was left without action by the whole House.

Eventually, however, the petitions for a suspension did not get such a welcoming response from House committees. A November 1807 report succinctly dismisses the idea of suspending the Sixth Article with the only argument given, “That it is not expedient at this time…”50 Conspicuously, this was also the first time a House committee on this subject had specifically noted not just an affirmative petition, but also one against introducing slavery. The memorial in favor from the General Assembly of Indiana Territory complains that other territories have the right to slavery and that despite its moral conflict it is safer to spread it amongst a larger area than concentrate it. These arguments, however, were countered by a petition from residents of Clark County, a relatively populated area near to the Ohio border. They point out that there are actually immigrants to the territory who came specifically because it was free from slavery and that as the abolitionist-minded population grew it was unlikely that a majority in the territory did favor slavery, as reported by the General Assembly51.
The primary impetus behind such aggressive petitioning from the Territory was that Governor Harrison was a strong proponent of slavery. While he was appointed (and reappointed) by President Jefferson, his strong push for suspension of the Sixth Article did not endear him to his enemies or many national Republicans who while not promoting slavery, were not defending its extension either. As Eblen writes, “He used his appointive power to build support for his pro-slavery position, openly took part in the debate, and was roundly criticized.”\textsuperscript{52} The issue also divided the Territory in many ways, between the Francophiles and pro-slavery westerners and settlers from the East who were generally abolitionists. Inaction on the issue within Indiana Territory on the national stage is relatively unsurprising. First, Congress was at this time more interested in removing the national importation of slaves, which could be done in 1808 at the earliest (and was). Second, even among those in Congress who may have been sympathetic to the petitions, there was a sense by that time that the territories of the Northwest were filling so rapidly that the current imposition prohibiting slavery was temporary. After all, states could choose their own laws after that without interference from Congress. Thus, the status quo remained.

Unsurprisingly slavery was an issue frequently discussed in the early American Congresses. The Northwest Ordinance had banned the practice (although as stated above the common interpretation was that it forbade future, not current, slavery in the region). Despite continued efforts from the appointed officials, like Governor Harrison, to allow the practice, Congress repeatedly denied them. This was primarily due to the already establishing construction of free versus slave states and the balance of power in the Senate and House, as southern territories were obviously allowed to practice slavery. This also reflected the growing strength already of the northern states in terms of population, which was reflected in the House.
Following the second U.S. census in 1800, there were 70 seats in free states and 71 in slave states, with slave states such as New Jersey ready to remove the institution. Therefore, during the period which Indiana Territory pushed for slavery, there was a clear majority of the House opposed to the extension, even if the Senate may have been amenable to the idea. While territorial legislation was passed defying national law and some slaves were held in bondage regardless of the legality, the refusal to proactively sanction slavery by the House was a clear indication of their already important role in balancing free and slave concerns with the Senate.

Territorial Bounding

Boundaries of territories were important, if for no other reason than they were strong indicators of the possible future borders of admitted states. This was particularly important in the case of Indiana Territory, which as stated above went through massive border changes between 1803 and 1809. Including the initial determination of where to divide it from the Northwest Territory in 1800, the conflicts which occurred over the determination of boundaries demonstrate the importance which national policy makers put upon these decisions.

Glassman outlines the concepts of recognition, bounding, and incorporation in the construction of territorial entities and their subsequent admission to statehood. The concepts of recognition and bounding are particularly useful to consider here. For Glassman, recognition deals with the definition of a “legitimate political community” upon creation of a new territorial entity, while bounding is the effort of matching “political community to geographic community” upon a territorial division. Thus, recognition creates a political community, regardless of its size and meaningfulness, while bounding is a later effort to actually map a section of a political
community to a corresponding geographical region to which it fits. Political controversy pervaded both of these actions.

Indiana Territory, as with a significant number of other territories, was divided numerous times during its existence, varying greatly in size and shape, and thus geography. The people within these regions cared greatly about who controlled their fate, where the territorial government was located, and what policies the territorial government would enact and enforce. As Glassman notes, “This suggests that the politics of initial organization of territories is largely…a question of how it will be organized – the number of new territories to be organized from a given piece of land, the size of these new territories, and the boundaries that will define their jurisdictions.”

When deciding on boundaries for territories, there was much to be concerned with for residents and governments. While changes to this end were relatively frequent in early American history, they also became largely self-reinforcing. The path-dependency of territorial bounding mattered a great deal. With few exceptions, the continental territories retained most of their essential geographic boundary features as Congress divided them over time. This is why territorial division was such an important policy making moment, since a particular specified boundary was likely to be relatively permanent. This was even more so when it involved the creation of a state, bordered by a remaining territory, for example when the state of Ohio was split off from the remainder of Indiana Territory.

When Ohio was admitted to the Union, its boundaries were set so that the eastern portion of modern Michigan was left off. Residents of the area surrounding Detroit were fairly unhappy that they were then placed back into the western mass of largely undeveloped territory, rather than given their own territory, especially considering they remained hundreds of miles from the
seat of the government. They petitioned Congress to create a separate territory from Indiana complaining that, “The immense distance from the settlements upon the wasters of the Lakes, to the established Seat of that Government...places us in a situation truly Critical and alarming...but a little preferable to a state of nature.”55 While their petitions were not immediately acted upon, residents would not have to wait long for legislative action to occur on their request.

In February of 1804, the U.S. House discussed a report which recommended against dividing Indiana Territory in two, principally separating off the Michigan peninsula. The arguments revolved around the practicality of the division versus the virtue of providing adequate government and justice to the residents of the territories. In particular it was noted that Michilimackinac was over 800 miles from the seat of government, but was producing enough exports that the U.S. government gained $17,000 in revenue from it. When the bill came up for a vote it was narrowly defeated 58-5956.

Undeterred, the petitioners sent further argumentation in October of that year, noting that copies of legislation supposedly passed in September of 1803 by the territorial government had still not reached them, and that discussions of a move to second-state government would mean a greatly increased tax burden, while a further reduction in their representation in the territory57. In December, a separate petition to Congress pointed to the fact that mail routed to the region around Detroit was now to come through Ohio, meaning that communication with the territorial government in Vincennes would take even longer58.

The addition of the vast Louisiana Purchase further complicated territorial creation and division. Residents of the western-most regions of the Indiana Territory worried that the addition of the lands from the Louisiana Purchase would leave them either connected to an even greater-
sized Louisiana Territory, farther from population centers and civil government, or would leave them as part of the Indiana Territory, left out of most decision making. They point out in a petition in October of 1803 that if Indiana Territory were granted second-stage government at that time they would be dominated by residents of the more populous eastern region. The House did assign a committee to investigate these memorials, although it reported in November of 1803 that while it understands the challenges of being a far-flung region of a territory, “those inconveniences are common to all Infant-Settlements, [and] that these inconveniences are transient and will speedily be remedied…” through settlement of the area in between them and Vincennes. An further committee report a month later in the House noted that a division of the Indiana Territory should be opposed due to the expenses which would be incurred in creating an additional territorial government. That region remained part of the Indiana Territory, while the Louisiana Purchase was divided in two.

Michigan Territory was created in 1805, leaving Indiana Territory with boundaries that included the current states of Indiana, Illinois, Wisconsin, the Upper Peninsula of Michigan, and the arrowhead of Minnesota. These borders would stay the same for only a short couple of years. In late December of 1808, the House received a petition from a significant number of residents of Knox County, which included Vincennes, the territorial capital, and was located relatively centrally in the southern half of the territory. The petitioners opposed division of the territory, pointing out that while the distances from Vincennes to the edges of the settled areas of the territory were considerable, they were not unreasonable. They also reflected upon a theory of early American territorial growth which was relatively pervasive when arguing, “Territorial Governments are temporary and formed for temporary purposes Inconveniences result from
them as well as every other Government…”

This petition was passed on to a committee formed to report on a bill dividing Indiana Territory from what would become Illinois Territory.

About a month later, the House read the report from the committee which registered dissension over the proposal. Arguments in favor reflected the concerns of petitions from residents of the western regions. Their distance from the territorial government “renders the administration of justice burdensome and expensive” and “division of the Territory is a matter of right under the ordinance…” Arguments in opposition cited the small population of the territory (estimated at 28,000), the added expenses, and that “there were many places in different States whence people had to go two or three hundred miles to the courts…” The bill passed quite easily, 69-37, implying that Congress leaned toward the claim that rapid settlement would soon bring a return on investment. Thus, in 1809, western residents were finally given their freedom from the more populous eastern region and would be placed back into district-stage government with the creation of Illinois Territory. Finally, Indiana Territory had taken on the shape of what is now the state of Indiana, bordered on the east by Ohio, the north by Michigan Territory, the south by Kentucky, and the west by Illinois Territory. The process of bounding that particular political community had been completed through a circuitous process taking place over the course of about one decade.

From the perspective of Congress, the action of bounding is one that reflected a number of different concerns. Perhaps most obviously it depended upon both geographical and sociological factors. During the decisions over Indiana Territory, one of the primary distinctions was the political ideologies of the majority of residents in newly bounded areas. As noted, some areas were more pro-slavery, while others were determinedly against it. The sections holding larger population centers looked forward to political dominance, while those less populated
regions worried that they would lose all political influence if connected to more developed areas. Still, most of these earliest bounding policies depended less upon the people in the territories than in the later eras of territorial policy.

Another pressure upon Congress was ensuring that territories were properly sized but also not too numerous. Early Congresses were hesitant to create too many territories at any time since that meant increased costs, but they also realized that the rapidity of the expansion meant that new states would be admitted rather quickly. Representatives from existing states worried that these areas would be large geographically and thus potentially in population, which would give reduce their power in the House. They also were concerned about admitting too many new states because every admission meant two more Senators, reducing the power of existing states in that chamber. Yet, despite these concerns, there was a clear majority that saw the purpose of the territorial system during this period to be a temporary process leading to including in the Union. The autocratic nature of that process was necessary due to practical concerns, but since it was only temporary, there was little discussion in Congress at this time regarding the limited rights granted to territories and their residents compared to U.S. citizens in the states. From these points, it is clear that early bounding decisions were of vital importance to residents in the territories, but were largely abstract decisions by national legislators. They had pressures operating on them, but those pressures in the early 1800s dictated less the specific borders and more the general contours of size and shape.

3 Interestingly, in the enabling act for Michigan Territory, Congress seated the government in Detroit, which could only be changed thereafter by an act of Congress, as opposed to the earlier capitals which had either not been formally placed or could be changed by an act of the General Assembly. Congress would go back to allowing General Assemblies to change the capital afterwards.
4 The preceding information taken from Andrew Linklater’s *Measuring America*, pages 164-166.
8 “The Secretary of the Treasury to the President” Carter, Edwin, Territorial Papers, Volume 7, 562-563.
9 “Petition to Congress by Inhabitants of St. Clair and Randolph Counties” Carter, Edwin, Territorial Papers, Volume 7, 591-592.
10 “Memorial to Congress by Inhabitants of Peoria” Carter, Edwin Territorial Papers Volume 7, 431-432.
14 Bills and Resolutions, House of Representatives, 10th Congress, 2nd Session, Bill No 25, December 26, 1808.
15 “Memorial to Congress by Citizens of Harrison County” Carter, Edwin, Territorial Papers Volume 7, 632-635.
16 “Petition to Congress by Citizens of Clark County” Carter, Edwin, Territorial Papers, Volume 7, 687.
17 “Petition to Congress by Citizens of the Territory” Carter, Edwin, Territorial Papers, Volume 7, 690-691.
18 Bills and Resolutions, House of Representatives, 11th Congress, 3rd Session, Bill HR 73.
19 Ibid.
20 Bills and Resolutions, House of Representatives, 11th Congress, 3rd Session, Bill HR 29.
22 Alaska would be governed by a system similar to the district stage for decades and the reasons for it matched in many ways the reasons for district stage government in the initial territories, primarily sparse population and impracticality. Yet, the government would not be directly based upon the Northwest Ordinance and therefore it makes more sense to consider Illinois Territory as having been the last territory to begin at the District Stage.
23 Eblen, The First and Second United States Empires, 141-142.
24 “Governor Sargent to the President of the Senate” Carter, Edwin, Territorial Papers, Volume 5, 109-117.
27 House Journal, February 18, 1802, 103.
30 “Resolutions of the Territorial House of Representatives” Carter, Edwin, Territorial Papers, Volume 7, 600.
32 Ibid, 180.
33 Ibid, 195.
34 “Governor St. Clair to the Secretary of the Treasury,” Carter, Edwin Territorial Papers Volume 2, 420.
36 Eblen, The First and Second United States Empires, 155.
39 The report can be found in full in American State Papers, Miscellaneous Volume 2, 15-16.
41 History of the report and discussion about it can be found in Annals of Congress, 11th Congress, 2nd Session, 682-683, 690, 844, 1172-1173, and 1198-1199. The votes can be found on page 1199.
44 Annals of Congress, 8th Congress, 1st Session, 1023-1024.
46 “Petition to Congress by Citizens of Harrison County” Carter, Edwin, Territorial Papers Volume 7, 703. See also Philbrick. Laws of Indiana Territory, 1801-1809, 523-526.
51 Ibid.
54 Ibid. 190.
57 “Memorial to Congress by Inhabitants of Detroit” Carter, Edwin *Territorial Papers Volume 7*, 227-231.
58 “Petition to Congress by Democratic Republicans of Wayne County” Carter, Edwin *Territorial Papers Volume 7*, 240-242.
63 The original report can be found in *The Annals of Congress*, House of Representatives, 10th Congress, 2nd Session, 971-973.
Chapter 5 – “The Old Northwest is Done” – Wisconsin Territory

Wisconsin Territory in many ways was a turning point in American territorial policy. As of 1838, the only territories in existence were Florida, Wisconsin, and Iowa. Florida Territory had existed since 1821 and can be considered the original colonial rebel as many of the early attempts to restrain territorial power were due to incidents with Florida’s legislature. Iowa Territory was created from the western stretches of Wisconsin Territory and adopted much of the same structure. Thus, it is easy to separate Wisconsin Territory from the earliest period of territorial experimentation. It would take the Civil War and the end of slavery as a national divider to move territorial policy into a second era. Yet, Wisconsin Territory reflects many of the changes that had occurred since the Northwest Ordinance was enacted.

First, Congress had begun to standardize territorial policies, not only in terms of applying them to all territories at once, but also by defining the authority of the appointed and elected officials more strictly. Second, there was an effort to centralize territorial issues, with the creation of the House Committee on Territories, which also had the effect to minimize the likelihood that policy would be changed. Third, Congress moved to democratize territories, expanding the suffrage, limiting autocratic powers of governors, and providing greater appropriations for internal improvements. At the same time, however, they attempted to constrain territorial officials by circumscribing the size of legislatures, deficit spending, paying legislative salaries, and limiting the length and type of sessions allowed.

In the background of many of these decisions was the changing American political system. Technological progress, especially in communications and transportation, meant that
traveling to and through the territories was becoming easier and faster. The political party system was entrenching, starting to divide more distinctly over slavery, and patronage was a vital political tool. Many of the earliest challenges with territorial administration had been dealt with, albeit not necessarily efficiently or effectively. Congress as a whole had learned from past experience and the expansion of the United States continued to keep territorial policies, at least in the abstract, an important aspect of American politics. Yet, responding to the ever present and variable challenges of civil administration in the territories remained undervalued.

*Culmination of First Era Lessons – Mechanisms in Wisconsin Territory*

By the time Wisconsin Territory was created in the mid-1830s the settling of the United States had expanded nearly all the way to the Mississippi River, pushed by the incredible population growth of the era and a number of important technological advances in communication and transportation. The United States had increased from about 4 million in 1790 to around 13 million in 1830, more than tripling in just 40 years. Rail transport was in its infancy at the time, but innovations in fast travel over water, the expansion of useable turnpikes, and creation of canals, made it easier to live and work within the interior of the country, at least near major navigable waterways. This was especially vital to Wisconsin, which had ports on Lake Superior and Lake Michigan, as well as access to the Mississippi River via numerous major tributaries. Additionally it became easier, with the creation of a national postal system and easier forms of communication to live on the edge of American society and still connect with family and keep up with the news. This helped to promote greater expansion and supplemented living conditions on the frontier.
In addition to technological changes, the political system continued to centralize while also becoming more politically divided. The short period of partisan calm, during the Era of Good Feelings, was over and slavery was increasingly dividing the North and the South from one another politically. In Wisconsin tensions over slavery were felt despite the fact that the institution had no foothold in the region and would have been economically infeasible. Additionally, divisions within the territory tended to line up with the national parties, even if the issues being fought over did not directly reflect national political divisions. A committee to deal specifically with territorial issues had been created in the House in 1825 and a parallel boy in the Senate would be formed in 1844. Territorial administration has also become standardized as Congress learned from its earlier successes and failures. In particular, there was less hesitation to provide territories with some immediate elective representation. White male suffrage had also become nearly universal within the territories and the power of appointed governors had been circumscribed to some extent, including limited veto overrides.

Wisconsin Territory existed at the peak expansionist period of American history, where the primary goal was quick ascension to statehood. Between 1836 and 1867, 13 states were admitted, 10 of which had been territories. Only 11 new states had been admitted since the ratification of the United States Constitution prior to 1836, and 11 more would be admitted between 1868 and 1959, when Alaska and Hawaii became the most recent admissions. The tension over slavery, which produced a practice of pairing admissions of slave and free states, was connected to a general expansionist desire for new states, which would last through the end of the Civil War.
Creating Wisconsin Territory

In April of 1836, Congress organized the Territory of Wisconsin. The borders were created from what remained of the original Northwest Territory, plus a section of the northern Louisiana Purchase. This area encompassed the entirety of the modern states of Wisconsin, Minnesota and Iowa, as well as both of the Dakotas to the Missouri River. In 1838, the western section was divided off, leaving only the region east of the Mississippi River as part of Wisconsin Territory. This would remain the border until 1848, when Wisconsin would be admitted as a state, losing the excess lands to the Minnesota Territory.

In 1836 a census of Wisconsin Territory counted just over 22,000 people, with the largest amounts centered in the southern stretches of the region, from Lake Michigan over through the Mississippi River valley area around DuBuque. The northern expanses of the Territory had less than one-fourth of the total population at the time. The major population centers in the mid-1830s were Milwaukee, Mineral Point, DuBuque, and Burlington, pointing to the obvious importance of waterways for commerce and settlement\(^2\). By the time it gained statehood in 1848, and despite a dramatic reduction in overall size, Wisconsin had a population of over 223,000 and was by far the most densely populated territory to that point in American history, a title it would hold until South Dakota and Washington were admitted in 1889\(^3\). Milwaukee had grown to over 20,000 in population by the 1850 census and the impact of immigration to that area was clear from the fact that only 18% of the state’s population had been born in Wisconsin (territory or state), while 46% had been born in other states and 36% were foreign-born\(^4\). It was also only the second territory, after Iowa in 1846, to be awarded two seats in the House of Representatives upon admission to the Union.
Though only a territory on its own for 12 years, Wisconsin Territory is a particularly important case in the evolution of territorial politics and policies. As the last of the original lands from the Northwest Territory it was inextricably linked to the Northwest Ordinance. The enabling act, however, while based upon the Ordinance in some ways, also reflected important and lasting changes from what essentially had been an experimentation phase in American empire and colonization. Although the defining shift from the First Empire to the Second was the Civil War period, the creation of Wisconsin Territory marked the culmination of a phase of territorial policymaking marked by tentativeness, loose Congressional oversight and piecemeal legislation. Many of the primary components of the territorial empire of the second half of the 19th-century were evident by the time Wisconsin gained statehood.

**Organic Act Changes and Congressional Shifts**

Wisconsin Territory was created by an organic act in April of 1836. By this point, Congress had made some significant changes from the early territorial governments of the Northwest Territory. First, and perhaps foremost, there was no longer a district stage period. Illinois Territory two decades previously had been the last territory created at that initial stage. Although Congress would later give a similar government to Alaska and autocratic militarized civil administration would also occur in New Mexico, the standard policy had changed to allow territories to form elected legislatures from the outset.

Another major shift was that Congress was now paying for the expenses of these territorial legislatures. While the practice had started with Florida Territory in the early 1820’s, by the time Wisconsin Territory was created it had become standard procedure. The organic act called for a census to determine the apportionment of a territorial house of 26 members and a
council of 13. These legislators would be paid three dollars a day during the sessions, plus another three dollars for every 20 miles of travel to and from the legislative sessions.

Legislative sessions were also limited to 75 days, a necessary strict limitation given that the federal government was now paying the costs and because it had been clear from previous experience that legislatures would stay in session far longer than required. Sometimes this was due to a general lack of expediency, sometimes because the legislators wanted to extend the period during which they were paid. The precedent set in Indiana Territory remained that eligibility for the territorial legislature was restricted to persons not holding a commission of the United States, except militia officers. Again, this was to prevent undue influence from the territorial governor, who was still responsible for many of the appointed positions in the territory, particularly vacancies which arose when the legislature was not in session.

While many of these changes appear to be toward democratic self-control for residents of the territories, they were more accurately attempts by Congress to closely control the actions taken within the territories. The democratic responsibility granted by the national legislature to the territorial legislatures and their members was counteracted by more strictly defined boundaries on lawmaking as well as more control over their practices. This was done through limitations on session lengths, paying of legislative salaries, and residency restrictions. Farrand notes that this evolution occurred almost naturally and culminated with Congress stepping, “in to prohibit certain kinds of legislation which had formerly been considered the undoubted right of local governing bodies.”

According to Farrand’s calculations, by the time that the Wisconsin Territory was created, there was a long list of established practices that were followed within the territories due to Congressional experimentation. In addition to those already mentioned above, he notes that
the autocracy of the territorial governors had been greatly diminished so that they could no longer prorogue the legislature, they had lost much of their plenary power to appoint local officials (although they still had significant influence in this area), and their veto could be overridden with a two-thirds vote of the territorial legislature. Suffrage had been greatly expanded to preclude any property requirements. The justice system had been considerably better organized as well, with a quorum required to hold a session of the superior court, and appeals were eligible to the Supreme Court of the United States just as they were in the states.

From the perspective of Congress, these changes came about because of a variety of pressures. Perhaps foremost was the simple fact that they learned from experimentation. Failures in territorial policy typically led to tensions between federally appointed and territorially elected officials or drove strong protestation from territorial residents. Even though Congress might not have had a lot of concern overall for territorial administration, they appeared to respond to when significant friction arose within territories, especially regarding the actions of appointed officials. Some of these changes also resulted from a desire to tighten control over the territories while at the same time reducing the authority reserved to officials who reported directly to executive branch departments. It allowed a greater sense of oversight without requiring much more effort from legislatures. By making the rules more clear and standard across territories, Congress could rein in complaints against federal officers and limit the freedom territories had in setting up their governments while also eliminating the inadequate and undemocratic district stage.

An additional important factor that had arisen between the admission of Indiana and the creation of Wisconsin Territory was the formation of a standing Committee on Territories in the House in 1825. The Senate would not create a parallel committee until 1844, just before Wisconsin gained statehood. A standing committee dedicated to territorial affairs had two
general effects on territorial policy. The first was that it helped to regularize legislation, particularly in the sense that more often acts which affected territories did so universally. While many bills still had local impacts, for obvious reasons, there were far fewer piecemeal approaches as had been seen in earlier Congresses. For example, a bill might be proposed that would appropriate monies to build a penitentiary which was specific to Wisconsin Territory, but others might call for the election of territorial governors by the people across all territories. This made it far easier for Congress to craft policies that addressed both specific and general needs in the territories more efficiently.

The second effect that a standing committee on territorial policy had was to centralize concerns from those unique areas. While legislation dealing with land issues, relations with Indians, etc. still frequently emanated from other committees more specifically tied to those topics, the territorial committee became a specific policy venue for the memorials and petitions from territorial residents and the concerns brought forward by appointed territorial officials and the elected delegates. At the same time, however, this also tended to minimize the territorial issues. Whereas before, any territorial matter of substance would be provided a temporary select committee which would then report on the topic, these issues were now sent to the House Committee on Territories. Depending upon chairman, this might be a boon or a death sentence.

The House Committee on Territories was relatively small, having only seven members during the 19th Congress, growing to nine by 1836. The first chairman was James Strong, an Adams Party Representative from New York. Three of the initial seven members were from former territories, a Representative each from IL, AL, and OH. Across the period of existence for Wisconsin Territory, the Committee had 127 seats across 14 sessions. Of those 127 seats, only 26 (20.4%) were held by Representatives from former U.S. territories (and of those about half
were from Tennessee, which had gained statehood in 1796). This meant that most of the men dealing directly with territorial issues represented areas that had never experienced the process. And it wasn’t as though there was a distinct lack of Representatives from recent former territories. For example, in the 28th Congress, the House had 223 members and 41 of them (18.4%) represented former territories that had achieved statehood since 1812. The chairs of the committee from the 26th Congress until Wisconsin was admitted as a state were at least all from non-original states, but only Stephen Douglas of Illinois was from a relatively recent territory. While the committee reflected the diversity of the overall chamber, it is surprising that more members were not from former territories, demonstrating again the idea that the creation of the standing House Committee on Territories was both beneficial and harmful to territorial policy from the perspective of the territories themselves. The permanent nature of the specific committee helped standardize and centralize the policymaking, but the demographic features of the members at times acted as a deterrent to effective action.

While the House and Senate had begun creating standing committees even prior to 1800, both institutions remained reliant upon temporary select committees to deal with most issues. This was, “Because legislators feared that committees with substantial policy discretion and permanence might distort the will of the majority,” and they left the debate and policy decisions to the whole House discussions, giving the select committees power over drafting the details and submitting reports. The House became more reliant on permanent committees after the first decade of the 19th-century, the Senate lagging a few years behind. Thus, by the time that the House Committee on Territories was formed, standing committees had become the accepted norm and bills were frequently diverted to permanent structural entities, rather than ad hoc ones. Accompanying this was the growth in importance of the committee chairman, who initially was
looked to as more of a moderator than the lead policy decision maker. Quickly, however, chairs saw these opportunities to push legislation they favored and block legislation they disliked. In the case of territorial policy, this had the effect, as noted above, of standardizing and minimizing territorial policy compared to select committee use.

The Wisconsin Territory Organic Act

Most of the discussion regarding the Wisconsin Territory Organic Act centered on a grant for public buildings and the salaries and requirements for territorial office. The initial House bill called for 10,000 acres of land for erecting public buildings, but this was then altered to be $20,000, with the obvious implication that Congress felt a direct monetary appropriation would be more beneficial than one of land. When Congress returned to discussion of the bill, Representative Bond moved to amend that amount down to $12,500, which was largely opposed by others in the chamber. In particular, Representative Kinnard exclaimed, “…I would like to see the manifestation of an intention, open and avowed, to benefit the new sections of the country by affording something like a regard for their necessities; and, at least, the appearance of an equivalent for the additional value conferred by the labor of the settlers on the public domain.” The proposed reduction in the appropriation failed in a 60-117 vote and the $20,000 amount was agreed to.

Discussion shifted then to the salary of the governor (who at the time was still acting as both territorial governor and superintendent of Indian affairs). As drafted, the bill set the salary at $2,000 for the position of governor and $1,500 for superintendent. Two amendments were proposed, the first to reduce the overall combined salary to just $2,500, the second even further
to only $2,000. This lowest amount was argued for by Representative Vinton, because as he saw it,

The expenses of a Governor living in a log cabin in Wisconsin could not be equal to those of a person holding the same office in Ohio. Wisconsin was almost out of the world, and its Governor could not be subjected to those expenses, in the entertainment of visitors, which, in the States, were unavoidable. It was said that these inhabitants of Territories were our children, and must be treated with indulgence and liberality; but he thought the best way of bringing up children was to accustom them to take care of themselves.\textsuperscript{12}

Representative Ashley responded to this accusation by noting that territorial governors at the time had more, not less duties than state governors:

The Governor of this Territory would be the great father of all the Indians within it, and he would be frequently compelled to receive and entertain them…Again: the responsibility and labor of this office was greater than that of a Governor of any of the States. He was obliged to fix his eyes upon every body around him – upon the citizens of the Territory and upon the Indians.\textsuperscript{13}

The Vinton amendment was narrowly defeated in a 75-76 vote, but the initial amendment proposed, which would reduce the overall salary of the governor for both his roles to $2,500, was approved. One of the most important components in the proposal for the Wisconsin Territory was an appropriation to provide money for a permanent library for the legislature, which would contain the laws for the territory and the U.S. The lack of such an institution in previous territories had been an enormous hindrance to effective policymaking and judicial practice. An amendment to reduce the originally proposed amount for such a library was outright and quickly defeated on the House floor\textsuperscript{14}. This signals that the federal lawmakers finally understood the value that having a permanent archive for laws would have upon justice in the remote settlements of the frontier.
The final discussion in the House was regarding the tenure of territorial judges. The practice in most territories had been to appoint the territorial judges to tenures of good behavior, equal to those that all federal judges, as outlined in the U.S. Constitution, were entitled to. Representative Cushman moved to substitute a fixed four-year term in place of the precedent of tenure during good behavior. Two major points were raised in opposition to this amendment. The first was that these were federally appointed judges and all similar judges not in territories were given lifetime tenure. The second dealt with the problem of patronage since as Representative Wise points out, “The judicial officers were the only officers of the Government whom the President could not remove at pleasure; and if this amendment were adopted, we might see a worthy man and a good judge turned out, to make room for a friend of the party.”

A number of Representatives, despite these arguments, questioned whether or not it was a duty of Congress to provide tenure of good behavior. After all, the Constitution mentions nothing about the territorial judicial systems and Congress had broad authority over territorial policy. Representative Pearce, who had chaired the committee which produced the organic act, responded that while obviously the territorial courts were not federal in the meaning of the Constitution,

> [T]he committee could perceive no principle which made these courts an exception; a part of the judicial power of the United States is vested in them; they derive their existence from the Government of the United States; the judicial system which they are created to administer is established by the Government of the United States; the judges are appointed, paid, and liable to impeachment, by the Government of the United States. The only difference seems to be, that the residence of the judges and the seat of justice must be within the limits of a Territory instead of a State.

Representative Cushman withdrew his proposed amendment and the House enacted the Organic Act for Wisconsin Territory. A few years later the House did pass a bill that would have
limited the terms of Wisconsin Territory judges to only four years but it stalled in the Senate and was never enacted\(^{17}\).

From these discussions on the House floor, it is clear that the majority of Representatives saw it as their duty to the nation to provide an adequate government to the territories. By the 1830’s it was clear that a central location for government provided stability and that appropriating funds for building government buildings was a necessary action. It is also clear that many members of Congress had little information regarding the realities of life on the frontier and much of their beliefs were at least somewhat inaccurate if not outright contradictions of fact. This led to rather amusing comments regarding what salaries would be sufficient for governors to entertain guests or who those guests might be on the edges of civilization. Yet, providing some stability for civil administration in the territories meant reducing the chaos which had plagued the early territories, such as when the territorial government of the Northwest Territory simply was wherever Governor St. Clair was. Finally, it should be noted that in some of these discussions, it is clear that Congress was still clarifying rules it felt appropriate for the federal government. While debating the terms for judges of territories (which after all were designed to be temporary) might seem relatively semantic, this was a case where Congress was defining territories in relation to the system of federalism. While operating under the national government’s authority, they were specifically defined subunits, similar to states. There was also concern here about the impact that patronage would have if the president were able to remove territorial judges at his pleasure.

*A Tale of Two Men*

One of the most fascinating rivalries in territorial history occurred between Henry Dodge and James Duane Doty, who dominated Wisconsin Territory politics. It is worth extrapolating on
their struggles in this project for two reasons. First, both were appointed governor and also elected Congressional delegate, so they help to illuminate the effects which occurred in territories when local and national political winds shifted. Second, the actions taken by both of these men in their official and private capacities warranted at times responses by the executive and legislative branches of the national government.

Henry Dodge had been born in Vincennes in the Old Northwest in 1782, moved to Missouri in 1796 and then to Wisconsin (at the time part of Michigan Territory) in 1827. He fought in numerous Indian wars before being appointed the Governor of Wisconsin Territory in 1836 by Democratic President Andrew Jackson\(^\text{18}\). He was obviously familiar with the politics and needs of the frontier and the concerns that came along with the politics of territories.

James Duane Doty was an easterner by birth, born in upstate New York in 1799. He moved to Detroit in Michigan Territory in 1818 after studying law, and began his career in territorial politics by acting as the secretary and clerk for the legislative council of Michigan Territory. After that he served as a judge for the northern section of that territory until 1832. He then was elected to the territorial council in 1834 and 1835, during which time he played an important part of the efforts to divide Michigan Territory from its western frontier and gain statehood. He also was successful in preempting a number of tracts of land in what became the Wisconsin Territory, including laying out the town which would become Madison. His first official capacity in the new territory came with his successful victory in the 1838 election for territorial delegate\(^\text{19}\). Doty, a Democrat, defeated George W. Jones, who had served previously as the delegate from Michigan Territory and the first from Wisconsin Territory, as well as Thomas Burnett, in a three candidate election. Doty captured 1,764 votes to Jones’ 1194 and Burnett’s 956\(^\text{20}\).
Dodge and Doty would find themselves frequently at odds with one another, despite the partisan ties. For example, in his 1838 message to the territorial legislature, Governor Dodge recommended the passage of a territorial tax which would be placed on the lands of non-residents, “for the purpose of forming a fund to be applied exclusively for the establishment and support of Common Schools in this Territory…”21 The obvious reason for this would be to tax absentee landlords to support schools which would only provide benefit to settlers living on their land, thus discouraging the practice of land speculation. It was a politically popular idea among residents of the territory, who of course were the ones in charge of electing the legislature. Yet, it was a problematic assumption, since as Doty would respond in his own gubernatorial address in 1841, “The power to compel any one species of property to pay all the taxes for the support of government if granted by Congress ou’t not to be exercised. To exclude all improvements made upon land from taxation is to require all wild uncultivated land to be taxed higher than cultivated lands which is forbidden by the acts of Congress,” specifically, the Northwest Ordinance22.

This was just a minor squabble, however, compared to the major incidences which pitted the political leaders against one another. Three in particular stand out. All three deal with Doty’s financial schemes and ended up involving Congressional action.

The first occurred over the siting of the permanent territorial capital. It was originally placed at Belmont by the Organic Act, but the power over removing it to a different location was left to the legislative assembly. Along with the General Assembly’s right to select county seats, this meant that speculators had a particularly important interest in making deals in the legislature. This practice began to infuriate Governor Dodge. Regarding the capital change, Dodge wrote to Delegate Jones that Doty was exerting every effort to broker a compromise with elected representatives from Des Moines and Iowa Counties. This deal would remove the capital to
Burlington for a temporary length of time before moving it to the land Doty owned sited on the isthmus where modern downtown Madison, Wisconsin is located.

Between Doty’s backers and the representatives of the Burlington area, they would have a majority of the territorial legislature. Dodge cried, “I will never consent to do an act of Injustice to the people of this Territory should their representatives consent to do so…I am to have all the rascally Speculators arrayed against me in the Territory…”23 He was unable to block Doty’s efforts on that front, with the territorial capital moving to Burlington until the creation of Iowa Territory in 1838, when it was indeed removed to Madison. Part of the problem, apparently was that he felt bound to sign the capital move bill given its wide popularity in the territory, which led Delegate Jones to be cautioned to watch himself in opposing the Congressional sanction of the law in the House24. Yet, he did use his veto power rather frequently on county capital relocations, a practice that Eblen says Dodge, “considered unnecessary and unjustified.”25

The second of the major feuds between Dodge and Doty stemmed from a set of territorial acts passed in 1836, which called for the incorporation of banking institutions in Wisconsin Territory. Incorporations were required, under current federal law covering the territories, to be confirmed by Congress. On February 3, 1837, a Senate committee submitted a brief report, along with a bill, confirming those acts. The report itself noted that while, “these charters are abundantly sufficient to fulfil (sic) every just or necessary purpose…needed at present, or for several years to come…” that the Wisconsin Assembly should not add to the number of incorporated banks because the Senators believed, “strong and peculiar reasons, ought, in their opinion, be required, before assent shall be given.”26 The bill itself, which would be passed by both chambers of Congress made several conditions of their acceptance. Included in these restrictions were that the banks may not issue bills for circulation until at least half of their
capital was paid in, that they cannot at any time have a capital amount larger than $200,000 without Congressional approval, and that the banks may not owe more than it has in deposits or twice what it has actually paid in for capital stocks\textsuperscript{27}.

Doty was the president and one of the major investors of the Mineral Point Bank which was included in these incorporations. By the end of 1838, it appeared that the banks as approved, were not actually following those conditions, or at least as far as Doty’s enemies were concerned. Governor Dodge put pressure upon Delegate Jones to introduce a resolution calling for the Secretary of the Treasury to investigate the banks. As if the situation weren’t volatile enough already, Doty successfully defeated Jones in the delegate election of the fall of 1838. Given that the final session of the 25\textsuperscript{th} Congress was just wrapping up at the time, Jones assumed this meant that Doty would take his seat at the start of the 26\textsuperscript{th} Congress, which would begin in early 1839. Doty, however, contested this interpretation, arguing that he was to be seated immediately.

On December 21, 1838, the House Committee of Elections dealt with the overriding question of the timing of the start of a delegates’ term. The Organic Act had mentioned only that the election for delegate would select a person to serve for two years. The act of 1817 which referred to territorial delegates and their rights, noted that “such delegate shall be elected every second year for the same term of two years for which members of the House of Representatives of the United States are elected.” The committee construed this to mean that a two-year term was required, but not necessarily one fully coinciding with those of the regular members of the House. The report argued that if the interpretation was that delegates served simultaneously with other House members, that Wisconsin would have technically been without a delegate for nearly a half year, since Jones’ first term would have begun in March of 1837, not upon his certification
in the fall of 1836. While the report is confident in its conclusions, it does note a certain amount of confusion over these points exists and implies that perhaps it should be rectified. At the same time, however, they remarked that, “delegates are so far the mere creatures of law that their term of service may be long or short, and may commence and terminate at such periods as Congress, in their wisdom, may direct.” The House agreed to seat Doty on January 3, 1839.

In the meantime, however, Jones introduced a resolution on December 31 which would require the Secretary of the Treasury to inquire into the Wisconsin Territory banks. In a letter to the Treasury Department on January 2

Mr. Jones is not the Delegate for Wiskonsin, and any act of his as such will be deemed invalid, and therefore disregarded- The Banks of the Territory owe nothing to this government, neither are they responsible in any way to it. I am satisfied therefore, as the proceeding is illegal, they ought not to submit to the examination proposed.

Jones, however, was not deterred, writing to the Treasury the next day a letter pointing out the accusations toward the banks of violating the conditions put upon them. In particular he observed that, “The people of the Territory in the vicinity of the Mineral Point bank almost universally believe that bank at that place has violated the provisions of the act of Congress in both particulars alluded to above…” Regardless of Doty’s efforts and any question regarding the validity of Jones’ resolution due to his being unseated, the Treasury Secretary officially called for an investigation on January 8, which continued despite hesitation by the Attorney General on whether or not the Treasury Department had authority, at least in law, to complete such an investigation without the consent of the banks. The investigation began, only fueling the tensions between the two territorial politicians.

Less than a month later, Doty sent a letter to President Van Buren recommending a replacement for Governor Dodge. The list of offenses and Doty’s choice of words easily portrays
the acerbic relationship and included complaints that Dodge, “pursues the barbarous practice of daily wearing arms or offensive weapons”, “does not possess sufficient intelligence to qualify him for the Station”, “he unequally apportioned the legislative assembly, owns and keeps slaves, he has not resided or had his executive office at seat of government…”33 Within three years of the creation of Wisconsin Territory, therefore, Dodge and Doty had already involved a number of executive departments, both chambers of the U.S. Congress, and the presidency in their feuding. Congress never did take up the issue of the banks after the Treasury Department submitted a report which indicated that there was no evidence of the banks being in unstable financial condition or not complying with the Congressional restrictions34.

The third major incident of the Dodge and Doty rivalry involved the appropriations for erecting public buildings for the Territory of Wisconsin and bled into controversy over territorial borrowing. The Organic Act for the Territory stated that $20,000 were to be appropriated for the construction of public buildings for territorial operation. The first Territorial Assembly had approved three commissioners in late 1836 to act as receivers of the appropriations on behalf of the Territory and to oversee the construction of buildings to accommodate the assembly and other territorial officers. Doty was not only among the three commissioners appointed, but was then additionally appointed as the treasurer for the group, which meant he was directly responsible for drawing the appropriations from the U.S. Treasury.

Construction on the buildings had begun and some progress had been made, but clearly the initial appropriation was inadequate and so in June of 1838, Congress gave an additional $20,000 to the cause, again given directly to Doty. Despite the limited progress which had been made on the construction, however, the Territorial Assembly clearly was worried about the financial fidelity of the commissioners and launched an investigation, which resulted in the
repealing of the original commissions and appointment of new commissioners. Additionally, Doty and his two partners were to settle their accounts and provide money or proof of debt. When they failed to do this, Moses Strong, the federally appointed U.S. Attorney in the Territory “instituted an action of trespass on the case against them…”

Doty was hardly willing to let this action go unpunished and sent a letter a few months later to the President, complaining of a variety of misconducts of which Strong was guilty. First, he accused him of using his position as fiscal agent for the Territory for financial gain through taking money which was supposed to be borrowed solely for territorial needs and investing it in lead. The actions led to the Territory paying interest on the money, which had been borrowed from banks outside of Wisconsin. Secondly, Doty complains that Strong charged $124, “from the Territory, on a question which he procured to be raised, as to the tittle (sic) of the Territory to the land upon which the public buildings are erected at Madison,” when he was acting as the private attorney for the claimants of the land. Finally, Strong was faulted for not effectively completing an investigation of fraud regarding mineral lands, by instead of taking affidavits in person, he supposedly sent an agent who had been implicated in the alleged fraud to begin with.

Governor Dodge responded to these charges in a letter just days later sent to the Secretary of State: “[I]t is well known that Judge Doty entertains the most inveterate Hostility towards Mr Strong and I have not hesitation in expressing My Opinion that Judge Doty will always avail himself of any advantages his official Station as Delegate gives him to gratify the malignity of his feelings towards those opposed to him in a Political or Pecuniary Point of View…” While defending Strong’s record, Dodge also points to nepotistic motives for Doty’s actions, given the Doty’s brother-in-law, serving in the Territorial Legislature was vigorous in condemning Strong
and was actively trying to procure the appointment to U.S. Attorney in the event that Strong were removed\textsuperscript{39}. Additionally, a friend of Dr. McSherry, the “agent” of Strong’s whom Doty had complained about, sent a letter to U.S. Senator Daniel Sturgeon denying the charges and noting that, “It would have been unnecessary to have this matter taken notice of were it not that our Delegate in Congress has made a charge by ‘implication,’ and we have no Senator to whom the facts can be explained...”\textsuperscript{40}

Doty suffered little repercussion from his role in this final debacle, as Madison not only remained the Wisconsin Territory capital, but remains the state capital today. While he was clearly disliked by many of his peers, he maintained power within the Territory throughout its entire existence, even becoming Governor from 1841-1844. He was appointed by Whig President Tyler as a fulfillment of deceased President Harrison’s wishes, despite Doty being a Democrat. Thus, despite the extent of the feud between Dodge and Doty and any enemies they made, they were able to continue in their positions of power.

What is perhaps most fascinating about the Dodge and Doty quarrel was that both men were Democrats, although Doty would portray himself well enough to the Whigs that Harrison wanted to appoint him governor and upon the president’s death Tyler fulfilled that desire. Thus, while not an overt case of partisanship, the struggles, and how they played out both within the territory and on a national stage, reflected the regrowth of opposition to what had been a dominant Democratic Party during the Jacksonian era. Dodge, while serving as the delegate from Wisconsin, wrote to his friend, George Jones in 1842. Regarding Doty he proclaimed that, “‘Nothing saves him but the influences Webster has with Tyler… I shall keep a good look out while I am here and will make Doty a heavy weight for Tyler to Carry before I am done with him…’”\textsuperscript{41}
The saga of Dodge and Doty reflects the ability for Congress to react to the challenges of territorial administration. That the two men were both appointed by the president (and confirmed by the Senate) while also being elected to the House as delegates demonstrates that they both enjoyed sufficient support within and outside the territory. Their clashes over territorial debt (see below), land speculation, the limits of official authority, and what constituted acceptable entrepreneurial activity, were marked with petty political bickering, but were founded on fundamental concerns the civil affairs of Wisconsin Territory. While both Democrats, they obviously split over key political questions, just as the Democratic Party of the Jacksonian Era was beginning to splinter nationally. Their conflicts also reflected continued efforts by Congress to limit the ability of territorial government to act independently in ways that contravened their intentions. This even extended to efforts by territorial leaders to play the national branches off on one another, as Jones did in an attempt to undermine Doty’s image regarding Wisconsin banks. For the most part, however, Congressional policy remained directed toward emphasizing a relatively rapid process of democratization and growth toward statehood.

Territorial Debt

The Wisconsin Territorial Assembly was not the first to designate more in governmental expenses than they had been appropriated by Congress, but the situation there caused Congress to pass legislation banning the practice. From the first session of the territorial legislature, Wisconsin Territory had borrowed money against its appropriations, since the legislature wanted to be paid prior to the actual disbursement of money by the U.S. Treasury. To overcome that challenge, the territorial government appointed a “fiscal agent” who would be responsible for borrowing money temporarily for operation of the government. The problem with this was that,
“Borrowing money on public credit presented a peculiar problem in the territories, since they were not sovereign and any pledge became a federal responsibility.”

Borrowing on credit had the side effect, of course, of causing the territory to have to pay interest on the loan (for which it had not received appropriation from Congress for). It also acted as an encouragement toward deficit spending since they would just simply borrow more money to cover those extra costs. This resulted in a growing and significant territorial debt, which soon caught the attention of the U.S. Congress. Representative George Evans contacted the Secretary of the Treasury in May of 1840 as Chairman of the House Committee on Treasury Expenditures to inquire about the legal authority of a “fiscal agent” from Wisconsin Territory, and “whether these persons are recognized as officers of the U.S. to whom remittance can be made; & if so, what Security exists for the faithful performance of their duties.” It would still be another two years before the problem came to a climax.

After appointment to Governor, one of James Doty’s vendettas was served against the territorial legislature for overspending their appropriated allotments. In April of 1842, Doty wrote to the Secretary of the Treasury that, “The Legislature has, for several years, held its sessions before the appropriations have been made by Congress to pay their expenses.” He estimates the debt thus incurred to be “about Three Hundred Thousand Dollars” and in his typical fashion accuses that, “these debts have been created and the avails squandered by the political paupers who have infested [Wisconsin Territory’s] limits from the first year of her separate existence.” Finally, Congress was ready to act upon this situation and in May of that same year, enacted a clause in the appropriations bill that disallowed the assembly of any territory to exceed its annual appropriations from Congress.
Enacted in order to reign in territorial costs as well as disabuse the practice of borrowing on credit by the territories, the law also had the effect of disallowing special sessions to be called, “unless special appropriations were made or money was left over from the regular appropriation…” This prohibition would be partially lifted in 1874 when Congress gave the President authority to permit emergency sessions of territorial legislatures if necessary\textsuperscript{46}. Later that fall (of 1842), Congress attempted to fix the problem completely by settling the debt of Wisconsin and Florida Territories and putting very specific restrictions on the number of clerks that can be hired for the territorial legislatures and the amount they can be paid\textsuperscript{47}. The paternalistic nature of the action was hardly subtle and again the U.S. Congress tightened its control over the territories, while further removing power from appointed and elected officials.

This national legislation, however, did little to deter conflict within the territory over the territorial legislature’s ability to disburse funds. In December of 1842 the legislative assembly was set to meet, but Governor Doty refused to allow them to convene because he had argued that no appropriation had been made, and given the acts passed earlier that year by the national government, he felt it was his duty, “to keep the legislature within the sums appropriated for its expenses, and to correct the practice of holding sessions before the appropriations are made…”\textsuperscript{48} The Assembly shot back saying that Congress had in fact appropriated moneys for the 1843 session of the territorial legislature, even though Doty had argued that those appropriations were for covering the past year’s expenses. The Assembly called upon the Congress and the president, “…to remove James D Doty from the office of Governor as a man unfit to rule over a free people…”\textsuperscript{49}

Governor Doty eventually did allow the Assembly to meet in early 1843 despite his hesitations, after getting approval for the session from the Treasury. Yet, afterwards, he was in
contact with the Treasury Secretary regarding his role in assuming authority over territorial expenses. He claimed that, “The Legislative Assembly at its session in April last, made many appropriations for objects not estimated for by the Secretary of the Treasury as well as for objects forbidden by the Acts of Congress.” His concern, as laid before the Secretary was, “…whether a larger sum can be lawfully appropriated by the Assembly for its expenses than is provided by Congress, and whether it can exceed the sums and objects as stated in the Estimates of the Secretary of the Treasury?” Doty was trying to determine how far he could go, as the appointed executive of the territory, in restraining the Territorial Assembly from legislating expenses which went beyond Congressional appropriations. Congressional reprimands for overspending had hardly seemed to deter the legislature, a fact overshadowed by the bickering between it and the governor. While the issues of territorial debt were serious ones and Congress had attempted to ameliorate the cause, it was clear that they had not prevented it from occurring.

Borrowing and debt accumulation were familiar to Americans, as the states had built up massive wartime debts, assumed by the national government, after the Revolutionary War. The national government has maintained some level of debt ever since. Yet, the fiscal irresponsibility of the territorial legislatures was more problematic, primarily because territorial legislators believed (correctly in the end) that whatever debt they might accumulate would be paid off by the national government. While Wisconsin Territory couldn’t, by itself, erase a debt of potentially hundreds of thousands of dollars that was an easy feat for a rapidly growing national economy. Although Congress had never encouraged deficit spending in the territories, until the fallout in Wisconsin Territory, it had largely dealt with the issue on a case-by-case basis, particularly in Florida Territory. As territorial governments grew in influence and appropriations rose, however, Congress needed to act more assertively to deter deficit spending. Although it did
not stop the practice entirely in Wisconsin, and subsequent territories would face debt issues as well, Congress was clearly not condoning the practice.

Frustrations with Territorial Officials

As noted in earlier chapters, one of the most consistent complaints from territorial residents dealt with the federally appointed officials, especially the governor. By the late 1830’s however, things had changed quite significantly in many ways. The territorial governors had lost their power to prorogue the legislature as well as to appoint most local officials and designate counties. Much of this was due to the fact that Congress allowed territories to begin existence by that time in the second stage as outlined by the Northwest Ordinance. Therefore after calling for and certifying elections of the territorial assembly they handed off much of their former powers to those chosen men. In March of 1839, Congress approved a law allowing the legislatures of Wisconsin and Iowa to override a gubernatorial veto, requiring the governor to return a veto within three days51. This left territorial governors even more stripped of the early authority for which they had been derided.

Additionally, by the 1830s there were calls for the territorial governors to be separate appointees from the superintendents of Indian affairs. Congress had first separated the offices in 1834, although they continued to appoint the same person to them in most cases, including Wisconsin Territory. Only in Kansas, Nebraska, and Oklahoma territories were they separated according to the organic acts, although in 1873 Congress finally would permanently sever the offices52. In Wisconsin Territory a group of residents petitioned Congress to separate the appointments because, “[P]ersons have generally been selected for this office on account of their reputation for military talents, rather than their civil qualifications...” They also desired to elect their governor and that they should, “be trusted by a republican government with the choice of
their own Governor – an officer who is to serve them as their fellow-citizen, and not rule them as a King…”53

Concerns also continued about the common practice of appointing non-territorial residents to federal positions in the territory. A petition to President Polk in 1845 from the Democratic members of Wisconsin’s Assembly complained that the residents of the actual territory were not consulted nor their desires made known regarding appointments. They point out that it has, “been too common practice of the President of the United States to appoint citizens of other States to the most honorable responsible & lucrative offices in the Territory…” They reject the practice arguing, quite accurately even if abstractly that, “it is unjust anti-republican, degrading to our self-respect, and partakes too much of the character of the treatment which the British Government extended to the colonial (sic) governments, which among other things led to the Revolution.”54

The residents were not the only ones who became frustrated. Dissatisfaction from territorial officials, whether appointed by the federal government or by the territorial government, caused headaches for national politicians as well. There were still issues with what the secretary’s role was in absence of the governor. It was standard procedure by the time the Wisconsin Territory Organic Act was passed that the territorial secretary would take on the full duties of the governor in his absence. Yet, the secretary was apparently not paid for this extra work as Wisconsin Territory’s Secretary Slaughter found out in 1841. Dodge had traveled to Washington on a business trip, leaving Slaughter to handle all the administrative affairs. When Slaughter requested to be paid the equivalent of the governor’s salary during that period he was denied the request, because since Dodge had been paid his regular salary during those months, there were no additional appropriations for that purpose55.
A couple of other incidents are worth mentioning, and unsurprisingly they deal with the rivalry between Doty and Dodge. The first happened in 1844, when Governor Doty, after years of fighting with the territorial legislature, took the petty step of removing from his estimates of legislative costs a salary for a clerk during the sessions. John Smith, who had been chosen for that duty and continued in the position despite the possibility of not being paid for his services, wrote to Congress regarding the incident. He asks, “whether the fact that the Department has failed (sic) to estimate for an obvious, and unavoidable expense of the Legislature, is a just reason why it should not be paid; and especially an item which has uniformly been provided for in this Territory, and is still provided for in respect to Iowa and Florida?” Smith argues that a clerk for the legislature indisputably should be considered an essential and ordinary expense.

Another instance happened when Dodge had been replaced in office by Doty in office in 1841. Apparently the Comptroller in charge of disbursing his salary declared that his duties began when he received the governor’s books and papers, not when his appointment was certified and his oath was taken. The problem was that Governor Dodge had not provided those materials immediately and thus Doty responded with dripping indignation,

When an officer is removed from office, it is generally understood that he is no longer in that office; but your decision is that although he is removed, and is actually out of office, yet holds the office until it is his pleasure to surrender up the books and papers to his successor. My predecessor had the books and papers at his own residence, fifty miles from the seat of government: was it my duty to hunt him up before I could obtain the office, or my salary commence? By such a rule it will be found very difficult to get some men out of office.

These complaints reflect the limitations of Congressional interference in territorial affairs. For the most part, national legislators were content with the placement of what amounted to a colonial governor, even though they did slowly remove the most invasive of their powers. There was little concern over the practice of appointing non-residents to federal positions. This
stemmed from the customs of patronage as well as the continued belief that the best candidates were not necessarily to be found within the territory itself. Of course, some of the governors, such as Dodge and Doty in Wisconsin, were initially non-residents, but remained in the territory throughout its existence. Other federal appointees also served long stints in the territory, lessening to some extent the local complaints. Frustrations also reflected the ambiguity of territorial administration and the application of Congressional policy. Perhaps the most common document found in territorial archives besides memorials from residents complaining of one injustice or another was requests from federal appointees for clarification on legal duties. This was only exacerbated by the fact that outside of the territorial capitol, civil administration remained rudimentary and copies of laws were still virtually non-existent.

The Up-Hill Battle of Land Policy Continues

The public lands remained vitally important to settler expansion into the middle of the 19th-century. Just months before Congress would create the separate Wisconsin Territory, a Methodist minister who circulated the region wrote to George Wallace Jones, the Michigan Territory delegate (of which Wisconsin was at that time included) with his concerns,

I am of the opinion, after viewing the subject all roud (sic), that Govt. had better sell the Mineral lands. At present you know they afford no revenue. And some of the lands are being materially injured by being dug over & the timber being taken off…we know by experience & observation that people take better care of their own land than they do of other peoples, or the public…

Just as it had in the eastern portions of the original Northwest Territory, settlement was quickly surpassing the rate at which lands were being surveyed and sold by the national government. The second item in the inaugural address of Governor Dodge to the Wisconsin Territorial Legislature was a request to memorialize Congress regarding preemption rights. “The
public lands were intended for the benefit of the actual settler, who depends alone on the soil for support…By granting them the right of pre-emption they will be enabled to purchase their homes at the government price, which is a small boon extended to this meritorious class of the community…”

Pre-emption remained a prominent concern throughout Wisconsin Territory. Delegate Doty wrote to the Senate Committee on Public Lands in January of 1839 regarding a variety of lands in the area of Southport which were to be sold at public auction. He notes that the town, while built on public lands, consists, “of nearly one hundred buildings…” and that “unless some provision is made to secure to the Citizens of said town their improvements this present session of Congress, they will suffer an entire loss of the same.” His proposal was to allow them preemption, at a fair price, of up to one half acre of land they have improved.

In most cases, however, it was not enough that settlers would get first rights to lands they had squatted on and improved in various ways. Given that many of these people remained cash poor despite their developed homesteads, they continually asked Congress to give them reprieve from paying for their lands for years. Surveyor George Jones remarked to President Van Buren of the struggles these settlers faced. “They expended their last dollar in removing to the Country & in the improvements of their Claims. They are therefore unable to purchase them, so soon after their Settlement, even at the Minimum Government price & are Consequently at the Mercy of the Merciless Speculator…” Various citizen petitions supported this argument. One from Green County in 1846 notes that money is very difficult for settlers to procure, “and, indeed to support a family and make the necessary improvements for future cultivation is found by experience to be all that can reasonably be expected.”
Congress had, in the past, allowed preemption, typically via acts which specified the time and place. In 1841 Congress debated a far sweeping preemption bill. Discussions centered around the specifics of the bill, especially how it might impact the balance between squatters and speculators, as too lenient a preemption and speculators could simply move in on the land and claim it for themselves, while too strict would limit the ability of squatters to obtain rights to lands they illegally lived on, but had improved and civilized. Senator Magnum in particular, spoke of the past efforts of Congress. Congress, he observed, “out of tenderness for the citizen, and a scrupulous desire that every one should enjoy the avail of his own labor, have overlooked the original intrusion, and in a liberal and parental spirit given the right of pre-emption…”

Despite frequent attention to the issue of land sales, claims, and pre-emption, however, Congress was only able to act infrequently on behalf of settlers. While pre-emption laws granted post hoc sanction to many squatters, they remained in a tenuous situation as inhabitants of land they did not own. They faced the potential of being removed after sale of that land to other buyers or being forcibly evicted by the militia.

As in previous territories, questionable speculation, fraud, and corruption also remained problems when it came to land sales. James Doty was at times, usually with reason, accused of unsavory actions when it came to procuring lands. He had connections with many other speculators in the territory, owned a few particularly important plots, including areas around Mineral Point, the original territorial capitol and of course the land which would become downtown Madison, Wisconsin, the territorial and then state capitol. Doty was unafraid to take risks to drive profits as well and whether his actions were legal or not, many of his political opponents saw less than virtuous motives driving his actions.
Another character frequently implicated in land fraud was Moses Strong. Strong acted as an agent for land speculators and was later a U.S. Attorney. He found it easy to procure the most suitable lands because, “Since he was a surveyor, it was a simple matter for him to enter a tract believed to cover a hopeful location, survey and plat it, and place it on the market.” Upon reaching the receiver’s office in Green Bay, Charles Borland wrote to the General Land Office Commissioner that, “I have no doubt...that, during the years 1835-‘6’-7- the periods of wild speculations in new lands – many frauds were practiced upon the Government, at these offices, in the public sales of the lands, through the connivance and agency of the officers here.” Congress was aware of these problems as they were frequently targeted with petitions and letters from federal appointees regarding various charges of fraud and corruption, but there was only so much that they were able to or cared to do to rectify the situation regardless of the potential costs of inaction.

Another concern in terms of public lands in the Wisconsin Territory was the exploitation of land either via mineral extraction or by cutting of timber. While there had been some mineral deposits found in the first territories of the Old Northwest, very little was of much use. Wisconsin Territory, however, had some significant finds, especially in the area around Mineral Point, located in the southern portion of the Territory, in the hills east of the Mississippi. Just like suitable agricultural land, mineral lands were heavily speculated and early miners claimed pre-emption rights. Yet, a land office was not created in Mineral Point until 1834, before which there had been no way for distant land officers, unfamiliar with the area, to ascertain precise lots where mining activities had been occurring. This lead a number of Wisconsin Territory inhabitants in 1840 to complain that there had been a great deal of opportunities for speculators to buy mining lands which should have been pre-empted and these “opportunities were seized upon by persons
having not the shadow of a claim to the mines and diggings thus wrested from the industrious and enterprising miner."

On top of the issues regarding claims, there were concerns about the removal of resources from public lands by settlers. If the valuable resources were extracted, whatever they might be, demand would drop, reducing the price per acre, and therefore any profit which the national government might make on the sale of the lands. In an 1842 letter to Delegate Dodge, a concerned citizen argues that “…the Govt has not for many years derived any revenue from those lands – while their value is daily decreasing in consequence of the removal of the ore and Timber.” Additionally, some of the land, at least given farming techniques of the early 19th-century was too rocky and hilly so that, “If this land was sold now I do not doubt it would bring more than the minimum price-which after the wood is Cleared off will not bring any thing- but prove a total loss as tis not fit for Cultivation.” (393)

Yet, surveying the lands of Wisconsin Territory was tough work. Commissioner Shields of the General Land Office wrote House Representative John McClernand about these difficulties in 1846. He noted that while the prairie areas in the southern sections of these territories were relatively easy to survey, the Northern portions are much more difficult, “where the hills are steep & precipitous,- where thickets of cypress and hemlock render the extensive forests almost impenetrable, where local attraction is so great that the ordinary compass cannot be depended on, rendering it necessary to survey with a Solar Compass…” The Commissioner asked for the surveyors to be paid more per mile due to these difficulties. These complaints were echoed by two of the surveyors themselves writing to Jones, the Surveyor General for the Territory. They complained that the land was “broken and the hills are mostly composed of rocky precipices…”and “Where any level country is found it is covered with ever green timbers…”
Given that these requests were being made just two years before Wisconsin achieved statehood, it is clear that surveys were only slowly being completed. This reflected both the practical challenge of surveying incredibly large swaths of land on foot, but also the desire for Congress to have surveying be done orderly and paced effectively to try to slow settlement.

With the U.S. government acting with the incentive of attempting to manage settler growth and additionally of a generally apathetic view of the territories, the realities were that the issues of land management and sale were simply far more complex on the frontier than they were seen in Washington, D.C. Patterns of squatting on public lands, speculating, and resource gathering forced government action to stem conflict in the territories and reduced any immediate profits that might be realized.

Internal Improvements

In the early decades of American existence the fastest forms of travel occurred over water. This led to most of the major cities of the early U.S. being located along the Atlantic seaboard, but it also meant that most inland population centers were along the major rivers and giant lakes of the American interior. In Wisconsin Lake Michigan dominated the Territory’s eastern border and further inland were the major rivers of the upper Midwest that flowed toward the Mississippi River basin. The early towns in Wisconsin were primarily either along the Lake Michigan coast or on the Mississippi or its direct tributaries. Shipping on the Great Lakes was already an important economic venture by this time, since goods could be transported from Milwaukee to Detroit or even Buffalo much more efficiently than by land. In addition, the availability and conditions of interior roads in the territories was typically poor.
On the national level, arguments over whether the United States government should take a prominent role in financing internal improvements had largely been settled by those in favor of greater government influence. While nowhere near the scale of later projects, especially those during and after the New Deal period, Congress did take an active role, especially in the Territories, for which it was wholly responsible, to attempt to build infrastructure. They helped finance military and post roads to facilitate troop movement and the transport of information and merchandise. They paid to carve out harbors, dig canals, and they supported some incorporation of investors to oversee the longer-term projects.

The western shores of Lake Michigan were being settled by the 1830s, but there were few safe harbors or operational lighthouses. By the fall of 1839 there were two recently built lighthouses, in Racine and Milwaukee, with two more, at Sheboygan and Manitowoc, under construction. All of these were paid for via national funding. Inefficiencies, however, plagued their operation at times, such as the Manitowoc lighthouse which, while finished in late 1839, was still not operational by mid-1840, because, “The Keeper has been unable to put the Light in a good manner and in fact Has not as yet Lighted it up…” all the while he was supplied a salary and a home by the government. By 1847 there were five operational lighthouses in the western Lake Michigan region, the four mentioned previously and one located on Pottawatomii Island. According to the inspector, “the lights on this vast chain of inland seas are in excellent condition…and are the means annually of saving much property & doubtless too, many lives.”

Along with the construction of light houses, safe harbors were needed along the coasts of Lake Michigan. The process of creating one, however, tended to be complicated in practice, even after appropriations had been made for such a project. The Southport Harbor in Wisconsin Territory is a prime example. In 1844 an act of Congress specified an appropriation for the Corps
of Topographical Engineers to examine and select a site for a harbor at the town of Southport. Colonel Abert led the Corps examination and reported back that there were a number of suitable sites, but that some confusion had arisen regarding the language of the appropriations bill. This confusion arose because there was both a town and a village of Southport, the town being greater in size and encompassing the village. Abert’s own interpretation, however, despite a more suitable harbor site nearer to the town of Kenosha, led him to propose a site within the village. This decision was derided via two letters sent to Congress. The first was sent from a Mr. Turner who owned lands in the area and asked Congress to halt the construction because there were far better options outside the village of Southport, noting that the Wisconsin Territorial government considers the Town of Southport to be separate and much larger than the village. He also complained that Colonel Abert had reportedly dismissed recommendations from the local business community. The second letter was submitted by James Spencer, who had previously worked on the project.
served as a U.S. House Representative in New York and now owned lands near Southport. He was astonished at Abert’s suggestion since the proposed harbor was to be built on a “verry (sic) small stream with no running water in the summer months to force out the sand and gravel brought into the Harbor…” Adding a bit of theoretical prose, he admonished Abert by noting that, “…public functionaries should stretch their vision, when locating public works, for the benefit of unborn millions of American Citizens, beyond the pecuniary interests and prosperity of a small Village…”74

Regardless of the controversy, construction continued on the harbor, as well as numerous others throughout the Wisconsin side of Lake Michigan. Delegate Dodge, during this same period of time, sent a letter to the chairs of the Committee of Commerce requesting their help in additional appropriations for work on the harbors. He notes that harbors at Milwaukee, Racine, and Southport are all in need of more funding, arguing that the completion of these projects would increase immigration, provide for safe transportation of troops and supplies, and augment commerce. In particular he estimates that imports to these three harbors would exceed $8 million and exports, including wheat, flour, and lead, over $4 million. After all, he argues, sales of public lands in the Territory had netted over $3 million for the Treasury, “Should not a small per cent um of this sum be applied to the construction of Harbors and the improvement of roads…?”75

Before the creation and widespread use of the railroad, wagon roads and trails were the primary overland mode of transit. While settlers in Wisconsin had relatively easy access to major rivers which emptied into either the Great Lakes or the Mississippi River, just getting goods a few miles without decent roads was an almost impossible task. As was clear from complaints of the difficulty of surveying the land, it was much rockier and thicker in growth than most of the lands further south in places such as Illinois and Indiana. In other parts of the territory, the
unimproved roads would wash out or become mud pits during rainy portions of the year. The 1845 report of a Corps of Army Engineer Captain in the Territory noted that where they were working, “It is generally flat and wet, the soil is almost entirely clay, and during the fall and spring it is almost impassable…” and asked for more appropriations to finish the road. According to tabulations reported by the Captain, for a road built through good soil, the cost was about $125 per mile, while for another road in worse condition it was estimated at over $200 per mile. Road creation and improvement was hardly a cheap proposition, but again the ability to connect commercial areas, agriculture, and hasten militia movement was easily worth the cost in the long-term.

The main problem dealt with getting Congress to actually grant the appropriations. Residents constantly sent in petitions asking for new roads or money to improve existing routes. The delegates for territories were a primary source of specific requests. For example, Doty got a resolution by the House approved that instructed the Post Office and Post Roads Committee to inquire into the possibility of establishing Post Routes. Nineteen potential routes were included, signifying both the need for the improvements and the ability of Doty to get attention paid to the issue. Most appropriations were a few thousand dollars at a time and the Congressional approval would specify the route. Slowly but surely Wisconsin Territory became peppered with useable roads and by the time of statehood transportation had been greatly improved from a decade prior.

Another internal improvement which was important in Wisconsin Territory (and across the rest of the U.S.) was canal-building. In Wisconsin early plans were put into place to create a connection between Lake Michigan and the Mississippi River via the Rock River. After the Wisconsin Territorial Assembly enacted an incorporation of the Milwaukee and Rock-River
Canal Company, the president of said corporation memorialized Congress for aid. They argued that this project would increase commerce, facilitate military transport, and help more rapidly settle the region. A report from the Committee on the Public Lands agreed that the proposal was justified in its expenses and concluded that, “believing this work to be worthy of public attention and the patronage of the Government, report, herewith, a bill to grant a quantity of land to aid in its construction…” equal to similar grants issued in the states of Ohio, Indiana, and Illinois previously. The rest of Congress agreed and approved of the law later that spring. The cost of the canal was estimated to be just under a million dollars. The project became, like many others of the same magnitude at that time, one of public and private contributions. It would be a publicly subsidized internal improvement to be managed by a private entity.

Law and Order in Wisconsin Territory

The American frontier was typically seen as an unruly, lawless place by the more settled regions of the country. While there was certainly crime, some which clearly went unpunished, overall the edges of civilization were not as anarchic as the legends about them foretold. Throughout the early American territories, in fact, the county court system was actually the most powerful local institution. So much so that Eblen argued, “The nature of local problems and the strength of the oligarchies were such that local lawmaking occurred in the courts rather than in the streets…there were few instances of lynchings or vigilante actions.” This was primarily out of sheer necessity as the local oligarchy required that violence and crime were minimized. The courts typically dealt out a type of limited frontier-style justice due to the “poverty of governments, confusion over boundaries, and problems of extradition…” in addition to a general lack of knowledge of legal codes among county judges.
While the expanding edge of American settlement might not have been as lawless as its reputation implied, there were too few law enforcement officials and far too much confusion over the contours of proper authority for most criminals to be punished or even caught. Even if they were caught, there were very limited facilities for them to be housed in. Until at least 1798 there wasn’t a single jail in the Northwest Territory and even after that no territory in the first half of the 19th-century ever built a prison. What jails were built, moreover, were typically poorly constructed and escape was relatively easy. Therefore, most punishment consisted of fines, loss of privileges, or physical pain, such as whippings. The Wisconsin Territorial Assembly complained of these challenges in a petition to Congress in early 1845 saying that, “there are no means provided in any portion of the Territory, for the safe keeping of criminals who are sentenced to a long imprisonment…” and that “The difficulty and expense of keeping criminals, have afforded for their escape, and given an impunity to the commission of crimes…” The Assembly requested $30,000 from the federal government, with the argument that a building, partially completed, could be finished with the labor of the inmates, thereby reducing the overall needed costs. Despite repeated appeals and some discussion within the House Committee on Territories, Wisconsin would not see appropriations for a federally subsidized penitentiary built during the territorial period.

Regardless of the actual conditions it appears that the primary concerns of Congress were based upon reports of rampant violence gone unpunished in the territories. This was particularly the case (and probably also more accurate) when members discussed areas which were on the far edges of currently administered territorial lands. For example, a discussion in the House regarding a bill creating the Wisconsin Territory centered on the need for justice. Representative Patton noted that the citizens of the area were “entirely without government and without laws.
Murders were almost daily committed, and there was no lawful punishment provided for any crime.\textsuperscript{84} Mr. Jones, from Michigan, rose to concur with the need for justice, particularly for a militia to defend the borders, but he also pointed out that, “he did not know of a single set of the laws of the United States within the bounds of the contemplated Territory.”\textsuperscript{85} The implication was that lawlessness was rampant because there was no way to effectively adjudicate criminal behavior without a better working judicial system.

This was then questioned by Representative Storer, who asked why it was necessary to extend the justice system into this area. “One year ago this Territory was under the supervision of judges…The laws of the United States were in operation then. How is it we are told now there is no organization, and that the doors of justice are closed?” In response, Representative Brown pointed out that the courts had ruled that they had no jurisdiction over the western and northern stretches of the area which would become Wisconsin Territory because original jurisdiction had been applied to only three of the most settled counties in 1823, “and since that time emigration had gone on to a great extent to the westward, and there were now settlers altogether beyond the jurisdiction of the laws.”\textsuperscript{86} The settlers had outstripped the Congressionally approved judicial authority in the territories. This particular situation was ameliorated by the creation of the Wisconsin Territory soon after, including an extension of judicial power and an appropriation for a library which would contain laws of the territory and the United States at the seat of the territorial government.

One of the major obstacles to administering proper justice in the territories was simply the size of the judicial districts, especially the federally administered ones. An example of this occurred in 1841 where the newly appointed U.S. Marshal, Daniel Hugunin became embarrassingly aware of the difficulties of overseeing a sprawling judicial system in an
undeveloped frontier. He wrote to the Solicitor of the Treasury that, “It is impossible for me in this wild and extensive District to be as prompt as Marshals in the States.” He notes that there are twenty-two courts per year, frequently held in different counties simultaneously, and without deputies and given the expansiveness of the territory, he argues, “it is impossible for me to get through my business…” He finishes his letter with a note requesting a set of laws of the United States to better perform his duties. A later set of letters from Hugunin to the Secretary of the Treasury outline the difficulties also of ensuring that appropriations for court expenses are paid out to public servants of the courts and jurors in a timely manner. As Hugunin complains, “A great portion of the amount due me I owe to needy and clamorous (sic) people who want it badly – The want of funds occasionally subjects me to great abuse as well great inconvenience and expense.”

The irony of the system of justice within the territories is that it became somewhat of a self-fulfilling prophecy. Members of Congress maintained a vision of a lawless frontier society and complained of the rampant violence, but then did little to assist territories in improving the system. Whether it was the limited resources available to judges to determine common law punishments, the practical constraints on the types of punishment meted out due to a lack of detention facilities, or the fact that there just weren’t adequate law enforcement officials available, territories struggled with law and order. While the reality was better than the perception amongst national politicians, justice in Wisconsin Territory remained rudimentary, especially for the vast majority of residents who couldn’t even afford to bring cases to court. As for criminal offenses, “the courts dispensed summary justice, applying common sense as they understood it, rather than strict statutory or common law.”
1 Texas and California were annexed without having been organized territories and West Virginia was carved directly from Virginia.

2 This information from Carter’s Territorial Papers, Volume 27, 84-86.

3 See Table 2 on pages 230-231 in Eblen, The First and Second United States Empires.

4 Data from 1850 United States Census available online at https://www.census.gov/prod/www/decennial.html.


7 HR 322, 26th Congress, 1st Session.

8 HR 690, 27th Congress, 3rd Session.

9 Committees in Congress, Smith and Deering, 10.

10 Register of Debates, House of Representatives, 24th Congress, 1st Session, 3201-3202.

11 Ibid, 3220.

12 Ibid, 3222.

13 Ibid, 3222.

14 Ibid, 3223.

15 Ibid, 3223.

16 Ibid, 3224.

17 “Memorial to Congress by Members of the Milwaukee County Bar,” Carter, Edwin, Territorial Papers, Volume 28, 318.


20 Carter, Edwin, Territorial Papers, Volume 27, 164.

21 Ibid, 167.

22 Ibid, 310.

23 Ibid, 670-671.

24 “Thomas McKnight to Delegate Jones” Carter Edwin, Territorial Papers, Volume 27, 681.


26 Senate Report 136, 24th Congress, 2nd Session, to accompany S. 186.

27 Bills and Resolutions, Senate, 24th Congress, 2nd Session, S. 186.

28 For the report see, HR Report No. 7, 25th Congress, 3rd Session.


30 “George W. Jones to the Secretary of the Treasury,” Carter, Edwin, Territorial Papers, Volume 27, 1119.


34 The last two records in congress regarding this issue are a February 8, 1839 report from the Secretary of the Treasury and a February 18, 1839 letter from Delegate Doty noting a territorial legislature report which noted that the Bank of Mineral Point, “in a sound and safe condition.” See Senate Report 193, 25th Congress, 3rd Session and Senate Document 230, 25th Congress, 3rd Session.


36 From all accounts the accusations of speculation do have some truth to them and Strong was well known in the Territory since he had become one of the largest land speculators investing in land early in the Territory’s history. At the same time, Doty was also a well-known speculator, so his accusations have a great deal of hypocrisy in them as well.

37 All of the information in this paragraph from “Delegate Doty to the President,” Carter, Edwin, Territorial Papers, Volume 28, 114-116.

38 “Governor Dodge to Secretary of State,” Carter, Edwin, Territorial Papers, Volume 28, 142-143.

39 Ibid.


41 “Delegate Dodge to George W. Jones,” Carter, Edwin, Territorial Papers, Volume 28, 446.

42 Eblen, Jack, The First and Second United States Empires, 196 (note 46).
45 See H.R. 74, 27th Congress, 2nd Session and Farrand, *Legislation for Territories*.
47 See Farrand, *Legislation for Territories*.
51 The House bill can be found in *Bills and Resolutions*, House of Representatives, 25th Congress, 3rd Session HR 115.
59 Ibid., 12.
63 *Appendix to the Congressional Globe*, 26th Congress, 2nd Session, 48-49.
77 Ibid., see in particular Carter’s notes.
81 Ibid., 135.
82 Ibid., 135.
84 *Register of Debates*, House of Representatives, 24th Congress, 1st Session, 3090-3091.
85 Ibid., 3092.
86 Ibid., 3093.
Chapter 6 – “Big Sky, Few People” – Wyoming Territory

*Cows, Trains, and Parties – Mechanisms in Wyoming Territory*

Wyoming has been a massive, sparsely populated region under American control since it was created. The main industries deal with resource extraction and ranching or agriculture. Most of the early settlers to the territory came from the eastern states or were recent immigrants from Europe and besides the few remaining Native tribes, there were no existing settlements. While the image of the West in national culture was that of rugged individuals living on the edge of society, Wyomingites were at least the preferred type of people to settle and create republican institutions. The two impediments to statehood came from the small overall population and the increasingly partisan divide in Congress. Still, the concerns over population were less problematic than the electoral significance of admitting a new state which might only have one or two House Representatives, but would be guaranteed two Senators and could potentially swing a presidential election in an era of hyper competitiveness. Partisan concerns, while less salient within the territory itself, were reflected on a national scale and frustrated admission efforts.

At the same time, Wyoming was a primary beneficiary of perhaps the most important innovation for American expansion of the 19th-century: the railroad. The initial transcontinental railroad was connected across the southern tier of the state. Consequentially almost all of the development of the territory occurred within a few miles of this line. Even with this infrastructure advantage, the population grew relatively slowly. Still, what growth did occur helped in that it was largely due to settlers who were viewed positively. It also encouraged the
expansion of the cattle industry and mining in the territory, with easy access to Eastern markets as well as the important Pacific coast ports. Many national policymakers saw the policy targets of Congressional legislation as deserving of statehood. Wyoming also sought to increase their salience by opening up voting, at least for territorial officials, to women, the first state or territory to do so.

Wyoming was provided with a meaningful territorial government and provided with significant autonomy. At the same time, Congress was increasingly demarcating the limits of territorial administration by specifying the length of sessions, revoking some incorporated entities, and punishing negligent or incompetent territorial officials. This reflected Congressional desire for more standardization in territorial policy, but it also limited the additional attention Congress paid to the existing Western territories. It took Wyoming just over two decades to attain statehood, despite limited opposition to the specific territory. With its attention turned toward Reconstruction efforts, between 1867 and 1889, only Colorado achieved statehood. There was simply less direct pressure to admit new states than had existed earlier in the century. Additionally, there were practical considerations of partisan balance that mattered. During the late 1870s and through the 1880s, Congress was either divided in control or was closely contested between the parties. This made it difficult to admit new states given the partisan advantage even a couple new Senators or a few more Electoral College votes could make, especially considering the admission of Colorado directly impacted a presidential election. Wyoming was admitted in 1889 after a number of earlier efforts had stalled, but by that time, there were few concerns over its suitability as a candidate for statehood.
Creating Wyoming

On July 23, 1868, Delegate Burleigh of Dakota Territory gave a speech in the House of Representatives regarding a bill to create Wyoming Territory which had recently passed in the Senate. Arguing in favor of territorial governance, Burleigh observes that settlers to this region “find themselves today in a new country where the protection of civil government cannot be successfully invoked, where the hand of justice does not reach.”¹ The territory has a white population of at least 35,000 and is quickly being settled. It contains more than 300 miles of the Union Pacific Railroad, and will within three months be cross entirely, a distance of approximately 480 miles. As most of the area had been annexed to Dakota Territory in 1864 upon the creation of Montana and Idaho Territories, this meant that from the capital of Dakota to Cheyenne was a distance of 700 miles. To this end, Burleigh implored his colleagues in the House not to let the bill be referred to House Committee on Territories due to the chairman’s opposition to it. If Chairman Ashley, “deemed it so important to the passage of this bill that his eagle eye should scrutinize it, and his great brain infuse the guarantees of ‘life, liberty, and the pursuit of happiness’ into it, why did he not take it up in his committee and report it to this House?”² Clearly Burleigh was successful in his pleas as the legislation was approved just two days later creating Wyoming Territory and reducing the enormous size of Dakota Territory, which Burleigh had complained, “is larger than the Austrian empire…it is twenty thousand miles larger than all New England, New York, New Jersey, Pennsylvania, Ohio, Delaware, and Maryland combined.”³

Senator Yates, who promoted the Wyoming Territory bill in the upper chamber of Congress, called for the need of separating it from Dakota Territory, adding to Burleigh’s arguments that “The intervening country is infested by Indians, who render travel insecure and
expensive. Add to this the inclemency of winter and the great length of this journey, and it is found that the proper administration of justice through the territorial courts in the western part of Dakota is almost impossible…" He notes that Wyoming is “rapidly developing, through the enterprise of the hardy pioneers…” and that along with the discovery of gold, petroleum, and coal.

In 1861, Dakota Territory had stretched across nearly the entirety of the modern states of North Dakota, South Dakota, Wyoming and Montana. In 1864, Congress divided this region somewhat, but left what is now the state of Wyoming divided between Idaho and Dakota Territories. When Burleigh rose to give his speech, therefore, Dakota Territory was still enormous in geographic size and as settlers slowly began to fill in pockets, particularly following the paths of the newly built railroads, there was more and more agitation for further separation. This occurred, as noted above, in 1868 when Wyoming Territory was created with the same borders as the current state. The Territory would remain for the next 22 years before gaining statehood.
In the late 1860’s Wyoming was a largely barren high mountain region. While there were some promises of finding resources and minerals among the state’s mountainous regions, it was clear that ranching would be the primary economic driver. As the railroads forked out in the late 1860s from Omaha and Kansas City, the Pacific Railway System ran the entire length of the southern portion of Wyoming Territory. It would reach from there to Seattle, Portland, Los Angeles and San Francisco on the West Coast. The existence of the railroad both boosted Wyoming Territory’s status, but also put it under the influence of the wealthy barons of industry in the post-bellum economy.

The period immediately following the Civil War was a contentious period in American politics as Radical Republicans sought to enforce strict sanctions on the Southern states which had broken off and joined the Confederacy. Reconstruction also saw the enactment of three major constitutional amendments, including the abolition of slavery, the federal guarantee that race could not be a factor in denying someone the right to vote, and the equal protection and due process guarantees extended to all citizens in the states. While the latter two of these amendments would be flaunted until at least the mid-1960s, their enactment signaled a momentous constitutional shift. This affected territorial policy generally by eliminating the extension of slavery from questions of statehood admissions and territorial politics. As Farrand proclaimed, “The abolition of slavery destroyed the last great dividing line that had existed between the Territories.” For Wyoming, more specifically, it meant that territorial policy was significantly less salient as a national issue than it had been a decade earlier. This led to the slow reaction of Congress, as discussed above, to break apart the massive Dakota Territory, but also made the eventual action largely uncontentious. Despite this, contention between the executive
and some of the Radicals delayed the confirmation of Wyoming’s territorial officials, so that “Ten months passed before officer reached and organized the territory.”

The Organic Act for Wyoming Territory, enacted on July 25, 1868, was relatively standard in its construction. An appointed governor and secretary with four year terms headed the executive branch, while an elected assembly formed the legislative branch. The assembly was made up of a nine-member Council, capable of being expanded to 13 members, and a House of Representatives of 13 members, which might be expanded to 27. Council members served two-year terms, while House members served just one-year terms.

During discussions in the Senate on the organic act, there was a suggestion to amend the terms for the House and Council to be two years apiece. Senator Williams criticized this idea, noting that long-standing precedent, both in territories and states, was to have elections for the chambers at different times. In response, Senator Nye pointed out that it was a question of convenience, saying, “I know how difficult and expensive it is to hold elections every year in these wide-spread Territories.” Either this was persuasive or there was very little concern about the argument, since without any further discussion on the resolution the amendment failed.

The sessions, as had become the standard practice over the previous two decades in territorial politics, were limited to 40 days, although the Organic Act did contain a provision allowing for the first legislative session to extend up to 60 days, presumably in order to allow greater discussions in the initial construction of territorial laws and procedures. Justices, as had become the norm, were appointed for four-year terms. This does imply at least some sense that territories would be relatively short-lived entities, as this continued to differ from the regular federal practice of judicial lifetime appointments. It may also reflect a relative unconcern amongst most members of Congress about internal territorial politics.
In terms of salary, the governor was given $2,000 annually for that role and an additional $1,000 to act as superintendent of Indian affairs. This practice, of dual roles and salaries for the governor, was nearing its end, but there was little discussion regarding the point during the debate on the organic act. All of the justices were provided with $2,500 per year while the secretary would be paid $1,800. The salaries of justices were discussed during Senate debates on the organic act. A number of Senators worried greatly that $1,800 annually wasn’t enough. Senator Pomeroy rhetorically opined, “I submit whether you can expect to have any justice administered by a man who will serve in this Territory for $1,800 a year.”9 Since justices in Dakota Territory were already granted a salary of $2,500, this amount was forwarded as a motion and carried10. There was, however, no additional discussion regarding the potential insufficiency of paying the secretary only $1,800 a year, despite the fact that as early as 1854, Congress had allotted $2,000 salaries for the secretaries of Washington, New Mexico, Utah, and Oregon11.

It was clear that salaries for some of these territorial appointees were considered insufficient, even by a relatively inattentive national legislature. In 1870, Congress enacted a bill which provided a salary of $3,000 to all territorial judges. This was one of many examples of the growing practice of Congress to apply standards across all territories, rather than on a case-by-case basis. Farrand highlighted this feature of territorial policy, which began after the slavery question was eradicated, saying that, “…instead of enacting laws for each Territory with regard to the special requirements of that district, Congress enacts but one law affecting all the Territories alike. Uniformity of government in the Territories was a prerequisite to such legislation, and this uniformity we have seen established since the organization of Wisconsin.”12 By the time Wyoming Territory was organized, therefore, this project had become in earnest.
In addition to standardizing salaries for appointed members and the length of territorial legislative sessions, the pay for territorial legislators had become regularized. In the organic act for Wyoming Territory members of the legislative assembly were provided with four dollars per diem plus three dollars for every 20 miles of travel going to and from the seat of government. The four dollar per diem was an amendment on the original bill in the Senate, passed without discussion\textsuperscript{13}. In 1873, Congress raised this to six dollars per diem, applied across all territories in existence\textsuperscript{14}. Voter eligibility requirements in the Organic Act also reflected the growing standards of male, 21 and older, and citizen of the United States. As discussed below, however, Wyoming Territory would make national headlines by introducing broad-based female suffrage a few years later.

Finally, the laws of Dakota Territory, which would have been in force at the time, would continue to be valid “until repealed by the legislative authority of said Territory, except such laws as relate to the possession of occupation of mines or mining claims.”\textsuperscript{15} While it had been common practice to extend laws, at least temporarily, from one territory to another carved from the original, there were additional concerns for Wyoming. Senator Stewart worried that leaving all the Dakota Territory laws in effect would create an unnecessary burden for Congress. He complained of the mining code of that territory, “It is in conflict with the law of Congress. It is cumbersome and inconvenient…They are very bad laws.”\textsuperscript{16} He noted that numerous resolutions had been received from residents asking Congress to intervene and repeal the laws. To extend these to another territory would simply duplicate the problem. Senator Conness added that poorly constructed mining laws were frequently created by territorial legislatures because of the potential value to the person who possesses the land upon which mining operations would occur\textsuperscript{17}. Senator Stewart then concluded the discussion by arguing that all parties in mining
contracts, “are all protected in their possession under the general law of Congress, and we had better have but one system.” An amendment to the organic act to exclude the mining code from Dakota Territory specifically from the extension of laws to Wyoming Territory was approved without a roll call vote.

Wyoming Territory, therefore, reflected a combination of factors in its construction. Congress had clearly learned from decades of territorial governance. Territorial legislatures were prone to unnecessarily elongating sessions and were subsequently limited by statute from doing so. Salaries were slowing rising for territorial appointees, even if they remained well below satisfactory levels of compensation, and were becoming standardized across territories. Congress had compromised some of the practical difficulties of governance in large, rural, frontier territories with the desire to apply democratic ideals. As discussed above, this meant limiting the appointment of judges to only four years and holding elections for all territorial officials simultaneously. It also meant, however, an increasing understanding of allowing territories, from the beginning, to have organized democratic institutions. There was no longer any discussion of a period of time where territorial residents would not have direct representation. This did not ensure effective or meaningful representation, either in territorial politics (where governors retained a great deal of authority) or through their House delegate (who still had no voting power, although could sit on committees).

Transferring Territories (State to Interior)

On March 1, 1873, Congress finalized agreement on legislation that would transfer the executive administration of the territories from the State Department to the Interior Department. The Secretary of the State had been the primary link between the federal
government’s bureaucracy and the territories, although not the only one. The War Department was in charge of military affairs in the territories, the Treasury Department disbursed the funds for territorial governments and the salaries for its officers, and the Department of Justice oversaw the judicial branches of the territories. Yet, it was the State Department which controlled the appointment of governors and secretaries and to which most of the direct, general, consultation occurred between territorial officers and the federal government. Pomeroy notes that “Ordinarily, approval by the secretary of state was of considerable weight in determining appointments,” even if the president clearly had the final say.20 There were references to a “Territorial Bureau” in territorial documents that existed within the State Department, even if it had no specifically official designation. Yet, the State Department was hardly spirited in its administration of the territories. Arguing that they had little incentive to devote time and resources to the territorial system, Pomeroy emphasizes that, “Communications with Congress were chiefly suggestions for legislation, especially appropriations, relayed from governors and secretaries. There was no close or continuous connection with the Capitol.”21

In the early 1870s, Secretary of State Fish made a push to transfer territorial duties away from the diplomatic agency. Territories of the U.S. had traditionally come from wresting foreign control away from other nations, whether it was British interior lands after the Revolutionary War, the Louisiana Purchase, or the Mexican-American War. These lands were on the frontier, abutting other nations, and sometimes held significant populations of non-Americans. Thus, it made some intuitive sense to have the State Department be the main repository for territorial issues. Yet, territories were not really foreign concerns. They were administered as quasi-states under the authority of the federal government and, at least until the late 1860’s when the U.S.
purchased Alaska, all territorial possessions were part of a contiguous continental stretch of land. To this end, the Interior Department made more sense as a home for territorial affairs.

Yet, neither of these executive agencies fit perfectly. Just as territorial issues in Congress had been dispersed before the creation of standing committees specifically related to them, territorial administration in the executive bureaucracy never quite matched up with any specific agency’s interests. Although it failed to garner enough interest in the 2nd Session of the 42nd Congress, the bill moved quickly through the House and Senate in 1873, with insubstantial debate. McCormick, the Delegate from Arizona Territory mentioned on February 28 that the bill had been recommended twice by the President and also by Secretary Fish, and “It will take away from the State Department the only remaining connection it has with domestic affairs.” 22 A few days later the bill was agreed to by the Senate and sent to the President for signature.

While this transfer was a meaningful one from a theoretical standpoint, it didn’t change much in practice. Congress was clearly not that invested in which arm of the executive branch administered their rules for territories. Presidents, beyond the patronage of appointments and the way territories fit into party politics (or slavery prior to Civil War), did not appear concerned either. This highlights the fact that it was decisions about the territories, not ensuring that they were necessarily effectively administered, that was seen as most important to federal policy makers. This can be seen in the lack of concern by any federal officials over the intermittency of territorial reports. Despite a long-standing legal requirement that territorial Secretaries submit annual reports of the executive proceedings, and with them copies of territorial laws, Pomeroy cites numerous governors who pronounced the law as practically inoperative. Governor Hoyt of Wyoming Territory wrote “With this provision there appears never to have been a compliance on the part of any Secretary of this Territory…[In] this office copies of all the official
correspondence...have [not] even been preserved.” Finally, in the mid-1870s Secretaries of the Interior demanded slightly more timely accountability and annual reports became more frequent. Yet, even then, there was little evidence that laws or logs of executive proceedings were examined by anyone in Washington. Annual reports did become more informational by the late 1870’s as well, but less partisan, as governors and secretaries instead directed private letters to specific sympathetic allies in the executive and legislative branches. This did not have a lasting effect, however, on centralizing control or reflecting a level of greater interest in territorial affairs. It appeared mainly to reflect the growing concern throughout bureaucracies in the late 1800’s of formalization and professionalization.

Around the same time as the departmental transfer, the separation of the role of superintendents of Indian affairs and territorial governors was finally completed. It was clear that the desire to separate the duties was growing from an earlier period. In the discussions regarding the creation of Wyoming Territory, an amendment was discussed that would have left the governor with only those duties. Senator Hendricks, who suggested the amendment, argued that while customary, uniting the offices, “has not been promotive of the good of the public service.” While earlier territorial governors had spent much more of their time and effort dealing with Indians, governors now discharged those as “subordinate duties.” Senator Yates replied that it was the normal provision and if separated, Congress would not only need to appoint a different person to that position, but that the governor’s salary was only $2,000 without the supplement, hardly sufficient. Further, Senator Ramsey noted, the governor’s civil duties remain light. “When they [territorial legislature] meet the session is a short one, and when has signed the bills and the Legislature have adjourned there is nothing further form him to do for some time.” Hendricks retorted that the position of territorial governor is a “stepping-stone either to the
House of Representatives or to the Senate. He administers his office with a view to that…I say that the administration of Indian affairs ought not to come under such an influence.”

Senator Stewart agreed, arguing that, “I want the Indians removed from politics if possible…if you have a few Army officers who are honest and just men they will manage the Indian service economically and justly…”

These comments revealed the underlying tension at stake between the political nature of the role of territorial governor and the changing role for Indian affairs. Some senators clearly believed that the constant wars with Native Americans were costly and unnecessary. Still, there were legitimate reasons to leave the offices in the hands of one person. Senator Morton noted that governors are, “interested in the country, in its growth, and this can only be promoted by the peace of the Territory, and the proper and wholesome management of the Indians.” Senator Nye added that, “This combination of duties is based upon the economy of the thing,” and that “He being regarded as the head of the Territory, it is important that he should have some power to control the only dangerous element in these Territories, the Indians.”

Despite the lengthy discussion over separating the duties, at least in 1868, Congress was unprepared to do so and the amendment to the Wyoming Territory Organic Act failed nine to twenty-six.

One additional concern for some Congressmen was that not only was the governor playing two relatively distinct roles in territorial affairs, he was also responsible to report to two different officers as part of this job. Indian Affairs were founded in the Interior Department while the regular duties of territorial governing were found in the State Department. The transfer of authority over territories from the State Department to the Depart of the Interior in 1873 would come too late, however, to affect this debate. In 1857, Congress provided separate superintendents of Indian affairs for Washington, Oregon, New Mexico, and Utah Territories.
Oddly the salaries were higher for the Indian Agents in the Northwest than in the Southwest, while the salaries provided to Southwestern territorial governors were increased to $2,500 annually for the single role\(^3\). This did not, however, end the practice of the governors also being superintendents immediately, and evidence exists that it was not until around 1870 that Wyoming, Dakota, and Colorado Territories had separate positions\(^3\).

**Railroads and Ranching**

The very first words of Lewis Gould’s historical treatise on this region read, “Wyoming Territory was the child of the Union Pacific.”\(^3\) Maps of the area from the late 1860s and early 1870s showed a stretch of surveyed land with some light settlement that stretched like a snake across the southern edge of the Territory. That land simply followed the railroad as it weaved
through the high plains on its way to connections to Eastern markets one way and the Pacific Ocean the other.

Like other railroad towns, Cheyenne sprung up quickly after the metal tracks were laid. From nothing to a bustling town of 1,500 in just one year, it was clear that for Wyoming, the railroad would be the spark of settlement. Even before Congress had agreed to separate the region from Dakota Territory, citizens of Cheyenne created both a city government and elected county officials of the recently founded Laramie County. They even selected a provisional territorial delegate to send to Washington, despite the fact that they were not a separate entity at the time. There was little surprise that the delegate chosen was a Union Pacific engineer.

By mid-November of 1867, the first steam engine arrived in Cheyenne to great fanfare as it did to all communities it crossed paths with in the West. The importance of the railroad was obvious to Eastern Congressmen as well. Senator Yates, in June of 1868, noted that “The rapid construction of the Pacific railroad in the direction of this Territory is without a parallel,” within one year 400 miles were constructed, and that, “There are already twenty thousand people living on this line; and unquestionably this number will be doubled, perhaps trebled, within the present year.”

While this prognostication was certainly a liberal one, there was little doubt that many Easterners, for a variety of reasons, were excited about the settlement of the West and the laying of a transcontinental railroad. These settlers, while certainly unruly and uncivilized, were the right kind of people to settle the region and would be followed by distinctly American political institutions and culture.

The importance of the railroad was a curse and a boon to the territory. Clearly, as evidenced by the troubles encountered by New Mexico Territory in the preceding chapter, railroads were vital to settlement of the West. Nearly all of the population of Wyoming Territory
during its existence lived within close proximity of the main transcontinental rail line. The line created access to Eastern markets, the West Coast ports, and of course made traveling across country for individuals much easier. Yet, the private ownership was able to extract public lands at nominal prices and had strong control over shipping rates. It was also the one relatively stable major component of the territory’s economy. Ranching, mining, and for most of the 1870s, the army, were the other primary sources. All of these were highly dependent upon other factors which were themselves variable. The railroad, however, was a stable force in the economy. At the same time, however, railroad corporations were able to exert leverage upon, not only territorial leaders, but national leaders. The smooth and uninhibited operation of railways, especially transcontinental links, was a primary concern among Eastern politicians, many of whom either directly had investments in the industry or were at least supported by them. Thus, it was hardly surprising that when the territorial legislature, over the governor’s veto, enacted laws attacking Union Pacific interests during their first session, Congress repealed them, at the railroad’s insistence, in 1870\textsuperscript{36}.

The economic power of the railroads within Wyoming Territory, and throughout the country at the time, was undeniable. Yet, transferring economic dominance to the political sphere was not always an easy task. Part of this stemmed from the fact that while few people thought the railroad wasn’t bribing or at least financially supporting, political candidates, the railroads still needed to keep their influence relatively hidden. The public outrage could be fierce and meaningful at times. More importantly, however, was the fact that their overall interests were rarely threatened, even if some political leaders might attack them with rhetoric or some statutory restrictions might be placed on their activity. As Gould argues, “Since neither party threatened any vital interest of the Union Pacific, it seems plausible to conclude that the
company decided to keep its participation to a minimum in the absence of challenges to its favored position.\textsuperscript{37} The railroad, by virtue of its dominant economic position, could largely remain above the political infighting, since neither party was ready to seriously contest that economic dominance.

Cattle ranching came to be seen early on as an economic driver for the fledgling Wyoming Territory. The 1889 Senate report on Wyoming statehood highlighted the stock association’s estimate of over 2,000,000 head of livestock in the territory\textsuperscript{38}, or approximately 33 per resident of the territory at the time\textsuperscript{39}. An article about the Wyoming Stock Growers’ Association from the 1940s noted that the organization was successful in politics because it was, “generally considered the \textit{de facto} territorial government…”\textsuperscript{40} although federal appointees, “were in a position to delay legislation, if not prohibit it, long enough to thwart the desires of the executive committee of the stock growers.”\textsuperscript{41} The Association was so successful that half of the councilmen in 1882 were stockmen, and of those most were members of the Wyoming association\textsuperscript{42}. Just as with any industry, the influence and impact of the stock growers’ was dependent upon the status of their source of wealth. Despite some trying years in the midst of the 1880’s, cattlemen in Wyoming were among the wealthiest and most prominent.

Ranching also led to conflict within the territory between the stockmen and others who wanted to use the land. Federal land law, developed originally for Eastern agriculture which relied on small plots of land, did not harmonize with the reality of large scale ranching in the dryer Western territories. Still sold in 40-acre plots, the Wyoming Governor complained in his 1881 report that agriculture, which needed irrigated land, competed with ranchers and herders for the few valleys with streams and rivers. “These are naturally coveted by the owners of herds of cattle and sheep, who, under the law which allows the public lands to be taken by forties, find it
easy to acquire title to many miles of river and valley for a very little money.” Governor Hoyt
notes that their primary objectives are to “gain the monopoly of as large a grazing region as
possible, and, secondly, to keep out agriculture…” These ranchers, after purchase, are
enclosing their lands, cutting off any access to the water in the streams, necessary for agriculture
to exist outside of the area directly adjacent to the waterways.

Not only were settlers fencing their rightfully owned property, but they began doing so
on government-owned land unlawfully. In his 1883 report to Interior Secretary, Governor Hale
noted that lawsuits had been initiated during the previous year against illegal fencing, although it
was later rescinded. For Hale, however, the answer was not to punish the settlers, but, as had
been the case in earlier territories, for the government to speed up the process of transferring
federal lands to private owners. “The hope is often expressed that Congress, in its wisdom, may
provide measures by which grazing lands may be lawfully occupied,” and that while the
existing land laws are useful in the rare Wyoming regions where agriculture can thrive, “There
are large tracts…which admit of grazing only, and a permanent and lawful occupancy of them
must be brought about by other methods.”

Additionally conflict arose between the cattle ranchers and the railroad. With their
influence in the territorial legislature they were even able to enforce restrictions on the railroad
companies. For instance, in 1875, a territorial law was enacted that assigned liability for stock
killed by trains, putting the responsibility for ensuring restitution on the railroads rather than the
stock’s owner. The penalty for noncompliance was double the losses incurred. Another example
was requiring railroads to plow alongside their tracks to serve as a fireguard. “The railroads were
liable for a $100 fine for every mile or fraction thereof not properly plowed…” and
noncompliance created full liability for all damages caused. While these were territorial
restrictions, that they were not either defeated in the territorial legislature, vetoed by the
governor, or repealed by Congress, shows that they were at least tolerated by the federal
government.

The end of the 1800’s marked the early peak of the transition in the United States from a
largely agrarian nation to an industrialized and commercial one. Many major industries in the
country were being built up, and then consolidating into enormous conglomerates. As discussed
above, the railroad and stock association in Wyoming were powerful players in the territory. In
New Mexico, as we saw in the previous chapter, “rings” of businessmen joined together to
control policy in the territory and through it, gain access to great expanses of public lands.
Except in a few rare cases, Congress acquiesced to these actions, shutting down only the least
subtle and most corrupt attempts and most incorporation dealing with Mormonism and
Catholicism.

Yet, an area in which expanding industrialization did spark Congressional concern was
over foreign corporations. In conjunction with the growing nativism of the late 19th-century,
Congress enacted a law in 1887 which prohibited foreign individuals or corporations from
acquiring real estate within the territories (excepting inheritance or debt collection)47. This
applied to all corporations with at least 20% of their stock owned by aliens. Additionally, this act
prohibited any corporation, regardless of ownership, except for the transportation industries of
railways, canals, or turnpikes, from owning more than 5,000 acres of land in any territory, or
more than necessary for their operation. In other words, Congress was attempting to restrict the
ability of corporations to practice land speculation or hold valuable lands, in essence, for ransom.
As punishment, the law required the forfeiture of any property violating these restrictions.
Small Population, but the “Right” Population

Wyoming Territory and New Mexico Territory were vastly different places in the late 19th-century, but they were both governed under increasingly narrow Congressional oversight. The rules and procedures they were required to follow were expansive compared to their territorial counterparts of the fifty years before. Yet, this growing sense of control was belied by the fact that Congress also largely left territorial politics alone and oversight was very reactionary rather than proactive. As Pomeroy opines, “While there was more a lack of governance than actual misgovernment in the growing years of the mountain West, national control could represent quite positively oppression and assistance, foreign intervention and patriotic attachment.”

Yet, the two territories were treated very differently overall and in the end, Wyoming gained statehood far earlier. Much of this stemmed from who the residents of the territory were, rather than any other factor. In 1872, with some concern over admitting western states with small populations, Congress passed a resolution that no state would be admitted without having a population which would entitle it to one Representative in the U.S. House. Despite this, Wyoming would gain statehood in 1890 with a population considerably smaller than that of New Mexico, which was denied statehood multiple times during that decade (estimates by Congressmen also overestimated Wyoming’s population and underestimated New Mexico’s, clearly on purpose).

Wyoming became a state after just 21 years as an organized territory. Never a populous territory (or state), the 1880 census recorded 20,789 residents in the territory, two-thirds of which were men. This was up considerably from the 1870 census, which listed just 9,118 persons in the territory. As the map earlier in this chapter illustrated, the vast majority of these persons
lived near the southern railroad route through the territory. One of four territorial residents lived in either Cheyenne (Laramie County, population 3,456) or Laramie (Albany County, population 2,693). A population of barely 20,000, in such a vast area, hardly made for a compelling case for statehood. New Mexico had a population at the time of well over 100,000 and was considered sparsely populated.

Just like other territories during the westward expansion, Wyoming had a higher percentage of foreign-born residents than most of the established Eastern states. Yet, in 1880, only about one in four persons were foreign-born, and nearly all were from northern Europe, with the exception of a sizeable Chinese population (about five percent of the territory). By contrast, in 1880, New Mexico had a very small foreign-born population, but it was primarily made up of Mexicans. Of course, most of the “native” New Mexicans were also of Hispanic origin, having been born in the territory over the preceding 30 years of territorial existence. In other words, Wyoming Territory, with the exception of the Chinese who were largely brought in as cheap labor for the railroads and mines, were of northern European ancestry, had emigrated recently from the East, spoke English as a first language, and were Protestants. New Mexico, on the other hand, had a population split between many Spanish-speaking Catholics, descendant from Mexican and Spanish families that had lived in the territory or migrated there over the past few centuries, and a smaller English-speaking population which had settled there more recently.

From a sheer numbers perspective, New Mexico had a small population considering its size, compared to territories that had previously been granted statehood. Wyoming Territory was considerably less densely populated. Yet, it had the “right” kind of population, stronger connections to powerful leaders in national politics, and was more central to the project of Manifest Destiny than its Southwestern peer. Additionally, unlike the problems with public
education and government institutions that plagued New Mexico’s efforts for statehood, the 1881 Governor’s report from Wyoming Territory noted that “ninety percent[sic] of the children of school age, even in the larger towns, are actually in the public schools.” The 1889 Senate report on statehood pointed out that without any financial assistance for education from Congress, the territory has 225 schools, employing 300 teachers, and a university in operation.

While New Mexico might have had a larger overall population, the frames which Congress used to consider the populations gave Wyoming an edge. In the Senate report on Wyoming statehood in 1889, the advising committee wrote that, “The Territory is being settled by a population perhaps as distinctively American as can be found in the Union. They are a homogenous people. They appear to be almost a unit for State government.” Continuing on, the committee remarks that, “The question of population has never cut much of a figure in the admission of new States,” going on to cite population numbers for previous admissions.

It was clear, from the language and the actions taken by the national government as applied to Wyoming Territory, that settlers there were considered deserving and worthy targets of beneficial public policy. While the politics of the territorial legislature, the infighting between some of the industries, and the small population, were all nuisances at times for the president and members of Congress, the largely white, northern European, English-speaking population was the ideal. These were the successors to the settlers of Wisconsin and Kentucky before them. They had few of the qualities Eastern politicians associated with an inability to operate republican democratic governments. Wyoming may even have been considered more highly simply because it was not New Mexico or Utah. Rather than being a dramatic handicap, the relatively small population in Wyoming kept its population homogenous and the “right” kind of settler.
Female Suffrage

Wyoming Territory was, true to the independent spirit of the iconic Westerner, the first major jurisdiction within the United States, to permit females, of age, to vote along with their male counterparts. The bill, which was enacted by the territorial legislature in 1869, demonstrated the ingenuity that could occur with the decentralized authority provided to territorial governments. Lewis Gould argues that there were three factors which persuaded enough legislators to act\(^57\). First, it would help to publicize the territory back East, a goal of early leaders who looked to it as a relatively inexpensive and positive promotion of the region to prospective settlers. Clearly, it had an effect. Newspapers from across the United States reported on the enactment of female suffrage in Wyoming. Some were less enamored with their coverage.

For example, the *Rocky Mountain News* from Denver reported that, “A few fights have resulted from challenging the votes of ladies. The first lady whose vote was challenged at Laramie, dropped her ballot and indulged in a good cry, whereupon her escort sailed in and made it hot for the challenger.” Yet the paper notes that the overall effect is that, “woman-suffrage in Wyoming has resulted in making everything just as it was before, only a little more so.”\(^58\) In Milwaukee, a newspaper reported the thoughts of a particular female voter describing, “we thought we would like to vote just once for the novelty of voting…and to realize, if possible, that indescribable sensation of exalted citizenship…”\(^59\) The *St. Louis Dispatch* related a speech by then former Wyoming Territory Governor Hoyt of his impressions of woman suffrage, who said that, “womanhood suffrage is a positive and great advantage to all concerned, man as well as woman.”\(^60\)
The second factor Gould argues was that women, owing gratitude to the party which granted them suffrage, would then support the Democrats at the polls. The third factor aligned with this, in the sense that it would also embarrass the Republican Party, which was championing suffrage for freed blacks, but refused to add female suffrage to their efforts. Since woman suffrage had been passed during the first session of the territorial legislature, it was followed by the elections leading to the second. This gave the experiment a chance at revealing its effects. In the following elections, the Democrats suffered some losses, although they retained control of both houses of the legislature.

Apparently some of the Democrats blamed this directly on the suffrage for women, despite a particularly contentious political fight that had occurred over political appointees in the meantime (one which involved President Grant numerous times). The Democratic-controlled legislature, therefore, moved to eliminate the voting extension, hoping that the governor would not veto the measure, which they could not overcome due to a lack of a supermajority in the Council. Governor Campbell, however, had already publicly endorsed woman’s suffrage and was unwilling to backtrack from that position. His veto of the repeal effort marked, “the last important challenge to women’s voting in the [Wyoming] territorial period.”61 Clearly, the partisanship of woman’s suffrage had not aided Democrats as much as they had hoped, but once expanded, it is difficult to pull back suffrage. Regardless of the partisan concerns, however, it did help that women could vote, as voting numbers were frequently cited within Congress as support for (or against) statehood admission. Given Wyoming’s small population, every voter, even women, helped this cause.
Interacting with Congress

In the early years of territorial governance, as noted in earlier chapters, law and order was a distinct challenge. There were too few officers to enforce the law, too few judges to adequately punish under the law, and no adequate places to imprison persons for violating the law. While all of these remained significant obstacles to administering justice by the late 1800’s, Congress did begin to provide more assistance in creating penitentiaries so that territories could hold on to their own criminals.

In Wyoming, Governor Campbell wrote in summer of 1870 to the Secretary of the Interior of the desire for appropriations in order to build a territorial penitentiary. Without one, “every offender convicted in the United States district courts and the territorial courts, must be conveyed, at great expense…to the penitentiary at Detroit, Michigan.” From Cheyenne to Detroit was a distance of well over 1000 miles, a significant challenge even with use of rails. The Secretary forwarded the request on to the House, who noted that similar territorial penitentiary were under construction in Colorado, Montana, and Idaho Territories, which had been paid from net proceeds of territorial revenues over the past few years.

Congress agreed to allow internal revenues be appropriated to the purpose of building the penitentiary. As it seems with any construction, costs overran projections, although in this case, only by an amount of $40. Still, given the appropriations process in Congress, the contractors were delayed for months in receiving that payment due to needing Congressional approval to release the funding. Built by the mid-1870s, the U.S. government initially assumed custody of the penitentiary, which almost meant paying directly for upkeep and security. Congress, however, desired to hand off that responsibility on to the territories, since it would mean less national subsidization of territorial governance. A bill to this effect, submitted in the 45th
Congress, however, was reported negatively by the House Committee on the Territories, because, “the legislature of said Territory has adjourned, will not meet again in two years, and no acceptance of the proposed legislation could be made in the mean time, and no practical benefit could result to the Territory.” Still, Congress clearly found it desirable to have convicted criminals stay in the territories where they committed their crimes, and largely supported efforts in the last few decades of the 19th-century for territories to create and maintain penitentiaries, which did not exist in antebellum territories. In 1886, in fact, Wyoming Territory was asked by the House Appropriations Committee to submit a request for $30,000 “or such an approximate sum as may be necessary, to repair and enlarge and fit for the security of convicts the penitentiary…”

One of the aspects of territorial policy that continued to infuriate frontier settlers was the appointment of Easterners to positions within the territorial government. Just as with earlier cases, practical considerations of patronage, partisanship, and the relative lack of qualified candidates in the territory were at play and the “oppression” suffered by territorial residents exaggerated. Yet, tensions still flared up enough that Congress had to become involved beyond just approving of presidential nominations. One particular case in Wyoming merits attention. President Hayes, in mid-1877, appointed William Ware Peck to a newly open judgeship. He was assigned to the third judicial district, which encompassed the relatively less populous southwestern section. The problems arose when Judge Peck, unlike most territorial judges, was overly concerned with following court procedures carefully. Strict adherence to the rules, while admirable in abstract, had a number of problematic consequences.

First, it meant comprehensive recording of cases, something which was not only time consuming, but problematic for a frontier society with limited resources. Territorial justice was
frequently haphazard, but in many ways relatively efficient. Especially on the edges of settled areas, the main desire was simply for compensatory justice. By closely following legal procedure Peck violated this general understanding. More importantly than this, Peck’s administrative process also increased court costs, which were paid out by taxes from county residents, increased from $3,800 to $11,000 67. This increase in tax burden was outrageous to the people of the district.

Territorial residents moved against Peck and utilized all the resources they had to influence his removal. Peck was due to be officially confirmed by the U.S. Senate in December of 1877, about six months after assuming office. The territorial legislature sent along resolutions attacking Peck’s actions and Delegate Corlett asserted his full influence on the Judiciary Committee of the Senate. While Delegates were non-voting members of only the House, one of the few areas where they did exert some meaningful influence was in their opposition or support of territorial appointees. Their opinions rarely could be seen as a deciding factor, but they were considered important. As Pomeroy notes on his chapter on the role of the delegates in the late 19th-century, “In the matter of appointments delegates played a considerable part…” 68 Much of their influence depended upon their relationship (both partisan and personal) with the president in office.

When Peck was confirmed regardless of these concerns, the territorial legislature retaliated in a long-standing tradition of redistricting. If Peck, they reasoned, could not be removed completely from his position as territorial judge, his impact can at least be minimized. The legislature’s redistricting placed Peck’s jurisdiction over two unorganized, and nearly completely uninhabited, counties. Peck’s exile, a tactic that had been used in other territories in the past, might have worked if it hadn’t been so clear a violation of Congressional desires.
Removing him from one of the few meaningful judicial positions to a meaningless district flaunted Congressional control over the territory.

The Senate quickly moved on legislation voided the redistricting act. The debate in that body clearly reflected the outrage toward territorial defiance. Senator Dawes of Massachusetts remarked that, “It is simply the question, presented in the bill before us, whether Congress shall surrender to the Territory or whether the Territory shall conform, as in times past, and as in all other Territories they have, to the administration of the law according to its forms enacted here.” Delegate Corlett, however, was able to block the bill from reaching the floor of the House and Judge Peck was relegated primarily to his position writing opinions on the territorial supreme court, since local legal conflicts were non-existent in his reconstituted district. This was not quite the end of this saga, however, as Governor Thayer’s support of the redistricting bill (despite the fact that it likely would have been enacted over his veto) cost him his appointment.

Unlike the Senate, which required the House to act, the President’s unilateral control over executive appointments gave him a stick with which to strike out and make an example of at least one leader in Wyoming Territory.

Another example of the interactions Wyoming officials had with Congress dealt with territorial elections and representation. Federal law required reapportionments based upon census readings within the territories. Due to the rapid expansion in some areas of population, it was clearly important to frequently ensure reapportionment of the territorial legislature based upon population. In 1880, Congress enacted requirements that following the census of that year, Montana, Idaho, and Wyoming Territories were to reapportion their legislative districts. The board tasked to complete this consisted of the governor, speaker of the territorial house, and
president of the territorial council. This would be followed by an election, after which the new members of the legislature could alter the reapportionment as they saw fit.\footnote{71}

Wyoming’s 8\textsuperscript{th} Territorial Assembly, however, failed to complete this process via this board of apportionment, before holding the 1885 elections. Despite holding the elections, Congressional law prohibited the new legislature from convening because it was illegally apportioned under the previous plan. This meant that either Wyoming Territory would be responsible for holding an expensive special election or had to persuade Congress to uphold the apportionment from previous elections. Delegate Joseph M. Carey introduced legislation in the House Committee on Territories to confirm the results rather than require additional elections. This legislation passed through the Senate and by early 1886 looked like it would also pass through the House. Carey did run into some obstacles, however, when on January 7, 1886, he asked that the bill be discharged from the committee and that he be allowed to make a statement. Representatives Henley and Wilkins objected to this action, which required unanimous consent.\footnote{72}

Despite these challenges Delegate Carey was able to persuade the House to legitimate the newly elected legislature in mid-January of 1886.\footnote{73} Congress re-emphasized that Wyoming Territory was to follow the 1880 law the next round of elections. This was yet another example of tensions between Congress and territories. In contrast to the issue with railroad regulation, discussed in an earlier section of this chapter, the election saga was caused less by any direct subordination, but simply an artifact of incompetency and infighting. The practical effects of rebuking the efforts here were also more costly than the previous case, since it would involve the federal government subsidizing a second election.
In early 1890, the House approved a bill authorizing admission of Wyoming to the Union by a vote of 139-127, sending to on the Senate, which also approved and then the president’s desk. While the votes were close, it only took Wyoming 22 years to achieve statehood from its formation, one of the shortest periods of territorial existence in the Mountain West. Gould suggests a number of reasons that Wyoming, despite its small population, was relatively easily and quickly able to gain admission to statehood, at least as compared to most other Western territories. As a now solidly Republican state, and with control of the national government in the hands of that party, the political tide favored statehood interests. As noted above, the homogenous population prevented ethnicity, religion, or language to be factors. There were also fewer sectional rivalries in Wyoming than occurred in places like Dakota and New Mexico. Perhaps most importantly, Gould argues, was that the experience of territorial life had touched Wyoming gently, and thus, “Devoid of loyalties to their territorial past, the residents of Wyoming accepted statehood as a foregone conclusion, and this attitude helped to make it so.”

Delegate Carey had, in a speech a year before, promoted Wyoming statehood vehemently: “We want to see the promised land; we want an enabling act…A true American’s ambition is to be a full American citizen with all the attending privileges.” Given that Congress saw Wyomingites as “true Americans” Carey’s desires were fulfilled.

1 Congressional Globe, House of Representatives, 40th Congress, 2nd Session, 467.
2 Congressional Globe, House of Representatives, 40th Congress, 2nd Session, 468.
3 Congressional Globe, House of Representatives, 40th Congress, 2nd Session, 467.
4 Congressional Globe, Senate, 40th Congress, 2nd Session, 2792-3.
7 Statutes at Large, 40th Congress, 2nd Session, starts on page 178.
8 Congressional Globe, Senate, 40th Congress, 2nd Session, 2794.
9 Congressional Globe, Senate, 40th Congress, 2nd Session, 2799.
10 Congressional Globe, Senate, 40th Congress, 2nd Session, 2799.
13 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2795.
15 *Statutes at Large*, 40th Congress, 2nd Session, 183.
16 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2798.
17 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2799.
18 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2799.
19 *Statutes at Large*, 42nd Congress, 3rd Session, 484.
21 Pomeroy, *The Territories and the United States, 1861-1890*, 22. Pomeroy took this from a letter from Governor Hoyt to Hayes, July 24, 1878, Miscellaneous File 221.
22 See Pomeroy, 22-23 for more detail.
23 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2799.
24 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2799.
25 *Statutes at Large*, 34th Congress, 3rd Session, 185.
28 *Congressional Globe*, Senate, 40th Congress, 2nd Session, 2793.
31 Senate Report 2695, 50th Congress, 2nd Session, 3.
32 1890 census reported a Wyoming population of 62,555.
43 1880 Census, Table Ia.
44 1880 Census, Table Ib.
45 1880 Census, Table III.
46 1880 Census, Table XIV.
48 Senate Report 2695, 50th Congress, 2nd Session, 6.
49 Senate Report 2695, 50th Congress, 2nd Session, 8.
51 Rocky Mountain News, Denver, Colorado, August 26, 1875.
52 *The Milwaukee Sentinel*, Milwaukee, Wisconsin, November 5, 1880.
53 *St. Louis Dispatch*, St. Louis, Missouri, November 6, 1882.

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61 Gould, 35-36.
64 House Ex. Doc. 13, 43rd Congress, 1st Session.
68 Quoted in Gould, 55. Original from *Congressional Record*, 45th Congress, 1st Session, 1203.
71 *Congressional Record*, 49th Congress, 1st Session, 358.
74 *Cheyenne Daily Sun*, Part 1, Page 4, March 28, 1899, accessed on newspapers.wyo.gov
Chapter 7 – “Race, Religion, and Territory” – New Mexico Territory

The “Other” Territory – Mechanisms in New Mexico Territory

New Mexico, as a candidate for admission to statehood, was basically the opposite of Wyoming. The area, which until the 1860s included modern-day Arizona as well, was comparatively well-populated to other Western territories. It was largely populated, however, with Spanish-speaking Catholics, who had lived in the region since the 16th-century. In a society dominated by the Catholic Church, with limited government, and a lack of distinctly American political institutions, New Mexicans were seen as ignorant and incapable of self-governance. The other component of the existing population was a collection of Native tribes, some of which were the most aggressive on the continent. This meant that the United States had incentives to provide strong military presence in the region. This was heightened during the Civil War when Confederate soldiers actually occupied the southern half of the territory. New Mexico, therefore, was wrapped up in concerns over order and security that did not exist in some of the territories to the in the northern portion of the mountain west.

Additionally, the railroad, which was so integral to the development of Wyoming, did not reach New Mexico at all until the 1870s. Before this, in order to travel to the territory required a long and dangerous journey along the Santa Fe Trail. There was little enticement for settlers to travel from the Eastern states to New Mexico and the national image of the territory as portrayed in newspapers of the time was that of disorder, backwardness, and corruption. While Congress provided New Mexicans with a similar territorial government as other Western territories received, there was additional attention focused on actions of the territorial legislature due to the
influence of the Catholic Church and the fact that most residents spoke only Spanish. In fact, the House even refused to provide an interpreter for an elected delegate who did not understand English.

These conditions and the lack of settlement, until at least the 1890s by a significant number of ethnically Anglo-Saxon settlers, meant that New Mexico faced additional hurdles to statehood than Wyoming had. While partisan concerns were still prominent, once the Civil War ended the delicate balancing required for maintaining the compromise on slavery, there was almost no unifying desire to admit New Mexico. It was economically poor, full of “others”, and easily seen as unprepared for the political sovereignty which statehood implied. New Mexico waited well over half a century for this transition.

“New” New Mexico

Named in the mid-1500s by miners New Mexico was “conquered” first by the Spanish, and then transferred to Mexican rule after that country gained independence in 1821. A couple of decades later, with the imperialist-minded James Polk in the White House, American expansionism had one of its greatest proponents ever. His desire to capture the lands across the Western half of North America to the Pacific Coast drew the U.S. into conflict with Mexico, which now owned (Alta) California and New Mexico. While historians debate whether the U.S. could have divested Mexico of its entire sovereign territory, there was clearly enough opposition to the war from Whigs and abolitionists to block a far Southern expansion. The end of the Mexican-American War in 1848, however, brought with it a cession of much of the American Southwest, including most, if not all of the modern states of California, Arizona, New Mexico, Nevada, and Utah, as well as parts of Wyoming and Colorado. In the Treaty of Guadalupe
Hidalgo, the U.S. received these land cessions in return for a guarantee that civil and property rights of the former Mexican citizens would be respected and that they could choose either American or Mexican citizenship.

As originally formed, New Mexico Territory would encompass all of the modern states of New Mexico and Arizona, plus small portions of Nevada and Colorado, an enormous region. It was sparsely inhabited, other than a stretch of small villages through the Rio Grande valley and a couple of frontier towns, such as Tucson. Although geographically similar to some of the rest of the Mountain West, it had an established population with different traditions, language, and religious beliefs than the vast majority of Americans. Given that it was also separated from the rest of the country by large stretches of deserts and rugged mountains, New Mexico would be treated differently by Congress throughout its existence. That it did not gain statehood until 1912 might be unsurprising in hindsight, but it demonstrates how various concerns about who, where, and what of territorial policies mattered.

Figure 7.1 New Mexico Territory before 1860

http://upload.wikimedia.org/wikipedia/commons/5/5f/Wpdms_new_mexico_territory_1861_legend_idx.png
Civil or Military Territory?

When General Stephen Watts Kearney issued the Organic Law of the Territory of New Mexico (popularly known as the Kearney Code) on September 22, 1846, the territory claimed by the United States during the Mexican-American War stretched across much of modern New Mexico and Arizona. From the start of the American occupation, which was initially peacefully accomplished, it became clear that the region was going to stay part of the U.S. How far south the American military would push and American politicians would seek claims on, was yet to be seen.

The Kearney Code, promulgated by the military commander, was relatively liberal in its provisions for self-government, including an appointed civilian governor and secretary and an elected bicameral legislature. Rights would be protected, listed similarly to the Bill of Rights in the U.S. Constitution. This proclamation, however, was based off of Kearney’s desire to secure local allegiance and not a positive grant of authority. Acting under orders from President Polk, Kearney had clearly overstepped the Congressional authority to implement territorial governance.

In the meantime, the United States army had marched all the way to the capital of the Mexican nation. The outcome of that conflict in 1848 would be the ratification of the Treaty of Guadalupe Hidalgo by the United States Senate. Among its provisions were the protection of Mexican nationals’ property and civil rights and payment in exchange for a large cession of land including present-day California, New Mexico, and Arizona. The original treaty also guaranteed Mexican land claims, but this provision was deleted form the final ratification. This was something that would worry the existing residents of New Mexico Territory for much of the rest of the century and lead to both economic and political instability.
Kearney, under his temporary government, gave himself the power to appoint officials to administer the civilian component of the militarily-dictated system. Despite local and national concerns over this assumed power, President Polk supported the General, with the direction that, as much as possible, he retains the existing power structure within the region. Kearney violated this directive by only appointing a couple of people associated with the older residents of the territory. Instead, he relied heavily on the American merchants who dominated commerce, especially in Santa Fe. Doing this not only ignored the president’s orders, but also served to entrench much of the Hispanic population in opposition. In late 1846, growing dissention lead to threats of assassinations against political leaders in the territory. Opposition was particularly strong from the leading families of Taos, some of the more conservative families of Santa Fe, and the Catholic clergy.

The ensuing struggle did become violent, leading to a number of deaths and required military intervention to overcome. This incident, combined with the frequent raids by local nomadic Indian tribes, created an environment which only reinforced the need for military occupation. To this end Lamar notes in his history of the territory that, “[T]he region was ruled by military commanders so preoccupied with Indian troubles or by nature so autocratic that they showed scant regard for civil rights or the chaotic luxury of elections.”

This was the situation in which the Territory of New Mexico was created. Despite these problems, there were some attempts, both from within the territory as well as from key allies in Congress, for immediate statehood for the region. Inaction during the 1848 and 1849 sessions, due to the enduring division over slavery, left the residents of the area under continued direct military supervision. Many residents, tired of the military occupation, and anxious to have full rights granted to state citizens, were eager to obtain incorporation into the Union. New Mexicans
convened a convention to create a state constitution to be sent to Congress for ratification that year, as did Californians. These efforts forced Congress to respond finally. Yet, question regarding New Mexico’s status as a territory, were caught up in a number of larger issues than the oppression of a military commander.

By the end of the 1840’s, Lamar noted that the fate of the region,

“had become extremely involved with several national questions: the North-South fight over the extension of slavery into the Mexican Cession; the admission of California as a free state – which implied that New Mexico must declare for slavery in order to retain the traditional slave state-free state balance in the Senate; the Texas claim of the Rio Grande for a western border up to and including the Santa Fe district; and, finally, the fate of the Texas debt.”

It was clear, however, that if New Mexico were to be granted statehood in 1850, it meant slavery would be extended to the region, and while peonage under the master and servant system had long been an important part of Hispanic culture, not all residents were eager to see an extension of African slavery. Despite clear limitations on the profitability of slavery in New Mexico, the practical expansion of slavery was less important than upholding a balance of slave-protecting Senators. Regardless of the efforts of residents in the territory, it was clear that the national political system would be the arbiters of the question of statehood. Discussions over extending slavery, the question of borders between Texas and New Mexico, and the debt of Texas (covered in more detail below), led to compromise that would both benefit and severely impede New Mexican statehood. The Compromise of 1850 held that California would be admitted as a free state, Texas would renounce its claims to New Mexico’s eastern portions in exchange for significant financial payments, slavery in New Mexico and Utah Territory would not be banned, and a stronger Fugitive Slave Act was enacted. The Compromise was enabled by the death of President Taylor, who many Southern Congressmen believed “was encouraging, if
not inciting, statehood activity, with the belief that quick admission of the territories in question would remove the slavery question from public concern.” While closing off the prospect of early statehood for New Mexico, the Compromise of 1850 also closed off Texan hostility.

On September 9, 1850, Congress created the Territory of New Mexico. The initial organization was similar to other territories for the past few decades, with a governor and secretary appointed for four years. Thirteen members would serve two-year terms in the Council, while 26 members would serve one-year terms in the House of Representatives. Both of these would be popularly elected from the beginning of the territory. The appointed justices for the territory would also have four year terms rather than life-time tenure. For salaries, governors were to receive $1,500 for their duties, plus an additional $1,000 to act as superintendents of Indian affairs; justices and the secretary were afforded $1,500 per year. Members of the legislative assembly were to be given three dollars per diem and three dollars for every 20 miles they traveled to and from sessions. Just as with all other territories to this point, New Mexico was also afforded a delegate to the House of Representatives.

All free white males, 21 years or older were eligible to vote and hold office, although additional qualifications could be mandated by the legislative assembly. One critical addition to this provision, specifically attached for New Mexico, was that these privileges “shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the republic of Mexico…” This reflected the concern over the potential influence that might be exercised by residents who chose, as was their right according to the terms of the Treaty of Guadalupe Hidalgo, to maintain Mexican citizenship, as well as the broader influence that any lasting nationalistic loyalty might exert.
There were also provisions that reflected some of the challenges which Congress had encountered in dealing with territories to this point in U.S. history. One of these stated that no person holding a commission under the United States, except for postmasters, was eligible for any office to the territory. The lure of territorial posts was attractive toward building a political resume, but hardly sufficed as meaningful compensation. This provision prohibited the most ambitious men from holding numerous positions at once and drawing multiple salaries, while not giving appropriate attention to their concomitant duties. Another example to this end was a limitation on legislative sessions of a length of 40 days. This was to cut down on the practice in earlier territorial legislatures of dragging on sessions without necessity, in order to continue to receive per diems. Congress, in applying similar limitations to other territories, had argued that longer sessions were unnecessary due to the lack of substantial law-making that was required in territories.

With this enactment, the people of New Mexico rid themselves of the oppressive military rule and the Kearney Code they had lived under for years. It did not, however, end the division between the military, which remained a vital institution in ensuring security for New Mexicans, and the civil leaders. This nearly came to a head in 1852, when Colonel Sumner, fed up with the negative attitudes of New Mexicans and repeated reprimands from Washington regarding his own behavior, “suggested, either sincerely or spitefully, that all troops and civil officers be withdrawn, and the government left totally in the hands of native New Mexicans.” Despite its clear extremism, other national officials, including the Secretaries of State and War gave support to idea of abandoning the region. The population was small, the climate difficult for settlement, and the cost of protection from Native American raids too high. While nothing more came of
these threats, there continued to be a balancing act between the need for strong military presence in the territory and the complaints from the largely native population.

*Slavery and the Civil War*

New Mexico was never going to be a region of slaves and plantations. The arid climate and the relative lack of suitable farmland meant there was little economic viability for slavery in the territory. This did not, however, stop it from being at the core of some of the most contentious political controversies over slavery just before the outbreak of the Civil War. New Mexico was thrust into this position for two reasons, one general and the other specific. The general reason was that as a new territory and thus a potential new state, New Mexico was included amongst the areas which would be considered as an extension of the practice to admit one free and one slave state to the Union. This would mean, given its southern location and boundary with Texas, the largest slave state by the late 1840’s, that New Mexico Territory might win rapid statehood, but be forced to adopt slavery. The specific context which brought New Mexico into the slavery conflict was the border dispute with Texas, which had the neighboring state (and former independent nation) claiming a large swath of what is now the eastern half of the state of New Mexico. While at the time this would have only been about one quarter of the size of the entire territory (since Arizona Territory had not yet been created), it would have deprived the territory of direct control over the Rio Grande valley and the trade and farming that arose from it. Essentially, New Mexico Territory would be split down its center if Texas’ claims were upheld.

This situation erupted into a battle of federalism, with the Texas legislature going so far as to order troops to occupy what they saw as their rightful land. At the same period on the
national stage, President Taylor had unexpectedly died, leaving the position to fall to Millard Fillmore. Fillmore pushed Congress for a legislative solution to both the specific and general conflicts occurring at the time. Congress, however, was deeply divided over the slavery issue and was slow to adopt potential workable solutions. While Colonel Munroe, in charge of the New Mexico Territory’s federal armed forces was advised to avoid violence, he was also authorized to use force to detain any attempt by Texas to forcibly occupy the Territory in violation of federal law.8

Before it came to this, Congressional action began to take shape. Senator Henry Clay, in what would be his final significant act on a national stage, introduced a number of resolutions to attempt to resolve the slavery conflict. These resolutions, which were meant to appease both slave and free state proponents as well as settle the New Mexico-Texas border dispute, were sent to a Committee of Thirteen, of which Clay was assigned chairman. That committee reported back to the Senate on May 8, 1850. Pointing to the unsuitability of slavery as an economic system in the southwestern territories, the report called the Wilmot Proviso “a mere abstraction. Why should it be any longer insisted on? Totally destitute, as it is, of any practical import…”9 In particular, they concluded that it made sense to establish the territories of Utah and New Mexico without reference to the Wilmot proviso10, thus setting up a situation where those territories might be able to choose slavery as an option, but not forcing it upon them just because they were at similar latitudes to the bastion of slave culture in the American Southeast.

This debate would eventually result in what has come to be called the Compromise of 1850. While the primary effect was to temporarily hold off a full-blown conflict on slavery between the North and South, for New Mexico this resolution had enormous effects. The positives involved the peaceful conclusion to the boundary question with Texas. The U.S.
government would officially set the Texan boundary far away from the central valleys of New Mexico, largely leaving intact what New Mexicans had presumed was their territory. In exchange, Texas would receive $10,000,000 from national coffers, which was basically the amount needed to cancel that state’s public debt.\textsuperscript{11} With that issue solved, Congress was able to create the Territory of New Mexico, giving it the right to decide for itself whether or not slavery would exist there.

At the same time, however, this resolution meant that proponents of immediate statehood for New Mexico would be disappointed, at least in the short term. Slavery, it had seemed, would be the perfect issue to force a compromise which would include New Mexico, even if it meant that the institution would be allowed in the state. Instead what occurred was that New Mexico was no longer a major player in the primary debates on slavery that occurred in 1854 and 1861, related to the Kansas-Nebraska Act and the Crittendon Compromise respectively. The outbreak of Civil War, followed by legislation which banned slavery in the states and territories in 1862, meant that New Mexico, which was remained loyal to the Union, would no longer have to worry about the extension of slavery in to its borders. It also meant that its early hopes for statehood were dashed. Without the pressure of balancing slave and free states there was no longer an overarching national desire to admit states as rapidly. Nevada and West Virginia were admitted during the Civil War, with the Union working to increase loyalty amongst the Western and border regions, but once the War ended, without slavery as a force for statehood, and with the preoccupation of Reconstruction nationally, territorial calls for statehood were largely ignored until the 1880s.

Beyond these national concerns, there were some territorial politics regarding slavery which did affect New Mexicans. During the latter part of the 1850s, the territorial legislature
passed resolutions to restrict the movement of free blacks, and allowed them to remain in the territory for only thirty days. In 1859, they enacted a slave code, which while not legalizing slavery within the territory, did regulate slaves who were brought into the territory by their owners. Larson notes that much of this occurred due to Delegate Miguel Otero’s marriage to a South Carolinian belle as well as the Buchanan appointment of Abraham Rencher to New Mexico Territory governor. Rencher was a Democrat from North Carolina. Of course, none of these measures had much practical effect since the territory had neither a significant population of freed blacks nor of enslaved ones.

In addition to slavery, due to the long-lasting control under Spanish rule, a sizeable portion of New Mexicans were held in the state of peonage. As traditionally practiced, this was closer to indentured service than outright slavery, but it relied on a master and servant system, under which the servant had almost no rights. Ingrained in the culture of the region, peonage was important to the hierarchy imposed by the leading families in the territory. Its existence, while not as offensive to some political leaders as the American slavery system, was nonetheless clearly a concern. By 1866, the territorial legislature had determined that statehood efforts might be benefitted by repealing the laws on free blacks as well as the practice of peonage and they took action on both of those.

They hardly mattered, however, since Congress had already banned slavery by this point and the next year would enact a ban on all forms of peonage as well. While the law, passed in March of 1867, applied to all territories and states, New Mexico was mentioned by name three separate times in the bill. In particular, it was the “duty of all persons in the military or civil service in the Territory of New Mexico to aid in the enforcement…” of the provision of the act.
The punishment was also severe, a fine of $1,000-5,000 dollars and imprisonment of one to five years\textsuperscript{14}. This ended legal bondage anywhere in the United States.

\textit{Race, Language and Religion}

As late as the start of the Civil War, New Mexico Territory had only a few thousand English-speaking settlers of European descent. The vast majority of the people living in the area were Mexican Hispanics, Native Americans, or mixed-blooded mestizos. Thus, for the first time in American history, a territory was dominated from the start by non-Anglo non-Protestants.

Race had mattered in U.S. history from the beginning, whether dealing with Natives or African slaves, but this was different. Only New Orleans and the surrounding region had been already built up and settled before American political conquest. It is therefore, unsurprising that New Orleans was the most recent and only other territory which had been more severely restricted in terms of political rights and self-government before New Mexico.

The language used to describe the people in the territories gained from Mexico in the Treaty of Guadalupe Hidalgo, are reminiscent of that used toward the region around New Orleans or the earliest Northwest Territory. In a committee report in 1850, headed by Senator Clay, a call is brought forth to establish governments in these territories. The reasoning given was due to,

\begin{quote}
The remoteness of the territory from the seat of the General Government; the dispersed state of its population, the variety of races – pure and mixed – of which it consists; the ignorance of some of the races of our laws, language, and habits; their exposure to inroads and wars of savage tribes; and the solemn stipulations of the treaty by which we acquired dominion over them…\textsuperscript{15}
\end{quote}

While the elite of the \textit{Hispanos} of New Mexico Territory were well educated, relatively wealthy, and had strong European lineage, they were also benevolent supporters of the Catholic
Church, spoke Spanish, and were not “white” in the same sense as Anglo-Saxons. They practiced peonage, which while a step above slavery, was foreign to American sensibilities and therefore widely attacked and would be abolished by federal law in 1867.

Congress largely reflected the general national mood, particularly of Easterners, toward New Mexico Territory. In March of 1875, reflecting on discussions regarding the suitability of statehood comparing Colorado to New Mexico, the *New York Times* was hardly hesitant to clearly state the prevailing conceptions. Colorado, despite its small population was worthy of statehood because, “the extraordinary thrift, industry, and enterprise of the people…” New Mexico, whose population was much greater, is however “…thinly populated, the towns scattered over its vast area are few and ill-regulated, and a large part of the people is ignorant and utterly destitute of enterprise and public spirit.”

The use of Spanish throughout much of the Territory of New Mexico, especially in government and courts, was a constant irritation to Congress. While there was no requirement, within the territory, of which language was to be used in any given circumstance, the mixture of the languages made it more difficult for political business to run efficiently and also for Eastern bureaucrats and politicians to know what was going on in the territory since it was unlikely they spoke Spanish. A quick purview of government documents from the territorial period shows that even the records of the territorial assembly were done in whatever language the clerks were most fluent in, meaning in only a few cases are they available in both English and Spanish.

In terms of how the use of Spanish was an irritation, a particularly noteworthy example of this was the election of the formidable Father Jose Manuel Gallegos to territorial delegate in 1853. While a significant political authority, given his position in the Catholic Church and the respect he garnered from the *Hispanos* of the Territory, Gallegos neither spoke nor understood
English. He also only won the position of delegate after Congress invalidated the votes of Pueblo Indians, who they claimed were not eligible and non-citizens. Padre Gallegos’ lack of English competency was hardly an issue when he was traveling about New Mexico as most people were native Spanish speakers and the few residents who spoke English knew enough Spanish to communicate.

Yet, in the U.S. House of Representatives, it was impossible for him to have any effective impact without the aid of a translator. Representative Richardson, on February 27, 1854 submitted a resolution to suspend the rules of the House in order to allow Delegate Gallegos an interpreter to accompany him throughout his business in the chamber. In defense, Richardson noted that a comprehensive lack of English literacy, “is the misfortune of his constituents; and this is not for his personal convenience, but for the convenience of the people that he represents.” Unfortunately more than two-thirds of the members refused to act upon the request leaving New Mexico Territory without any real representation for two years17.

There was slightly more tolerance toward accommodating Spanish as an official language within the Territory. Even in these cases, however, that accommodation grew more out of a desire to ensure that government documents were translated into English than it was to allow Spanish to be used as the prevailing language of the government and courts. As early as 1853, Congress enacted legislation authorizing the New Mexico Territory assembly to employ translators, interpreters and clerks to each house. Of the four clerks so assigned, two “shall be qualified to write in Spanish and two in English.”18

In an 1863 resolution received by Congress from the Territorial House noted that there were members of the territorial legislature who only understood either Spanish or English and asked for additional compensation for the translators “whose salaries are entirely insufficient
either for their maintenance or as a just compensation for said duty…”

Through these examples, it is clear that despite the practical needs for both Spanish and English to be understood for New Mexican territorial politics to operate effectively, the desire for English, as an American quality, to spread throughout the territory was prominent among many in Congress.

It was not just language, however, that provided Congress reasons to treat New Mexico differently. Spanish traditions, in particular Catholicism, and its control over education, were also problematic for legislators used to a system of public schools, even if they were highly influenced by protestant values. This opposition of Congress to New Mexico’s institutions and traditions is clearly demonstrated by looking at the way in which their attempts at statehood were received.

One of the last unsuccessful attempts to gain statehood for New Mexico occurred during the 57th Congress in 1902. Senator Beveridge, an opponent for statehood of the southwestern territories, and the Chairman of the Committee on Territories, called for members of that committee to travel west to examine the territories firsthand and hold hearings on the suitability of statehood. This trip was, from the beginning, a clear attempt by Beveridge to stall statehood for Arizona and New Mexico, while granting it to Oklahoma and Indian Territory (as one combined state). The executive report from the committee’s hearings laid out clearly the reasons for opposing statehood at the time.

Among the distinctions made were that the majority of New Mexicans speak nothing but Spanish and Court business is conducted via interpreters, “since it sometimes happens that some of the members of the jury are English speaking, some Spanish speaking and no member of the jury can speak both languages.” Particular emphasis was also put on the fact that while Spanish and English was, as of 1902, taught in most schools, in some schools Spanish remained the only
language used. This meant that, “When the children finish their school…their tendency is to relapse into the Spanish, that being the language in their homes and in the affairs of their daily life.”21

If speaking Spanish weren’t enough of a reason to delay statehood, the report decries the fact that in the 1900 census, it was recorded that 33.2% of the entire territory’s population are illiterate in any language. Shockingly, the report notes, “If the test of illiteracy were confined to the English language only, the committee is of opinion that the percentage of illiterates would be much more than doubled” (emphasis original)22. Education, however, is beginning to make a difference and when the “Mexican” class is identical in language and customs with the great body of the American people; when the immigration of English-speaking people who have been citizens of other States does its modifying work with the ‘Mexican’ element…the committee hopes and believes that this mass of people, unlike us in race, language, and social customs, will finally come to form a creditable portion of American citizenship.23

A contrasting report was filed the same day by one of the other Senators who had been on the committee’s trip. Senator Quay questioned why there were so many concerns regarding the population of New Mexico. Population numbers were not major concerns in other recently admitted states, many of which were smaller than New Mexico in 1900. While many residents might speak Spanish, the irony, Quay noted, was that overall the percentage of the population that was foreign was the smallest in the entire country24. After all, there had been limited emigration to the territory overall, and most of its residents, regardless of ethnicity, had been born in the territory, which had been under U.S. control since 1850. In addition, there was an official minority report released a few days later by Tennessee Democratic Senator Bate, which urged passage of the Knox bill to admit New Mexico and Arizona as states along with Oklahoma. The report argued, Larson noted, that Congress, “had no right to inquire into the
character of a population if its numbers were sufficient to meet the requirements of the past."^{25} Despite their efforts, Beveridge and his allies were able to forestall New Mexico and Arizona’s admission using the clearly biased information in his report.

**Separation Anxiety – Creating Arizona Territory**

New Mexico Territory in the 1850s spanned an area approximately the same size as the recently annexed state of Texas. In addition, it had two regions of population which were separated by hundreds of miles and multiple mountain ranges and deserts. Also, the small population of the western region was made up of more settlers and fewer former Mexican residents than the eastern section. Any government operating over the entire territory would clearly be centered in one of the larger towns in the eastern half, such as Taos or Santa Fe, leaving settlers in the west clearly disconnected from it. It was not surprising, therefore, that there were constant early calls for some sort of division.

By 1860, ten different bills had been introduced in Congress to separate New Mexico in two. The residents took things into their own hands as well, unofficially holding five different elections for delegates during the 1850s who would have represented areas outside of region...
around Santa Fe. Numerous memorials from residents also requested such a separation. What was most interesting about these requests, however, was their calls for an east-west border between the divided portions of the territory. In Figure 7.2, the 1860 section (far left) shows what this division would have looked like at the time. The light blue line shows the boundary of the proposed southern Arizona Territory, which would have claimed Tucson as its capital. The yellow border around the northern region, demarcated the northern New Mexico Territory, which would retain Santa Fe as a capital.

The Civil War disrupted these efforts, which had been getting more interest in Congress. It did, however, lead to an unsanctioned division of the territory. While the area was unsuitable for slavery, it was a potential ally for the Confederate States, which made a significant push into the Southwest. The Confederate Army got as far as Santa Fe before being turned away, but for a period of about two years, the Confederacy occupied and loosely controlled the southern section of Arizona Territory (the middle of Figure 7.2) Once Union forces were able to control this region again, Congress, now reduced in size by the secession of Southern states, was finally able to act upon the division of New Mexico Territory. Representative James Ashley of Ohio, and the chairman of the Committee on Territories, pushed through a bill in early 1863 that was signed by President Lincoln in late February. It rejected the calls for an east-west boundary and instead split the territory in half by a north-south border (the far right of Map 6.2).

Apparently, the primary reason for this was “the belief that there were rich deposits of gold and silver in the territory which would be added to the Union’s war chest.” A separation would allow for federal officials to exercise tighter control, especially over the less populated Arizona Territory where much of the resource wealth was assumed to be. The Organic Act for Arizona Territory reflected this in that it was different from other organic acts passed in the
decades since Wisconsin Territory. It was much shorter, having only three sections, two of which
only dealt with boundaries and bans slavery. The final section organized the government, but in
most ways simply transplanted the existing structure of New Mexico Territory, including its
laws, directly to Arizona Territory. In other words, it was clearly not because there was concern
about the various sections of the original New Mexico Territory needing different laws or
political situations. Congress was interested in national concerns, not local.

Claiming Lands – Spanish, Mexican, Indian, and American

One of the lasting legacies of the fact that New Mexico changed hands from Spanish to
Mexican to American rule over the course of three decades was a vast network of competing
land claims. Added to this web were the traditional lands of the various Indian Tribes that had
lived in the region for centuries. This lead to a situation whereby there were three major types of
land claims: first to communities, second to individuals, and third to the various Indian
pueblos. The claims overlapped one another and few were clear to the extent, borders, and
ownership due to poor recordkeeping and conflicting sovereignty. Was it the first claim that
mattered most, the one with the best evidence of ownership, or the one with the clearest
authority? Did grants from the Spanish King override grants by the Mexican governor? All of
these questions and more plagued efforts to discern who actually controlled and could use lands.

Owing to the national political climate, Congress also didn’t even appoint a surveyor
general until 1854 to try to sort out the claims. “Over one thousand claims awaited settlement,”
historian Lamar noted, “of which 197 involved large private grants.” Donlon called this “one of
the most thorny and drawn-out problems in the history of the Territory.” The process for
making a claim to the surveyor general, as outlined by Congress, didn’t make resolutions any
easier either. First, individuals had to make a formal application to the surveyor, who would offer their judgment on the claim, then send that on to the Secretary of the Interior, who would examine it and if agreeable forward it to Congress. The problem however, was that “no time limitation was set for presenting applications and some appeals dragged on for decades. As of 1889, only 165 cases out of hundreds in existence and involving many tracts of land, large and small, and allegedly owned by parties at the time of annexation, had been acted upon by Congress.” Congress could take direct action on the claims as well, but this was a rare action, only available to the most influential ownership claims.

The first major action on this front occurred in mid-1860, when the 36th Congress assented to a number of private land claims. The bill referred back to the evidence provided by both the Surveyor General and the Secretary of the Interior, showing that the opinions of these two figures mattered greatly in the eventual positive granting of land claims on the national stage. Additionally, the bill opened up legal recourse for a couple of individual land claims but put additional restrictions on these too. Clearly, Congress was willing to make decisions on land claims, but only after a lengthy process had shown that evidence was strong enough to legitimize the claims.

Despite these efforts, it was also clear that land claims were not being dealt with efficiently. Out of more than a 1,000 filed by 1880, an Interior Department report noted that only about 150 had been sent on to Congress for action. During this period of competing land claims, the United States Congress had designated that no public sales of these lands could be undertaken, which “was the equivalent of denying the existence of a public domain in New Mexico...” As had been the case since opening up the Old Northwest in the late 1700s, influential land speculators were the most well positioned to win these battles. The most
significant of these battles was over what became known as the Maxwell Land Grant. Any study of New Mexico territory touches upon this episode, which involved all of the national branches of the United States government before it was resolved. Maxwell was an extremely well-liked and shrewd businessman who paid for a government survey of his claim in 1869 and found that it was roughly 97,000 acres\textsuperscript{38}.

Maxwell then sold this claim to a group of buyers including prominent members of the Santa Fe Rings, including the Territorial Governor William Pile, Jerome Chafee, a major player in Colorado Territory, and four other men who would be either governors or delegates from New Mexico over its history. These new owners, understanding the ambiguity of the claim, despite the original survey, and with their well-considered influence in the region and nationally, sought a more favorable approximation, hiring the Deputy Surveyor of New Mexico to outline the claim as a 2 million acre plot, more than 20 times the original claim\textsuperscript{39}. This new report was filed in Washington, and in the meantime the larger plot was sold to an English group. In 1871, however, the Columbus Delano, the Secretary of the Interior ruled the grant was only 97,000 acres, as originally surveyed.

The original deal began to fall apart and while the company which sold the lands to English buyers went bankrupt, there were still questions of the size of the land claim, which after all was in the midst of the more settled region of the territory. To this end, through clearly corrupt bargains, members of the Santa Fe Ring were able to shift political responsibility to the Land Commissioner rather than the Secretary of the Interior. After a favorable new survey, which lasted only 22 days, claimed the full 2 million acres, the Land Commissioner issued patents for just over 1.7 million acres of land\textsuperscript{40}. In 1887 the Supreme Court consented to these patents, pointing to the language of the 1860 Act discussed above. The decision argued that, “In
this case, the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill…”“ Having gone through the federal courts, being shot down by the executive agencies responsible, and forcing Congressional action, the scheme finally won out in the end. The 1.7 million acres were the equivalent of about 2,600 square miles, or roughly the size of the state of Delaware.

By the time the 1880s came to a close, however, so few of the land claims had been concluded that public demands were mounting for some sort of official settlement. At that point it was clear that stability was more important than an elongated bureaucratic process in order to figure out which claims were strongest. In 1891, therefore, Congress finally established a special, temporary federal court to deal specifically with existing land claims in New Mexico, Arizona, and Colorado. This was a tremendous boon to settlers because the previous “system was very unsatisfactory, not being judicial, always ex parte and sometimes unjust, Congress acting more through political influences, confirming some grants which never should have been acted upon favorably and declining to confirm others where affirmative action should have been taken.”“ While this new court was able to work through these competing claims much more efficiently than the previous system had done, Congress had to extend the time limits on the operation several times, and they didn’t finish operation until mid-1904. As Donlon notes, “In the 301 cases that came before it, the Court passed judgment on title to 34,653,340 acres. More than two-thirds of the petitions presented were totally rejected while many of those confirmed were greatly reduced in size.”“ Twitchell writes that of those claimants, only just over 2 million acres were confirmed, the remainder rejected. This was largely due to the strict guidelines from Congress, “which required proof of strict legal authority in the granting powers, and a rigid compliance with law in the form and manner of its execution.”“ Many claims were rejected because the
original authority granting them was considered illegitimate. This process had numerous effects, but none greater than finally resolving the long-standing conflicts over private land ownership. It also meant that many areas of New Mexico which had been claimed by private individuals or groups would finally be publicly available. While even today New Mexico, similar to many other Mountain West states, has enormous sections of protected public lands, the settlement of land claims also coincided with a period of rapid settlement of the territory given the recent connections to the national railroad system and the growth of the cattle industry.

In the late 1890s, there was also an attempt on the part of New Mexican officials to ensure that whenever they did finally achieve admission to the Union, they would be granted significant public lands from the federal government for state government usage. This was primarily the effort of Delegate Harvey Fergusson, who failed in achieving statehood but did succeed on two important ventures. First he was able to secure the permanent location of the territorial capitol in Santa Fe, thereby all but guaranteeing that upon admission it would remain there. Additionally, he achieved what became known as the Fergusson Act, a land law affecting grants from the federal government. What it called for originally was the use of four sections in each township for educational purposes as well as an overall grant of 100,000 acres of land, across the territory, for public use. Congress was willing to work with this proposal, but the Republican-controlled legislature was not going to give the Democratic delegate everything. The Committee on Public Lands amended the bill to include only two sections of each township for education and a grant of 50,000 additional acres. The debate over the bill, however, did succeed in embarrassing the territory, as it gave Congressmen a national stage to highlight the terrible public education system which New Mexico had at that point. After all, if they were
asking for more land for public education, wouldn’t it be worthwhile for them to show they can even operate a territorial system at all first?

**Political Tensions in the Territory**

At the national level there were recurrent concerns over the influence of Spanish traditions such as the reliance on the Catholic Church, the use of peonage, and of course the Spanish language itself. On a local level, however conflict reflected more immediate tensions. Similar to other territories at that time and throughout American history, and not unlike the practice in many states, the post-Civil War continental expansion period saw the growth of political factions within New Mexico Territory. Describing western territories in general, Kenneth Owens described the early stages of this as chaotic factionalism, which would morph over time into a more stable and orderly political system with enduring factions. By the 1860s in New Mexico, this process created groups of businessmen and other local leaders, since with political control “went authority over natural resources and economic privileges that could entail magnificent fortunes for the fortunate, or the shrewd.”

The conflicts produced by clashes between these factions would at times involve Congressional or presidential actions.

The most notorious of these groups was labeled the Santa Fe Ring and operated for much of the latter decades of the 19th-century. The group was made up of many of the most powerful financial and political leaders in New Mexico, including almost all of the territorial governors, delegates, and secretaries. As Donlon writes, “The Santa Fe Ring apparently was neither a club with limited membership nor even a deliberately organized clique, but simply a group of men …who, possessing similar and sympathetic convictions with regard to territorial operation as well as exploitation, were determined to have things done their way.” They were also largely
born in the Eastern states, having arrived on the frontier in search of opportunities in business and politics. Among the members, many were Republicans, but the issues of the national parties were different from many of the concerns in the Ring and some of the main members were Democrats. Governor L. B. Prince remarked that “A well formed Ring embraces members of both parties and the New Mexican one is remarkably well formed.” Their main goal was to achieve statehood, because through this land, as the territory’s primary commodity, would become far more valuable, and there would be numerous political spoils, such as positions in the Senate and House.

This group was influential in the aforementioned Maxwell Land Grant issue, but it was also involved in many of the other major land claims in the territory. Their ability to hire surveyors and able lawyers gave them an edge in dealing with the federal courts and bureaucrats. Their connections directly to appointed and elected officials (who at times were mostly members of the Ring) aided them as well. Lamar described the Ring as “a sophisticated combination of the eighteenth-century speculator and the nineteenth-century businessman.” While powerful, the Ring did not engender sympathy in most of their dealings. For example, the Maxwell Land Grant covered lands which hundreds of settlers, along with some Indians, had settled. When the Maxwell Land Company’s agents, with the legal authority of the United States courts, evicted these settlers for trespassing in the mid-1870s, violent conflict was the ensuing response. Beginning with the murder of a priest who had threatened to expose a corrupt judge by thugs hired by the Santa Fe Ring, what became known as the Colfax County War broke out. Leading to the territorial governor sending troops from Fort Union in order to quell the rioting, the incident demonstrated the limits of the power of the Ring. It also, as Lamar argues, demonstrated, “a fight between men who held an American or public domain concept of the frontier and an
organization which insisted that the region, because of its Spanish-Mexican origins, was private property.”

Before the Colfax County War was brought to a close, however, another conflict erupted in the newly formed Lincoln County, which would again implicate the Santa Fe Ring. The incident began over a series of events that included embezzlement of a life insurance policy and cattle stealing, but really turned on the murder of an Englishman, John Tunstall, who had refused to cooperate with legal action on his property due to debts from the original deceased whose life insurance policy had sparked the entire conflict. This murder escalated armed engagements in the area to the point that the governor ordered disarmament and sent troops into the county. While the battle effectively ended when a posse, “aided by…soldiers from Fort Stanton,” was able to kill McSween, who had embezzled the life insurance money in the first place, it was revealed that the original murder of Tunstall had been ordered by a prominent member of the Santa Fe Ring. In a subsequent legal investigation by a special agent appointed by President Hayes, no member of the Ring was prosecuted, but Governor Axtell and the United States Attorney Catron, were forced from office.

What these episodes showed was the control of a small group of individuals over the internal affairs of the territory, and the limited ability of others, even the president, to prosecute them for their actions. The Ring controlled New Mexico from approximately 1860 until the mid-1880s. The dominance of that group, despite their efforts to achieve statehood, also held the territory back in many ways. The conflicts they precipitated only enhanced the Eastern perceptions of lawless violence in the Western frontier regions, which at least for short periods of time, were all too accurate in New Mexico. A New York Times article in the midst of the Lincoln County War noted that, “Most of the Americans [in New Mexico] are politicians of the rudest
stamp, enforcing opinions with arguments which are not tolerated in peacable communities. But the bulk of the people is made up of Mexicans and other mixed races...[who] do not speak or write the English language, and it has been found necessary to their enlightenment that the laws should be printed in Spanish in the local papers.”\(^{56}\) They also were slow in realizing that their control was holding back the territory in terms of economic growth and settlement. By the 1880s, Lamar argues that, “New Mexico was still dramatically behind the rest of the country in income, education, population, economic opportunity, and political standards.”\(^{57}\) Adding to this that many people in the territory were Hispanic, Catholic, and knew little or no English, it was not surprising that statehood efforts, as outlined below, were unsuccessful.

**Congressional Control Tightens**

While relatively subtle in its visibility, one of the major shifts during the period under which New Mexico Territory existed is the ways in which Congress tightened its grip on the actions of territorial governments, while seemingly giving them more autonomy to act. The key was that the autonomy came at the expense of authority, so that while the territories could do more on their own without Congressional oversight, they had less space within which they were empowered to act.

A major concern continued to be the frequent absences of territorial officials who had been appointed by the national government. In amending the appropriation act of 1851, a provision was enacted, “That the salaries...of the officers of any of the Territories of the United States shall not be paid in any case where any of the said officers shall absent themselves from said Territories and their official duties for a period of time greater than sixty days.”\(^{58}\) In the Senate debate an attempt was made to strike out the provision. Senator Walker of Wisconsin,
who had lived under territorial government worried that striking the provision would leave little ability to punish absentee officials. “I know the inconvenience of secretaries, judges, clerk, and other officers absenting themselves; so that when a writ of habeas corpus was applied for it could not be had, and when the administration of justice was required in an emergency there was nobody there to administer it,” Walker explained. Senator Badger of North Carolina, who had suggested striking the clause, argued that it was too harsh to simply have 60 days be the cutoff for forfeiture of salary. Clearly the issue had some division in the Senate, as it was narrowly defeated in a 17-17 vote.

The following year a similar provision came up for vigorous debate once again. In this case, it was brought on by specific instances of defiance by Brigham Young and other officials in Utah Territory. This lead to a great deal of infighting among members of the House and Senate since Mormonism, even by the 1850s was a particularly contentious subject nationally. Amongst this discussion, however, were some more general concerns regarding payment to territorial officials who by being absent shirked their appointed duties for which they were not only legally responsible, but were being paid to do. A particular concern arose regarding the process in which officers were paid, and therefore the practicality of forfeiting their salaries upon elongated absences. Representative Phelps argued that since salaries were paid quarterly and after one quarter all vouchers were prepared, the only way to practically punish, by forfeiture of salary, would be to simply discontinue payments as soon as an officer was absent for more than sixty days. Additionally, he makes the point that while much of the discussion is geared around the absence of Utah Territory officials, Grafton Baker, chief justice of New Mexico Territory, who had been residing in Washington, D.C. for months, even while “the people of Santa Fe at that
time believed that an insurrection was about to take place…that upon a particular day, an attack was to be made upon the ‘Exchange,’ in the city…”

The amendment at stake would also allow the president, in a case where a territorial official were absent for sixty or more days, to certify that there was some excusable cause for the absence. Representative Richardson spoke to the necessity of this when he argued that, “by lodging the power in the hands of the Executive you would have more uniformity in the decisions than you would have if you left it to Congress to pass bills for the relief of each particular officer who has to leave the Territory…” Representative Phelps also noted that providing power to the president was an effective way of resolving the issue of absentee officials, “Let the Executive do his duty – remove the officer, and appoint in his place some man who is willing to reside at the post assigned to him, and perform the duties of his office.” He worried that it was not right for Congress to “send out broken-down politicians…who have no sympathies with the people of the Territories, and who do not stay there except for the purpose of drawing their salaries.” Eventually, Congress would enact a modified precedent that any officer absent for more than 60 days, whose absence was not certified by the President, would forfeit their salaries during the time they were gone.

Congress also focused efforts on limiting territorial legislatures from overextending themselves and costing the national government money. In 1869 they required that all sessions of territorial assemblies be biennial and in 1873 they limited sessions to 40 days and equalized pay for officers across all territories, although they would revise the session limit to 60 days in 1880. After a contentious election in New Mexico, Congress enacted a specific provision that the 1884 session of the territory’s assembly would only meet for 40 days. Extra sessions of territorial assemblies were also prohibited, as of 1874, unless with prior approval of the president.
Additionally in 1874, territorial secretaries were required to submit estimates of expenses for every year to the Secretary of the Treasury. These examples show that Congress desired more control even as it regularized territorial governance and used its authority to deny territorial actions contrary to its will.

Growing Importance of Political Parties

Prior to the Civil War, slavery had been the defining feature of admission to statehood for U.S. territories. The practice of admitting a free state and a slave state simultaneously was meant to ensure the continuation of a Senate which would fight to uphold slavery as legal and balance with the House which as the North grew ever more populous became more and more anti-slavery. Following the conclusion of the war and the ratification of the 13th and 14th Amendments, however, the politics over statehood admissions turned toward a partisan divide. Instead of free versus slave states, the Democrats and Republicans sought a balance in representation, especially in the Senate where Democrats were most likely to maintain some power during the late 19th-century.

This concern was clearly at stake in the numerous discussions regarding admitting New Mexico as a state. In 1889, where New Mexico would again be thwarted in its efforts, Representative Cox (R-NY), of the House Committee on Territories, argued that the territory would be solidly Republican. He notes that the victory of, “Mr. JOSEPH – the Delegate – in 1884, was owing to a split in the Republican party. But the two Republican candidates had a majority over Mr. JOSEPH of 2,851. The same vigilant gentleman was elected in 1886 owing to a bad nomination of the Republicans.” In addition, within the territorial legislature, there were currently two-third majorities of Republicans.
Representation Struble, also on the Committee, praised these words from his colleagues and noted that “Here is an opportunity afforded both sides to rise above questions of party politics and reach out a hand towards these great Territories and welcome them into the Union. Partisan consideration aside, patriotism to the front!”\(^{64}\) Despite his enthusiasm, partisan politics were at the heart of decisions during the post-bellum period when it came to state admissions.

Statehood – Failure and Success

A person born in Santa Fe just after Kearney promulgated his code of territorial government would have been older than 60, if still alive, when New Mexico finally gained admission as a state. Without a doubt there were thousands of persons who lived their entire existence as residents of an American territory. In addition, the world modernized during this period. The 1850s were a time of impeding national conflict over slavery and the early rise of railroads. By the 1910s Americans were driving automobiles, about to face a terrible war of previously inconceivable proportions, and the industrial revolution had shifted labor from predominantly agricultural to wage-based. Thus, in many ways, New Mexico Territory grew up alongside the U.S. as a whole.

Various leaders of the territory, as well as national political actors, pushed for statehood numerous times during these decades. The failure of New Mexico to gain admission was a combination of a number of factors, including the impact of political party, the contours of slavery, racism, sectarianism, and the perceived “backwardness” of the geographical and historical region. Any attempt to outline in significant detail, all of these efforts could fill hundreds of pages (as Larson’s *New Mexico’s Quest for Statehood* attests to) so this section will instead highlight, briefly, a few of the more illuminating episodes in this saga.
Stephen Elkins, the territorial delegate, introduced a bill in the House in 1874 to allow New Mexicans to form a constitution. On May 21 of that year, he gave a lengthy speech on the merits of statehood. To begin his arguments, he demonstrates that both historical tradition and the Treaty of Guadalupe Hidalgo guaranteed statehood to New Mexico. The population of the territory, estimated at that time to be at least 135,000 was continuing to grow, with “stock-raising and farming” vital parts of the economy, and “owing to the fact that for the last three years New Mexico has been free from Indian hostilities, for which reason also, since 1870, in those portions large mining districts have been opened and occupied.”

Elkins points out that 15 former territories had been admitted with less population in the past, including Nebraska and Nevada in the past decade, which had barely 100,000 people combined upon admission.

As to the understandings behind the Treaty, Elkins points to both the language of the ratified document, whereby it guarantees citizenship in the United States to all those who don’t actively retain Mexican citizenship, as well as the words of President Taylor (following the desires of President Polk) that New Mexicans promptly “form a plan of a State constitution and submit the same to Congress with a prayer for admission…” While he does acknowledge that the president (in addition to promises made by General Kearney) do not guarantee actions by the legislature, his point is that actions taken by executive officials reflected their belief that New Mexicans were to be granted statehood after only a brief territorial period.

He notes that New Mexico is rich in resources, a beautiful place, where stock-raising, wheat, mineral resources abound. While clearly overzealous in his descriptions here, Elkins is reflecting the recent growth in the territory of industry, especially mining. He also notes, likely more realistically, that once the railroads are extended in to the territory extracting mineral resources will explode as it becomes much easier to transport heavy coal and iron across the
country. There were five lines within 90 miles of the New Mexico border, two of which were planned to have transcontinental routes once completed\textsuperscript{67}.

Elkins also delved into the more abstract, but just as powerful reasons in favor of admission. “[T]he interests of a Territory to the General Government are necessarily secondary,” he argued. “The Territories have no vote and no power, and are therefore not heard. The long arm of the Government cannot reach to distant and remote sections and jealously guard the rights of the people anticipate their wants, and build up their interests.”\textsuperscript{68} While these complaints were nothing new, the emphasis by the 1870s would be even more powerful. New Mexico was a territory, stuffed in the remotest corner of the contiguous U.S., with a largely “foreign” population, and still unconnected to the rest of the country by railroad. While it might have significant resources, other areas of the country had more and were already served by railroads. The national government was growing in power and size, dealing with the aftermath of the Civil War. New Mexico was hardly a prominent concern for political leaders of the U.S. states. Elkins’ plea, therefore, was for his colleagues in the House and the Senate to give to New Mexicans the authority to make their own government because it was hardly important to the national government.

Added to this Elkins described the territorial system of governance as anathema to American ideals, particularly following a war fought to reunite the country and free millions of slaves. He stated,

“[T]he keeping and holding large bodies of people in remote localities in territorial bondage and subjection; governing them by laws they have no part in enacting; taxing them without representation; denying them the right to elect their own officers; appointing to the highest places among them entire strangers who have no interest in the country, who sometimes prove to be mere political adventurers, is not only unjust and unRepublican, but hostile to our ideas of true government.”\textsuperscript{69}
Even the elected officials got slammed by Elkins who argued that the legislature “is a farce, a political hybrid, without sovereignty…” and the delegate, “only a beggar at the doors of the Executive and Congress, without power.” Despite this inferior position, Elkins opined, New Mexico showed its loyalty during the Civil War, regardless of the ethnicity of the territorial resident.

Reactions came swiftly against Elkins’ pleas. Representative Potter (D-NY) questioned what the real population of New Mexico was by refuting the growth that Elkins had supposed was going on. The 1870 census, after all, had shown only about 91,000 people in the territory, while Elkins claimed there were nearly 135,000 just four years later? In addition, he complained of the common use of Spanish in the assembly and court system, beyond the fact that many residents didn’t know English at all. Representative Hoar of Massachusetts also voiced concerns regarding the public school system, which had only been created in 1871. Despite these reservations, the House passed the bill 160-54 (with 76 abstentions).

A few months later, the House also passed a statehood bill for Colorado, meaning that both of the territories were awaiting action in the Senate at the same time. Finally in February of 1875, just one week before adjourning that session of Congress, the Senate took up territorial issues and after amending it, passed the Colorado bill 42-12. Although there was clearly less enthusiasm for the New Mexico version, after applying the same amendments, it also passed 32-11. During the debate, Senator Thurman argued that if Colorado were agreed to, New Mexico should be to, as its claims were actually stronger because they “have the additional sanction of the treaty we made with Mexico…and also the fact that New Mexico has more population than has Colorado.” While these bills were being debated, Eastern sentiment was expressed through major newspapers, much of it derogatory. The New York Times, in March of 1875 wrote
concerning New Mexico, “That territory is thinly populated, the towns scattered over its vast area are few and ill-regulated, and a large part of the people is ignorant and utterly destitute of enterprise and public spirit.”

These amended bills were then sent back to the House for approval. The Republicans, who were pushing for these admissions, were going to lose their majority in the next session, so they were rushing to approve the bills. Opposition from the Democratic minority over civil rights bills at the same time forced the Republicans to lay the bills “upon the speaker’s table” instead of sending them to a committee first. The problem was that removing a bill from the Speaker’s desk to the floor required a two-thirds vote, which Republicans did not have without some Democratic support. A first effort barely failed, gaining only a 164-84 edge (66%). A resolution was offered to change the rules so that only a majority was required to remove the bills, but this was also defeated. Finally, Representative Roberts (R-NY) used the tactic of suspending the rules altogether to allow that bills could be removed one at a time rather than as a group, which was finally agreed to. This, however, endangered New Mexico’s chances since it would be up for removal separately and after Colorado, which clearly had more overall support.

Without significant discussion, the two bills were brought up to be removed from the Speaker’s table. First up was the Colorado statehood bill, which gained 164 votes for, 76 against, and 48 abstentions. With the abstentions not counting toward the final necessary two-thirds vote, Coloradoans had just beaten their final challenge to statehood with 68.3% of a vote. To pass, it would only require the Republican majority to push it through. Then it was New Mexico’s turn. While the roll call appeared nearly identical, just a few changes in votes would doom the southwestern territory. Unfortunately, this is exactly what occurred and when the tallying was done, there were 154 votes for, 87 against, and 47 abstentions, leaving the territory
seven votes shy of the two-thirds it needed at 63.9% of the vote\textsuperscript{78}. Despite the disappointment, territorial newspapers did show appreciation for the efforts of Delegate Elkins, one claiming that his efforts meant that, “false impression[s] relative to the territory have been corrected and the croakings and maligning which itinerating bohemians have delighted to pile on the territory have been effectually stopped among all the leading and respectable newspapers of the land.”\textsuperscript{79}

The problem had been a lack of Democratic support for statehood, despite some strong local support in New Mexico. Only nine Democrats voted to remove the New Mexico bill from the Speaker’s table, not enough to ensure a two-thirds majority\textsuperscript{80}. To worsen the situation, the three Electoral College votes granted to Colorado upon admission were the difference in the incredibly competitive 1876 presidential election. Republican Rutherford Hayes won the Electoral College 185-184, leaving Democrats to be wary of allowing any potentially Republican-leaning territories to be admitted for the foreseeable future.

The next significant attempt at statehood came over a decade later in spring of 1888, when Representative Spring, the chairman of the House Committee on the Territories introduced a strong omnibus bill calling for admission for Dakota, Montana, Washington, and New Mexico\textsuperscript{81}. There was greater enthusiasm at this point for the prospects of New Mexico, as the Democratic Party had been more competitive in the previous election cycles. Reports accompanied the Springer bill, and the minority report’s sections on New Mexico “were biased, unkind, and deeply cutting.”\textsuperscript{82} There was, the report argued, a distinct lack of interest in statehood from New Mexicans, who weren’t ready to assume the responsibility anyway. The arguments hinted at the racism that had tainted relations between Congress and the predominately Hispanic and Catholic residents of New Mexico.
The House passed the Springer bill in January of 1889, nearly a year after it had been introduced, but in the Senate Republicans dropped New Mexico, and only New Mexico, from the omnibus bill. A conference committee was therefore the only hope for statehood, but upon reconsideration the House voted 134-105 with 84 abstentions to allow the amended bill to move forward. The primary reason given during the debates appears to have been that “it might impair the chances of the other territories for admittance.” Representative Spinola and McAdoo called out their colleagues for the move, complaining that it was poor statesmanship for opposing admission because of the Hispanic background and religious traditions of territorial residents.

Not helping the cause were contradictory memorials sent by some influential members of the New Mexican elite. In one example, a small group of Albuquerque businessmen wrote Congress pleading against admission. They complained of the unfamiliarity of English and corrupt, greedy politicians. “Before agitating for statehood,” Donlon argued, “the Territory, in the opinion of this group, should settle the anomalous condition of land titles, require the use of English in all public transactions as well as in all schools, and develop a sound political and economic structure. Only then would the citizens be ready for statehood.”

In February of 1889, President Cleveland made Washington, Montana, North and South Dakota equal members of the Union. Not to be finished, Representative Springer introduced another omnibus bill in late 1889 which called for the admission of Arizona, Idaho, New Mexico, and Wyoming, which would balance Democratic and Republican-leaning territories. The Democrats would again lose that battle, leaving this time both Arizona and New Mexico out of statehood in the Republican dominated late 1880’s.

By the 1890s, it appeared that New Mexico’s efforts were gaining traction. There were less other territories to contend with for admission, as Dakota (split into North and South),
Washington, Idaho, Montana, and Wyoming had all recently been admitted. In fact, between 1891 and 1898, the only territories left were New Mexico, Arizona, and Oklahoma. Alaska was considered a “district” until 1912. Other factors also enhanced the chances of New Mexico’s admission. The railroad finally reached the population centers of the territory in the late 1870’s. Up until that point, the only route into the region was along the long, winding, Santa Fe Trail. The railroad opened up access to Eastern markets and made promotion of the territory easier. In a 1967 dissertation on the topic, a student at the University of New Mexico succinctly noted that “Construction of the Southern Pacific and the Atchison, Topeka, and Santa Fe lines introduced a large number of energetic leaders, along with their boisterous and lawless workers, eager to build towns, exploit mineral deposits, and, in general, develop the industrial and agricultural potential of the area.”

With all of these advantages, it still took until 1912 for New Mexico to finally gain admission. For a territory formed in 1850, this was an incredibly long journey, complete with political, social, economic, and military challenges. Opportunities existed, but the conditions were simply not aligned in New Mexico’s favor until the existence of continental territories stuck in the middle of long-established states was an embarrassing reminder of American imperialism. Starting with Minnesota, fourteen states created from territories were admitted while New Mexico waited. There is an historical tragedy that the state with the oldest settlement in the contiguous United States was the last contiguous place to be allowed to join. The long journey to statehood is perhaps the clearest indication before the acquisition of Puerto Rico that America was truly an empire.

1 Lamar, *The Far Southwest*, 57-58.
3 Lamar, The Far Southwest, 63.
4 Larson, New Mexico’s Quest for Statehood, 27.
5 Statutes at Large, 31st Congress, 1st Session, begins on page 447.
6 Statutes at Large, 31st Congress, 1st Session, 449.
7 Larson, New Mexico’s Quest for Statehood, 78.
8 Larson, New Mexico’s Quest for Statehood, 50.
9 Congressional Globe, 31st Congress, 1st Session, 945.
10 Congressional Globe, 31st Congress, 1st Session, 449.
11 Larson, New Mexico’s Quest for Statehood, 78.
12 Larson, New Mexico’s Quest for Statehood, 50.
15 Congressional Globe, 33rd Congress, 1st Session, 492.
16 HR 263, 32nd Congress, 1st Session.
21 Larson, New Mexico’s Quest for Statehood, 216.
22 Larson, New Mexico’s Quest for Statehood, 216.
23 Larson, New Mexico’s Quest for Statehood, 216.
24 Larson, New Mexico’s Quest for Statehood, 216.
25 Larson, New Mexico’s Quest for Statehood, 216.
26 Larson, New Mexico’s Quest for Statehood, 216.
27 Larson, New Mexico’s Quest for Statehood, 216.
28 Larson, New Mexico’s Quest for Statehood, 216.
30 Lamar, The Far Southwest, 123.
31 Lamar, The Far Southwest, 123.
32 Donlon, Lebaron Bradford Prince, 263.
33 Donlon, Lebaron Bradford Prince, 264.
35 Statutes at Large, 36th Congress, 1st Session, 72.
37 Lamar, The Far Southwest, 124.
38 Lamar, The Far Southwest, 125.
39 Lamar, The Far Southwest, 126.
40 Lamar, The Far Southwest, 126.
41 United States v. Maxwell Land Grant Company, 1877, 121 U.S. 325.
43 Donlon, Lebaron Bradford Prince, 269.
45 Larson, New Mexico’s Quest for Statehood, 193.
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*Congressional Globe*, 43rd Congress, 1st Session, 296. The quotation here is of President Taylor, made during the speech of Elkins.

*Congressional Globe*, 43rd Congress, 1st Session, 296.

*Congressional Globe*, 43rd Congress, 1st Session, 296.

*Congressional Globe*, 43rd Congress, 1st Session, 296.

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*The New York Times*, March 5, 1875, as quoted in Larson, 123.

Larson, *New Mexico’s Quest for Statehood*, 126-127.

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Chapter 8 – “The Last American Frontier” – Alaska Territory

A Second Era Territory trapped in a Third Era Mentality

Alaska was purchased during the aftermath of the Civil War, had Congressional attention paid to it only after a significant gold rush forced their hand, at the same time that the Spanish-American War occurred, and finally achieved an elected territorial legislature once all of the remaining contiguous territories had been admitted. At the same time, it didn’t gain statehood until 1959, and if there hadn’t been Hawaii there to balance its admission, it might still be a territory. The current study has argued that territorial policy can be broken into four eras. Alaska’s history however places it directly across two of these eras, the continental expansion and the insular expansions after the Spanish-American War. Where then, should Alaska be placed and, perhaps more importantly, why?

The arguments for placing it in the Continental Empire era (1850-1912) are numerous. First, it was acquired in 1867, during a period of continental expansion that had over the previous two decades resulted in the near doubling of the size of the United States’ holdings. It was a post-slavery acquisition as well, meaning that like the territories of the far west, it would not face that issue either in its creation or admission as a state. While there were some discussions about investigating the possibility of purchasing islands either in the Pacific Ocean or Caribbean during the 1860s, this was mostly swept aside at the time, indicating that perhaps because Alaska was at least connected to the North American continent it was different. Also, while most of the residents of Alaska until World War II, were Native Americans and Inuit, the population that was the primary focus of government were nearly all ethnically European or Russian.
Despite these reasons, this study argues that it makes more sense to include Alaska, unique as it was, in the Insular Empire (1898-1959). A simple reason could be given that Alaska was joined with Hawaii in admission, which was a possession not controlled directly by the United States government until 1900. Yet, as demonstrated earlier in this chapter, Alaska also was not given a proper territorial government until 1912, meaning that it didn’t overlap with its continental, but non-contiguous territorial predecessors. Before that Alaska had been described as either a district or department, largely because it contained no legislature of its own. Certainly, it would make no sense to consider Alaska a territory at all until 1884 and even then the structure of government was distinct from that which was found in New Mexico, Arizona, or the other territories of that time. Perhaps most importantly, however, for placing Alaska in the third era, along with places like Guam and Puerto Rico, was that it was treated as different, as inferior, to previous territories. Nugent argues that upon its purchase from Russia, “no one claimed publicly that Alaska would ever become a state…” and it was not a prominent concern on a national level until well into the 20th-century. In this sense, it was different even from New Mexico which had the wrong type of people, customs, and institutions, and was still considered an apparent candidate for statehood. Clearly the fact that Alaska was separated from the rest of the United States, across the sea or 500 miles of Canada, played a definitive role in enough Congressional members’ minds to keep it from statehood during the period when it was slowly, but surely, admitting Utah, Idaho, Washington, and other western territories with few people and largely arid mountainous lands.

While similar arguments were made in debates on the House and Senate floor regarding the suitability of statehood for places like Wyoming or New Mexico and Alaska, there was a palpable extra consideration there. There was an assumption, for the most part, that New
Mexicans just weren’t ready yet. They didn’t know English well enough, the schools were poor, or the Catholic Church held too much influence. Yet, there was a sense that eventually even the most hostile opposition would have to concede that New Mexico was ready for statehood. In the case of Alaska, however, the discussions took place, but did not have that same impetus driving them. It is easy today to say that statehood was inevitable, since Alaska achieved it, but it’s not clear that was the case for much of its territorial existence, and certainly not until it had been under U.S. control for well over 50 years.

Changing Territorial Concerns

Alaska was initially purchased for its potential use as a military base and as a show of good faith to Russia of American foreign policy. Its population, which until after World War II was incredibly sparse and largely non-European in ancestry, was basically a non-concern for lawmakers located thousands of miles away in Washington, D.C. The indigenous populations were usually ignored in policy, if not they were treated paternalistically. While Alaska was purchased just after the Civil War, it took decades before the United States provided the residents with any sort of accountable government, and this only occurred after a rush of new settlers during the gold rushes near the turn of the 20th-century. The history of the territory reflects the shifting concerns over territorial policy during the third period, following the completion of the creation of the continental United States. The targets of policy, namely indigenous and the few whites employed in the territory were politically weak. Unlike in New Mexico, these residents were not seen negatively, but were instead simply not seen at all.

The primary purpose of Alaska was to hold a military position closer to the central powers of East Asia than could be found in the continental United States. Hawaii’s permanent
acquisition in 1898, along with the Philippines, Guam, and American Samoa, expanded this reach much further, but for three decades, Alaska was the closest link from Asia to the United States. This focus on national security demonstrated the shift in territorial policy from a desire for expansion to that of greater protection. Clearly, national security was important in earlier cases of territorial politics, particularly acquisition decisions, but Alaska was the first clear case of acquisition almost solely for non-domestic concerns.

This chapter focuses on the struggles that Alaskans faced in convincing the United States Congress that they needed and were worthy of territorial governance. As Alaska became more important for both military actions in the Pacific theater during World War II and for industry upon the discovery of vast oil deposits and other resources, there was a contentious struggle for building infrastructure that paralleled the territorial projects of previous continental territories, but differed in important ways as well. Alaska’s geographical location along with its sparsely situated and mostly politically weak residents provided Congress with little incentive to focus on the territory. There was also a slow, but growing recognition of political rights as the 20th-century passed on, reflecting the incremental movement toward greater civil protections in American society. These various mechanisms of change were especially important during the final four decades of the territory’s existence and can demonstrate how Congressional policy had shifted to take in to account the post continental expansion period’s goals.

In 1954, nearing the end of Alaska’s long journey as a territory, Ernest Gruening published his treatise on *The State of Alaska*. It was the end of Gruening’s 14 years as the territorial governor of Alaska. Prior to that, he had served in the Interior Department, as the administrator of the Puerto Rico Reconstruction Administration, and the Alaska International Highway Commission. Gruening would also find himself as one of Alaska’s first two Senators,
where he served until 1969. The State of Alaska was a descriptive narrative of the struggle for relevance of this far northern territory and this was clear in Gruening’s choice for chapter titles, which included “The Era of Total Neglect”, “The Era of Flagrant Neglect”, and “The Era of Indifference and Unconcern”, among others. After purchasing Alaska from Russia in 1867, it had slowly progressed through a number of political statuses, ranging from basic military supervision to a territorial system similar to those in earlier territories. For Gruening, and others looking back on Alaskan history, this process was marked by a Congress and country that didn’t know what to do and didn’t care how to relate to the frigid, vast lands of Alaska.

*Purchasing “Icebergia”*

Given that the Alaskan peninsula was purchased by the United States almost 150 years ago, it is easy to forget that Russia had held it prior to that for well over a century as well. Yet, as Gruening notes, the Russian occupation of that land had very little lasting impact. It was the simple fact that any nation, other than Britain, had come to possess it. “But for Russia,” Gruening points out, “Alaska would today be a province of Canada,” and the United States would be considerably less extensive and contain significantly fewer resources. Despite becoming a possession in the late 1860’s, Alaska’s future was less uncertain than any of the existing contiguous territories. Its distance from the states, the contentious political environment of the Reconstruction Era, and the understanding that settlement on a large scale was not going to occur, led Congress to almost completely ignore the enormous lands it had assumed control over.

On March 30, 1867, the primary architect of the Alaskan purchase, Secretary of State William H. Seward, completed agreements on a treaty with Russia to acquire the vast region. It
called for $7.2 million to purchase Alaska. Congress was set to adjourn later in the day and Seward wanted to push ratification as soon as possible. After persuading the Senate to consider the treaty, in an executive session, there was clear opposition and it was very unlikely that forcing a vote that day would have resulted in its ratification. Instead Senator Sumner, who had been tasked with promoting the treaty, despite some hesitations on his part, referred it to his own Committee on Foreign Relations. Sumner also gave a lengthy speech, during that spring’s executive Senate session, which was closed to the public and press, in favor of the treaty and purchase. It was afterwards published, so that the American people would understand the reasons for the decision.

Nugent notes that Sumner made five arguments for purchasing Alaska. First was the additional access to the Pacific Ocean it would bring, in particular easier commerce with the major Asian trading partners of Japan and China. At this point it was very difficult and dangerous for ships to travel straight across the middle of the Pacific Ocean. During the warmer months, ships would now be able to travel north along the North American coast, refuel in Alaska, and continue their journey along the Asian side of the Pacific Ocean. Harbors in Alaska, “were significantly closer to Asian ports, thanks to the curvature of the earth’s surface, than San Francisco was...” and “By stopping in midvoyage for coal…transpacific vessels could both save time and carry more cargo in their holds.” The second argument was that the purchase was an extension of previous expansions, “The passion for acquisition,” Sumner opined, “which is so strong in the individual, is not less strong in the community.” In just 64 years, America would have grown from occupying only the Eastern seaboard of North America to dominating the central half and spreading thousands of miles with numerous accesses to the Pacific and Atlantic Oceans, along with the Caribbean. The third argument from Sumner fell in line with the concept
of Manifest Destiny that the continent’s monarchs were falling away in the advance of the ideals of republican institutions and democratic virtue.

The final two points in Sumner’s arsenal were much more practical foreign relations concerns. The first of these was that in purchasing Alaska from the Russians, who desired to be rid of possessions on the continent, they would foreclose Britain from controlling it. Ever since the Revolutionary War for Independence, American foreign policy had largely been a cat and mouse game with Britain for dominance over North American resources, one that the United States continued to succeed at. Finally, with Russia’s rise on an international stage, and in return for its support during the Civil War, the Union eagerly anticipated a way to bolster the ties of friendship between Russia and the United States.

For his part, Sumner was somewhat tentative personally about the purchase. He was not an expansionist and was more interested in questions closer to home regarding Reconstruction, but he wrote a friend that, “Abstractly I am against further accessions of territory but this question was so perplexed by considerations of politics and comity and the engagements already entered into by the government, I hesitated to take the responsibility of defeating it.”8 While Seward had hosted Sumner, a few other Senators, and some of his cabinet colleagues at a dinner to discuss the territory, he knew that the primary opposition would be “ignorance about the remote Russian colony and enmity toward Andrew Johnson.”9 The president, who had assumed power upon the assassination of Lincoln, was mired in post-war struggles over Reconstruction with the Radical Republicans who still dominated the U.S. Congress. Facing impeachment for his imprudent politics and frequent vetoes of Reconstruction legislation, anything coming from Johnson’s cabinet was sure to face immediate scorn from some in the legislature.
There was also the press and national opinion to worry about. While a myth exists still today that there was general outrage about the idea of paying millions for a frozen icebox, as Kluger points out, “The immediate reaction by the press to the announcement of the treaty was more one of bewilderment based on ignorance than hostility to the Johnson administration…”\textsuperscript{10} While those who had visited or understood the resources and economic value of Alaska were largely in favor of the purchase, there were some major newspapers that decried the entire idea. The most virulent opposition in the press called the treaty “Seward’s Folly” and coined Alaska as “Icebergia” and other similar names. These reports, Gruening argues, created “the myth which has persisted…that Alaska is a desolate and uninhabitable waste.”\textsuperscript{11}

Less than two weeks after Sumner’s speech, the Senate took a vote on ratification, needing 30 out of the 45 Senators to vote in favor if everyone was present, but with six Senators absent from the chamber on that day, they were able to secure 27 votes, one more than necessary. As with any purchase, however, the ratification of the treaty only signified the transfer was officially sanctioned, which occurred on October 18, 1867. The House still needed to appropriate the money to pay Russia for its cession. Given the concerns of Reconstruction and the impeachment of the President, the purchase of “Icebergia” would have to wait a bit. Despite the treaty being ratified in the early spring of 1867, and its transfer of possession in October of that year, multiple sessions of the 40\textsuperscript{th} Congress went by without any debate.

Prior to late June of 1868, the only action which occurred at all on the front in the House was a resolution introduced by Representative Washburn (R-WI) to oppose any further purchases of territory, although he was careful to note that this would not affect the ratified treaty. Inaction continued however, and even when the House finally took up the bill halfway through 1868, there continued to be strong resistance to it. A lot of this appeared to be directed at the way in
which the treaty was drafted and then ratified, which pinned allegations of “haste, secrecy…and illegality surrounding the negotiation of the treaty…reopening the very points at issue in the impeachment proceedings.”

There were institutional prerogatives at stake as well, since the House had been kept out of the discussions until after the treaty was completed and the Senate ratified it. “They argued, with extensive citations, that a treaty requiring an appropriation should have secured the prior consent of the House…”

The minority report from the House Committee on Foreign Relations did not hold back in disparaging the deal and the lands that came with it, heightening ignorance about the value in their hatred for Johnson. Alaska, it declared, was of no value resource-wise because it was not fit for agriculture, held no valuable minerals, held poor and inaccessible timber supplies, the fur trade was dying, and fisheries were questionable. As Kluger summarizes, “The right ‘to govern a nation [Alaska] of savages in a climate unfit for the habitation of civilized men’ was ‘not worthy of purchase.’ The findings reeked of vengeance.” On the floor, some of the opponents built upon these misconceptions. Representative McCarthy (R-NY), from Syracuse, one of the snowiest and coldest places in the continental United States noted that he had heard reports of the Alaskan soil being frozen a half dozen feet deep or more and sarcastically remarked that the House might soon, “hear that Greenland and Iceland are on the market.”

Representative Loan, a Radical Republican from St. Louis, complained that “the acquisition of this inhospitable and barren waste would never add a dollar to the wealth of our country or furnish any homes to our people.” The venom from these and other comments was poisoning the national perception of a distant land, which despite having a milder winter along its southern coast than much of the northern plains and Rockies, was a relative unknown. It wasn’t difficult for Americans to see where this purchased land was on a world map and guess that it must be barren and worthless.
Yet, despite vigorous opposition, the House was clearly not willing to let its frustration with the President override the practical considerations of approving appropriations for it, which after all, would serve to embarrass the U.S. as a whole for non-payment on an international agreement. The final funding bill passed by an enormous margin of 113 to 43, with 41 of those nay votes coming from Representatives who had voted for Johnson’s impeachment. Following the vote, there were allegations of bribery on the part of the president, his cabinet and Russian officials to ensure enough House support. Edouard de Stoeckl, the Russian diplomat who worked with Seward to draft the initial treaty, was apparently given $200,000 to influence House members. While lobbying was already a well-recognized tradition, the amount of money, the controversy over the treaty, and evidence of wrong-doing all led to speculation that Stoeckl had used at least some of that money as direct bribes. An investigation followed, led by a House Committee on Public Expenditures, but despite its efforts could not find damning proof of bribes being offered or accepted.

Historians even today debate whether any impropriety actually occurred. Kluger remarked about a particularly interesting personal letter from President Johnson, found decades after his death, which implied that he had held a private outing with Seward who told him that much of Stoeckl’s money had been used to bribe House members. Yet, there are numerous reasons to fully doubt the claims, especially since Johnson had motive to sully the reputations of some of his Congressional enemies, who were implicated in that personal letter. Writing in the 1930s, Clark, agreed that officially no evidence existed, but Stoeckl’s behavior made it “certain from the facts that bribery was indulged in…” because upon the Russian diplomats’ return to Russia, “he expressed himself as sick of the corruption of Congressmen and other public men…” Nugent, on the other hand, finds newer historical arguments persuasive, that while
there was some disbursement of money from Stoeckl to other’s these were for legal fees and
other charges\textsuperscript{21}. While not perhaps honest, they were hardly guilty of the charge of bribery.

Regardless of the motives of members of the House of Representatives, their approval of
the money to purchase Alaska from the Russians finally completed the sale officially. Alaska
was an enormous addition of land to the American system. While not quite the size of either the
Louisiana Purchase or additions following the Treaty of Guadalupe Hidalgo, this purchase added
land equivalent to twice the size of Texas (see Figure 8.1).

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Alaska_map_over_US_map.jpg}
\caption{Alaska’s size relative to the “Lower 48”}
\end{figure}

\textit{Neglect – The Other Half of “Seward’s Folly”}

Alaska is perhaps the most unique case of territorial possession in U.S. history. The size
of the region acquired is enormous, has never been broken up into separate territories or states, is
much further north than any other territory had been, and is still largely empty and undeveloped.
While arguments of potential military and economic use for the coastal harbors, along with the
generic cry of Manifest Destiny, were given as reasons for the purchase, there was very little
concern over the region on a national level after the summer of 1868 for a long period of time. Yet, some sort of governing structure needed to be provided for the few residents who called Alaska home. Between the period when the Russians transferred ownership and the House finally paid for the deal, President Johnson ordered military forts to be placed at Sitka, the primary settlement at the time, and Wrangell\textsuperscript{22}.

Yet, the 40\textsuperscript{th} Congress only enacted a Customs Act covering Alaska. This extended all federal laws “relating to customs, commerce, and navigation,” to the new lands, and created a customs collection district there with a port of entry, designated by the President, in or near Sitka. It provided regulatory power to the president regarding the “importation and use of firearms, ammunition, and distilled spirits into and within the said territory,” outlawed killing of fur-bearing animals, and established that the district courts of California, Oregon, and Washington have jurisdiction over violations of the restrictions of this act\textsuperscript{23}. Thus, it was that in mid-1868, the Russian lands became known officially as the District of Alaska.

The only other piece of legislation that would be enacted early in the district’s history was put into place in 1870. This was both a protection against exterminating fur-seals in the territory, a lucrative industry that had been declining due to over-harvesting, and a concession of an exclusive contract to a San Francisco company regarding the legal harvesting of protected seals. It created harsh penalties for violations, fines of $200 through $1000 per offense, as well as potential prison sentences of up to six months. In addition, any vessel or tackle used in violation would be forfeited to the United States\textsuperscript{24}.

For the next seventeen years Congress completely ignored the Alaskan District, despite frequent appeals for additional legislation by current and potential residents. It would be an understatement to claim that this neglect was anything less than a disgraceful reflection upon
American liberty and republicanism. Even New Mexico was provided with a civilian
government, similar to other territories, within a few years of occupation. Kluger sums up the
relationship between Congress and the District of Alaska rather pointedly,

Congress did nothing whatever to encourage the settlement or economic development of
Alaska – there were no land laws, no political rights, no roads, no forum for residents to
address their common needs; you could not legally buy land, build a cabin, take timber,
stake a mining claim, get married, or have your civil grievances addressed by a court –
there was no court. The only authority was the commander of the tiny army garrison at
Sitka…A few customs officials, paid intermittently, were charged with policing an
endless, mist-laden coastline and a 1,200 mile border with Canada; smuggling was
epidemic.25

During these years, eight successive Congresses and four presidential administrations
passed by without any real concern for land amounting to approximately a fifth of the entire
United States. From 1868 until 1884, Alaska was technically governed first by the army
commanders at Sitka, then after 1878 when the army was withdrawn, by temporarily stationed
naval officers. They were not provided with any civilian government at all, appointed or elected.
In this sense, they were treated as inferior American subjects more so than even the residents of
the original Northwest Territory had been. At least territorial governors, despite their military
and political power, could be held somewhat accountable for their actions, and Congress paid
some attention to the needs of settlers. In the District of Alaska, non-military residents were
nearly completely cut off from the rest of the world and entirely unable to improve their or
fortunes where they lived.

Kluger notes that there were three primary reasons for this national indifference. The first
was, unsurprisingly, the remoteness of Alaska. Even had the U.S. government promoted
settlement, mining claims, timber cutting, etc. it was not clear that many people would willingly
choose to emigrate there from the lower states and territories. While the rest of the United States
was booming economically and population-wise, “federal lawmakers assigned the lowest priority to what many of them regarded as a bad bargain, a pointless appendage way out there in frigid limbo…”26 The second reason for the neglect was that private operations were profiting immensely off the lack of enforcement across the region, and convincing officials, via bribes, that it was best simply to not bother building up any sort of regulatory administration to deal with it27. This quid pro quo worked because the vast resources of Alaska were too remote, and the concerns over exploitation too minor for national legislators or presidential administrations to care about. Finally, there were the people of Alaska. In 1867, Nugent estimates that there were likely only about 900 residents of European ancestry living in the acquired territory with potentially 30,000 native Eskimos and Indians28. The population stagnated for decades due to the lack of economic and social incentive to settle in Alaska, and the largely non-white population meant that, in an era of increasingly unbridled racism, the “savages” of the northern tundra would be left to fend for themselves.

The First Civilian Government

By 1883 at least 25 bills had been presented in Congress providing for some government for Alaska. Yet, at that point, none had been voted on or even reached the floor of the House. In February of that year, the House debated the most recent attempt at civilian government. Representative Richardson (D-SC) argued that there were a number of reasons to provide the people with some form of governance beyond the military. First, he refers to the treaty which “obligated ourselves to maintain and protect the people of that Territory in the enjoyment of their property and their lives; but for fifteen years we have left that people without any protection whatever so far as the laws can give protection either to life or property.”29 Additionally,
Richardson argued that the population, while still small, is large enough to rightfully demand government. If his colleagues could not be persuaded by idealistic republicanism, then he also reasoned that, “the interests of the United States in the resources of Alaska are sufficient to demand from us the expenses of some form of government for the people.”

Representative Knott (D-KY) responded by questioning the costs of providing a population of perhaps only hundreds of white persons, a judicial organization which would cost the national government tens of thousands to operate, noting that there would need to be a judge, a district attorney, a collector of customs, a marshal and deputies, and three commissioners. Representative Townsend (R-OH) asked why Alaska should not have simply asked to be annexed to Washington Territory, thereby gaining the protection of the courts and laws of the closest contiguous area in federal control. “This would furnish all the government that that very small number of white people living in Alaska need to preserve peace and supply the conveniences and safety of government.”

The push for government, however, had gathered enough allies by 1884. A report from the Senate Committee on Territories began by arguing “The obligation to provide a civil government for Alaska is obvious and pressing.” While they do conclude that “This condition of things ought no longer to be tolerated,” the strong recommendation is made because, “The weakness and ignorance of the native population strongly appeal to us for defense and enlightenment.” The report also suggests that only executive and judicial branches of government are necessary and that this organization “will furnish a convenient and inexpensive tribunal for the settlement of the rights of property and for the prompt arrest and punishment of criminals.” They do not however endorse the extension of U.S. land laws over the Alaskan District, due to abuses of the current public land laws throughout the country, potential
fundamental changes to those laws already proposed, and the lack of inquiry into the rights of Indians to some of the lands.

The growing favorability for a civilian government was also shown by the recommendation of the House Committee on Elections of providing M.D. Ball with compensation of $4,665 as a duly appointed delegate from the people of Alaska. Ball had been tasked with appearing before Congress and sent with petitions from the residents of Alaska for civil government. The favorable report on providing him compensation noted that the convention which chose him was “in good faith and had the unanimous acquiescence of the mass of white citizens,” and that Ball “has devoted himself during this whole Congress with zeal and fidelity to the trust committed to him…”35 Whether the changes in perception of Alaska were due to Ball’s presence, a growing embarrassment over the treatment of the territory, or a more amenable president and Congress, it was only a matter of time before some sort of government would be erected.

Civil government was finally enabled by the territorial organic act passed by Congress in late February of 188436. It did provide a governor, with the authority of enforcing laws and granting reprieves, along with commanding the militia. Just like with other territorial governors of that time, he would be responsible for submitting a yearly report. The bill also established a district court for Alaska with one judge who would hold court at least once a year at both Sitka and Wrangell. Additional appointments were allotted for a court clerk, a district attorney, and a marshal. Four commissioners to operate the court system would also be appointed. All of these governmental positions would follow standard practices of appointment by the president, on consent of the Senate, with terms of four years.
As far as laws, the enacted bill called for the extension of the code from the State of Oregon to apply. This was questioned by Senator Beck (D-KY) who argued instead of using the more suitable and parallel laws of Washington Territory. Senator Benjamin Harrison (R-IN), who had drafted the bill, noted that it was not due to “any careful study of the laws either of the state of Oregon or of the territory of Washington, but because it was supposed that the Oregon code was in a more mature and satisfactory shape.” This response reflects the relative lack of dedication to the details of creating the civil government, as a brief perusal of territorial histories would have demonstrated why Washington Territory’s laws would be more applicable.

Senate Bill 135 also made Alaska into a land-district, providing a land office in Sitka. In addition it extended the mining laws of the United States to the territory. It did not however actually apply land laws to Alaska, and while it provided duties of surveying and selling lands to the appointed officers, “it failed to provide any legislative authority under which they could perform.” In essence, Congress still did not provide a meaningful apparatus for settlers to gain access to public lands for private use. This lack of concern with the practical problems unaddressed in the organic act was seen in a variety of other oversights. The appointed officials were certainly an important step toward organized government, but they faced a plethora of obstacles including, “lack of mail and transportation facilities, the difficulty of securing competent juries, adverse public sentiment toward prohibition, the uncertainty of the applicability of the laws of Oregon, and the fee system of compensating officials.”

In a final indication of clear neglect, the organic act did provide $25,000 for education in the territory, and specified that provisions for educating school age children must be done “without reference to race…” Yet, this amount was absurdly inadequate, given that there were hundreds of villages and towns strewn across thousands of miles of otherwise empty lands.
Senator Harrison (R-IN), remarked that he had been told there were at least 1,000 students in schools established privately or by churches in southeastern Alaska. When asked, then, why the Committee on Territories’ bill did not ask for more than $25,000 since facilities throughout the state would have to be constructed, Harrison replied contritely,

I agree that the appropriation is inadequate; indeed, I am willing to confess upon the challenge of almost any Senator here that all the provisions of the bill are inadequate. It is a mere shift; it is a mere expedient; it is a mere beginning in what we believe to be the right direction toward giving a civil government and education to Alaska. I hope more will follow, but the committee in considering this matter adjudged what they believed to be the probably limit of the generosity of the Senate.40

While the bill would provide Alaskans with their first civilian government in almost 20 years of American control, it was as Harrison admitted, “a mere shift”. As Gruening concluded, Alaska was now a civil district with a largely impotent civil administration, a judicial district with an ambiguous mandate and lack of enforcement, and a land district without land laws41.

Representative Government at Last

Alaska, purchased in 1868 and provided civil government in any form in 1884, was still not considered an official territory. By 1900, the United States had provided civil government and an elected delegate to both Puerto Rico and Hawaii, territories for only two years, and the remaining continental territories of Oklahoma, Arizona, and New Mexico all had elected territorial legislatures. Alaskans still had no elections and no direct say in their own affairs. In 1906 this finally changed when, after years of presenting bills and fruitless debate, the chambers finally agreed to allow Alaskans to vote for an official delegate who would sit in the House with other territorial delegates42. The bill also, for the first time, referred to the entity as the Territory of Alaska, rather than the District or Department of Alaska, as it had been previously known.
Despite a victory for representative government, the delegate position would only last through the end of the next Congress (60th), calling for one delegate elected for the remainder of the 59th and then another separate election for the 60th. Even though the privilege was temporary and the impact of a delegate without a vote, from a territory with a small population, was severely limited, there was one important consequence. The successful election in 1906 “dispelled any lingering doubts in the minds of many Alaskans about the feasibility of electing a legislature.”

The Committee on the Territories in the House submitted a report in August of 1911, which accompanied what would become the second primary organic act for Alaska and finally provide it with representative government. In it the committee argued that despite the relative lack of density of the population, the territory actually had more people (64,356 as of 1910 census) than many earlier territories had upon creation of a territorial government. Even compared to states, Alaska’s population exceeded that of nine of them at time of admission, including Wyoming, which had joined only 20 years earlier. The report also noted that Alaska had been recently importing as much as $18 million annually from the rest of the United States and their exports of merchandise and gold/silver had reached over $30 million. Despite the painstaking efforts made to demonstrate the economic importance and sufficient population of Alaska by the Committee, they ended their report by assuring hesitant colleagues that “There is practically nothing new in this bill; it is the mere extension to Alaska of powers given to other Territories for a century past, but more carefully limited.”

That bill went up for discussion in the House starting on April 17, 1912. Representative Flood (D-VA), who brought the bill forward from the Committee on the Territories, gave a lengthy speech in its favor, and noted that, “We have done little for Alaska. Congress is its legislative body, and we have passed few laws for the development of that vast Territory. We
have never properly codified the laws that we have passed.”⁴⁶ He accurately described the most important aspect in relation to the people of Alaska, that of “local self-government, the one which permits the people of Alaska to elect a legislature of her own people, to enact her local laws.”⁴⁷ Ironically, in this assertion, is that the “careful limitations” which Flood’s committee had placed upon that legislature were intended to foreclose it from enacting the most meaningful laws, including those covering the existing judicial system, land disposal laws, and laws relating to game and fish⁴⁸. Alaskans could not meaningfully alter their system of government, particularly the legal process, could not work on their own to encourage land sales, and could not manage any of their primary resources without direct Congressional approval. While other territories did have many of these similar restrictions placed upon them, those territories also had been given representative government much more quickly and land settlement had been encouraged, not discouraged, by the national government.

In response to some concerns over whether this new government reflects practice in other territories, Representative Wedemeyer (R-MI), a proponent of the bill himself, admitted, “This is no radical bill. The criticism of most Alaskans is that it does not go far enough. Everything is still under the control of Congress, but it provides a local body that will understand local affairs and initiated needed local legislation, which Congress, by the very nature of the case, never can properly initiate.”⁴⁹ As if to make this point even more obvious, much of the discussion regarding the bill revolved around attempts by its supporters of pointing to the resources and growing economic value of the region, rather than any notion that the people of Alaska actually deserve, under a republican form of democracy, an elective legislative body. Representative Sulzer (D-NY), for example, exclaimed that “Alaska is God’s country,” and “was purchased
from Russia for...less than 2 cents an acre and has produced in gold and silver alone more than
29 times what she cost – the cheapest bargain in land in the annals of time.”50

The final version of the act passed in 1912 did provide, for the first time since Alaska’s
purchase 44 years earlier, an elected representative legislature for the territory’s residents51. Alaska was finally afforded with a full organic act, unlike the 1884 version which barely
supplied an equivalent government to the first stages outlined under the Northwest Ordinance a hundred years before. As noted above, it did restrict legislation on some specific and important areas of policy concern. However, it provided a legislature of 16 members, four each from four judicial divisions, who were to be elected for two year terms. Alaska’s legislature was held to
similar restrictions as had been placed upon recent territories in the continental United States,
including 60 day bi-annual sessions, with extraordinary sessions of up to 15 days allowed by gubernatorial proclamation.

While it did limit the areas in which the legislature could act, allowance was made for
granting incorporations, regulating the conduct of financial institutions, constructing or operating roadways and railroads, and constructing educational facilities. It also was granted a right to tax, albeit a strongly limited one, and as with other territories of the past, was not allowed to incur debt. The governor retained a veto power in this new government as well, but it could be overridden, as had become the practice, by a two-thirds supermajority. In all, the 1912 civil
government provided to Alaskans was in essence the first real territorial government afforded
them. This is also officially the stance of the United States government, which considers Alaska’s time under the status of territory to range from 1912 until statehood in 1959.
Despite nearly all of the land outside of the southern and southeastern valleys and inlets being relatively dry, barren, and cold, Alaska’s appeal was from the beginning the potential of discovering valuable minerals and other resources. As noted above, Seward had argued that at the least it would provide a shorter and safer trip to Asian ports, along with coaling stations, since there was presumed to be numerous coal fields scattered throughout the region. Yet, the resource that would ignite a “rediscovery” of the northern territory was gold. In the summer of 1896, a group of prospectors found gold on what was then called Rabbit (later Bonanza) Creek, a tributary of the Klondike River, which flowed into the Yukon River. While the news of the gold find would not reach national salience until the next summer, the 1897 Klondike Gold Rush is arguably the second most famous in American history after the 1849 rush in California, for which the modern San Francisco football team is named after.

Thousands of people headed north after hearing of the gold, but unlike California, the path to get to the “gold belt” meant finding a way into the interior of the central portion of Alaska. Even in the midst of the summer months this was a long and dangerous undertaking. As had happened during earlier rushes in American history, the flood of settlers meant increasing demands for goods and services along with the problems of administering government and in particular, justice, to ensure order was maintained. The rush also brought considerable attention, nation-wide, to Alaska, which had been largely forgotten since its purchase 30 years before. As Gruening noted, “The gold rush was reported in thousands of newspaper columns, in a multitude of magazine articles, and was more permanently recorded in not fewer than three hundred bound volumes of personal experiences as well as fuller compendia.”
While the press and the public were fascinated with the growing realization that there were vast pockets of gold scattered throughout the Alaskan Territory, Congress also concerned itself with it. Senate and House records document at least 15 maps marking the gold finds just in 1897-1898 (see Figure 8.2 as an example of what Congressmen would see).

The gold rush caused the Congressmen of the second and third sessions of the 55th Congress to pay serious attention, with “the largest number of bills and resolutions relating to Alaska ever introduced, some fifty in all…”53 Perhaps the most important of the bills that was actually enacted, however, was one which extending Homestead Laws over Alaska as well as provided some right of way to railroads. There were 22 separate days in which the bill was taken
up, primarily encompassing short discussions over various amendments, but there were two aspects of these debates that became clear over time. The first was that national legislators still had very limited understandings of Alaska, a situation that made legislating for a distant, unknown place much more haphazard. The second was that they were unsure of what to do. In 1898 the United States Congress was still the only legislative body with control over Alaska. Without their action, little could be done within Alaska, by its residents or appointed officials, to rectify the growing problems of land settlement, mining claims, and transportation issues. This wasn’t a national issue until the rush more than doubled the population of the territory, especially increasing the white population.

A report on HR 5975 to extend the Homestead Act and Right of Railways in Alaska was submitted by the Committee on the Public Lands in mid-January 1898. Suggesting a number of amendments to the bill’s language, the Committee noted that it was “grounded largely upon the right-of-way act of 1875…but the law with its amendments is so drawn as to be adopted to the situation in Alaska.” In particular the Committee mentions that, “The great mineral discoveries in that region and the present almost insuperable difficulties in the transportation of freight and passengers have caused an active interest to be taken in the location and construction of railways there.” The plight of Alaskans in terms of just moving goods and people from one part of the territory to another was finally getting some national attention, a perverse consequence only coming after thousands of non-residents were pouring into the region.

During the debates over extending the homestead laws, the discussions oscillated between Congressmen who were primarily concerned with ensuring that the extension did not allow for settlers to snatch up the best lands, particularly those near navigable waters or on the coast, and those that questioned the applicability of the current laws to the situation in Alaska.
For example, in one elongated debate in the Senate on amending the proposed legislation, Senator Stewart (NV), a Silverite, noted that because much of the land has not been surveyed, and therefore there is no general knowledge on which lands should be generally withheld from private settlement, “If you keep them, in the first instance, a thousand feet from the shore of navigable waters, the disposition of the water property can afterwards be considered in a well-digested bill.” In other words, the Senator argued that it would be better to provide some homestead laws with significant restrictions, then survey and plat the lands, rather than either withholding the laws or risking private settlement on all the valuable waterways.

In response to this, Senator Stewart contends that the way in which Congress is considering public lands in Alaska, “is very peculiar. We are trying to deal with Alaska as if it were an agricultural district, which is very far removed from the fact.” Later he would add that homestead laws, as currently constructed, make little sense because “if a man settles upon a piece of land in Alaska…and is required to inhabit and cultivate it, to plow it and break it up, and improve it, under such rules and regulations as the Secretary of the Interior may prescribe, he will have an exceedingly difficult task in obtaining title.”

While the bill would get passed, much of Senator Stewart’s criticisms would result in it having a very limited impact on settlement in Alaska. While extending the homesteading policies already in place in the rest of the United States, Congress reduced the acreage available to individuals to 80, that water access on any given plot was restricted, and provided native-born Canadians the same rights as American prospectors were given in Canada, encouraging reciprocity between the adjoining nations. These plots, however, could only be granted upon acceptance by the General Land Office of a satisfactory survey of the land to be purchased. Since no surveys had been conducted in Alaska to that point, each potential homesteader, “would have
to survey his land at his own expense, and remain uncertain whether it would be acceptable…"58

Given their previous experiences with the national bureaucracy, it was understandable that Alaskans were skeptical about their chances of getting homesteads approved. In the end, an action that Congress should have taken decades earlier was, unsurprisingly, still deficient near the end of the 19th-century.

Not only did Congress have to contend with the laws relating to land claims and creating transportation infrastructure, but they also had the responsibility of ensuring the safety of Americans in Alaska. Responding to a resolution from the Senate, in early December of 1897, inquiring into the condition of the affairs in the Alaskan gold fields, the Secretary of War warned of impending dangers59. In the area around Dawson City, which ballooned to a population greater than 5,000 due to the rush, “a large number of American citizens are reported to have insufficient food to last them through the winter, and that many are absolutely destitute.” Information from October had reported, “there was not on sale in the stores of Dawson or those accessible to the mining region a single pound of bacon, beans, or flour…” The Secretary suggested that Congress allow the purchase of 500 reindeer from Lapland in order to bring supplies to the miners. He does assure the Senate that the miners would be able to pay for the supplies, so that it would not be a hand out. Thus, the situation in which Congress had placed itself in was such that transportation to the interior of Alaska, in 1897, was still to bring reindeer from halfway across the world.

This also highlighted the need for modern transportation modes, in addition to creating better roads and trails throughout the territory. The act which extended homestead laws did finally provide for the right of railway, which supplied an impetus for the creation of numerous railroad corporations. Given the costs and the difficulty of building railroads through Alaska, it
was not surprising that work was relatively slow and many of these railroad corporations failed miserably along the way. Congress, for its part, did provide some assistance. In 1905 it enacted a tri-purposed bill which would use liquor and trade licenses to create a fund for Alaska. One quarter of the fund would go towards establishing and maintaining schools in the territory, five percent was to go toward caring for the insane, and the remaining 70 percent was for construction and maintenance of wagon roads, bridges, and trails. It designated a board of road commissioners, who would have the authority “to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters,” to any town or mining settlement, “if in their judgment such roads or trails are needed and will be of permanent value for the development of the district…”

The problem, however, was that the money coming to this project from the Alaska fund would be massively insufficient. While the fund would rise to over $80,000 in 1906 and then to over $125,000 in 1907, Congress realized more was necessary and allocated a special appropriation of $150,000 in 1907, raising it to $175,000 in 1908. Alaskans, however, also required railroads in order to efficiently transport the vast resources of the interior of the region to ships at the ice-free ports, who could then remove them to factories and refineries in the states for production. While Congress provided a funding mechanism through railroad bonds to the Philippines, and had for decades given land grants to railroad corporations in other areas of the United States, Alaska had the neither the authority nor ability to utilize these options. Given the additional difficulties of laying track across a mountainous region where the ground may stay frozen for most of the year, it was not surprising that private enterprise to bring rail transportation to Alaska lagged behind.
By the second decade of the 20th-century, it appeared that even Congress was done dragging its feet on creating a railroad link in Alaska. A bill to construct an Alaska railroad had become law in October of 1914, with the next task being to choose a suitable route. In the House appropriations of 1915, $2 million was requested for the start of the line. During the debates that request was amended to $1 million and was heavily discussed. In favor of it, Representative Stafford (R-WI) argued that it was a simple “business proposition. The Navy Department comes here and says that there has been coal discovered of high value that will save the Government hundreds of thousands of dollars in the transportation…” In this view, the large upfront costs will pay for themselves in the long run. Yet, supporters were unable, at least initially, to get over opposition which primarily argued that the cost was simply too high for a route through a remote area of a far-flung territory.

Congress would fail to appropriate any money toward the railroad in 1915, but the next year funds were authorized to begin the project, which given the delay, began to increase rapidly in cost. In 1919, an appropriation of $17 million was granted, and in 1921, an additional $4 million. By 1916 despite Congressional inaction which had hamstrung development in Alaska there were railroads, telegraph lines, and post-offices dotting the southern coasts and through the central interior.

Despite the growth of transportation networks throughout Alaska, it was still the case by the time World War II came that the only way to reach the territory was by boat. What was needed was a rehabilitated internal network of railroads and highways, along with connections to the lower 48 states via Canada. The Alaska Railroad, which had been started finally in the late 1910s, was already aging by the late 1940s and Congress still struggled to appropriate the necessary funding, despite desperate please from military officials who saw Alaska as a vital
military resource in the event that a third world-wide war might break out. In addition, Alaska was uniquely kept out of the provisions of the Federal Aid Highway Act, meaning substantial funds were not being appropriated for help in establishing and maintaining roadways in Alaska, despite the fact that Alaskans paid taxes which disproportionately went toward roads in the territory anyway. The Alaskan Highway linking the interior of that territory to major Canadian roadways, and thus to the rest of the United States was finally completed in 1942, mostly as a result of attention given the project due to World War II. With the parallel growth in air travel, and the construction during that war of the first airfields in Alaska, the territory had finally become somewhat less remote. Yet, all of the major infrastructure projects which Alaska was provided with from the federal government were due to a combination of external events which demonstrated their necessity and an endless struggle for supporters in Congress to overcome the image of “Icebergia” and the isolation of the region from the rest of the United States.

Statehood at Last

Mirroring their predecessors in other territories, as soon as Alaskans were granted a full civil government, they clamored for admission to the Union. Even efforts to increase the autonomy under the 1912 act were largely unsuccessful. As Gruening noted in 1954, “Of the six amendments enacted in forty-two years, the first five merely corrected minor defects or wrought perfunctory changes.” At the time he couldn’t know that Alaska was a mere half decade from admission, but it would be a struggle nonetheless. One of the potential obstacles to statehood for Alaska was partisanship. Since the end of the Civil War, territorial admission policies had shifted from the concern over balancing slave and free states to one of balancing Republican and Democratic control. With the admission of the remaining contiguous territories in 1912 and all of the other existing territories small islands scattered throughout the world, Alaska’s chances at
achieving statehood hinged on which party the voters’ ideologies tilted toward and whether there was another territory, suitable for admission that might balance its own politics. As early as 1947 there were attempts to grant statehood simultaneously to Alaska and Hawaii. Alaska was presumed to lean Democratic and Hawaii toward Republicans. Efforts failed, however for over a decade in this regard.

The primary reason for a shift toward Alaskan statehood from its earlier status as “Icebergia” and an empty land of “savages” was World War II. The proximity of the territory, in particular the Aleutian Islands archipelago, to Japan, destined it for a significant role in military operations in the Pacific. While early efforts to appropriate money toward building military bases in Alaska were largely unsuccessful, after the attack on Pearl Harbor and the occupation of a number of the Aleutians by Japanese forces, the United States poured financing into the infrastructure of Alaska. Gruening notes that the war spurred creation of the first airfields in the territory, of a desire to have geological surveys of the region, and the start of a true road system, including most importantly the Alaska Highway, which finally linked the rest of the United States, via Canada, to the northern territory. The Hepburn Report in 1937, “emphasized that naval air bases in the Alaskan area would be ‘essential in time of war’” and recommended air bases located at Sitka, Kodiak, and Unalaska, along with two submarine bases.

The war also brought hundreds of thousands of young men, in military service, through the territory during those years, some of whom stayed afterward. The increase in financial appropriations, infrastructure, and population, also spurred bureaucratic growth, including an Alaska Housing Authority, Development Board, and a Department of Agriculture. In addition, the territorial legislature fundamentally reworked the tax system, which had previously left “vast categories of businesses and individuals, deriving substantial profits in Alaska,” paying
negligible taxes. The 1950 census reflected this maturity, showing a growing population of well over 100,000 people.

Concerns over admitting Alaska reversed some of the benefits of its original purpose. Seward had sought the land originally because of its potential warm harbors, resources, and proximity to Asia, in other words, its remoteness from the United States. When it came to admission, however, this was a potential problem. During the debates over the final version of what would become the Alaska Statehood Act, Senator Monroney (D-OK) stated his concern to this question. “[T]he Senate and House should stop, look, and listen, to determine whether we merely are admitting another State into the Union, or whether we are violating one of the fundamental principles which have led to the greatness of the United States. We are being asked, for the first time in our history, to admit a Territory which is not contiguous…” This he argued, might lead down a slippery slope, “Certainly if we adopt such a pattern for Alaska, we must adopt it for Hawaii…If we do it for Hawaii and Alaska, then why not for Puerto Rico?”

Senator Strom Thurmond (D-SC) provided his own opposition, arguing, “[T]hat by conferring statehood on a Territory so thinly populated and so economically unstable as Alaska, we, in effect, would be cheapening the priceless heritage of sovereign statehood.” He had “no doubt that extraordinary doses of Federal aid would be necessary to keep Alaska solvent…” Thurmond also worried that admitting Alaska, which would please the Democrats, would allow Republicans in turn to admit Hawaii, and that “precedent will have been set for the admission of offshore Territories which are totally different in their social, cultural, political, and ethnic makeup from any part of the present area of the United States.”

Many members of the House and Senate, however, favored the statehood bill by this point, regardless of the potential precedent it might set and the likelihood that Hawaii would
quickly follow Alaska. Senator Goldwater rose to speak because of his own experiences, having been born in a territory, noting that “I know something of the struggle, something of the almost tragic appeal of the people of my Territory, who struggled for many years to become a State of the Union.” Senator Cotton (R-NH) appealed to something other than the value of Alaska to the United States when he argued, “We may talk about its resources; we may talk about its physical attributes, but I am betting on the people of Alaska. They are among the best Americans. They are most ambitious and far-seeing.”

One of the final entries for the Senate in this discussion before they voted in favor of the statehood bill was a statement submitted by Senator Magnuson (D-WA). In it he harkened to history and paternalism as reasons to admit Alaska. Rather than simply focus on the merits of the territory, he importantly recognized the role Congress plays in policy. “Legislative committees,” Magnuson argued, “have had a relatively free hand in studying Territorial problems, but have never had a free hand in solving many of the problems. After going so far, solutions have been sidetracked to Washington, D.C., and the Territory all too often has been forced to wait for final answers from either administrative agencies or Congress.” In this, the Senator highlights the primary obstacle to territorial development, the national actors who must respond actively to it, namely Congress and the bureaucracy.

Magnuson also responded to the conception of paternalism that plagues Congress’ relationship to its territories. In responding to the concerns over economically viability, he noted that “this argument of economics is not confined to Territories or States. As we know, it appears in family discussions. The parents are always worried that the youngsters will not be able to support themselves.” While this argument always arises, Magnuson conceded that, “Of course there should be concern as to Alaska’s ability to support itself and advance its own program. But
this is more a concern of Alaskans than it is of Congress.” In the end Magnuson argued there are two options that can come from this concern. The first is that “These United States, like fearful parents, can waver further in indecision, and allow our lack of confidence to undermine Alaskans,” while the second choice is to “be proud of Alaskans’ determination to strike out for their true independence through their own real self-government…”

Although Magnuson’s ideas would find themselves on the winning side of the debate, his statement was followed by Senator Saltonstall’s (R-MA), who questioned the need for admission. He says that in analyzing the issue the primary question he asked himself is, “In what way will statehood contribute to Alaska’s economic development?” In answering the question, he noted that the primary concern of Alaskans is being able to change the laws they perceive as blocking development and growth, primarily homesteading laws and regulations regarding local resources. As the Senator argued, however, “[E]very one of these changes which statehood would confer, thus facilitating Alaska’s economic development, could be effected by Congressional action. There seems to be no validity to the argument that we should do indirectly what we have failed to attend to directly.” While accurate, this argument fails to consider the lessons of over 150 years of territorial governance, during which period the national government rarely, if ever, provided the authority territories required in order to ensure economic growth and development that was desired by the residents actually living there.

Despite the various arguments made for and against in this debate and similar ones that occurred in the House, Alaskans finally achieved statehood in 1959. Whether it was the prominence that World War II had brought the area as a strategic military outpost, the various demonstrations over the previous half century of the vast mineral wealth of the territory, the growth in population, particularly the “right” kind of people, or a strong bipartisan effort to
admit Alaska (and then Hawaii shortly after) as balancing partisan additions, it was in some respects an incredible shift in the understanding of territories and states. Alaska and Hawaii continued to be important military sites following World War II, Alaska particularly so because it was situated close to the Soviet Union, which had become the new primary international adversary in American foreign policy. While this factor was important to a continual maintenance of U.S. control in Alaska, it was not a primary topic of discussion during the debate over statehood. Since 1959, no additional states have been admitted, nor have any efforts been that close. In many ways it appears that admission of Alaska and Hawaii created a new Congressional compromise, which balanced the desire of bringing statehood to inhabited territories, regardless of their location, with the fear of admitting remote and distinct areas as equals in the Union.

1 Nugent, *Habits of Empire*, 249.
7 Quoted in Nugent, *Habits of Empire*, 246.
8 Quoted in Clark, *History of Alaska*, 73.
20 Clark, *History of Alaska*, 76.
23 Statutes at Large, 40th Congress, 15 Stat. 240.
24 Statutes at Large, 41st Congress, 16 Stat, 180.

Nugent, *Habits of Empire*, 249.

Congressional Record, 47th Congress, 2nd Session, 2125.

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Congressional Record, 85th Congress, 2nd Session, 12642.

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Chapter 9 – “Domestic, In a Foreign Sense” – Puerto Rico

Third Era Mechanisms in Puerto Rico

The story of Puerto Rican administration by the United States has been one of contradictions. Puerto Ricans, living in the territory, have never earned the full array of civil rights and political rights afforded to U.S. citizens living in the states, yet they have slowly provided with more autonomy than previous territories ever were. This arises from the tension which exists from the desire to maintain an inferior political status for the territory in a period of growing concern over the effects of colonialism, the treatment of overseas possessions, and human rights in general.

Initially, Puerto Rico’s acquisition was less about freeing the people from Spanish rule and more about securing a military outpost at the mouth of the Caribbean Sea region. Following the long-standing conception of the Monroe Doctrine and the threat of both European influence and local political instability, keeping the island under U.S. control made more practical sense than retaining Cuba. It was also an important factor that Puerto Ricans, as a whole, were much more amenable to American rule than were the Cubans, who fervently sought independence. This focus on national security and foreign policy concerns, however, could not override the fact that Puerto Ricans were substantially different in culture than the predominant American majority.

With a long history of Spanish rule and socio-religious influence, Puerto Ricans were not seen as viable candidates for the responsibilities of statehood. A substantially illiterate population, relatively poor, and used to Spanish institutions and political administration, were
seen as inferior people. Congressional policy, especially during the first few decades of the 20th-century, reflected the dominance of this view among state-based lawmakers. While eventually Puerto Ricans would gain citizenship, elective territorial government, and greater political autonomy, there was substantial opposition to these efforts which came incrementally over a period of decades.

Policy regarding Puerto Rico reflects the shifting, during the post-continental expansion era, of policy objectives. There was no prospect for settlement of the island, as it was already densely populated, and the infrastructure, while deficient, had been in place for years prior to the Spanish-American War. The glacial pace of changes in political rights and autonomy granted to the territory, demonstrated the uneasiness which national lawmakers felt regarding the existence of insular possessions during a period of time which saw European decolonization of Africa and Asia as well as heightened scrutiny of imperialism and its lasting effects. Puerto Rico’s opportunities for statehood have been met with significant opposition, within the leaders of the territory as well as in Washington, D.C. Like other territories of the third period, statehood is unlikely, despite the earlier successes of Hawaii and Alaska.

*Shift or Continuation in Territorial Politics?*

The most important broad question that arose following the acquisition of Puerto Rico and a number of other overseas possessions after the Treaty of Paris concluded the Spanish-American War of 1898 centered on how these new territories would be treated. Along with the parallel annexation of Hawaii, the U.S., for the first time in its history, controlled lands not only separate from the continental states, but spread out across half the world. In particular, the possession of Puerto Rico and the Philippines raised questions. Both of these island regions were
densely populated with people who did not speak English, were not Northern European in ethnicity, and had been under governments fundamentally distinct from the American model of republican democracy.

Other than New Mexico and Orleans Territory, the United States had never dealt with places under their permanent control that were significantly populated by non-Anglo residents. In both of those cases, the existing population was noticeable but hardly could be considered wide-spread or dense. The official 1903 census for the Philippines put the population at just over 7.5 million\(^1\) and a military census of Puerto Rico in 1899 counted 953,243 residents\(^2\). Despite the disparity in numbers, this meant that Puerto Rico was over four times as densely populated. About two-thirds the size of Connecticut, it had more people than the existing state in 1900. It
was also located much closer to the U.S. mainland than the Philippines and was seen as a significant military outpost as it fell on the main sea routes into the Caribbean.

The sizeable existing population meant that settlement, the primary tool for Americanizing the continental territories, would not be an option in Puerto Rico or the other insular possessions. Puerto Rico would play the role of the experimental guinea pig in designating Congressional policies toward these new territories. What these policies would be, and how they might treat these new territorial possessions, became the central contested principle in the earliest years of the 20th-century. In his treatment of the Insular Cases, Bartholomew Sparrow argues that there were three perspectives being discussed regarding the connection between the new acquisitions and existing American territorial politics.

The first of these, a narrow reading of the Constitution, held that it was up to the legislative and executive branches to define how territories were to be treated and administered. Specifically, this perspective argued that the Constitution was not self-expanding and only applied to lands under U.S. control that were not states if Congressional legislation or treaties explicitly expanded its protection to them. The primary conclusion of this view was that its proponents “did not believe that the United States’ territories had to become states.”

Thayer, writing in the Harvard Law Review in 1899, argued that the national government, while limited in important areas, retained the power, which all sovereign nations hold, of acquiring and administering territory, and it retained this power in plenary, absolute form. For Thayer, this meant that, “when a new region is acquired it does not at once and necessarily become a part of what we call the ‘territory’ of the United States…It is for the political department of the government, that is, Congress or the treat-making power, to determine what the political relation of the new people shall be.” This view reinforced the conception that there were organized, versus unorganized territories. Even
though almost all instances prior to 1898 had been of specifically organized territories, the
treatment of Alaska as a district without a representative civil government for decades pointed to
the fact that this bifurcation was not novel to insular regions.

A second perspective held that Congress could not treat territories and states differently
in terms of constitutional protections. In other words, Congress did not have to specifically
extend constitutional protections or the “right” to become a full-fledged member as a state to
territories. Once Congress had agreed to obtain new territories, they became part of the United
States, as outlined within the Constitution. This was the position adopted by Chief Justice Taney
in his infamous *Dred Scott v. Sandford* majority opinion. Taney argued that “There is certainly
no power given by the Constitution to the Federal government to establish or maintain colonies
bordering on the United States or a at a distance, to be ruled and governed at its own
pleasure…[N]o power is given to acquire a territory to be held and governed permanently in that
character.”6 In 1900, Shipman applied this logic to the case of the new insular possessions, in
arguing that “Though not self-executing, [the Constitution] is self-extending; it goes with the
land of which it declares itself to be the supreme law, as the form goes with the substance.”7 In
other words, the Constitution cannot exist outside of the states and the territories which it covers,
since it is for those bodies of people and places that it subsists. How can a thing created by, and
given authority by, constituent bodies under its purview, nonetheless not apply to those same
bodies?

Finally, Sparrow points to a third perspective, which lies between those already outlined.
Argued by Lowell in the *Harvard Law Review*, this third view believed that there was some
space in which Congress and the presidency could administer territories outside of the
framework of guaranteed constitutional protections. This space, however, had to be selectively
chosen. As Lowell notes, “All the treaties for the acquisition of territory on the continent of North America have therefore provided that the people should be incorporated into the union, or admitted to the rights of citizens…But the recent treaty with Spain makes no such provision.” In this argument, then, some rights were so fundamental that they were extended universally, but these for Lowell were those noted as restrictions on Congressional power. The positive grants of rights, such as uniform taxation and trial by jury, were not automatically extended.

All three of these perspectives held traction within the U.S. Congress. In December of 1898 the Senate debated a resolution from Senator Vest (D-MO) which would deny any power to Congress, under the Constitution, of permanently holding and governing colonial territories. It specifically opposed what it saw as European-style colonialism under the U.S. Constitution. While much of the discussion about the resolution was dominated by Congressmen in favor of the viewpoint that U.S. sovereignty was absolute in territorial relations, the introduction and defense of the resolution clearly indicated strong observance of the principle that the Constitution followed and extended to whatever territorial possessions the United States held. Vest’s attempt at stifling the growing imperialist viewpoint was followed by similar resolutions during the remainder of the third session of the 55th Congress.

Senator Bacon (D-GA) introduced a resolution on January 11, 1899 which stated that the goal of the Spanish-American War was not “for conquest and for the acquisition of foreign territory,” and that once an independent government in the Philippines was established, the U.S. would “leave the government and control of the islands to their people.” Another resolution was introduced by Senator Mason which read that the U.S. government “will not attempt to govern the people of any other country in the world without the consent of the people themselves, or subject them by force to our dominion against their will.” In the debate about
these resolutions, Senator Allen questions whether or not the 14\textsuperscript{th} and 15\textsuperscript{th} Amendments to the Constitution entitle “citizenship by virtue of our obtaining the territory?”\textsuperscript{12} The vehemence and vigor of the debates over these resolutions makes it clear that this was clearly an important question and one that the U.S. Congress found itself divided upon.

The more vocal, narrower perspective on constitutional limitations to Congressional and executive rights over territories was headed primarily by Senator’s Platt (R-CT) and Teller (D-CO). Senator Platt of Connecticut remarked that the United States, as a nation “possesses every sovereign power not reserved in its Constitution to the States or the people; that the right to acquire territory was not reserved…that is a right upon which there is no limitation, with regard to which there is no qualification…”\textsuperscript{13} He went on to cite numerous scholars on this issue and argues that these questions were settled by Jefferson when the country acquired the Louisiana Purchase from France. This is so, Platt contended, because “a nation has a sovereign, inherent, and unlimited right to acquire territory, because that is an essential element of nationality, and that to deny it is to deny our nationality.”\textsuperscript{14} He also countered that Taney’s opinion in \textit{Dred Scott} should be seen as authoritative, since despite the proposition that Congress does not have plenary power over territories, nowhere in the Constitution “does it say that we can only acquire territory for the purpose of making it into a State…”\textsuperscript{15} He then pointed out the Supreme Court’s much more recent cases on Mormon polygamy in Utah Territory, in which Congressional control over the territories was held to be plenary under the Constitution, a direct repudiation of Taney’s argument.

The following day, Senator Teller rose to another lengthy defense of this viewpoint of absolute sovereignty in territorial politics. In addition to reinforcing Platt’s arguments, he also introduces the practical reasons for this perspective. “I know the danger and the trouble of
dealing with tropical people….The people who live in the Tropics are not qualified, and, I fear, never will be qualified to maintain such a government as is maintained by Anglo-Saxon people.” Yet, he notes, that this does not mean they will forever be incapable of self-government, but that “They are entitled only to such government as they themselves can maintain – it must be one producing order and protection to persons and property, for otherwise it is not a government at all.”\textsuperscript{16} Teller also declares that he does not believe these possessions will ever be States, but that they should, at some time in the future, be allowed to be independent nations.

The third perspective, while less clearly stated by any particular member of Congress, ended up being the median position as some compromise was needed in a practical sense. The Treaty of Paris, which would officially resolve the Spanish-American War, was voted upon on February 6, 1899. The final tally in the Senate was 57 in favor and 27 opposed, just one more vote necessary than the two-thirds required by the Constitution. While 11 Democrats joined the Republican majority, 22 rejected the treaty along with two Republican Senators. None of the resolutions brought forth in the Senate regarding the specific power of Congress over territorial possessions found themselves into the final document. Yet, it was clear from the discussions that very few Senators were willing to exercise absolute power over territories, regardless of whether they had the ability under the Constitution. Many were worried by the connection being made between the new possessions and European-style colonialism. Added to this were the frameworks of the debates between expansionist Senators and their opponents. Both sides acknowledged that there were some limits to U.S. control. They also saw the need for tighter control, at least until some form of self-government could be attained. For some Senators this meant independence, for others statehood. Most at this time, however, did not see a place in for permanent territorial possession. As history would attest, Cuba and the Philippines would gain
independence, while Guam and Puerto Rico, among others, would retain territorial status, albeit with slowly increasing powers of home rule and self-government.

The ratification of the Treaty of Paris, and the vigorous debates on its provisions was not the end of the discussion. The prevailing perspective, whereby the Constitution did not entirely follow the flag and did not automatically extend to new territories, was controversial at the time and while less salient, is still controversial in the 21st-century. The decisions by Congress appeared to be a significant shift in territorial policy from earlier generations. Sparrow points to these Congressional decisions and the subsequent reinforcement from the judicial branch in the *Insular Cases* as the point of departure from the presumptive temporary territorial system which had existed throughout U.S. history, starting with the Northwest Ordinance of 1787. Emphasizing the language of that Ordinance, Sparrow argues that territories were to be temporary and admitted eventually as equal states and that from the beginning a specific process was outlined for this to occur, that civil liberties were protected in the territories and that residents of these territories were treated as economically equal to citizens of the states\(^{17}\) (15-20).

Max Farrand, writing on territorial issues in 1900 wrote that the idea that “Territories are to be regarded as inchoate States, as future members of the Union, has been and is the fundamental basis of our Territorial system.”\(^{18}\)

Without denying that this was a widely held presumption, it is also clear that as the 19th-century wore on, particularly following the Civil War and the expansion of territories into the arid West, rapid statehood was simply not the vital concern of Congressional leaders it had been during the first half of that century. The average length of territorial existence for entities created before 1850 was just over 13 years. Considering all other contiguous territories created (thus excluding Hawaii, Alaska, and the Spanish-War possessions), the average length of
territorial existence was 26.5 years, running from a low of three years for Nevada Territory to 61 years for New Mexico. Considering that Alaska was owned by the U.S. as a district and territory for almost 90 years before attaining statehood as well, it is clear that Congress was not enamored with the idea of creating new states from territorial areas by the end of the 20th-century. This does not mean that areas like New Mexico or Utah were not presumed to be eligible for statehood, but there were clear indications following the Civil War that the American empire was not as temporary as intentions of the Founders may have implied in the Northwest Ordinance. It was in this shifting landscape that Puerto Rico found itself upon acquisition by the United States in 1898.

These discussions also highlight an important distinction in evaluating whether the treatment of insular possessions in the 20th-century was fundamentally different from continental possessions previously. While much of the discussion concerned whether the Constitution automatically applied and therefore limited Congressional control, less attention was paid to the changing dimensions of American politics outside of territorial policies at the time. Sparrow writes that there were two dominant strains of thinking in American politics that influenced the decisions in the Insular Cases. The first was that U.S. society continued to be racially hierarchical, in some ways more so than it had been with slavery. In 1896 that Court had upheld segregation in Plessy v. Ferguson. While contested at the time, the decision also aligned with the beliefs of most white Americans. The second strain was that “the United States was destined to be a world power,” economically, politically, and militarily. The growing strength of the nation on the world stage, along with the success in the Spanish-American War, renewed confidence that Manifest Destiny conquered the West and would now move overseas.
Treating Puerto Rico differently because of the racial, political, religious, linguistic, and economic distinctions from mainstream American society was therefore unsurprising. It was the imperialistic language, less subtle than it had been in dealing with New Mexico or Utah, and the clear indication that new territories need not be guaranteed some future assumption of statehood, that gave these decisions more controversy. The actions taken by Congress toward the post-Spanish-American War possessions was less clearly a distinct break from the past than it was a more openly defined continuation of increasing resistance to guaranteeing statehood to territories. While decisions by majorities within the legislative and judicial branches defined territorial status as potentially permanent, there was still reason for anti-imperialists to believe that Puerto Rico might assume equal status within the Union at some future point. After all, New Mexico had been a territory for almost 50 years when the 1898 Treaty of Paris was signed.

As Senator Platt reasoned during his long speech against the Vest Amendment in 1898, the U.S. government has long treated territories differently than states. “In providing government for the Territories, before admitting them as States, we have always exercised the right of legislating as we chose, giving them no right of self-government during the initiatory period of their existence.”20 Pointing to the decades it has taken New Mexico to ascend to statehood, “If fifty-one years is not enough, who will say how many years are required for a population not fitted for self-government at the time the treaty stipulated that they should be incorporated into the Union?”21

**Governing “Porto” Rico**

In the first days of 1900, both the U.S. House and Senate introduced and discussed bills which would form an organic act for Puerto Rico. The original bills provided for U.S.
citizenship, application of constitutional provisions to the people and the area, and free trade\textsuperscript{22}. Hearings held in the Senate demonstrated that the prevailing opinion at that time did not warrant these strong commitments. General Davis, the military governor at that time, argued that while it is “desirable to give to the people of Puerto Rico some opportunity to show their capacity…for an exercise of political privileges and responsibility,” any representative body should “have a majority of persons appointed by the President…so that we may be sure that the control would not pass into the hands of persons who would use it improperly.”\textsuperscript{23} The General also noted that only 30,000 males were eligible to vote on the island, just 2.5% of the population. This was due to restrictions on literacy and tax payments. When Representative Clayton (D-AL) asked whether universal suffrage was advisable, Davis replied, “I do not think manhood suffrage should be conferred in a population as ignorant as the Puerto Rican…Manhood suffrage presuppose a basis of real manhood.”\textsuperscript{24}

This attitude reflected two prevailing perspectives at that time. The first was that Puerto Ricans, having been under a relatively strict imperial structure for centuries, were simply not prepared to be given full autonomy under the American model. Clearly paternalistic this viewpoint, held by some Puerto Rican elites, as well as a significant number of Congressional members, was rooted in the belief that without some sort of preparation for republican democracy the island would not administer its government in ways acceptable to and in line with existing practices on the mainland. Despite the fact that Puerto Ricans were clearly able to have an operational and stable government under Spanish rule, the widespread poverty, at least relative to the American states, and the lack of “Americanized” beliefs among the islanders, made this first perspective easy to adopt among American political leaders.
The second perspective, however, was steeped in deep racial and religious stereotypes. Categorized as non-white, speaking a foreign language, deferent to the Catholic Church, and largely illiterate, Puerto Ricans were easy targets for “otherness”. Added to concerns over who Puerto Ricans were, was the significance that the island would have for military control over the Caribbean and commercial competition in the states. While the military importance of the island would have some impact over time, it was the anxiety among U.S. firms that put the most pressure on Congress to act as will be shown below.

After a number of hearings over the first few weeks of 1900, the organic acts for Puerto Rico were heavily amended, striking out nearly all of the autonomy for the territorial government as well as the presumption of political and constitutional rights for its inhabitants. The Foraker Act\textsuperscript{25}, as it would be popularly known, set up a system of territorial government for Puerto Rico that resembled more closely the autocratic regimes of the earliest territories rather than the systems found in places like New Mexico or Oklahoma at the time. The island would be administered by a governor, cabinet, and a five-member supreme court, along with a bicameral legislature composed of an 11-member executive council and a 35-member House of Delegates. Only the House was elected, every two years. All other officials were appointed by the U.S. president. The Executive Council was composed of the six members of the presidentially appointed cabinet as well as five others, the only restriction being that five of the eleven members of the Council must be natives of Puerto Rico. As with other territories at the time, the governor had veto authority of any legislation. While the veto could be overturned, this required a supermajority vote of both the House of Delegates and the Executive Council, an incredibly unlikely event given that the Council largely followed the governor’s prerogatives. Even if unwanted legislation were to make it past the governor, however, both the U.S. president, via...
legislation, and the U.S. Congress, via their constitutional powers, could annul the legislation as well.

The Executive Council reflected in many ways a parliamentary cabinet. It included six specified departmental heads: the secretary, attorney-general, auditor, commissioner of the interior, and commissioner of education. It also included five additional members. All 11 were to be appointed by the president and confirmed by the U.S. Senate, with again the only restriction being that five must be “native inhabitants of Porto Rico.” The Executive Council controlled the disbursement of territorial funds and any legislation which had passed the House of Delegates would also require majority approval in the Council. This meant, in effect, that while the House of Delegates had great breadth in terms of what it could legislate upon, it was extremely restricted in its ability to enact legislation at all unfavorable to U.S. political appointees in Puerto Rico, members of the U.S. Congress, or the presidential administration. One option available to the House of Delegates was to refuse to enact legislation, which included budgets for the territory. After radicals in the House were able to legitimately threaten with this tactic, the U.S. Congress amended the Foraker Act to provide that the existing budget would simply roll over to the new fiscal year if a new one was not approved. The final official of the Puerto Rican government would be a resident commissioner, similar to the role of territorial delegate. The only prominent difference was that commissioners were elected for four year terms unlike all other members (voting and non-voting) of the House who serve two-year terms.

In continental territories at the time, in contrast, while the governors, secretaries, and supreme court justices were appointed, the entirety of the bicameral legislatures were elected, the territorial bureaucracy was controlled directly by the legislature, and overturning gubernatorial vetoes was slightly easier because governors did not control selection of legislators.
Additionally, territorial residents in places like New Mexico, Utah, and Oklahoma were provided with greater constitutional protections, guaranteed typically via the treaties which secured the territorial land initially and the existence of a more desirable (i.e. Northern European) core of settlers. The autocratic nature of the territorial government as assigned in the Foraker Act looked much more similar to that which was imposed upon the residents of the Orleans Territory in 1805, after the Louisiana Purchase was completed. In order to ensure that the Spanish and French inhabitants of the region, particularly around New Orleans, would not rebel, Congress implemented a rigid territorial administration, giving complete power to appointed members and limiting the civil rights of residents. Of course, the harshest of these conditions lasted only a couple of years and by 1812 the area had been incorporated as the State of Louisiana. Puerto Ricans would not be as fortunate in terms of gaining political self-autonomy.

Caban argues that Puerto Rico served American imperial purposes, “as an experimental station for colonial administration and was a laboratory to design and test the campaign to Americanize a subject people.” He notes that Senator John Morgan (D-AL), who chaired the Senate Foreign Relations Committee, contended that Puerto Rico’s size, location, and population would make it difficult for it to maintain independence if it were granted it. These comments, coming prior to American invasion of the island, demonstrated the understanding that Puerto Rico, if not gained by the U.S., would come under the influence of another European power. Political leaders saw the risk of allowing that to occur and maintained the long-held ideals of the Monroe Doctrine in enforcing U.S. interests in the Western Hemisphere. It was the potential experimental quality of the territorial acquisition, however, that intrigued many imperialists even more.
Other than Cuba, which Congress was quick to define as a temporary occupation before granting independence, the status of the other acquisitions from Spain was held in limbo until Puerto Rico was dealt with. As discussed above, this included the imposition of a comparatively (to other existing territories) overbearing governmental apparatus, with very little control or influence from Puerto Ricans in general. Of course, this civilian government was only approved after two years of oversight by military officers via the War Department, while Congress continued to debate the fate of its various new possessions. The Treaty of Paris was unique in the history of American diplomacy regarding territorial acquisition as it did not specify status or protection for the people in these new areas. Unlike the Treaty of Guadalupe Hidalgo or the Louisiana Purchase, there were no set guarantees for the people at stake.

What the Treaty of Paris did do to the island, however, was create economic havoc. The island had been a major supplier of coffee to various European countries, with which it had beneficial trade through its imperial administrators. With a switch to U.S. control and a U.S. coffee market already saturated, growers in the island faced stiff competition and prices. No longer favored in trade with its longstanding partners Puerto Rico’s export earnings from its primary cash crop dropped rapidly. The U.S. relationship, however, did allow for a rejuvenation of the sugar production on the island. The Foraker Act played numerous roles in this economic transformation. First, duties on imports to Puerto Rico from outside the United States, other than coffee beans, would be the same as duties collected by states on foreign imports. Second, all imports and exports going between the U.S. and Puerto Rico would be levied at 15% of the normal levels. Third, to assuage the beet lobby on the mainland, Congress restricted the amount of land any individual corporation could own in Puerto Rico to 500-acres. The intent was to limit the influence of major U.S. sugar producers from capitalizing on Puerto Rican cane farming and
thus protect the sugar beet industry from competition. There would be no meaningful attempt at enforcement of this restriction, however, for decades.

With a permanent civil government in place and economic trade policies amenable to a majority of Congressional leaders, Puerto Rico’s experimentation had begun. It would not take long before a significant challenge arose. A set of cases, beginning with *DeLima v. Bidwell* and *Downes v. Bidwell*, collectively entitled the *Insular Cases* set forth a controversial new American imperialism. The underlying question across these cases dealt with whether or not the U.S. Congress, under its plenary power of territorial management, could retain them in territorial status indefinitely, and what protections this indefinite status might require, legally and constitutionally, of the national government. In the two aforementioned cases, the specific question dealt with whether or not the U.S. Congress had the constitutional right to assess duties on products moving from and to Puerto Rico from the states themselves. As outlined in Article 1, Section 8, of the U.S. Constitution, all duties must be uniform throughout the United States. Yet, the Foraker Act had specifically designated a different standard for Puerto Rico.

A number of companies turned to sue the U.S. over these levies. In *Downes v. Bidwell*, Justice Brown argues that the uniformity clause was intended only to apply to states and that Congress had never included territories in as part of the United States (emphasis added). Brown goes on to claim that within all of the territories carved out of the Louisiana Purchase, Congress “has assumed that the Constitution did not extend to them of its own force, and has in each case made special provision, either that their legislatures shall pass no law inconsistent with the Constitution of the United States, or that the Constitution or laws of the United States shall be the supreme law of such territories.” In other words, because Congress did specifically intend the Constitution to cover these territories and indicated this, shows that they believed incorporation
of a territory was not automatic. Brown finishes off his logical reasoning by proclaiming that unless the Uniformity Clause is meaningless, there must be some potential that there “may be territories subject to the jurisdiction of the United States, which are not of the United States.” (emphasis original)

The Supreme Court, in separate 5-4 decisions, declared in *DeLima* and *Downes* that Congress can choose to retain territories it controls in unincorporated status. The delineation between incorporation and non-incorporation lay in the intent of future statehood and the extension of full constitutional protections. Unincorporated territories would neither be guaranteed independence or statehood, while only being assured that fundamental principles of democracy would be protected in terms of liberties and rights.

*The Jones Act – Secondary Citizenship Achieved*

Despite, or perhaps because of, the decisions in the *Insular Cases*, during the first decade of the 20th-century, there was little success in further delineating Puerto Rico’s political status. It was clearly a possession of the United States, with an inferior status to mainland territories because Congress had not designated it as incorporated. The legislative body was only half elected and had no independent power other than voicing its displeasure in a public forum. Additionally, the people of Puerto Rico remained in an official limbo of sorts, because the only mention to their legal status was that if they did not assert their intention to remain Spanish, they would become citizens of Puerto Rico. Starting in 1910, there were numerous attempts to both clarify the status of citizenship and to reform the political organization of the island.

The act of clarifying citizenship was primarily geared toward two goals, the first of which was to attempt to quiet some of the calls for independence. The dominant political coalition at
the time was the Partido Union which had originally come together in order to push for accommodation with the status of non-incorporation, albeit under reformed terms more amenable to Puerto Ricans. Yet, the Partido Union, by the middle of the second decade of the 20th-century had numerous splits within its leadership, some of whom were pushing for more autonomy or independence. Granting citizenship would work to potentially keep some of these voices satiated. The second reason for granting citizenship was to try to cement the relationship between the United States and the island. If the people in Puerto Rico were also U.S. citizens officially, they would be more strongly linked to national interest, or so the argument went. Conversely, there were arguments in favor of greater self-government, primarily from political leaders who saw it as a way either to rid the United States of the burden of administrating Puerto Rico or as a necessary function of republicanism and democracy which were being withheld from over a million people there.

While independence was surely seen as a possibility and desired by a small, but influential, portion of Puerto Rico’s residents, there was little chance that Congress would allow it to happen. A 1912 report regarding citizenship for Puerto Ricans from the Committee on Insular Affairs in the House declared that, “It has long been a conceded fact that Porto Rico has become permanent territory of the United States.” In addition, it argues of the people that, “What they most desire, and what they have long and earnestly endeavored to secure, is American citizenship accompanied with the right to legislate for themselves in respect to all purely local affairs.” The next year, another committee report was released on the issue of citizenship, remarking that the situation has become unnecessarily complicated because it creates a situation “of one class, consisting of citizens of the United States who have migrated to the island…who have the privileges of citizenship, while those who inhabited the island at the time of its cession
from Spain and their descendants constitute a class without the privileges of citizenship. This situation is un-American and inevitably tends to friction and discontent.”29 The Senate report goes on to assure colleagues, however, that this bill “does not in any way involve the right of suffrage nor implicate directly or indirectly the question of statehood.”30 The passage of citizenship for Puerto Ricans was clearly designated as a practical matter, but did not imply any change of status for the territory.

While that effort in 1912-1913 would stall, it was only a matter of time before there was sufficient support for both citizenship and a grant of greater self-government. That impetus would arrive with the increasing chances of American involvement in World War I. The Jones Act of 191731 accomplished both tasks its supporters hoped for. As it fully outlined a new government for Puerto Rico, it technically replaced the Foraker Act, but it is most widely known as the bill that conferred U.S. citizenship directly on to Puerto Ricans. It did this in a collective manner, giving to anyone residing on that island that did not currently have citizenship, immediate U.S. citizenship. Only in the case where a person wanted to retain their foreign status would they be required to act. This was bureaucratically a much simpler exercise, as most Puerto Ricans would accept the new citizenship anyway, but it also took away the symbolic act of refusing citizenship that some who desired independence might take to highlight their opposition.

The Jones Act made other significant changes, in particular providing limited rights and responsibilities to Puerto Ricans, while still retaining full Congressional control, and in doing so, Congress was reiterating its authority over territorial policy. For example, the act starts off by delineating a bill of rights. Included among these were many staples of the United States Constitution, comprising due process, right to defense counsel, a speedy and public trial, a
contracts clause, habeas corpus protection, no ex post facto laws, a takings clause, no warrantless searches, and freedom of speech and religion. At the same time, by specifically outlining these rights as applicable to the territory, it demonstrated the belief in Congress that other rights were still not extended to the island.

Another meaningful change brought about in 1917 dealt with the organization of the executive and legislative branches of the Puerto Rican territorial government. The Senate, which up to that point had been appointed, would now be fully elected, creating a true bi-cameral representative legislature. Seven districts across the island would elect two senators apiece, and five senate seats would be elected at large. The qualifications for office were 30 years of age, able to read and write in English or Spanish, and residency of two years on the island, including one within the senate district. The 19-member Senate would work with a 39-member House to enact legislation. All elected members of the legislature were provided with four year terms, a distinction from other territories before, which typically held concurrent elections for both chambers, but every two years.

As for the executive administration, changes were made that provided somewhat more home rule. The executive council was changed so that it only included the six department heads, but it changed the way those persons were chosen. The attorney general and the commissioner of education, considered the two most important offices for the federal government to maintain control over, would still be appointed by the President, with the consent of the Senate. The commissioners of agriculture and labor, health, and the interior, along with the treasurer, would all be appointed instead by the governor, although with consent of the, now elected, Puerto Rican Senate and any nominees must have been residents of at least one year on the island. The changes might have been subtle, in that the U.S. President and his directly appointed governor
still retained overall authority when it came to appointing department heads, but for some of those offices, the people of Puerto Rico would now have a chance to directly affirm or deny nominees. The department heads would constitute an executive council, just as before, but their duties in the council were primarily to act as cabinet members, submitting annual reports and advising the governor. They were no longer a de facto legislative body. Finally, the U.S. Congress retained the right to veto legislation regardless of whether or not they passed over a potential gubernatorial veto earlier in the process, and in the event of an override, the president would also have the opportunity of denying the bill.

One particularly thorny issue covered in the debates over the Jones Bill was the qualifications for voters that would be required. The original House version called for replacing the existing universal male-suffrage rules with both property and literacy requirements. This was attacked on both the House and Senate floors, with a colorful remark from Representative London (NY), a member of the Socialist Party, highlighting early debate. “I say you assassinate the rights of Porto Ricans by depriving three-fourths of them of the franchise…You deny to a man the right to express his views through civilized methods, through the medium of the ballot.” This comment was followed in the Congressional Record with a note that “Mr. London here uttered certain words which were subsequently withdrawn.” Later in the debate, London remarked that “Instead of each man being entitled to a vote, you will have property recognized as the legal entity, as the political unit of Porto Rico.” In addition to controversy over the male suffrage requirements, there were efforts in both chambers, with relatively narrow defeats, to grant women the right to vote as well. In the end, however, male suffrage remained largely universal, only requiring 21 years of age and U.S. citizenship. Women were left out for the meantime.
Despite these changes, the Jones Act did not fundamentally alter the territorial status of Puerto Rico in any way. This was the point. Representative Miller (R-MN) stood up on the first day of debate in the House and after hearing a lengthy speech from the Resident Commissioner on the bill, noted that this, “is going to put permanently at rest the unrest in Porto Rico relative to the political status of the island…it means that the Congress of the United States says to the people of Porto Rico, once and for all, that they are a part of the United States domain and will always remain there; that the agitation for independence in Porto Rico must come to a decided and a permanent end.” Representative Miller was a strong supporter of the bill for these reasons, and he had many colleagues who felt the same way. Puerto Rican independence was also foreclosed for the same reason that the island was sought after initially, namely national security. Representative Cooper’s (R-WI) support for the bill hinged upon this, “We are never going to give up Puerto Rico for, now that we have completed the Panama Canal, the retention of the island becomes very important for the safety of the Canal, and in that way to the safety of the nation itself.”

Rhetoric surrounding the bill ran the gamut between honorific and abhorrent. Representative Campbell (R) of Kansas, for example, lauded the Puerto Rican people. “I have seen the Legislature of Porto Rico in session…They are as fine a body of men as you will see anywhere, well educated, well equipped for the business of legislators.” Representative Rivera noted that, “As regards the Porto Ricans, this is a question of patriotism. They want to be free. They want to be dignified.” Yet, in a separate speech, the powerful Joseph Cannon (R-IL) questioned the wisdom of extending more self-government and citizenship to Puerto Ricans. “You may try all the experiments you please, and make all the laws you please, and they are but as a sounding brass and a tinkling cymbal, if you have not the people who are competent to
exercise sovereign power.” It is clear that former Speaker Cannon did not think this applied in this case. “There is a small percentage of the people there who talk about liberty and who are quite intelligent. There is a smaller per cent who understand liberty as you and I understand it, as we do in this country.”

In the end, the Jones Act put Puerto Rico closer to the government structure that other territories in a similar state of development had enjoyed in the past. It finally had a fully elected legislature, with some ability to legislate without direct Congressional supervision. Yet, Puerto Ricans, despite their gains, were still mired in “a second-class citizenship…Puerto Ricans were not entitled to constitutional guarantees as long as they resided in the colony, nor did they have a voting representative in Congress.” In a cynical, but perhaps accurate assessment, one group of noted historians argued that, “The Jones Act…retained the substance of colonial tutelage. It granted Puerto Ricans American citizenship, which helped assuage many a guilty conscience among the tutors.” The gains, additionally, were superficial in any guaranteed sense, because, “the Jones Act was no constitution; it was an act of Congress, which Congress could amend at will.” While this was true about any legislation regarding territories since the Northwest Ordinance was enacted, it carried greater import when statehood was a highly unlikely long-term outcome.

_Electing a Territorial Governor_

In line with long-standing practice in territories, the governor of Puerto Rico was appointed by the president, with the advice of the senate. The questions of status and the constant push for independence among some Puerto Ricans however caused national political leaders to question this practice. President Roosevelt sent a message to Congress in March of 1943 that recommended amending the Jones Act to allow direct election for the governor’s office in the
He called for the creation of a commission to make recommendations to this and other changes in the organic act. Despite this, the bill that was eventually produced from this work went beyond reform to a transition to full independence, albeit over a period of decades. This effort would fail, taking it with the chance to create an elective governor’s office.

A new opportunity would arise a few years later. The influential Puerto Rican governor, Rexford Tugwell, one of FDR’s former “brain trust” members, was indicating that he was planning to step down. This would give President Truman a window to do what his predecessor could not for Puerto Rico. While work was begun on a bill to allow for direct election of governor, Truman dragged his feet in choosing a replacement for Tugwell who for the time being remained in office. He was persuaded by members of his administration to select, for the first time, a native Puerto Rican for the office. The director of the Division of Territories and Insular Possessions, Edwin Arnold, pressed upon the president that not only should the next governor be a native, but also from the dominant political party of the time, the Partido Popular Democratico (PPD). In the interim, the Puerto Rican legislature enacted two bills which called for a popular referendum on independence or statehood, plus elections for the next governor should the office become vacant at any point. While both were vetoed by the Governor and after being overridden, sustained by the president, the actions convinced Truman that, despite any other concerns, his selection of a native governor would have to be someone from the PPD, or else conflict between that person and the legislature would dominate the politics of the island.

Jesus Piñero was the man chosen for the position. Piñero had been elected Resident Commissioner in 1944 and was a well-liked leader of the PPD. This choice precipitated a second push for an elected governor. This would require potential changes in the organic act, still unchanged since 1917. The move also signaled that Truman’s administration was willing to press
for more political autonomy, but unwilling to move on a petition for independence or full autonomy all at once. The 80th Congress took up a bill to make the governor’s position elective. Senator Butler (R-NE), one of the co-sponsors, noted that, “Its enactment would be entirely in keeping with American principles of self-government and democracy,” but that at the same time, “It grants no new substantive powers to the Governor, the supreme court, or the legislature. Congress does not surrender any of its constitutional authority to legislate for Puerto Rico…”

The end of the Second World War and the beginning moments of the Cold War gave another reason for this legislation. As a committee report on the bill argued, it “would stand as evidence of our good will toward the people of Puerto Rico and as a demonstration to the nations of the world…that the United States practices as well as preaches the doctrines of democracy and self-determination.” Additionally, the Secretary of the Interior, Julius Krug, told a hearing held by a subcommittee of the House Committee on Public Lands that while the bill should be passed, “self-government should be given ‘little by little’.”

The bill came before the House in May of 1947 and was passed with little overall objection. Representative Marcantonio of New York (American Labor Party), however, berated his colleagues for their professed belief that the bill made any difference. The election of governor “will be utilized by imperialist elements in the United States and by opportunists in Puerto Rico as a means by which to evade and postpone the determination of the basic issue – the status of Puerto Rico.” In his estimation, “The mere election of a Governor…does not grant to the people of Puerto Rico any sovereignty. It merely adds an embellishing façade on an ugly and rotten colonial structure.”

The bill moved from there on to the Senate, which took it up on July 26, the final day of the legislative session. The only major opponent there was Robert Taft (R-OH), who objected to
the governor, who would be elected under the bill, retaining the right to appoint the territorial supreme court justices. The supporters were willing to concede this to Taft, but the amended version of the bill needed to be then re-passed by the House in the same form in order to be sent on to the president for signature. The Senate bill was passed at 11:45 p.m., 15 minutes prior to the scheduled adjournment and rushed over to the House for final passage. The House had extended time already to consider Senate amendments and was still in session. The elective governor act was the final measure through the House that session.49

The ease which the bill flew through the House and Senate, at least relative to recent efforts on reforming Puerto Rico’s government or clarifying its political status, was surprising. Yet, as Representative Marcantonio had surmised, the reason was that popular election for governor, with no other changes, was an impotent measure. Congress retained all of the power it had before. As it had done in the past, the measure was intended to quell dissension both within Puerto Rico and to show the rest of the world that the United States was a beacon of liberty. Providing an elective governor to Puerto Ricans, like desegregating the Armed Forces, were symbolic measures designed to demonstrate American equality and openness.

The Last Gasp for Political Independence

Primarily due to the hesitation of adding a territory with a significant population of relatively impoverished Spanish-speaking persons, attempts at statehood for Puerto Rico were anathema to Congress and regularly dismissed. Bills providing a transition to independence had had moderately more success, but had been turned back by significant opposition when brought forward. Yet this meant that Puerto Rico remained in an ambiguous middle ground where it was not allowed full rights of self-government, but it was also denied the ability to choose for itself.
It had become increasingly clear to some leaders, in Puerto Rico, the presidential administration, and supporters in Congress, that the only realistic option was to retain territorial status but continue to reform it so that at least there was relative political autonomy, at least when concerning local laws. In other words they looked toward the possibility of creating a commonwealth rather than a state. Traditional territorial governments, after all, had been based upon the premise of eventually attaining statehood. Since Puerto Rico did not seem destined for that, but also would be unlikely to be granted independence, a new “normal” territorial relationship would have to be established.

By the late 1940s it appeared this might finally happen. The backdrop to this was a rise in protests in Puerto Rico, particularly violent clashes with authorities. A student strike at the University of Puerto Rico in 1948 led to the passage in the territorial legislature of a Gag Law, modeled on the Federal Smith Act, which made it specifically a crime to advocate for the violent overthrow of the United States\(^{50}\). It was in this environment that the United States Congress began discussions on a bill, which would become known as Public Law 600 that would ultimately change Puerto Rico’s status by basically denying it the authority to do so at all. It would be a political ploy to provide greater political self-government, have Puerto Ricans assent to it, but only by effectively closing off the possibility of independence even further.

Muñoz Marín, the leader of the Partido Popular Democrático had been arguing for years that the status of Puerto Rico should be a question given directly to Puerto Rican voters, but after he became the first elected governor of the island in 1948, he turned his efforts toward pressuring Congress to provide Puerto Rico the ability to create its own constitution\(^{51}\). The governor traveled to Washington to appear before the House Public Lands Committee on Puerto Rico’s progress and was well received there\(^{52}\). A man of considerable political skill Marín was able to
make an impression on Congressmen in his push for more autonomy. Other leaders in Puerto Rico, however, questioned the significance of the constitution idea. Bhana argues that leaders of the other political parties were convinced that the constitution would simply, like the Jones Act, be another version of the organic act\textsuperscript{53}. Congress would not sanction a project that permanently took away its ultimate authority over the territory. This was clearly the consensus of the Congressional supporters of a draft bill. Senator Butler (R-NE), who had been a co-sponsor on the elective governor bills, had a memorandum sent from his office that assured his friends that the bill would not change the status of the island, noting that Congress “can also nullify the Puerto Rican constitution if it wishes, since, technically, Puerto Rico is still a territory subject to the rules and regulations of Congress under the Constitution.”\textsuperscript{54}

With that limitation clearly outlined, the next question was what exactly would Puerto Ricans be able to change in this new constitution? What new rights, what restrictions, what guarantees, could be made? The basic framework of Public Law 600 came together quite early. In essence Puerto Ricans would first vote to accept or reject the terms of their participation in the constitutional process. It was assumed they would vote in favor and by doing so they would then elect a constitutional assembly which would draft a new constitution. That constitution would be subject to some restrictions as outlined by Congress in the original bill. If the constitution did not violate any of those stipulations and was ratified by Puerto Ricans, Congress would then presumably certify it and a new constitution for the island territory would replace the Jones Act.

In debates over the law, much of the rhetoric in favor revolved around the ability of Puerto Ricans to decide their own future. Representative Crawford (R-MI) argued on June 30, 1950 that the people there “are acquainted with our customs…they know what a constitutional representative form of government is; they are citizens of the United States, and they have
sufficient sense and intelligence, and loyalty, and patriotism to design a constitution and return it
to us which will square with the Constitution of the United States.” Delegate Bartlett (D) of
Alaska also rose to speak in favor of the bill assuring his vote-holding colleagues that, “Congress
retains all essential powers…and it will be Congress and Congress alone which ultimately will
determine the changes, if any, in the political status of the island.”

Yet, other Congressmen saw instead a primarily symbolic action, inspired by less than
honest reasons, in the bill. In particular, Representative Marcantonio, whose district in New York
City contained many Puerto Ricans, argued that “If you did not have this colonial system which
this bill perpetuates, Puerto Rico could develop an agriculture of its own,” and that, “This bill is
a device to deprive Puerto Ricans of the right to obtain for themselves the sovereignty they need
to protect themselves against these conditions.” This was similar to the concerns that had been
voiced by Puerto Rican political leaders outside of the dominant PPD, and in many ways
Marcantonio was the most honest, even if colorfully so, of the commentators in Congress.

The primary stipulation which had been placed on the constitution in Public Law 600 was
that it could not fundamentally alter the political relationship between the United States and
Puerto Rico. It could only affect the organization and functions of the Puerto Rican government,
as applied to self-government and authority over local policy. In addition, there were
prohibitions on sections affecting “citizenship, immigration, coastwise shipping, commercial
treaties and foreign relations, and all matters related to military activity, currency, and tariff
policy.” Also, as if it needed to be said (although it was) PL 600 stated that federal laws would
remain supreme over insular laws. While this was technically the case in states as well, the
federal government had plenary authority over territories, while even by the mid-20\textsuperscript{th}-century,
they were still limited in what they could legislate over the states.
As additional evidence that Congress was clearly unconcerned about the amount of authority they might be losing by allowing Puerto Ricans to create their own constitution the bill was enacted without opposition in 1950. It was then up to the people of Puerto Rico to take the next step and vote against or for the provisions of Public Law 600. Opposition to this took shape before a referendum could occur. The problem was that the referendum, nationalist-leaning leaders pointed out, was a sham. If Puerto Ricans voted in favor of PL 600, they could create their own constitution, but it would be under the stipulations given by Congress and with a full understanding that Congress retained plenary authority over Puerto Rico. If they voted against PL 600, it was not a vote of rejection of American rule. Instead it would be viewed as affirmation that residents of the island were satisfied with their current situation. In crafting the process through which PL 600 operated, American legislators working in conjunction with Governor Marín, were coercing Puerto Ricans into a public acceptance of indefinite inferior status.

In response to this concern, Governor Marín claimed that “the bill’s importance is moral rather than practical.”\textsuperscript{59} Congress, in allowing Puerto Ricans to craft their own constitution was retaining its plenary power but agreeing to not use it, unless forced to do so. It was a victory in this sense, and probably the most that could be hoped for. This relatively defeatist attitude, however, did not sit well with some factions within Puerto Rico. Notably, the Nationalists group was clearly planning protests, and potentially a violent overthrow of the insular government. The threat was serious enough that apparently the FBI kept a close eye on the organization’s activities during the early 1950s and police found weapons and explosives in San Juan\textsuperscript{60}. In late October and early November of 1950 uprisings occurred throughout the island, leading to numerous deaths. There were also attempts on both the Puerto Rican governor’s life as well as on President Truman’s, the latter resulting in the death of a White House guard\textsuperscript{61}. The Gag Law
which had been enacted in 1948 helped Puerto Ricans law enforcement to arrest hundreds of people suspected of being involved in the uprisings, many of whom were completely unconnected, but overall the response, while aggressive, did not involve federal troops and was played off by national leaders, such as Truman, as the work of a small group of radicals.\footnote{62}

The plebiscite on Public Law 600 in Puerto Rico finally took place on June 4, 1951 with an overwhelming number voting in favor of it. The final tally was 387,016 (76.5\%) in favor with 119,169 (23.5\%) against.\footnote{63} While impressive, this amounted to only 65\% of registered voters, implying that a significant portion of the population either saw the passage as inevitable or were convinced it didn’t matter either way. The next step was to elect constitutional delegates, which lead to the PPD gaining 70 of the 92 seats at the constitutional convention.\footnote{64} The constitution crafted over the ensuing months was then presented again to the voters of Puerto Rico and was again overwhelmingly supported, although a full 40\% of the electorate stayed home this time.\footnote{65}

The constitution began by distinguishing that from then on the island was to be designated as the “Commonwealth of Puerto Rico”, or in the original Spanish, “Estado Libre Asociado.” The ELA, as it would be abbreviated, was defined as a compact between Puerto Rico and the United States “of a state which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its federal structure.”\footnote{66} While this statement meant nothing in terms of altering what Congress could or could not do vis-à-vis the territory, it was the first example of a territory proclaiming itself in this fashion. Despite being primarily symbolic, it was meaningful.

While the ratified constitution that was sent to Congress did not violate any of the original stipulations of Public Law 600, as the PPD-dominated constitutional convention would
have realized would automatically be rejected, it nonetheless engendered significant controversy in Congress. This came in the forms of Sections 5 and 20 of Article II, which was a Bill of Rights. Section 5 guaranteed a right to education for Puerto Ricans, while Section 20, which was more controversial, recognized human rights in gainful work, education, adequate living standards and a social safety net. While adopted from the United Nations Declaration of Human Rights, for a significant number of American legislators these passages sounded far too “socialist” in nature.

In the House debate Representative Colmer (D-MS) asked if Section 20 meant “that there would be a mandatory provision for the Government to furnish everybody a job.”67 The only type of government, he argued, where “you could do that, that I know of, would be under a socialistic or communistic government.”68 Representative Curtis (R-NE) argued that Section 20 is “based upon the premise that it is the obligation of Government to provide these things. That is not the American idea. It calls for a totalitarian government. It can only lead to slavery…It would mean the citizens would be wards of the Government.”69 Clearly these discussions were influenced strongly by the perceived threat of communism that was prevalent in American politics during this period. Yet, by painting this provision in this way, these Congressmen were also able to play on fears of providing too much power to Puerto Ricans. This led to supporters of the overall constitution to back off strongly defending the Sections. For example, Senator Malone (R-NV) argued that the rights outlined were “a statement of ambitions and objectives, not rights.”70 In other words, they were not meant in a guaranteed sense, but only in a hopeful sense. Everyone should have work, but the government won’t actually create jobs to ensure that everyone does.
Despite it being modeled on the United Nations Declaration of Human Rights, the Puerto Rican constitution was enacted only after it was stripped of Section 20. The compact, which established the Commonwealth, or Estado Libre Asociado, provided some significant improvements in self-government to Puerto Ricans and, for the first time in a territory’s history, left the President largely out of direct affairs on the island as they were no longer appointing any of the legislative or executive officials. While different from the Jones Act and the Foraker Act in that it was not simply an organic act handed down by Congress, PL 600 did not necessarily clean up the ambiguity regarding Puerto Rico’s status and it did not fundamentally change the role of Congress relative to territories in general.

*Puerto Rico as the ELA*

If it wasn’t clear in 1898 that Puerto Rico was unlikely to ever become a state, the contours of the discussion regarding Public Law 600 certainly seemed to shut out that possibility. Despite being borne out of the desire to clarify the relationship between Puerto Rico and the United States, the ELA’s constitution only created new questions. Some commentators believe that it made Puerto Rico an incorporated territory, providing it more constitutional protection from the federal government. To others, it simply reinforced the idea that Puerto Rico was simply a colonial appendage of the United States. The reality is a bit more complex than either of these visions, but the balance of evidence shows that Puerto Rico remains an inferior political body, under the authority of the United States Congress, albeit with a somewhat expanded political autonomy that has been constitutionally protected at times.

Court cases over the past 60 years have demonstrated a variety of viewpoints, as have discussions in Congress and in various presidential administrations. In 2005, the Bush II
administration released a report on Puerto Rico’s Status which “firmly sides with the opinion that Puerto Rico is a territory of the United States and is thus under the plenary powers of Congress, which may at any time alter its government.”71 There have been a number of referenda on the question of Puerto Rico’s status, the last held in 2012, but none of these have had a significant impact in pressuring Congress to act. Even repeated calls by the United Nations, which has for decades sought to equalize or free colonial possessions in their relations with their ruling nation, have only forced Congress and presidents to pay lip service to the self-government enjoyed by Puerto Ricans.

While one could easily categorize the last half of the 20th-century as a period of rights consciousness and growing support for treating all people and groups equally, racism and xenophobia are still strong strains in American society. It is not difficult to argue that they continue to play an important role in Congressional resistance to a statehood movement. In response to a push in 1990 for a statehood referendum in Puerto Rico, the outspoken Republican Pat Buchanan had numerous anxieties about that possibility. In addition to the partisan advantage that admission would give Democrats, Buchanan also cautioned his fellow Republicans in Congress about the expansion of welfare benefits that would accompany it saying, “do we really want to convert Puerto Rico (per capita income $4,500, not half that of Mississippi) into a Caribbean reservation mired in the same rage and resentment that those dependent on welfare exhibit everywhere else in American?”72 Another potential issue for the Buchanan was that the U.S. would, of necessity, be forced to become a bilingual nation, “For the English language could not be forced upon this island of Spanish heritage, where 60 percent do not even understand it.”73 Reflecting the objections of Congressmen toward admission of New Mexico in the late 19th-century, Buchanan’s words also emphasize the continuing impact that territories
where much of the population is “different” remain politically inferior because enough Americans continue to support the rhetoric and the actions it excuses.

What has plagued efforts from many different fronts over the past 100 years to create either a new state out of Puerto Rico or grant it full independence, is that neither situation is ideal for American interests. As a state, Puerto Rico would gain prestige and political equality. Yet, the real problem is not necessarily political. As Ruben Berrios Martinez has argued, “Puerto Rico’s basic problem…is the dependence and subordination inherent in colonialism, not only legal and political, but also economic, cultural, social, and psychological.” He continues that, “As a state, Puerto Rico is bound to pay the heaviest of prices: cultural assimilation.”74 The United States government has found a largely defendable relationship between itself and its remaining territories, including Puerto Rico, which did not require them to provide equal political status to territories it does not want to. While awkward, these relationships are also politically expedient.

A Shifting Territorial Policy?

Surendra Bhana comments that “In endorsing a unique constitutional formula in the form of the Puerto Rican Commonwealth, the United States departed from its traditional territorial policy of permitting either full statehood or complete independence.”75 There is no question that the relationship between the United States and Puerto Rico, or for that matter any of its other remaining territorial possessions, is fundamentally different from the continental territories of the 19th-century. Simply shifting from temporary to permanent territories required a different relationship. Yet, this doesn’t necessarily explain the ways in which territorial policy actually
changed in a meaningful sense. In fact, in many ways the actions taken toward Puerto Rico mirrored actions taken against earlier territories.

The Jones Act, for instance, was different from the Foraker Act, mainly because it provided a fully elective territorial legislature. The same move had been made, albeit nearly a century earlier, in some of the territories of the Old Northwest. In some sense Puerto Rico was single-handedly experiencing a repeat of 19th-century territorial policy. While the practical needs of Puerto Rico, given its population and relative development, were in some ways different from a primarily undeveloped and unsettled frontier land. Yet, the need for infrastructure, law and order, and economic development were the same in Puerto Rico as they had been in Wisconsin Territory, just on a different scale. Certainly Puerto Rico was somewhat different in that it had a dense population of Spanish-speaking people who understood a different political system and cultural identity from the dominant American paradigm. Rhetoric surrounding the people, however, paralleled that of New Mexico, so it was not unique in that sense either.

Despite the similarities, however, Puerto Rico was administered under a different set of assumptions than Wisconsin or New Mexico Territories were. While statehood was not an impossibility, and still is not, there has never been a broadly held assumption of it as the goal of policy toward Puerto Rico. Puerto Ricans were given American style democracy and taught American values by their appointed colonizers, but it was not in order to prepare them for admission to the Union. In fact, in many ways, the United States has held back from pressuring Puerto Ricans to fully assimilate, because permanent territorial possession does not require it. Puerto Ricans have been active in resisting assimilation as well, but without corresponding resistance toward American control, it simply has not been an important project to force assimilation. While this may not be a conscious move on the part of any individual person in
Congress or the executive branch, it is certainly an institutional reaction to the political realities of Puerto Rico’s status.

When the United States took over the American southwest, in particular New Mexico, it set a precedent that regions with a substantial population of “civilized” (i.e. non-Native) persons, whose societies were built on values and institutions in contradiction with American ones, could nevertheless be administered as territories. While the system would eventually allow New Mexico, Alaska, and Hawaii, to join as full members, thus proving that political assimilation was possible, acquisition of Puerto Rico, Guam, and other insular lands threatened this arrangement. They were too different from what came before. Americans no longer had the desire to expand through actual accumulation of lands. In an era of growing concern over the treatment of subnational minorities, the United States continued to uncomfortably and awkwardly hang on to a small, but important, set of territories. Bartholomew Sparrow argues the constitutional construction in the Insular Cases that territories need not be destined for statehood, may “poorly serve as a resolution for the continuing tensions in the Constitution and in the U.S. political system since the founding between democratic principles and the politics of empire.”\textsuperscript{76} Without resolving those tensions, the United States maintains this inelegant system, one that grew out of, but is different, from those that came before it.

\textsuperscript{1} http://www.nscb.gov.ph/secstat/d_popn.asp “Population of the Philippines Census Years 1799 to 2010.”
\textsuperscript{3} Sparrow, The Insular Cases. See Chapter 2.
\textsuperscript{4} Sparrow, The Insular Cases, 42-43.
\textsuperscript{5} Thayer, “Our New Possessions,” 471.
\textsuperscript{6} \textit{Dred Scott v. Sandford}, 60 U.S. 393 (1857)
\textsuperscript{7} Shipman, “Webster on the Territories,” 186.
\textsuperscript{9} \textit{Congressional Record}, 55\textsuperscript{th} Congress, 3\textsuperscript{rd} Session, 287. The entire resolution reads: “Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That under the Constitution of the United States no power is given to the Federal Government to acquire territory to be held and governed permanently as colonies. The colonial system of European nations can not be established under our present Constitution, but all territory acquired by the Government except such small amount as may be necessary for coaling stations, correction
of boundaries, and similar governmental purposes, must be acquired and governed with the purpose of ultimately organizing such territory into States suitable for admission into the Union.”

10 Congressional Record, 55th Congress, 3rd Session, 561.
11 Congressional Record, 55th Congress, 3rd Session, 563.
12 Congressional Record, 55th Congress, 3rd Session, 566.
13 Congressional Record, 55th Congress, 3rd Session, 287.
14 Congressional Record, 55th Congress, 3rd Session, 290.
15 Congressional Record, 55th Congress, 3rd Session, 292.
16 Congressional Record, 55th Congress, 3rd Session, 329.
19 The Insular Cases, Sparrow, Bartholomew, 57.
20 Congressional Record, 55th Congress, 295.
21 Congressional Record, 55th Congress, 296.
22 Caban, Constructing a Colonial People, 86.
23 House of Representatives, 1900, HLns 56-A, 9-10.
24 House of Representatives, 1900, HLns 56-A, 15.
25 31 Stat. 77.
26 Caban, Constructing a Colonial People, 16.
27 Caban, Constructing a Colonial People, 16.
29 Senate, 62nd Congress, 3rd Session, Report Number 1300, 2.
30 Senate, 62nd Congress, 3rd Session, Report Number 1300, 2.
32 Congressional Record, 64th Congress, 1st Session, 7475.
33 Congressional Record, 64th Congress, 1st Session, 7477.
34 Caban, Constructing a Colonial People, 205.
35 Congressional Record, 64th Congress, 1st Session, 7473.
36 Quoted in Caban, Constructing a Colonial People, 201.
37 Congressional Record, 64th Congress, 1st Session, 7483.
38 Congressional Record, 64th Congress, 1st Session, 7483.
39 Appendix to the Congressional Record, 64th Congress, 1st Session, 1036.
40 Caban, Constructing a Colonial People, 208.
41 Carrion, Puerto Rico, 200.
42 Noted in Bhana, The United States and the Development of the Puerto Rican Status Question, 59 found in Congressional Record, 78th Congress, 1st Session, 1686.
43 Bhana, The United States and the Development of the Puerto Rican Status Question, 60.
44 Bhana, The United States and the Development of the Puerto Rican Status Question, 96.
45 Congressional Record, 80th Congress, 1st Session, 10402.
46 Senate, 80th Congress, 1st Session, Report Number 422, 3.
47 Quoted in Bhana, The United States and the Development of the Puerto Rican Status Question, 102.
48 Congressional Record, 80th Congress, 1st Session, 7077.
49 Bhana, The United States and the Development of the Puerto Rican Status Question, 106.
50 Ayala and Bernabe, Puerto Rico in the American Century, 159-160.
51 Ayala and Bernabe, Puerto Rico in the American Century, 162.
52 Bhana, The United States and the Development of the Puerto Rican Status Question, 117.
53 Bhana, The United States and the Development of the Puerto Rican Status Question, 118.
54 Quoted in Bhana, The United States and the Development of the Puerto Rican Status Question, 123.
55 Congressional Record, 81st Congress, 9592.
56 Congressional Record, 81st Congress, 9595.
57 Congressional Record, 81st Congress, 9596.
58 Ayala and Bernabe, Puerto Rico in the American Century, 163.
59 Quoted in Ayala and Bernabe, Puerto Rico in the American Century, 169.
60 Bhana, The United States and the Development of the Puerto Rican Status Question, 136.
63 Bhana, *The United States and the Development of the Puerto Rican Status Question*, 143.
64 Bhana, *The United States and the Development of the Puerto Rican Status Question*, 145.
66 Quoted in Bhana, *The United States and the Development of the Puerto Rican Status Question*, 149.
67 Congressional Record, 82nd Congress, 2nd Session, 5120.
68 Congressional Record, 82nd Congress, 2nd Session, 5121.
69 Congressional Record, 82nd Congress, 2nd Session, 5122.
70 Congressional Record, 82nd Congress, 2nd Session, 7837.
72 Congressional Records, 101st Congress, S9884.
73 Congressional Records, 101st Congress, S9884
75 Bhana, *The United States and the Development of the Puerto Rican Status Question*, 167.
76 Sparrow, *The Insular Cases*, 255.
Chapter 10 – “Informal Empire” – A “Fourth” Era of Territorial Policy

Informal Empire – A Continuation of Territorial Policy

The 20th-century saw the United States grow into a military and economic global powerhouse. Arguably it also changed the country from a relatively isolationist, although expanding, nation, into an informal empire which affected nearly all of the major international events during the century. Walter Nugent describes the post-World War I era of expansion as one that involved no land acquisitions, but “certainly involve[d] the extension of American power – political (through treaties), military (through sowing military and naval bases around the planet), and economic (through multinational corporations and financial networks, and the supremacy of the dollar…).”¹ The period between the World Wars was an incubation of this new conception of American empire, as it was the emergence of the United States as the world’s sole superpower in the late 1940s and early 1950s that created the conditions to finally allow a national program to construct an informal empire.

The seeds had been planted years earlier. Arguably the Insular Cases helped to manufacture this new imperialism. Sparrow argues that they led to the “emergence of a territorial empire, one politically and constitutionally subordinate to the states and other (incorporated) U.S. territories, and to the emergence of an informal empire based on opening markets, the promulgation of political reforms, the cooperation of friendly governments, the support of international institutions, and the timely use of force.”² While clearly both of these “empires” continue to exist, the direct territorial ownership has declined in salience and has been replaced
largely by military and economic incentives for other nations to cooperate with American interests.

These factors play directly into what is considered the Fourth Era in this study. This Informal Empire, which by the periodization here, begins around 1960 after both Alaska and Hawaii gained statehood, is characterized primarily by a change in how Congress perceived its role as administrator of the American territorial sphere. Instead of directly acquiring lands that would have to be managed by U.S. elected officials and would require at least some constitutional protections, it is far easier to create international conditions that favor American-style democracy, promote American business, and allow for American military presence. Despite the changing realities of territorial policy over the past 50 years and the shifts that have occurred, the growth and reach of American sovereignty is, in many ways, an extension of the historical trends.

Julian Go, a prominent scholar on historical empires, describes an empire as an entity where a central authority, “exercises unequal influence and power over the political (and in effect the sociopolitical) processes of a subordinate society, peoples, or space.” This broad definition surely captures the relationship to some extent between the U.S. government and territories that were organized over American history. Importantly for this chapter, Go also distinguishes two types of imperialism, formal and informal. The formal style is direct rule over territories, like that which occurred over places like New Mexico and Wisconsin Territories. The informal style “refers to the exercise of power over the internal or external affairs of nominally independent states through a variety of methods falling shy of annexation.” This describes the pattern of imperialism the United States has operated under since the early 20th-century. While less “territorial” in that it no longer required new acquisitions of land, it can be seen as an
extension of the goals of the earlier territorial policy. This chapter demonstrates how the
traditional territorial policy which administered the first three periods of territorial history morphed into the new imperialism.

Perhaps the most prominent counterargument to the belief that the United States has been an imperial nation from its founding is that all territories created before 1898 (except of course for the oddity that is the District of Columbia) had become equal member states of the nation. Go disputes this argument with two assertions. First, he notes, this practice was hardly unique to American empire, as the Russian, Ottoman, and Chinese empires promoted some equality among member states as well. Secondly, in questioning the conception of Jefferson’s “empire for liberty”, Go notes that even after incorporation throughout much of U.S. history, for nonwhites, “it was as repressive as any stereotypical empire… territorial expansion was a fundamentally racialized process.”

For Go, what occurred with the Spanish-American War acquisitions, signified both continuity and change in territorial policy. Expansion was maintained, power and authority were built up. At the same time, however, settlement did not accompany the expansion; in fact these areas already had substantial populations of “others”, who were easily treated as secondary citizens by the majority in the states. “This was a form of administrative colonials rather than settler colonialism.” This then melded into the informal imperialism of the post-World War I period, whereby the United States did not formally gain any additional territory, nor did it desire to. What the U.S. did do, however, was to expand its influence in other ways, coercing or encouraging other nations, multi-national corporations, and international government organizations, to act in American interests. As Immerman argues in *Empire for Liberty*, “The empire that America has constructed in the twentieth century is the most powerful empire in
world history…Its global leadership, when measured in terms of technological innovation, manufacturing, gross domestic product, or any other frame of reference, far eclipses all competitors.”7 Despite this, the United States’ new territorial policy is even less precise than it had been in the earlier eras of American history because of its informal nature and because of “America’s reluctance to look like an empire,” and “Americans’ self-image as the bastion of liberty.”8

Territorial System Persists and Solidifies

While less important than it had been in the past, territorial administration continues into the 21st-century. Ironically, there are more people living in American territories in the 21st-century than at any time before 1898. Puerto Rico, with a population of about 3.7 million as of 20109, is the dominant remaining territory both in terms of number of people and political significance. As noted in an earlier chapter, the people of the island have tried repeatedly to clarify their political status, yet are stuck somewhere between independence and statehood, yet lacking the sovereignty of either. They have, however, achieved a territorial status that had never before been contemplated, that of U.S. commonwealth. While not comparable to the commonwealth entities of the United Kingdom or France, it is a shift from earlier territorial practices. By providing fully elective executive and legislative branches, as well as giving Puerto Ricans their own constitution (as opposed to an organic act), the status of commonwealth did signify that the United States Congress was comfortable providing relative political autonomy over local issues to the people of Puerto Rico.

Similar discussions have occurred since World War II in the territories of Guam and the American Samoa. Guam was acquired after the Spanish-American War, but was initially only
designated as a naval base, primarily as a coaling station for U.S. forces. It was not until 1950, after the island had been occupied by Japanese forces during the War, that Congress finally provided an organic act for the island. This created a civil government with an elective legislature but had a governor appointed by the president. It also provided all Guamiams with U.S. citizenship. In 1968 they were provided with the right to elect their own executive head, just as Puerto Rico had been 20 years earlier. There have been some efforts to grant commonwealth status to Guam, but they have not been reported out of committee in the House or Senate\textsuperscript{10}.

The American Samoa, a small island chain northeast of Australia in the Pacific Ocean, was also a post-Spanish-American War acquisition. Just like with Guam, the island was primarily used by the United States Navy as a station for refueling and resupplying ships. Unlike Guam, however, residents of the American Samoa have been largely successful at resisting American authority over local affairs. Despite not having an organic act created by Congress, and therefore remaining an unorganized territory, they enacted their own constitution in 1967 which provides them with a fully elected insular government. While they rely on the United States for economic support and defense, they have been able to practice self-government for the past five decades. American Samoans, however, have not been granted American citizenship because of their unorganized status. Currently they are considered U.S. nationals and while they can travel to and from the United States relatively freely, they must become naturalized if they wish to gain the rights that come along with citizenship, including voting in national elections. Puerto Ricans and Guamiams who wish to vote for the president need only move to a U.S. state and establish residence there. Not having citizenship can also affect the ability to receive certain benefits and to utilize a number of important federal programs. In addition, applying for naturalization cannot be done on the island, but must be pursued only after establishing a period
of residency in a U.S. state, a costly endeavor for anyone living halfway across the world on a tiny Pacific Ocean island.

The relationships between the national government and the remaining territories are complicated. In one sense, never has territorial policy been so streamlined and efficiently administered. The Interior Department’s Office of Insular Affairs serves as a conduit for concerns or issues arising in the insular territories to be transmitted to either the appropriate bureaucratic agency or Congressional committee. Generally, the office has been credited with doing its tasks effectively. Yet, at the same time, all of the existing territories are maintained as constitutional exceptions in the U.S. system. Guam and the U.S. Virgin Islands remain on the United Nations’ list of non-self-governing entities. As part of their long-standing efforts to encourage the decolonization of the world, this list was compiled to highlight those places that not only have inferior political statuses, but are not even given political autonomy in any meaningful sense. Of the remaining territories, however, the only realistic candidate for statehood is Puerto Rico and there remain numerous concerns over this among many in Congress, in addition to the question of whether there is even a political will to encourage the debate in the national legislature. Since U.S. territories do benefit in material and significant ways from their relationship to the federal government, there is also reduced incentive for them to seek independence, particularly the less populous insular possessions. Political inertia promotes the status quo in terms of territorial status.

In addition to the increasing political autonomy granted to the territories, elected territorial delegates have gained some additional responsibilities and powers, particularly in just the past couple of decades. Since the 1970s, they have also provided greater breadth of representation by simply allowing more territories to elect delegates. By the end of the 1960s, the
United States’ inhabited territories still included Guam, Puerto Rico, American Samoa, the U.S. Virgin Islands, and of course the District of Columbia. As of 1970, only Puerto Rico was provided any Congressional representation, in the form of a resident commissioner, elected for the unique term of four years. The remaining territories were without any official national representation, regardless of the powers. The District of Columbia, which had sent a delegate to Congress (certainly not a significant travel burden) from 1871 to 1875, was the first to be given the new right in 1971. This was followed by the U.S. Virgin Islands and Guam in 1972, despite the fact that the latter had been sending delegate-elects since the mid-1960s in an effort to convince the House of the political desire for one. The American Samoa had a similar experience, first electing a delegate in 1970, but not actually being granted the seat until 1981. Most recently the Northern Marianas Islands were given delegate representation officially in 2009, although they had a Washington territorial representative since 1978 due to their relatively unique political status in the American system.

The House, in addition to permitting delegates to the smaller territories and the District of Columbia, has also broadened their ability to participate. As early as the 1930s, there was discussion regarding the right of delegates to vote in committee. A House committee report concluding that, “The designation ‘additional member’ applied to a Delegate clearly indicates the character of the assignment. Expressly the Delegate shall exercise in the committee ... the same powers and privileges as in the House, to wit, the ‘right of debating, but not the right of voting.’”

It was revisited in the midst of legislative reorganization in the early 1970s, with a discussion occurring on a floor amendment offered by Puerto Rico’s Resident Commissioner Jorge Cordova. Representative Foley (D-WA), who would later become the Speaker of the House, claimed that the right to determine this issue was fully within the powers of the House
and that granting the Resident Commissioner this power would hardly be dangerous: “Nothing that the Resident Commissioner could do in a committee vote could become a final decision unless a majority of the elected Members of Congress supported his position.”  

The Cordova amendment would be agreed to by voice vote and the following year the House rewrote its rules to allow both the Puerto Rican Resident Commissioner and the newly seated delegate from the District of Columbia the right to vote in committee. This was altered again in 1973 to include all delegates, thus allowing the delegates from American Samoa and Guam to sit and vote in standing committees.

The final major difference in rights between delegates and regular House members remained the ability to vote on the floor when the House was acting as the Committee of the Whole. This was granted in the 103rd Congress by the Democrats in the majority (who given the makeup of the delegates by party would benefit). Yet, it was qualified so that in any case where the votes of the delegates were actually decisive, the Committee of the Whole would temporarily be suspended, waiting while the House by itself, where delegates would not have voting power, voted on the question. This meant that while they had the right to vote, it was only on issues where their vote had only symbolic but not substantial importance.

The constitutionality of this action was challenged by a group of House Members who alleged that it violated Article I of the Constitution by granting legislative power to delegates not outlined within that Article. While the rule change was upheld by both the District and Appellate Courts of D.C., in 1993 and 1994 respectively, the judicial decision hinged upon the automatic re-vote provision, which de facto reduced the delegate vote to symbolism, meaning without legislative power.  

The right was rescinded in 1995 when Republicans took control of the U.S.
House, but has been reenacted under Democratic control of the House during the 103rd, 110th, and 111th Congresses.

In a debate in the 110th Congress, Representative Dreier (R-CA) noted his opposition to the resolution which gave delegates the vote in Committee of the Whole. He called the change “an end run around the United States Constitution,” because only the representatives of the states could vote directly on issue. Since the Court had only upheld the vote given the automatic re-vote provision, for Dreier this was “the ultimate in illusions…When your vote counts, it doesn’t count; and when it doesn’t count, it counts.”\textsuperscript{15} While acknowledging the reality that these votes were symbolic, Representative Conyers (D-MI) responded by noting that, “Delegates will now have a record that reflects their positions on the measures that come before the House, but ultimately Delegates will be more involved with the work of the Congress, which would, at least in small part, become their Congress.”

In clearly hoping for eventual full membership rights for territorial delegates, Conyers reminds his colleagues that they “already serve and vote on committee business, they serve in caucus and leadership positions, and they diligently represent the interests of their constituents.”\textsuperscript{16} This exchange highlights the continuing tension that territories represent in the American political system. They are not full members of the Union, bestowed with equal political and civil rights, but in a 21st-century where liberty and freedom are stronger ideals in the United States than they have ever been before, and where we admonish other nations for imperialistic actions, there exists a blatant hypocrisy. That this hypocrisy is reflected in the national legislative body closest to the American people only heightens its salience.
Ideological and Strategic Warfare

Between 1896 and 1945, the United States underwent a massive shift in international relations. While the traditional notion that the country was isolationist before that era may be overstated, clearly the difference between pushing militarily into Latin America or taking over bordering lands and fighting wars across the entire globe was massive. This study, while not focused on international relations, is interested in how the political reality of the 20th-century affected Congressional perspectives of the national interest, in particular about spreading, or at least maintaining, American influence in key sections of the globe. While different strategies and concerns were addressed through containment policy or the War on Terror than in combatting Native Americans or ensuring orderly expansion, the overarching reasons for those goals were similar. In both cases it was protecting American ideals, economic development, and cultural growth that were at stake.

The United States’ military budget skyrocketed, unsurprisingly, during World War II, when it reached nearly 45% of GDP. Since then, it has slowly been falling overall, at least relative to the economy of country, through the recent end of military operations in Afghanistan and Iraq in the second decade of the 21st-century.17

Along with the massive military buildup was the extension of military bases throughout the entire world, both within American possessions and in foreign nations. In 2002, the United States still had troops stationed in over 150 countries across the globe and had military bases in over 60 of those countries.18 The incredible reach of the U.S. military ever since World War II is hardly unfamiliar to almost anyone who has lived during that time. This spread, however, has been to protect American interests through a variety of different conflicts and international
incidents. With military forces close to anywhere on the planet, the United States can quickly mobilize in case of an attack or even a threat of an attack.

This relates to the current project because it is an extension of the American empire, different than earlier periods, but no less reflective of a national project of expansion. No longer needing to take literal possession of remote lands, the United States, through its republican, elected, institutions has instead focused on ensuring that the position of the country, as a major world power, is unthreatened by external forces. While much has been written about the role of the imperial presidency during this period of time in relation to war-making and foreign policy, Congress played a strong role throughout, usually supporting the president’s efforts, even sometimes pushing farther.

Cold War containment policy may have been outlined by presidential administrations following World War II, but Congress had already had a long history of condemning and actively working against communist and socialist forces. After the military buildup, Congress also realized that it needed to centralize the military bureaucracy. In 1947, they enacted the National Security Act, creating the Air Force, putting all of the main military agencies together in a new Department of Defense, crafted the Central Intelligence Agency (CIA), and gave the president the authority to organize the National Security Council. As Deering noted, these changes, along with a number of peacetime treaties requiring permanent military presence throughout the world, “marked a significant shift in Congress’s 150-year practice of maintaining a small-to-moderate-sized standing army, adhering to a policy of neutrality, and creating only modest-sized civilian institutions for the military’s support.”

What these changes did, in the long run, was to supply presidents with greater autonomy over military action. Rather than requiring Congress to appropriate money just to build a
standing army capable of waging war, the United States had one of the largest militaries in the world, certainly the most expensive, and could mobilize very quickly to react to potential threats. This gave the president enormous power over Congress in terms of decision making in war. Yet, it was largely Congress that provided this, and Congress which, despite a lot of frustration over it, has supported most military actions. Part of the reason for this is the fragmentation and factious nature of American politics.

The president can rationalize their decisions over military operations by linking them to supposed national interests because most reasonable explanations would be persuasive to the public and lawmakers.

Blechman, writing about the role of Congress here, notes that, “Congress can take more explicit account of competing American interests…For many defense issues, there is not one position that serves the national interest and others that do not. Rather, different outcomes serve different elements in American society.” Military operations against Iraq in the early 1990s, therefore, can be seen as protecting American interests in oil, defending a small sovereignty under attack, pushing back against the forces of authoritarianism, and re-stabilizing the Middle East. In order to ensure public support, presidents need only find Congressional allies, select an appropriate rationale, and then hope that the military effort goes relatively smoothly.

Reagan’s invasion of Grenada in 1983 is a prime example of how militarization has helped enforce the informal imperialism of the modern United States. Grenada is a tiny island nation, albeit densely populated, in the southern Caribbean Sea. Its military capabilities were relatively non-existent and most Americans couldn’t find it on a world map. It was hardly a threat to American dominance. Yet, it provided an opportunity for Reagan, a president needing a spark, to reassert U.S. seriousness toward the threat of communism.
The invasion of Grenada would not have been possible if it weren’t for the presence of a medical school there which had hundreds of American students. After radicals assassinated the Prime Minister of the island, it was the potential threat to the Americans’ lives, however remote, that gave the president a window of opportunity. As Kinzer writes in his book, *Overthrow*, “Reagan’s advisors immediately realized that this crisis gave the United States an unexpected chance to win a strategic Cold War victory.” Reagan decided to send in American forces, eventually thousands were on the ground in Grenada, to evacuate the American medical students and put down the rebellion. The victory was hardly something noteworthy considering the resources available on each side of the conflict and there was later frequent criticism over how poorly the military operation went considering that differential. Yet, it was a victory in the broader sense of demonstrating just how far the United States would go to protect its anti-communist democratic rhetoric.

In an article regarding the “Presidential Spectacle” Miroff argues that Reagan’s invasion of Grenada was predicated initially on the narrative that “The enemy was suitably evil…” and that “America’s objectives were purely moral – to protect the lives of innocent people on the island, namely American medical students, and to restore democracy to the people of Grenada.” The spectacle, however, expanded to include the images of the medical students being evacuated, thankful that their lives were saved (despite any evidence they were in danger) and then eventually that there had been a Soviet-Cuban plot to build a communist force on the island. This meant for Reagan that, “He had rescued not only the students but the people of the Americas as well.”

A Congressional Research Service issue brief filed in December of 1983 noted that there were four areas of controversy regarding the invasion. The first was the actual threat posed to
U.S. security interests, the second dealt with the actual level of danger Americans on the island were in, the third was the legality of the invasion, and the fourth was potential international consequences over the action\textsuperscript{24}. The debate, which pitted liberals in Congress against the internationalist anti-communist war hawks, demonstrated that despite the questionable evidence provided by the administration, there was strong support for the action in the abstract. In opening statements to the House in late October, for example, Representative Vento commented on the increasing clarity of false evidence for the invasion by noting that, “This would almost be comical if the subject and facts were not a central basis for justifying the military action of our Nation in Grenada…No matter what good foreign policy ends the United States would like to attain, how we do it is extremely important. The end does not justify the means.”\textsuperscript{25} Representative Walker, speaking just a few minutes later, berated what he called “left-wing radicals” of the Democratic Party, but argued that “Most of us believe our American troops were on a mission of great importance to this Nation and performed that mission with great honor.” To the families who lost soldiers, Congress can say, “that their loved ones stood as staunchly for freedom as anyone in past generations.”\textsuperscript{26}

Regardless of the sincerity of the rhetoric and the reality of the dangers posed by the Grenada radicals, Congress and the American people were largely satisfied with the action. Dissents were voiced, particularly in the Democrat-led House, but Grenada was just one example in a long line of U.S. interventions into the affairs of other sovereign nations, which included removing Allende from leadership in Chile, helping Saddam stabilize the Middle East (only to depose and execute him later), fighting wars in the Korean peninsula, Vietnam, and Afghanistan over the spread of communism, and many others. The role of Congress in these actions has been important, even if presidents have largely taken the spotlight and the credit (or blame). The
military operations were enabled by a Congress willing to provide the president with the power to protect the informal American empire.

The most recent examples of this have centered on what has been broadly titled the War on Terror. After the 2001 terrorist attacks on New York and Washington, D.C. that left thousands of Americans dead, President George W. Bush was given extremely wide latitude in terms of formulating a military response. The initial operation to invade Afghanistan, root out the Taliban, find Osama Bin Laden, and attempt to establish a working democracy there was widely supported by the American public and a Congress shell-shocked by what had occurred. The secondary operation, which led American forces into Iraq in order to depose Saddam Hussein, became mired in partisanship and presidential hubris as it dragged on. The rhetoric, however, was a time-honored reflection on bringing liberty and democracy to a people long oppressed by a dictator.

Even while Democratic opposition was voiced more consistently as the conflicts aged, the Republican support was infused with the rhetoric of spreading American values to the Middle East. In discussing an amendment to a 2002 authorization for military force, Representative Linder (R-GA) reflected that “what cannot be disputed today is that peace and freedom are the ends to which we now seek our means…I am proud to join a broad bipartisan coalition of Members by standing up to tyranny and oppression and opposition to freedom…”27 In another debate, Representative McInnis (R-CO) rose to speak, tired of having to attempt to defend the United States against not only foreign criticism but “apologists” among his colleagues. “This country, the United States of America,” he argued “has fought for other countries, has gone overseas more than any other country in the history of the world to fight not for American land but to fight for other people in this world.”28 What this comment inadvertently illustrates,
however, is that in fighting “for other people in this world,” the United States has been expanding its informal empire, influencing through its military the institutions, processes, and development of dozens of other nations, all to promote American democracy, capitalism, and the Western ideal of liberty.

Even the Supreme Court has recognized the shifting reality of American power in the broader world. In *Boumediene v. Bush* (2008) a conservative court nonetheless scolded President Bush over its treatment of detainees in the War on Terror held in Guantanamo Bay. In that decision, the Court argued that while the military installation might be only leased from Cuba, according to a strict interpretation of the treaty, it was de facto American territory and therefore detainees were constitutionally required to be given some habeas corpus rights. In one sense, this ruling provides a counter to the power of the president and Congress to act extra-constitutionally in its treatment of potentially dangerous war criminals. Yet, in another, it is a reaffirmation of the spread of American empire. Despite not being a part of the United States in the way that Puerto Rico or Guam are, the Supreme Court recognized that anywhere U.S. authority is predominant, as it is in the Guantanamo Bay military facility, certain constitutional guarantees, provided to all persons on American soil, must be followed. This expansion of the concept of “territory” recognizes the informal empire that the United States has created and attempts to ensure, even if at a basic level, that constitutional protections are relevant.

**Economic “Manifest Destiny”**

Multi-national corporations have replaced diplomats as the primary disseminators of American values and interests across the globe over the past half-century. In an interview in the *Challenge* journal, the Political Economist Robert Hunter Wade argued that economic American
economic interests have been as consequential as the military concerns in supporting an informal empire after World War II. One of the reasons for this was “Nixon’s breaking of the link between dollar and gold in 1971…” which Wade argued created the opportunity to run up large deficits and, “then spend much more than it earned on consumption and the military, and it had more autonomy over key factors like interest rates and taxes.”

In essence, Wade points out is that, “the United States really does not have to elicit the cooperation of other monetary authorities,” either international organizations or other nations. What this has done is allow the United States to economically dominate the rest of the world, particularly since the end of the Cold War. Most significantly, he argues that the United States “can go on sustaining its current strategy for a long time, provided the world does not move to a more sensible set of rules at the world level…”

American dominance, of course, goes far beyond simply their advantages in currency and financial capital. John Steele Gordon, in Empire of Wealth, points out that the American economy “is not only the largest in the world, it is the most dynamic and innovative as well.” Most technological advances of the 20th-century were by Americans, worldwide culture has been affected by American movies and music, and English is now the lingua franca. This is not to argue that the United States is the only influence in the world, but the dominance it exercises in socio-cultural, financial, and political domains across the globe surpasses that of any other empire in history.

While the past few years have seen the dramatic growth of Asian, specifically Chinese, corporations, the United States still dominates the world business scene. In terms of market value, the largest corporations in the world in the Forbes Global 2000, which lists the most powerful companies, are mostly American in origin (see Table 10.1). In all there are over 650
American corporations on the list, covering an extremely broad array of industries from banking, industry, and resource extraction to electronics, pharmaceuticals, and video game sales.

Table 10.1 Forbes Global 2000, 2014 edition – Top U.S. Corporation in Market Value (Top 20)

<table>
<thead>
<tr>
<th>Company</th>
<th>Rank</th>
<th>Market Value (in $billions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apple</td>
<td>1</td>
<td>$483.1</td>
</tr>
<tr>
<td>Exxon Mobil</td>
<td>2</td>
<td>$422.3</td>
</tr>
<tr>
<td>Google</td>
<td>3</td>
<td>$382.5</td>
</tr>
<tr>
<td>Microsoft</td>
<td>4</td>
<td>$343.8</td>
</tr>
<tr>
<td>Berkshire Hathaway</td>
<td>5</td>
<td>$309.1</td>
</tr>
<tr>
<td>Johnson &amp; Johnson</td>
<td>6</td>
<td>$277</td>
</tr>
<tr>
<td>Wells Fargo</td>
<td>7</td>
<td>$261.4</td>
</tr>
<tr>
<td>General Electric</td>
<td>8</td>
<td>$259.6</td>
</tr>
<tr>
<td>Wal-Mart Stores</td>
<td>10</td>
<td>$247.9</td>
</tr>
<tr>
<td>JP Morgan Chase</td>
<td>13</td>
<td>$229.7</td>
</tr>
<tr>
<td>Chevron</td>
<td>15</td>
<td>$227.2</td>
</tr>
<tr>
<td>Proctor &amp; Gamble</td>
<td>16</td>
<td>$217.8</td>
</tr>
<tr>
<td>Pfizer</td>
<td>18</td>
<td>$203.9</td>
</tr>
<tr>
<td>IBM</td>
<td>19</td>
<td>$202.5</td>
</tr>
</tbody>
</table>


It may not be apparent how this relates to territorial policy, and in many ways it is not a direct connection. The policies, however, that spurred the economic growth of the last 100 years, along with the ability to fight devastating wars in other countries, allowed the United States get to this dominant position. Many of those decisions were drive by Congressional initiatives. Certainly presidents have been integral to many of these efforts as well, but they have worked mostly in tandem with Congress, not against it, at least when taking a broad approach to the
project of economic imperialism. Instead of acquiring new land for Americans to settle and operate republican democracy in, Congress’ new territorial policy relies on the strength and influence of American corporations to spread the values of capitalist democracy, consumerism, and American culture to the rest of the world. Clearly this argument is value laden in some sense, but it also reflects the reality of how and why American policy operates the way it does. Americans have no need for geographical expansion. Instead they look for economic and cultural expansion.

Economic aid to other nations has become an additional key component of the new informal empire. Its primary purpose is to bind the recipient nations to the United States and promote American business and democratic ideals throughout the world. In discussing a bill which would provide assistance to a variety of Central Americans countries, Representative Evans (D-IL) said, “I believe the economic assistance we give to other nations for development is an important, if not key, ingredient in our foreign policy. This is particularly so with respect to Central America. We must continue in our efforts to encourage the budding, fragile democracies…”33 In 2009, in response to a call from Obama to increase aid to Afghanistan and Pakistan, Representative Woolsey (D-CA) noted that, “I have said for a long time that the best way to fight terrorism is to give people real hope for a better future so that they don’t become terrorists in the first place.”34 Both of these quotes reflect the increasing understanding of how providing economic aid can be a boon to foreign policy goals, including a favorable international environment for American business and trade.

Promoting the Foreign Assistance Authorization Act of 1986, Representative DioGuardi (R-NY) rose to summarize why it was so important to the United States. His arguments are worth quoting at length here.
Foreign assistance is a prudent investment that furthers our national security interests, promotes economic and political freedom, and reflects the humanitarian concerns of the American people. Economic assistance strengthens the emerging patterns of economic growth in developing countries. This growth enables them to become viable trading partners with the United States and provides important growth opportunities for U.S. exporters as well as new markets for U.S. goods. In a world prone to anti-Americanism we must make certain that our friends have the resources to ensure a democratic future.  

Economic aid provided through Congressional appropriations plays an important role in promoting American dominance in the world. It is a straightforward and relatively transparent way of encouraging “democracy” as defined in the West, economic development via capitalism, and alliances with the United States. We don’t need everyone to be part of the United States and we don’t expect or want to acquire more territory. We just want to ensure that the rest of the world works with us, on our terms, as much as that is possible. 

This can be seen particularly in what happens when another country breaks our trust. The first action in the modern world tends to be imposing economic sanctions. If you aren’t going to work with our economic plan for the world, then we will cut off support to that end. This clearly doesn’t always work, and at times can be counterproductive, but that it remains a viable and frequent option demonstrates its power as a means to encourage compliance with the new informal empire of the United States.

Informal American Empire

Nugent argues that there is a reason why Americans are both afraid of the idea of empire and why they nonetheless push further toward influencing the rest of the world. Empires, he notes, “decline and fall. But frontiers (including settlement frontiers), missions, and manifest destinies are not supposed to. Instead they expand. Indefinitely.” The United States therefore is
not an empire because “Admitting to being an empire would be admitting that the United States some day, in some way, will decline and fall…How could the United States spread liberty, democracy, freedom, and free enterprise if it declined and fell?” While this argument is certainly heavy-handed, the underlying notion is that the commercial and military empire built up by the late 20th-century is an extension of the process of earlier expansion. Territorial policy has not gone away in the course of this period. It has significantly shifted, morphing with the change in means by which American expansion has continued. It continues on as well, in the remaining territories, a reminder that empire is incompatible with abstract ideals of democracy and liberty.

The American quest for Jefferson’s Empire of Liberty continues on, but now it includes Mickey Mouse, the internet, and hundreds of thousands of heavily armed soldiers to uphold the mission. It may be a completely different magnitude of a project, using very different means, but the end goals are similar. Protecting American interests and spreading the political and cultural values of the United States carefully and with a heavy mindfulness of who deserves and doesn’t deserve our support. The problem, as Nugent does highlight, is that empires eventually fall. It is not clear where this fourth era will take us, how informal empire will unfold as the United States faces a future where economic and military expansion are less viable options than they were in the past. The choices that Americans make, via their representatives in Congress, as well as the President, will determine the next stage in the extension of what used to be more clearly territorial policy. Despite its adaptation to the modern informal empire, it is the evolution of territorial policy that has helped bring the United States to where it is now.

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1 Nugent, *Habits of Empire*, 306.
2 Sparrow, *The Insular Cases*, 255.
3 Go, *Patterns of Empire*, 7.
4 Go, *Patterns of Empire*, 10-11.
The 2010 U.S. Census enumerated 3,725,789, but a July 2014 estimate put the population at just 3,548,397, a significant decrease.


Hinds’ Precedents, Volume 2, Sec 1300, 865.

Congressional Record, 91st Congress, 2nd Session, 31843-31852.


Congressional Record, 110th Congress, 1st Session, H904.

Congressional Record, 110th Congress, 1st Session, H904.

cfr.org/cgs


Kinzer, Overthrow, 220.


Congressional Record, 98th Congress, 1st Session, 29960.

Congressional Record, 98th Congress, 1st Session, 29962.

Congressional Record, 107th Congress, H7742.

Congressional Record, 107th Congress, H6117.


Gordon, An Empire of Wealth, xiv.

Congressional Record, 100th Congress, 1st Session, S1498.

Congressional Record, 111th Congress, 1st Session, H4104.

Congressional Record, 99th Congress, 1st Session, H5427.

Nugent, Habits of Empire, 316.
Chapter 11 – “Territorial Politics in the American System” – Institutional Interactions

All of the previous chapters have highlighted the role of Congress in determining the shape and direction of territorial policy as a way to emphasize the political development of that institution over U.S. history. As just one of three primary political branches in the national political system of the United States, however, it does not operate alone in any policy realm. The President and the Supreme Court have also played significant roles in the development of the American political system at large, as well as territorial policy specifically. This chapter will investigate a number of ways in which these other actors, throughout territorial history have helped to shape the actions of Congress. It will demonstrate that in this specific area of policy-making Congress is the primary actor, even if they willfully delegate some authority to the executive branch at times or find their authority constrained by judicial rulings. In particular, it will show that while there are times when Congress is forced to react to executive actions or judicial pronouncements that largely these other branches interact in ways that support and encourage Congressional action rather than stymie it. Congress may choose not to act or may neglect its responsibilities, but in terms of territorial administration and management the national project of expansion is one directed by the national legislature. Previous chapters have focused on the role of the House and Senate in shaping this project. This chapter will demonstrate the ways in which both the executive and judicial branches have interacted with Congress in responding to the challenge of territorial policy.
Executive Action

*Louisiana Purchase*

The early years of the United States saw rapid expansion in terms of population. Along with this came a desire to control access to the interior of the continent. To do this, Americans needed to control the Mississippi River. New Orleans, the primary port near the river’s connection to the Gulf of Mexico, was the key to doing so. The Treaty of San Lorenzo, ratified in 1796 between Spain and the United States provided for free navigation of the Mississippi for Americans, duty free deposit in New Orleans for three years, and recognized American sovereignty in the southwest portion of the Eastern border of the river, which became the Mississippi Territory.

The rapidly increasing settlement of the Ohio River valley and into the area around Saint Louis in the center of the continent meant that Spanish control of the area was increasingly threatened. In 1802, the Spanish, after having agreed to transfer control of the region to France, cut off American access to New Orleans. They did so by invoking the language of the San Lorenzo Treaty’s, claiming that three year time limit on that right of use had expired. This was a clear violation of the treaty, however, which did not provide the Spanish King Carlos with the unilateral power to end the arrangement regarding American access. Unsurprisingly, given the growing importance of New Orleans as a port for American economy, this action outraged many in the young nation. During the same period, President Jefferson along with key members of his cabinet were pursuing agreements with France, without officially notifying Congress, to ensure access to the interior continental waterways. Jefferson could not reveal these proceedings since they were politically controversial, however, but also could not risk allowing public hostility toward the Spanish to boil over into an unauthorized occupation of New Orleans. Jefferson was
also, at this time, pushing through a Congressional appropriation for an expedition to explore the lands west of the Mississippi and Missouri Rivers, which would end up making Lewis and Clark a well-known duo in American history.

Using Congressional allies to attempt to assuage wide-spread calls for military action against the Spanish, Jefferson was also able to push for diplomatic resolution with France, which would soon officially take over the Spanish holdings, including New Orleans. Plagued by debt from his own wars and worried about both the spread of Americans into the interior of the continent and, closer to home, the power of the British, Napoleon was eventually persuaded by American agents sent by Jefferson to France that selling the vast inland region of North America was the only prudent choice. For a marginal cost, the United States doubled in size, secured the Mississippi and Missouri River Valleys, and rid itself of a major foreign entity on the continent, all without military expense.

For his own part, the President was conflicted over the Louisiana Purchase. While he understood that it was in the best strategic, long-term interest of the United States to purchase the interior, he was uneasy with the imperialist rhetoric he heard from prominent Americans as well as concerned about the constitutionality of a treaty which expanded the territory of the United States beyond what was owned at the writing of the Constitution. In Jefferson’s mind, historian Richard Kluger argues, “New states could be carved from old ones or from the territories ceded to Congress while it operated under the Articles of Confederation, but nothing else was constitutionally sanctioned…” Jefferson, at first unconvinced that any plausible argument could be made by his cabinet that the current Constitution allowed for the assumption of new territory in the federal compact, set to work on drafting an amendment which would allow for it. His proposed amendment would have considered the Louisiana Purchase an exceptional provision,
rather than broadly expanding the power of Congress or the executive to take on new territory. At the same time, he knew that any constitutional amendment faced significant challenges as only a few defections among Jeffersonian Republicans in either the House or Senate, or the opposition of just a small handful of states would block its ratification.

Before he could further pursue this course his agents in France notified him that Napoleon was seemingly changing his mind on the entire treaty, which if not ratified quickly by the Senate, might be revoked by the megalomaniacal emperor. With the impending potentiality of losing the interior and with it access to the Mississippi River at all, Jefferson pushed aside his constitutional concerns, abandoned his amendment proposal, and pushed fully for Senate ratification. It was quickly achieved, along with an appropriation from the House covering administrative territorial costs. While concerns were raised about the suitability of the mostly French residents of the New Orleans and Saint Louis regions which were included in the transfer of adopting English and American systems of government and law, Congress was not a significant obstacle to Jefferson’s diplomatic efforts.

This episode, in many ways, demonstrates the tremendous influence the executive branch, via both the president at its head, but also through constituent agents, can have upon territorial politics. A fortuitous and random set of events occurred to enable American purchase of the vast Spanish/French interior of the country in 1803. Jefferson required Congressional support only after he had secretly sent a diplomatic envoy to France to negotiate the potential purchase and their ultimate success. His dominance in American politics at the time and the broad national desire for expansion, all but guaranteed ratification of the treaty by the Senate and appropriations for the sale by the House. Yet, Congress still played an important role in the case here. The national debate over expansion and whether the purchase would realize an
acceptable form of imperialism played out in that body and marked the contours of the relationship between the federal government and the acquired territory more than actions by Jefferson or his cabinet.

Clearly, the president was vital to the acquisition, and in this sense, required Congressional reaction, but what that reaction would be was not determined by executive action. For example, Senator Timothy Pickering argued that expansion might lead to “strife, disintegration, and decline…” while Senator John Breckenridge countered that, “the more extensive is dominion the more safe and durable it will be.” There may not have been sizeable opposition to the expansion overall, but the construction of the territorial governments of these areas beyond the original Old Northwest, were affected by Congressional concerns over the French inhabitants. As with other presidentially-led efforts to acquire new territories, the saga of the Louisiana Purchase clearly shows the importance of executive energy and ambition. Beyond forcing Congressional action in response, however, presidents have been less authoritative in determining how territories thus acquired were treated. Presidents remained important players in territorial politics, but due primarily to the deference of Congress, which as this study has shown, preferred to leave the details of administration to the executive branch whenever possible.

Military Expansion and Imperialism

Some of the most significant clashes between Congress and the other branches, particularly the presidency, occurs when military action is at issue. Without delving into the fascinating constitutional question regarding who has what powers over initiating and continuing military actions, it is clear that both branches have considerable influence over these questions. In many cases, a large portion of Congress has upheld, even if grudgingly, presidential actions.
Unsurprisingly, given the rapid expansion of the United States, as well as its role as a primary global actor since at least World War II, many choices have affected territorial policy. The following section will highlight, briefly, a few cases that help to illuminate the role that the president, as well as some other public and private actors, have had over territorial politics throughout American history. Cases will not only involve direct military action, but also the way in which American commercial interests are protected throughout the world.

From the beginning, as should be clear from earlier chapters, control in U.S. territories was highly dependent on a combination of military-based defense and encouraging settlement so that populations could defend themselves against both foreign powers and Native incursions. Territorial governors controlled militias and were important leaders of military efforts on the frontier. In this capacity, they were given guidance directly from the Department of War and the President. While their position was assented to by Congress, and their efforts could be hindered by that body, in their capacity as military leaders, early territorial governors were almost entirely bound to the executive branch. While continual conflicts existed on the frontier between the expanding European settlers and the Native Americans, military efforts were most salient in conflict with non-Native entities.

A major early example of this was what has become known as the War of 1812, where American imperialism found an early limit to its aspirations when it attempted to force the British out of the northern section of North America. The United States, a growing, but still embryonic and relatively weak nation, was emboldened following the expansion from the Louisiana Purchase in the first decade of the 19th-century. It also was facing a relatively hostile British Empire, whose relations regarding overseas shipping with the United States had become strained, and who occupied a sizeable portion of relatively fertile land adjacent to some of the
most populated regions of the United States’ interior settlement. There were growing calls for military action against the North American British territory along with assertions that the residents of that region welcomed American control. The Canadians, outside of a few petitions, showed little interest in annexation, “most preferred the elitist privileges, commercial incentives, and officious orderliness that the royal British regime offered them for remaining loyal crown subjects.”

The push for annexation of Canada via a military conflict was primarily a result of the expansionist desires of the American public, particularly those who saw the fertile regions surrounding the Great Lakes as more fruitful for settlement than the far off and less desirable lands west of the Mississippi that the U.S. had gained in 1803. There were, however, other reasons that made the conquest a persuasive goal. A swift and successful military action might convince the Indians of the Northwest of American dominance, cowing their hostility and separating them from British influence. The U.S. population had surged to well over seven million by 1810 and while no large standing army was tolerated at the time, the small American force was still numerically dominant to the limited British forces holding the Canadian provinces. In addition, Madison persuaded Congress to authorize over 36,000 recruits.

These soldiers, however, never materialized, and the U.S. began an underwhelming campaign to forcibly annex Canada in 1812. That effort failed miserably and was, as Kluger argues, “a masterpiece of miscalculation from the start…” with a President and cabinet that, “blinded themselves to the nation’s preparedness to go to war, and once in it, to fight it with conviction.” In many ways, however, it was Congress that not only consented to, but drove for war. The 12th Congress, which took office in November of 1811, had been elected “on a wave of war fever,” and a young Henry Clay, elected as Speaker, “filled the foreign affairs and military
committees with war hawks like himself.” Very little opposition was mounted in the national legislature, and much of what was criticized the reasons for wanting war, rather than outright objection to the endeavor.

Lumbering through two years of fighting, U.S. troops actually lost ground to the British, who in the midst of the war in North America, had captured Paris, defeated Napoleon, and could now turn their attentions more fully on their uppity former colonies. It was clear that the U.S. was going to lose the war, but what else it might lose along with it became the ultimate question at that point. Rather than gaining control of the forts and towns across the northern border, Americans found themselves desperately warding off British regulars from reaching New York City and taking New Orleans. Perhaps the most tragic consequence of the war was when the British in August of 1814 occupied Washington, D.C. and set fire to a number of government buildings, destroying many of the records of the earliest Congresses in the process. The British would be finally pushed back, and while the War of 1812 would be seen as a relatively complete rebuke to American hostility, “the conflict also demonstrated how fiercely the United States would resist when its own real estate, the core of the country’s commonwealth was seriously threatened.”

Historians have placed much of the blame on President Madison as well as the fiercest war hawks in Congress, for pushing the United States into this conflict, and Madison’s generally incompetent management of the war was incredibly costly. This episode demonstrated that presidents would have significant wartime responsibilities and be looked to for military guidance. Yet, it is not clear if Madison would have been able to commit to the war if he had not had major Congressional allies swept in to power by a clamorous voting public. Henry Clay and the other war hawks pushed for the war initially, but there was growing opposition from some
members of Congress, especially as the war efforts struggled. The Senate defeated a number of presidential requests during the midst of the war, including arming militias and authorizing enlistment of minors without consent of an elder\textsuperscript{13}. While this streak of independence might have had no impact on the success of the war, it was certainly a source of frustration to the president and Federalist opposition, “went significantly further than partisan opposition in any other war,” demonstrating the importance of factionalism in Congress to pushing back against an energetic administration\textsuperscript{14}.

A second territorial case regarding the interaction between the executive and Congress over military action occurred a few decades later when President James K. Polk’s imperialist agenda pushed the U.S. further south and west on the North American continent. In the early 1840’s American settlers had been enticed to build new communities in the Mexican territory that would eventually become Texas. Eventually the heady independence of these pioneers would lead to an armed struggle, a separation from Mexico, and the creation of a new Republic of Texas. What Texans wanted, however, was to rejoin the United States, annexed in as a full and equal state. The U.S. elections of 1844 would in essence become a national referendum on the question of Texan annexation. In the end, the Southern states voted overwhelmingly, and unsurprisingly given the extension of slavery it would entail, in favor of the annexation candidate in Polk, while the North was largely divided and narrowly voted in favor of Henry Clay and the Whigs. Polk edged out his opponent, with some indirect assistance from an anti-annexation Liberty Party candidate, by a difference of just under 40,000 votes. His Electoral College victory, a whopping 170-105 seemed much more dominant, but this was largely because he was able to take New York, without which he would have lost the presidential bid\textsuperscript{15}. In this sense, the referendum on annexation was a very mixed signal, but with enormous consequence.
Polk, somewhat to his credit, was less interested in the slavery question than the vast majority of Americans were. Yet, that was the overriding concern wrapped up in the question of annexation of Texas and the potential acquisition of the northern border provinces of Mexico. The President believed he was seeking the national interest in going after these regions, but, in the end, “the price, however, was steep, insofar as Polk’s acquisition hastened the nation toward dissolution ad a devastating civil war.”\textsuperscript{16} First, however, he needed to convince Congress to agree to a treaty allowing annexation. There were numerous concerns to overcome, which had plagued earlier efforts by Texans to join the Union.

Just as Jefferson had worried about the constitutionality of purchasing lands to add to American territory with the Louisiana Purchase in 1803, some political leaders argued that the Constitution did not allow for annexation of foreign nations, which Texas was considered after having declared its independence from Mexico. This was easily overcome by the expansionist clamor against passing up such a tremendous opportunity and the simple fact that, unlike the French residents of New Orleans, the people of Texas were asking to become part of the nation\textsuperscript{17}. In addition there was some concern regarding the potential reaction of Mexico, especially if they were able to convince Britain to help finance a military effort to hold back American imperialism. This was unlikely, however, considering that the young independent Mexico was fractured politically and weak economically. Unlike the United States, which had banded together to force back the British in the War of 1812 (albeit after initiating the war in the first place), Mexico would hardly be strong enough to proactively counter annexation. “Compromise and concerted action, even in the face of invasion, loss of territory, or loss of national existence, eluded the troubled country,” Nugent argued in his examination of Polk’s aggression\textsuperscript{18}. Mexico’s possible retaliatory capabilities were simply not threatening.
The real hesitation on the part of many Americans over welcoming Texas into the Union was its impact on the simmering sectional crisis over slavery. The national debate had largely been contained since the 1820 Missouri Compromise drew an arbitrary geographical divide between slave and free states. The politics over territorial admission had carefully treaded this compromise through bringing one southern and one northern state in at a time, maintaining the delicate balance in the Senate to retain slavery on a national level. Annexing Texas, which would clearly come in as a slave state, and might be further broken up into smaller, also slave, states, was an enormous threat to the Missouri Compromise. Polk’s imperialistic vision and a revamped Democratic Party platform attempted to reduce the threat, although both only served to further open the sectional rift.

As Kluger notes, the Democratic Party in 1844 realized that it had to craft an argument for annexing Texas which might be more appealing to anti-slavery voters than simply the threat of losing the republic to Britain’s influence. “They devised a party platform that projected territorial expansion as a national imperative and, in doing so, hinted at a quid pro quo benefit…” that implied greater territorial gains, meaning free states as well as slave. Despite a rejected treaty which had been brought forth by outgoing President Tyler, the 1844 election, which demonstrated the public desire for annexation, led to a Congressional resolution suggesting immediate statehood for Texas, rather than a temporary period in territorial status. A last ditch effort to get obstructionist Senators to drop their stalling tactics was successful and essentially the final act of Tyler’s presidency was to accept the Congressional resolution offering Texas statehood. Polk could have reversed this effort, but the action aligned with his own desires, and he knew that speed was critical, as Britain was pushing for its own treaty with Texas. On July 4,
1845, delegates in Texas approved the offer and started the process of drawing up a state constitution.

One of the remaining issues of Texas’ annexation, however, was a resolution of its borders. In dispatching troops to the new southern border of Texas, President Polk ordered them into the region between the Nueces River and the Rio Grande, claiming it as American soil. This comported with claims the Republic of Texas had been making since 1836, but had not ever been a disputed border prior to that, nor had ever been occupied by Texan troops. Mexico’s newest president and its national Congress saw this action as a clear violation of international boundaries and sought to build up an armed force strong enough to drive the Americans from what became called the Nueces strip. Beyond the nationalistic pride involved, the border mattered because the Rio Grande extended much further inland than the Nueces, a difference that today would include present-day New Mexico and West Texas, an enormous, albeit largely arid and mountainous, region.

Despite this affront, Mexico’s President Herrera realized his country’s fragile state and told the U.S. that he would welcome a diplomatic commissioner to Mexico City to attempt to resolve the situation. President Polk sent John Slidell as a response, but did not seek or receive Senatorial blessing, which was required for official diplomats and therefore Mexico declined to accept Slidell as an official envoy. The situation simply deteriorated from there and on May 9, 1846, Polk received notification that Mexican troops had entered the Nueces strip and engaged with American forces stationed there. He requested a declaration of war, 50,000 volunteers, and $10 million from Congress, arguing that Mexican aggression had been long-brewing, that “We have tried every effort at reconciliation,” and that “Mexico has passed the boundary of the United States, has invaded our territory and shed American blood upon the American soil.” In
an abbreviated debate, limited to two hours by Democratic leadership, the House largely supported the president’s calls, eventually passing a bill 174-14. It is clear that a sizeable number of those who voted in the affirmative were uneasy with the president’s message, but “they did not dare refuse to support the war.” The Senate voted 40-2 in favor and with that the United States had officially declared war against Mexico.

The Mexican War was largely dominated by American forces. In the short period of just two years, the United States went from being at peace with Mexico to having armed forces camped just outside of Mexico City. Some expansionists desired to destroy the neighboring nation altogether, but the popular sentiment for territory was already satiated with the occupation of California, the successful treaty granting Oregon from the British, and the clear possession of Texas down to the Rio Grande. Additionally, many Americans were wary about incorporating millions of Mexicans, who were ethnically, linguistically, religiously, and culturally, different from the dominant Anglo-American strain. The United States would take its share of spoils, but there was a limit to American imperialism. Spread now from the Atlantic to Pacific Ocean, with a vast western region largely unoccupied (and even unexplored), the United States had the room it needed to grow. The Mexican War came to a close with the signing of the Treaty of Guadalupe Hidalgo in 1848. This treaty, as noted in earlier chapters, handed the United States the Texas border it had initially claimed (and that had precipitated the war) and much of the modern American Southwest, while it gave back a small strip of desert land near the Gila River.

The War, despite its relative success, had taken longer and cost more in money and lives than had been anticipated. Kluger argues that Polk, “used the power of the presidency even more willfully and productively than his revered mentor, Andrew Jackson, and perhaps more deviously than any of his predecessors.” The president had conducted a campaign against
Mexico using his strong convictions, unfailing expansionist desires, and personality in order to assert authority over territorial expansion. Yet, he would fade just as quickly as he had risen, as it became clear that adding the vast western regions were going to require revisiting an increasingly unstable sectional conflict over slavery. Polk was able to dictate the national discussion over territorial expansion for a few short years, and his impact in that regard is incalculable, but it was Congress that was left to deal with the aftermath. While Democrats in Congress clearly consented to the War and provided Polk with the resources needed to fight it, they also were able to affect the contours of the territorial questions. The Senate, in rejecting early treaty efforts to obtain Texas, set up the situation whereby it would be admitted directly as a state. In not certifying Slidell, Congress ignored a very unlikely, but possible, diplomatic solution to the Nueces strip.

Even with Polk’s strong role in promoting the Mexican War, however, he was also heavily criticized and attacked by opposition in Congress. Just days after he declared that Mexican troops had shed American blood in skirmishes in the Nueces strip, Whig leaders in Congress demanded evidence of these claims, hoping to embarrass the administration into revealing their warmongering as more simply imperialist desire, especially with the goal of expanding slavery. Introduced by then Representative Abraham Lincoln, the so-called Spot Resolutions forced Polk to at least concede that the initial fighting had been in disputed territory, rather than clearly American soil. Additionally, the Whigs condemned the war as unconstitutional and unnecessary among other complaints. A couple of months later, with the war effort still in its infancy, the Wilmot Proviso was introduced as a rider on an appropriations bill to negotiate a resolution to the conflict. This was an attempt to dissuade imperialists and slavery proponents from continuing the war by forbidding the expansion of slavery into any new
territory gained via the war. While it would never get past the Senate, which favored the slave states, it did demonstrate that Polk could not dominate the discussion of territorial policy unilaterally. In this sense, while Congressional actions in opposition to the president were largely reactionary, they did play a considerable role in shaping Polk’s options over expansion.

*Bureaucracy of Administering Territories*

Just as with any policy realm Congress must rely on others to actually implement its desires. While they can choose which agency to task with certain duties and can oversee their actions, this requires a level of focus which is difficult to achieve for the fragmented elected chambers. Given the struggle between party control, factions within each party, and the vast variety of topics which Congress deals with on a regular basis, it is not surprising that oversight is a demanding endeavor. Regardless of how one models activity within Congress, coalition-building\(^{26}\), conditional party government\(^{27}\), or other, Congress faces impediments to effectively evaluating and constraining bureaucratic actions. Legislative oversight is a vitally important task despite these challenges.

There are numerous reasons that oversight is an important role for Congress to undertake. First, since most legislation is purposely left ambiguous or complex, implementation requires agencies to have a good deal of discretion. In order to ensure these decisions are in line with Congressional intentions, committees may hold hearings or require documents or testimony. Additionally, oversight serves, “to protect Congress’s policy making role and its place in our constitutional separation of powers system as the ‘first branch’ of government.”\(^{28}\) Therefore it is clear that Congress cannot and should not simply leave a basic set of instructions to be followed
by the executive branch (and upheld by the courts) without any oversight. It is, however, a tough task in practice.

For one, there is simply no consensus on what the scope and depth of necessary oversight is. Not all members of Congress are concerned about the same issues, whether due to partisan, constituent, or other reasons. If only a few members of Congress consider an issue important enough for oversight, no action may occur, unless they are in positions of power or have some other direct influence. There is also usually a lack of incentives for most members of Congress to aggressively monitor the executive branch. Members of the same party as the president would avoid embarrassing the most prominent political actor in their party over anything they were not forced to oversee.

Given these obstacles to effective and constant Congressional monitoring, executive agencies and bureaucratic officials are largely left to interpret and enforce legislation as they see fit. In the case of territorial policy, responsibilities were decentralized and unfocused for most of U.S. history. The initial system of territorial governance, at least on paper, appears to be centered in the State Department. In 1793, then Secretary of State Thomas Jefferson wrote to Northwest Territory’s Governor St. Clair that, “as to whatever you have to do in your military Capacity, you refer yourself to the Secretary at War…every thing else falls into the department of State, to the head of which it should be addressed…”

Governors submitted their reports, although not as frequently as required by law, to the Secretary of State. Presidents used that office to select their nominees for appointed territorial offices as well. As described by Pomeroy, “the appointment of governors and secretaries did constitute the most essential concern of the Department of State with the territories.” There were numerous references to an informally named “territorial desk” within the State Department,
where much of these documents relating to appointments and other territorial concerns were filed. Given the prominence of territorial issues, particularly before the Civil War period, it is unsurprising that frequent correspondence was sent directly between territorial governors and the heads of various agencies, such as the Secretary of State or Secretary at War.

Territorial officials also sought out advice on legal matters from the Justice Department (which oversaw the judicial system within territories as well). They dealt with the Treasury Department on issues dealing with payments toward the territorial assemblies and appointed official as well as with early land surveys. When the General Land Office was created in 1812 issues regarding surveying and selling lands in the territories transferred to that office. In 1849, upon the creation of the Department of the Interior, public lands issues found yet another home. While the frequency and importance of these contacts shifted over time, it is clear from perusing territorial archives that the federal bureaucracy had extensive interactions with territorial administration. As has been shown in previous chapters, this administration was not always effective, however, and there were often times when responses from federal bureaucrats were confusing, vague, or non-existent. This led to situations where appointed officials or territorial legislatures were stuck between taking no action on important issues or taking action that might later be censured by federal overseers.

**The Supreme Court and Territorial Policy**

The United States Supreme Court has not ruled frequently on territorial issues, but there have been a number of highly consequential decisions nonetheless. With one important, although qualified, exception, these major cases have all sustained deference toward Congress in exercising plenary control over territorial administration.
In the one primary, influential case, in which legislative control over territorial policy was questioned, the result was a decision that has been upheld as one of the worst in U.S. history and only stoked the fires of the tension between the South and the North over slavery. The case, *Dred Scott v. Sandford* (1857) hardly needs an introduction as it is, along with perhaps *Plessy v. Ferguson* (1896), seen as the primary examples of judicial interpretation being twisted to uphold system of racist oppression. Yet, while most textbooks and classroom discussions revolve around the impact on race and the conflict over slavery, *Dred Scott* is perhaps more directly about Congressional control. After all, Taney could have simply said that Scott had no standing to sue and therefore rejected the case. Instead, he took the opportunity to argue that the U.S. Constitution did not provide the United States Congress, the authority to determine the existence of slavery in territories. In effect, he wanted to force Congress from being able to outright prohibit slavery.

Responding to the claim that the Territorial Clause of the Constitution gives plenary power to Congress Taney grumbles that, “in the judgment of the court, that provision has no bearing on the current controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States…and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.”

To evidence this claim, Taney argues that the clause was only inserted to provide Congress with the means to settle disputes over interior lands of the U.S. that were claimed by
the various states at the end of the Revolutionary period. This land had been ceded to the Confederated Congress, under the Articles of Confederation, and thus the Constitutional provision simply gave the new government clear authority over that particular territory.

Stretching this argument, Taney opines that “It does not speak of any territory, nor of Territories, but uses language which, according to its legitimate meaning, points to a particular thing. The power is given in relation only to the territory of the United States,” that which was then in existence.

Furthering this argument, he outlines the Northwest Ordinance, which he understands as a legitimate exercise of the Congressional authority under the Constitution’s Territorial Clause. Ironically, of course, that very ordinance prohibited slavery in the Northwest Territory. Capping off his point, Taney notes that the language used in that provision was also ambiguous and did not match other constructions of Congressional power which were considered plenary. While he may have had some logical merits to this argument facially, there is simply no historical proof that this was the case. The drafters of the Constitution did not discuss, in any meaningful sense, the Territorial Clause, and were clearly content with its construction. Since at that time, the existing Congress had been presumed to have relatively broad powers over the existing territory, it is highly doubtful they would have agreed with Taney’s judgment 70 years later.

Taney additionally looks toward precedent in order to show that even the Court had not previously settled the definition of Congressional authority in this arena. Citing the case of American and Ocean Insurance Companies v. Canter (1828), Taney concedes that the Court decided that, “The right to govern may be the inevitable consequence of the right to acquire territory.” Yet he argues, this simply means that “the court did not mean to decide whether the
power was derived from the clause in the Constitution, or was the necessary consequence of the right to acquire.”

All of this evidence leads Taney to famously opine, “There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new states…no power is given to acquire a Territory to be held and governed permanently in that character.” For Taney this means that while the government may not hold territorial possessions indefinitely, “it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission.”

He also recognizes that “The form of government to be established necessarily rested in the discretion of Congress.” That power, however, Taney warns, “can never be a mere discretionary” one. To this end, “…the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved.” In other words, all of the protections in the Constitution, Taney claims, apply directly to territorial residents. Therefore, any person, owning property, cannot be divested of that property due to territorial laws sanctioned by the federal government. Since slaves were property, as Taney’s argument had already laid out in clarity, and not considered persons under the U.S. Constitution, Congress could not create territorial rules which would void the ownership of slaves, since this would be an unlawful taking. Thus, Dred Scott was never freed when he entered Illinois Territory and could not be, since the Constitution does not provide this right to the federal government.
Taney’s intentions may have been to ameliorate some of the growing tension over slavery by promoting what he viewed as a legitimate and reasonable compromise, but to those worried about the expansion of slavery, this was an incredulous decision. Limiting the power of the national government to define rules for territories was a side effect of the core of the opinion, but it was a controversial principle. While it clearly proscribed Congressional authority over territorial policy, the backlash against the decision helped lead to the election of Abraham Lincoln, an increase of abolitionist rhetoric, and the secession of numerous Southern states. This was directly a rebuke to the decision’s impact on slavery, but it was also an admonishment of the Supreme Court for imposing limitations in a realm which Congressional control had been mostly unchallenged constitutionally.

*Church of Jesus Christ of the Latter-Day Saints v. United States (1887)*

In 1887, the United States Congress revoked the charter for the corporation of the Church of Jesus Christ of Latter-Day Saints, informally known as the Mormon Church, within the Territory of Utah. While the action was clearly due to concerns over the influence and practices of Mormon leaders within the territory, in particular the practice of polygamy, the authority for the action was argued to have derived from the Territorial Clause of the U.S. Constitution, through which the Congress is able to exercise direct and plenary control over territorial lands and their governments.

Mormon leaders complained that this action directly violated a contractual obligation between the government and private individuals, forbidden by the Constitution to state and national governments. They also argued that this violated their freedom of religion and that the revocation resulted in the government confiscating church property. To these the national
government responded, in the words of the Court, “that the use made of said personal property was largely for purposes of upholding and maintaining said doctrine and practice of polygamy, and violating the laws of the United States…”31

Justice Bradley’s opinion begins his argument rather directly by claiming, “The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire territory itself, and from the power given by the constitution to make all needful rules and regulations respecting the territory or other property belong to the United States…The power to power to make acquisitions of territory by conquest, by treaty, and by cession, is an incident of national sovereignty.” Bradley applies this logic, unlike Taney, to all territory acquired of the United States. Once acquired, these territorial possessions must be, by the fact of sovereign national power, administered in some form. “Having rightfully acquired said territories,” Bradley continues, “the United States government was the only one which could impose laws upon them, and its sovereignty over them was complete.”

These arguments, which echo the same made by Chief Justice Marshall in early cases regarding the rights of relations between the federal government and Native American tribes, point toward a particular conception of these territorial entities. They were to be considered subordinate to the national government, but separate from the states, and therefore under the control of Congress and the president.

Bradley supports his arguments with the practical applications in territorial relations. “The supreme power of Congress over the territories, and over the acts of the territorial legislatures established therein, is generally expressly reserved in the organic acts establishing governments in said territories.” This is true of Utah Territory, just as it had been of those territories which had come before. The principles at stake, Bradley is essentially arguing, are not
controversial. Congress has always had plenary authority in the territories, even if it chose not to exercise it. Simply because it only infrequently utilized its more draconian power does not mean that power is unconstitutional.

This conclusion thereby leads Justice Bradley to determine that Congress was within its rights to alter and then abrogate the charter incorporating the Mormon Church and confiscating property supported through donations to that corporation due to prohibitions on polygamy. Of course the Court at this time was itself antagonistic to that practice, notwithstanding any statutory bans, and Bradley clearly outlines that, “The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Christianity, and of the civilization which Christianity has produced in the western world.”

One could argue that this difference, therefore between this case and *Dred Scott* was the Court’s perspective on the ideological contours of the case, which then colored their interpretation of the Constitution. Despite this legitimate concern, however, there is clear evidence that the American political system had intended for Congress to exercise complete authority over the territories. What was not settled at this point was whether or not Congress could so over territories it had no intention of preparing for eventual statehood. That wouldn’t have to wait much longer.

*The Insular Cases*

Following the Spanish-American War of 1898, the United States ratified a treaty with Spain which relinquished control over the Philippines, Cuba, Puerto Rico, and numerous other island possessions scattered throughout the world. While the Philippines was by far the most populous and furthest situated of these possessions, the political system geared up for resolving questions of what Congress could or could not do with any of these island territories much closer
to home. It would be Cuba and Puerto Rico that would seem to be the early testing grounds. Cuba was quickly dismissed from this potentiality when Congress enacted, and President McKinley signed, the Teller Amendment, which declared U.S. intent to provide independence to Cubans. As Sparrow notes, this was due to a variety of factors, including protecting American agriculture, the popularity of the campaign to free Cuba, and a strong faction of anti-expansionists in Congress\(^3\). This left Puerto Rico as the constitutional testing ground for a strengthened brand of American imperialism.

While the questions which first arose regarding the relationship of Puerto Rico to the American political system were significant, they were also based in a relatively complex and dry policy arena, namely tariff rates. According to the U.S. Constitution, in giving Congress the power of taxation and providing for defense and welfare, Congress is also required to ensure that, “all Duties, Imposts and Excises shall be uniform throughout the United States…”\(^3\) The problem here was that legislation was extended to Puerto Rico that essentially treated it as a quasi-foreign entity, in the sense that goods transported between the states and the island were subject to a tariff. If Puerto Rico were a part of “throughout the United States” as designated by the Constitution, then any tariff treating them differently from the mainland states would be unconstitutional. If Puerto Rico were not considered a part of the United States, the question then becomes what exactly is its status vis-à-vis the federal government and the U.S. Constitution. In plain words: Does the U.S. Constitution follow the flag, and to what extent?

It would not take long for the U.S. Supreme Court to face these questions. Through a series of cases, collectively designated as the *Insular Cases*, and beginning in 1901, the Supreme Court unquestionably strengthened territorial policy. They did this, however, largely by upholding long-standing assumptions regarding the federal government’s authority over
territories, but by defining them in ways that had in the past been contested. In the end, these cases asserted that the power of the U.S. Congress over territorial policy was restricted to its own designations of territorial status. The Constitution did follow the flag, but only to the extent which Congress asserted that it did. It is important here to briefly describe the contours of the constitutional questions and the arguments made to this end as it has colored U.S. territorial policy since the early 1900s.

*Downes v. Bidwell* (1901) was arguably the most important of the *Insular Cases* decided by the Supreme Court. Decided the same day as, and connected with, the case of *De Lima v. Bidwell* (1901), the legal conflict revolved around the collection of taxes on shipments between Puerto Rico and the states. *De Lima* was filed first, but dealt only with taxes collected prior to the passage of the Foraker Act, which officially established Puerto Rico as a U.S. territory. The *Downes* case was potentially more significant in that it challenged taxes collected following the passage of the Foraker Act. In other words, after the federal government had declared Puerto Rico as a territory, it then continued to enforce a non-uniform system of taxation on the island. As mentioned previously, it was *Downes* that would require the Supreme Court to directly address the question of what exactly was encompassed within the meaning of “the United States” as outlined in the Constitution.

Both *Downes* and *De Lima* were announced on May 27, 1901, to an interested and clearly vested political system. Discussions of imperialism had risen to a fever pitch following the Spanish-American War. Sparrow argues, in this detailed study of the *Insular Cases*, that there were three major arguments which might be made by the Supreme Court in resolving these questions. The first was that the United States only consisted of the actual states. In this view, Congress had full control over dependencies and there was no explicit guarantee of statehood. In
essence, the U.S. was, and had been since the founding, a colonial power. A second perspective was that the United States consisted of territories as well as states. This was Taney’s overarching argument in *Dred Scott*, that the Bill of Rights and other Constitutional protections applied to the territories just as they did to the states. In this view, the U.S. undoubtedly had the power to control territorial possessions, but they were required to prepare them for full inclusion into the Union. The United States, in this view, was not an imperial power. The third argument here, unsurprisingly, attempted a torturous middle path. In this view, the United States could choose how to treat territories. It certainly could, and obviously had, acquired territories with the intent to incorporate them as states. Yet, it could also acquire territories without this intent. From this perspective, there was nothing in the Constitution which required eventual admission, and the basic conception of sovereignty allowed it. Therefore, as long as there was no provision, for instance in a treaty or organic act, that explicitly guaranteed a plan toward statehood, territories could be held as such indefinitely.

Justice Brown, in announcing the Supreme Court’s decision in *Downes v. Bidwell* clearly followed this middle approach. To the majority, “the Constitution deals with states, the people, and their representatives…” not territories. Brown notes that all of the territories formed from the Louisiana Purchase (to which the Northwest Ordinance did not directly apply) were provided with a special provision in their organic act that extended the Constitution. Why, Brown implies from this, would this be the case if the Constitution clearly applied there anyway? “It is sufficient to say,” Brown argues, “that Congress has or has not applied the revenue laws to the territories, as the circumstances of each case seemed to require…” and that “whatever have been the fluctuations of opinion in other bodies…Congress has been consistent in recognizing the difference between the states and territories under the Constitution.”
For Brown, much of the confusion occurs because in some cases territories must be considered in conjunction with the states in how they must be treated by the federal government, while in others cases not. When dealing with foreign governments, he says, ‘United States’ includes the territories, “not because the territories comprised a part of the government established by the people of the states in their Constitution, but because the Federal government is the only authorized organ of the territories, as well as of the states, in their foreign relations.” In other cases, which Brown spends many pages recounting, Congress has treated the territories as separate entities from the states and the Supreme Court has upheld these actions.

The primary case, however, in which the Supreme Court struck down Congressional authority, as noted above, is *Dred Scott*. While Brown acknowledges that on its face Taney’s argument is strong evidence in favor of Downes and the other plaintiffs, he attempts to distinguish the constitutional questions in the two cases from one another. In *Dred Scott*, he notes, the issue is that of Congress’ authority over prohibiting slavery in the territories, which would have the legal effect of taking property without due process, forbidden by the Constitution. In the current case, instead, the issue was that within the understanding of the uniformity clause for taxation, it was meant to apply only to the established states, not territories. In this regard, Brown opines, “There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time of place, and such as are operative only ‘throughout the United States’ or among the several states.” In this sense, Brown is granting that there are limits on Congressional authority in the territories, but only as regards a class of provisions fundamental to Congressional Constitutional authority. Since the uniformity clause does not fall under this rubric, and only operates upon the states, not all jurisdictions of the federal government, the differential tariff rates are not unconstitutional.
As evidence for this argument, Brown points out that Congress has always interpreted its constitutional constraints loosely when it comes to territorial policy. When organizing the Northwest Territory, its eventual subunits, “and still more recently in the case of Alaska,” Congress has established a governmental structure, “bearing a much greater analogy to a British Crown colony than a republican state of America…” In part, this is due to the practical difficulties of territorial policy. Territories vary in their populations and development, and not all are fit for rapid ascension to statehood (if ever). As Brown argues, “Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions, and modes of life, shall become at once citizens of the United States.”

In the end, what the majority opinions in Downes and De Lima created was different levels of territorial status (although the remaining Insular Cases defined them more specifically). There were some territories, organized and incorporated, which were provided the highest level of Constitutional protections. All of the territories which had achieved statehood, as well as New Mexico, Arizona, Oklahoma/Indian, Hawaii and Alaska Territories, were included in this description. Congress, according to the Court, had specified that these entities were on a track toward statehood, even if it might be a long process. Other territories, such as Puerto Rico and Guam, are considered unincorporated organized territories. This means that Congress, while providing a governmental system for the territory, has not formally extended incorporation into the full United States. These entities would remain foreign in some sense until Congress granted a different status. Finally, there were unincorporated unorganized territories, made up of the many tiny islands and atolls the United States would claim, primarily for military uses. These areas did not have their own governmental structures and were not extended any particular
Constitutional protections. Given that very few civilians have lived in any of these entities, their status is far less controversial than that of the unincorporated organized territories, such as Puerto Rico.

Realistically, Brown, and the other justices who joined in the judgment of the Court, attempted to outline a position that was both practical and flexible. While the conflict over the status of the new possessions was conflict-laden, the concerns were over American imperialism and ownership over places like Puerto Rico, Cuba, and the Philippines in general. There was wide agreement that those places were not fit for statehood, given their sizeable non-English speaking populations, their lack of institutions and traditions that comported with American-style democracy, and their relative poverty. Founded in xenophobia and racism, these concerns were nonetheless widespread and considerable. The non-legal question in the Insular Cases was whether or not the U.S. should retain these new possessions, not whether Puerto Ricans or Filipinos should be afforded the full Bill of Rights.

The dissenters in Downes held arguably a more logical foothold, or at least a more consistent one, even if the arguments failed the practical test. They conceded that in most areas Congress would indeed have broad authority within territorial policy, but that when Congress is restricted from a particular action throughout the United States, this must of course apply to the territories. Noting that “these particular duties are nevertheless not local in their nature, but are imposed as in the exercise of national powers,” the dissent argues that this means that national duties, affecting the relationship between political sub-units, must abide by the uniformity clause. Just because Congress has authority to create rules regulating the territories does not mean they can treat them differently when applying national rules restricted by the Constitution to be uniform throughout the country. After all, “To what purpose are powers limited, and to
what purpose is that limitation committed to writing, if these limits may, at any time, be passed
by those intended to be restrained?”

Justice Harlan, concurring with the above dissent, wrote his own dissent to expand upon a
number of the points made. In particular, he questions what exactly the Foraker did, if it did not
‘incorporate’ Puerto Rico into the United States political system. The political leaders for the
island would be selected by national office holders, the courts would be supervised by the federal
court system, U.S. currency would be legal tender, and all laws enacted by the legislative
assembly of the territory were to be reported to the U.S. Congress. To Harlan, this system, which
in most ways mirrored the territorial political systems since the early 19th-century, indicates a
clear intent of ‘incorporation’ on the part of Congress and the Executive.

Despite all of these concerns among the dissents, none of them questioned either the right
of the U.S. to acquire territory or the right of Congress to exercise plenary power, at least
following Constitutional requirements, over the territories. Had their viewpoint prevailed, the
relationship between the U.S. and territories such as Puerto Rico, Guam, and the Philippines
would likely have been different in some meaningful ways. At the same time, however, it is not
clear what the breadth of these practical differences might be. While vis a vis the states,
Congress may be somewhat limited in its actions, providing it with broad authority otherwise,
would in essence give it the same control over territorial residents as states have over their own
residents. The question at that point would be the strength of the various prohibitions against
federal authority listed in the Constitution as applied to the territories. For example, would the
courts in Puerto Rico be required to abide by full rights to trial by jury and assistance by counsel
that were applied to federal cases?
Yet, even the majority in *Downes* conceded that the U.S. government could not violate any prohibition listed in the Constitution that it wanted. There were fundamental rights that must be upheld. What the majority did definitively do, however, that would be clearly different from the vision of the dissenters was to provide Congress the cover that would allow it flexibility in its colonial relationships. This did not necessarily shift the overall direction of territorial policy, but combined with the pronouncements in *Church of Jesus Christ of the Latter-Day Saints v. United States* (1887), it cemented the plenary authority over territories that Congress had largely exercised throughout American history.

While it might not have changed the authority Congress held over the territories, the decisions in the *Insular Cases* did have one significant longstanding effect. By asserting differential statuses for territories, they implied that territories could be held indefinitely as such. Departing from the conclusions of Chief Justice Marshall in *Loughborough v. Blake* (1818) who pronounced that territories were “in a state of infancy advancing toward manhood”, it was now unclear that “manhood” could be achieved in all cases. In some ways, this is why plenary control by Congress had not been such a divisive issue before. If control, while autocratic, was also temporary, it was tolerable. What has made the situation of Puerto Rico, Guam, and other post-1898 possessions unquestionably more divisive is the lack of a promise of either complete political sovereignty or full statehood. Thus *Downes* and the other *Insular Cases*, while not necessarily changing dramatically the ability of Congress to treat territories differently, which they had long exercised, had sanctioned that treatment as potentially permanent.

It should be noted, however, that this was not as strong of a break from previous practices as it might seem. As has been argued throughout this study, Congress had significantly slowed in its desire to add new states to the Union as the 19th-century wore on. Residents in New Mexico,
Arizona, and Indian (Oklahoma) Territories had been waiting for more than four decades for statehood by the time the *Insular Cases* were decided. There were strong agitators for statehood for these entities, unlike for Puerto Rico, but it was clear that statehood was the not the pressing goal it had once been. In this sense, the 20th-century began with a meaningful shift in territorial policy, endorsed by the Supreme Court, but rather than being a distinct break from previous practices, it is more clearly a more definitive affirmation of a trend decades in the making.

*Providing More Autonomy – Puerto Rico in the 20th-century*

While the 20th-century began with the Supreme Court in essence sanctioning the federal government of the United States in treating Puerto Rico as though it were foreign, over the course of the century, as it did in many other areas, insular territories were slowly guaranteed more political autonomy and civil liberties. This section will briefly touch upon two of these cases to demonstrate that the federal courts have at times limited Congressional and executive discretion, albeit not in a fundamentally threatening manner.

Throughout the 20th-century, the Supreme Court heard a significant number of cases which asked for determinations about the contours of Congressional or executive authority over the remaining territories. Part of this was due to the fact that places like Puerto Rico, Guam, and the Philippines were considered to be held in different statuses than previous territories had been. Part of this was due to the fact that none of these areas were guaranteed statehood, meaning questions of sovereignty took on even more importance given that Congress would indefinitely hold power over people who didn’t have direct representation in that body. Part of it also reflected the growing concern over protecting liberties and rights that the Supreme Court took during that century.
In the first example, *People of Puerto Rico v. Rubert Hermanos* (1942), the Supreme Court had to determine the autonomy and authority that the highest Puerto Rican court held. Rubert Hermanos, Inc. had violated the long-standing, albeit largely unenforced, prohibition of agricultural corporations holding more than 500 acres of land on the island. This limitation had been prescribed originally in the 1900 resolution creating Puerto Rican civil government, and then carried over by the Jones Act of 1917. The Puerto Rican legislature had placed additional regulations toward this rule, not in contradiction of federal law, but potentially excessive of its authority to expand the law’s impact. A proceeding was brought against Rubert Hermanos, Inc. in 1937 that it controlled and was working 12,188 acres. The Supreme Court of Puerto Rico ordered the forfeiture of the incorporation, dissolution of the company, and a fine, with an appointed receiver to handle these affairs. On appeal, the First Circuit Court of Appeals reversed the decision regarding the appointment of a receiver as violating the limits of the authority granted to the Puerto Rican legislature under the territory’s organic act. The Supreme Court granted cert and reinstated the original ruling by the high court of Puerto Rico.

In doing so, the Supreme Court of the United States notes that, “In recent years we have had occasion to announce that the decisions of the courts of Puerto Rico with respect to the interpretation of the Island’s statutes and to matters of local law are to be accorded the greatest weight.” In this case, interpretations of an ambiguous statute by the Puerto Rican court should not be overturned by the Circuit Court simply because it has an equally plausible, but different, interpretation, the opinion argued. “The Supreme Court of Puerto Rico was in the best position to determine what the situation demanded,” Justice Byrnes claims. Importantly, this case recognized the authority of the insular courts in interpreting federal statutes. At the same time, however, it did not touch upon the questions of the limits of Congressional action in any
meaningful way. It simply acknowledged that given an ambiguous statutory requirement, Puerto Rico’s government and court system could fashion appropriate remedies within a reasonable interpretation. Unstated, but implied, in this opinion, is that if Congressional prohibitions or requirements had been clear, Puerto Rico would not be able to contravene them, despite their reasonableness as statutes otherwise.

The second case we will investigate, is that of *Rodriguez v. Popular Democratic Party* (1982), which involved a relatively complicated question dealing with elections, representation, and the rights of voters. Ramon Muniz was elected to Puerto Rico’s House of Representatives in November of 1980, but passed away in late January of 1981, before he took his seat. Muniz was a member of the Popular Democratic Party and the Governor, one of the leaders of the opposition New Progressive Party, called for a “by-election” to replace Muniz. It was at this point that partisanship led to a case which would reach the United States Supreme Court the following year.

The replacement election called by the governor was to be open to all qualified voters in the district from which Muniz had been elected. In announcing this decision, the governor referenced passages of the Electoral Law of Puerto Rico. The Popular Democratic Party, however, challenged this interpretation of those statutes, arguing that only candidates and electors who were affiliated with the party were eligible to vote in the by-election. The Superior Court of Puerto Rico sided with the Popular Democratic Party, calling for a limited electorate in the by-election, but a divided Supreme Court of Puerto Rico modified this decision. They interpreted the challenged statutes as requiring a by-election only if the party fails to appoint a replacement within 60 days. If more than one candidate were presented by the party, a by-election would occur with only party-affiliated candidates allowed to run, but all voters...
eligible to vote. If no candidate were designated, the by-election would be opened up to all candidates from any party. In making this modification, the Puerto Rican high court read the U.S. Constitution as “not expressly require[ing] a fixed method for filling vacancies in a state or commonwealth legislature.”

Chief Justice Burger wrote the United States’ Supreme Court judgment, holding that the Puerto Rico Supreme Court’s decision did not violate the U.S. Constitution. In arguing this, Burger actually protects Puerto Ricans in two fundamental ways. The first is by declaring that, “…it is clear that the voting rights of Puerto Rican citizens are constitutionally protected to the same extent as those of all other citizens of the United States.” To this end, Puerto Rico could not deny voting rights to its citizens that would be held unconstitutional in the States. Presumably, therefore, the same requirements would apply to the federal government. In the 1940’s this did not mean the universal suffrage it would come to reflect by the late 1900’s, but it still was a significant concession.

The second protection afforded to Puerto Rico Burger asserted, was that, “Puerto Rico, like a state, is an autonomous political entity, ‘sovereign over matters not ruled by the Constitution…’” and “The methods by which the people of Puerto Rico and their representatives have chosen to structure the Commonwealth’s electoral system are entitled to substantial deference.” In essence, Burger is arguing that as long as Puerto Rico’s election and representation schemes do not explicitly violate Constitutional requirements or prohibitions, they should be presumed constitutional. While this does not mean that Puerto Rico had fully control over its electoral system, as it was still overseen by and accountable to the U.S. Congress, it does mean that within the space it is allowed to operate, it can do so relatively freely. Just as with the "Rubert Hermanos" case in 1942, the Supreme Court of the United States provided greater
autonomy and local control to the Puerto Rican political system, while not directly limiting the potential authority of Congress. While Congress might not be able to violate various fundamental rights of American citizens living in territorial possessions in the 21st-century, this does not mean that the Supreme Court has significantly reduced the plenary power of Congress that was found in *The Insular Cases* over 100 years ago.

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33. Article I, Section 8, *United States Constitution*.
34. The following discussion is derived from Sparrow, *The Insular Cases*, 40-55.
35. *People of Puerto Rico v. Rubert Hermanos, Inc.* (639)
36. *People of Puerto Rico v. Rubert Hermanos, Inc.* (640)
37. *People of Puerto Rico v. Rubert Hermanos, Inc.* (646)
38. *People of Puerto Rico v. Rubert Hermanos, Inc.* (647)
42. *Rodriguez v. Popular Democratic Party* (2197)
43 Rodriguez v. Popular Democratic Party (2199)
44 Rodriguez v. Popular Democratic Party (2199)
Chapter 12 – Conclusions

The role of the United States Congress within the American political system would seem to be relatively clear: they are the primary legislative body. The Madisonian system, however, ensured that this would not such a simple arrangement. The three branches, all with the ability to frustrate one another’s efforts, the federalist system where states have independent authority, the influence of external events, and the effects of party organization and institutional norms, all work at cross pressures to guarantee that the role of Congress, as a lawmaking body would be difficult. This study has attempted to examine this role, as it relates to the development of the American political system, focusing on revealing patterns over time. In particular, the role within the development of territorial policy and how this then reflects on broader changes in the rest of the American system.

As stated in the opening chapter for this project, the overarching question is about Congress’s role in empowering and transforming the development of territorial policy and the creation of the American empire. Through the numerous case studies stretching from the construction of the Northwest Territory in 1787 to the continuing administration of Puerto Rico and the informal commercial and military empire that has largely supplanted earlier achievements of expansion, this project’s goal is to uncover durable shifts in the authority and role of Congress. These shifts can be seen by dividing American history into four periods of territorial policy and demarcating them from one another due to changes across several of seven different mechanisms outlined in this study, all of which are informed by previous work on public policy, American Political Development, and political institutions.
The existence of these mechanisms, their importance in affecting decision-making within Congress, and the actual impact territorial policy had upon the greater American system must also be considered here. While the seven broad mechanisms outlined in this study are clearly visible throughout American history and certainly were an influence in territorial politics, there are still questions regarding how much they actually affected the broader construction of American political development, and in particular how they demonstrate the primacy of Congress’s role in that development. This study does not settle these questions. As stated in the opening chapters, territorial policy is relatively remarkable because of the plenary control Congress has utilized over time. More than most other policy realms, Congress has often been supported by the other branches in their actions, or at the very least not strongly discouraged. At the same time, Congress was frequently negligent or indecisive in its responsibilities toward the territories. This might be unsurprising given that no voting member of either the House or Senate has ever directly represented a territory, but it also impacts the strength of conclusions which can be drawn from this study. Congress certainly was the primary actor in territorial policymaking, and territories have been vital to the expansion of the nation as well as the construction of an American identity, but how much this actually directly sculpted the development of the American political system as a whole does not demonstrably emerge from this project’s conclusions.

In this sense, the current project has much to say about the contours of territorial policy, which actors and influences were most impactful, and how it shifted over time, but the ability to generalize from this case to other realms is somewhat limited. This study is largely an attempt to demonstrate how studying Congress’s role in American political development might be accomplished and showing its affects within one particular policy arena. In this way it is more
limited in scope than, for instance, Skowronek’s work on the presidency or Whittington’s assessment of the Supreme Court. The purpose, instead, is to attempt to layer those broader investigations of APD scholarship on the role of Congress, but the role as it pertained only to one, albeit significant, policy area. The value of this approach is two-fold: first it provides a deep analysis of how territories were actually managed and developed via decisions and actions of the national legislature in the United States, and second that the framework might be adapted to other realms in which Congress played an important role in shaping American policy. It does remain limited in speaking directly to Congress’s overarching authority within the political system over time.

The mechanisms outlined in the theoretical conception of this study, and contemplated through the case studies, reflect influences on territorial policy and may not fit onto other policy issues during similar periods of time. Despite this limitation, it is worthwhile to understand how, via territorial policy, these conceptual mechanisms shaped Congressional decision making. Before summarizing how each of these mechanisms operated through the four eras, it is worthwhile to briefly overview the four periods, what changes occurred in territorial policy, and where the U.S. stands now. Table 12.1 displays the distinct territorial entities which existed in each of the four eras, with their starting and ending years, as well as total years in territorial existence, noted. It should be remembered that many areas of the United States were under the authority of different territorial governments over time. For example, there may have only been a small handful of settlers living in the western half of what would become the state of Wisconsin prior to the 1840s, but that area was technically part of the Northwest Territory in 1787. This means that Wisconsin was technically under territorial governance for over 50 years.
Yet, indicating that therefore early territorial governments were long-lasting makes little sense conceptually for a number of reasons. First, as noted, there were barely any permanent (or even migratory) settlers in these areas until just a few years before a new territorial government was founded. This obviously precludes the fact that thousands of Native Americans lived there, but Indians were not a reason for creating territories (save for the aptly named Indian Territory). Secondly, what mattered most for Congressional policy was the number of territories in existence, where they existed, who the residents were, and how those factors all related to other nationally salient issues. In other words, what mattered most was not whether there were people living in the far western sections of the Northwest Territory, but that once that population was significant enough to warrant a division, Congress created, for example, Indiana Territory in 1800 or Illinois Territory in 1809. Most territorial residents during the first period only lived under territorial government for a short period, usually not much more than a decade. During the second and third periods, however, some might (and did) live their entire lives under territorial government.

The purpose of this conversation is to point out that the longevity of territories during the periods, while not indicating how long a specific geographical area might be under territorial administration, is a meaningful reflection of the impact of territorial policy. Table 12.1 demonstrates this by showing that the average length of territorial existence jumps from just under 13 years during the first period, to nearly 29 years in the second, and finally to 86 and counting in the third. What these basic calculations indicate is that Congress was much more concerned with creating new states during the earlier periods of American history than in the more recent past.
Table 12.1 List of Territories by Era and Longevity

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<th>Territory</th>
<th>Start Year</th>
<th>End Year</th>
<th>Total Years</th>
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<td>NorthWest Territory</td>
<td>1787</td>
<td>1803</td>
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<td>SouthWest Territory</td>
<td>1790</td>
<td>1796</td>
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<td>Mississippi Territory</td>
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<td>Indiana Territory</td>
<td>1800</td>
<td>1816</td>
<td>16</td>
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<td>Territory of Orleans</td>
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<td>1812</td>
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<td></td>
<td>Michigan Territory</td>
<td>1805</td>
<td>1837</td>
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<td>Illinois Territory</td>
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<td>Missouri Territory</td>
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<tr>
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<td></td>
<td>Oklahoma Territory</td>
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<tr>
<td><strong>Total</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hawaii Territory</td>
<td>1900</td>
<td>1959</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>Alaska Territory*</td>
<td>1912</td>
<td>1959</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>American Samoa</td>
<td>1898</td>
<td>Current (2015)</td>
<td>117+</td>
</tr>
<tr>
<td></td>
<td>Guam</td>
<td>1898</td>
<td>Current (2015)</td>
<td>117+</td>
</tr>
<tr>
<td></td>
<td>Philippine Islands</td>
<td>1898</td>
<td>1946</td>
<td>48</td>
</tr>
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<td>Puerto Rico</td>
<td>1898</td>
<td>Current (2015)</td>
<td>117+</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Hawaii Territory</td>
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<td>1959</td>
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<td>Alaska Territory*</td>
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<td>Current (2015)</td>
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<td>Current (2015)</td>
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<td>1946</td>
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<td>Puerto Rico</td>
<td>1898</td>
<td>Current (2015)</td>
<td>117+</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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* Alaska was a Department from 1867-1884, District from 1884-1912, and territory from 1912-1959; this chart only reflects the period in which it was considered a territory

^Northern Marianas Islands maintain an agreement with the United States for defense and foreign affairs, but largely have political autonomy. In 2009 they did receive delegate representation in the U.S. House similar to the other inhabited territories.

In addition to the length of time spent in territorial status, it also makes sense to compare territories in some other ways over time. Table 12.2 shows the population, upon admission, of each of the territories within each period. In the case of the Philippines it is the population at the last census prior to independence, and for the territories still in existence, their most recent census counts.

While this examination is cursory and does not take into account the variances across each of the periods, just from glancing at the populations within each period, it is clear that it was not the amount of people in a territory that motivated Congressional action. This is even clearer when estimates preceding admission are considered of some of the earliest territories. Many of them jumped in population from a few thousand to dozens if not well over a hundred thousand in a period of less than 10 years. In most western territories, this type of growth was not seen and this partially fed into concerns over admission. In many ways it was the future, not the present that mattered when arguing about whether the population was sufficient for admission.

Regardless, not only did territorial existence change over the periods in terms of the average lengths, but clearly the overall population mattered less, demonstrating the influence of other factors in territorial policy. That is the subject of the next section.
Table 12.2 List of Territories by Era and Population

<table>
<thead>
<tr>
<th>Era</th>
<th>Territory</th>
<th>Population</th>
<th>Year Admitted</th>
<th>Census Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experimental Empire</td>
<td>Northwest Territory (OH)</td>
<td>42,159</td>
<td>1803</td>
<td>1800</td>
</tr>
<tr>
<td></td>
<td>Southwest Territory (TN)</td>
<td>105,602</td>
<td>1796</td>
<td>1800</td>
</tr>
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<td></td>
<td>Mississippi Territory</td>
<td>75,448</td>
<td>1817</td>
<td>1820</td>
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<tr>
<td></td>
<td>Indiana Territory</td>
<td>147,178</td>
<td>1816</td>
<td>1820</td>
</tr>
<tr>
<td></td>
<td>Territory of Orleans (LA)</td>
<td>76,556</td>
<td>1812</td>
<td>1810</td>
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<td></td>
<td>Michigan Territory</td>
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<td>1840</td>
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<tr>
<td></td>
<td>Illinois Territory</td>
<td>147,178</td>
<td>1818</td>
<td>1820</td>
</tr>
<tr>
<td></td>
<td>Missouri Territory</td>
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<td></td>
<td>Alabama Territory</td>
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<td>1840</td>
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<td>1860</td>
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<tr>
<td>Average</td>
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<td>1860</td>
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<tr>
<td>(1850-1912)</td>
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<td>Utah Territory</td>
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<td>Washington Territory</td>
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<td>Colorado Territory</td>
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<td>1880</td>
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<td>Dakota Territory (SD; ND)</td>
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<td>Oklahoma Territory</td>
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<td><strong>328,653</strong></td>
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<tr>
<td>The Insular Empire</td>
<td>Hawaii Territory</td>
<td>632,772</td>
<td>1959</td>
<td>1960</td>
</tr>
<tr>
<td>(1898-1959)</td>
<td>Alaska Territory*</td>
<td>226,167</td>
<td>1959</td>
<td>1960</td>
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<td>American Samoa</td>
<td>55,519</td>
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<tr>
<td></td>
<td>Guam</td>
<td>159,358</td>
<td>Current</td>
<td>2010</td>
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<td></td>
<td>Philippine Islands</td>
<td>16,000,303</td>
<td>1946</td>
<td>1939</td>
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<td>Puerto Rico</td>
<td>3,548,397</td>
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<td>2014 est.</td>
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<td>U.S. Virgin Islands</td>
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<td>Average</td>
<td></td>
<td><strong>788,103</strong></td>
<td>(excl. Philippines)</td>
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<tr>
<td>Informal Empire (1960- today)</td>
<td>Northern Marianas Islands</td>
<td>53,883</td>
<td>Current</td>
<td>2010</td>
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^Informal Empire (1960- today)
### Table 12.3 Mechanisms during Each Era

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<tr>
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<td>Continental Empire (1850-1912)</td>
</tr>
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<td></td>
<td>Insular Empire (1898-1959)</td>
</tr>
<tr>
<td></td>
<td>Informal Empire (1960-today)</td>
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<tr>
<td>Policy Targets (Social &amp; Geographical)</td>
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</tr>
<tr>
<td>Rules and Norms of Congress</td>
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<tr>
<td>Party System</td>
<td>✓</td>
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<tr>
<td>National Security and Law and Order</td>
<td>✓</td>
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<tr>
<td>Waves of Applying Democracy and Rights</td>
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<tr>
<td>Technological Changes</td>
<td>✓</td>
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</table>

Across the four periods this project has also argued that a number of casual mechanisms can be seen which help to distinguish the periods from one another and explain why Congress shifted its relationship to the territories. Seven mechanisms were identified in the opening chapters and we can now see how they are demonstrated within each of the four eras. Table 12.3 marks whether or not each of these mechanisms had a significant impact on creating a shift from the previous period. While a checkmark denotes a primary impact on the period, this does not mean that the mechanisms which were left unchecked were not important concerns of Congress and had no impact. Each of the mechanisms exists, and operates, within the periods, but may not be a dominant factor in determining how territorial policy shifts. The conclusions stated below
should be taken as a reflection of the waxing and waning importance each mechanism had within and across the periods, not as a conclusion that they only mattered at certain points in American history.

Mechanisms Operating in the Experimental Empire Period

It is important to recognize how these seven mechanisms were reflected across the periods, and more particularly, the case studies highlighted in this project. During the first period, Experimental Empire, we examined the Northwest Territory and two territories crafted out of the original British cession, Indiana Territory and Wisconsin Territory. The major political concerns of this period were establishing a democratic republican government, preparing the western lands for settlement, warding off established European empires, and keeping an uneasy compromise over slavery operative. All of these concerns affected choices in territorial policy and their impact on American political development can be seen through the lens of the mechanisms outlined above.

Even before the Constitution was written, the political concerns over what to do with the extensive cessions from the states required legislative action, which eventually led to the creation of the Northwest Ordinance. Carried over into the constitutional system, the Northwest Ordinance was a helpful framework for encouraging the incubation of new republican states. At the same time, however, the fact that neither the Senate or the House had an established committee system for a few decades, and committees dealing with the territories were not created until 1825 in the House and 1844 in the Senate, meant that those issues were sometimes ignored if they didn’t directly intrude on the policy areas of the existing standing committees.

One of the areas of policy concern that did overlap territorial issues during this period was that of national security and the establishment and maintenance of order on the frontier. The
United States Congress relied on the rapid expansion of settlement to stabilize the outer bounds of American possessions both from potential incursions by Natives, but also from the influence of foreign governments, considering the French, Spanish, and British occupied all of the surrounding lands. This was a primary reason for President Jefferson to overcome his constitutional concerns and complete the Louisiana Purchase, thus doubling the size of the United States.

For efficiency, the territorial governors during the first period were also tasked with authority over the militia and as the primary agent between the national government and the Indians in the territory. While this was driven out of pragmatism because it allowed for one primary official to be in charge of all these duties, it also required the territorial governors to divide their attentions. Given the concern over stabilizing, civilizing, and/or removing Native peoples from the Eastern lands they occupied, this meant that administration of the territories, which was rudimentary even when attended to regularly, was frequently ignored. This was only a temporary inconvenience in most cases as the earliest territories were rapidly settled and achieved statehood rather easily.

As the first period wore on, however, the concern over slavery made it increasingly difficult to manage territories without reference to it. The expansion of slavery progressively became tied more and more into politics over admissions decisions as well as the creation of new territories. The party system in its more fluid antebellum form did not play as much of a direct role in territorial concerns, at least not until the Civil War was about to break. Congress, however, in developing a more modern shape by that time, had at least centralized territorial policy in its own committees.
Two mechanisms coalesced during this period which helped to drive Congressional policy on territories. The first deals with the constructed identities of the primary targets of the policy and the second, and overlapping, mechanism emerged from the liberal vision of what American empire was intended to be. As discussed in Chapter 2, Schneider and Ingram (1997) developed a social construction of policy targets to explain why policy can change, not because of the need or desire for it, but because of who it affects. As a reminder, Figure 12.1 shows their construction.

*Figure 12.1: Schneider and Ingram’s (1997) Social Construction of Policy Targets*

<table>
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<th>Political Power</th>
<th>Social Constructions</th>
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<tr>
<td></td>
<td>Deserving</td>
</tr>
<tr>
<td>Stronger</td>
<td>Advantaged</td>
</tr>
<tr>
<td>Weaker</td>
<td>Dependents</td>
</tr>
</tbody>
</table>

To summarize, the authors place policy targets on two dimensions: stronger versus weaker and deserving versus undeserving. Any group placed within the stronger and deserving or weaker and deserving categories will be most likely to be targeted with beneficial legislation, while those in the undeserving categories would be less likely. In particular, the deviant category, groups who are both undeserving and weaker, are particularly susceptible to negative treatment in policy.

During the first era, we can map how various social targets of territorial policy appeared to be treated. Figure 12.2 illustrates this mapping.
While somewhat ambiguous of a conception, the only group that could be placed within the deserving and stronger category was the primary political and economic leaders who actually lived in the territories. This rather small, but influential cadre of persons had the positives of (mostly) being European Protestants, demonstrating a willingness to live on the frontier, and having vigor in promoting American republicanism. At the same time, however, they could easily shift into the undeserving category if they were accused and found guilty (even if only in the “court” of public opinion) of corrupt land or other political deals. This demarcation was usually a very fine one and had less to do with what the residents of a territory cared about and more about whether or not the majority in Congress responded. The example of the struggles between Dodge and Doty in Wisconsin Territory highlighted this. Both of these men and their supporters were instrumental in developing the territory, but were not dependably seen as deserving of Congressional support given the accusations toward their behavior.

Among the weaker policy targets, the most important were the settlers who were willing to move to the frontier. They were targets of relatively liberal public land sales policy (although they usually had to purchase them from speculators) as well as were counted on to provide

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<tr>
<th>Political Power</th>
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<td>Stronger</td>
<td>Economic and Political Leaders in the Territories</td>
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<tr>
<td>Weaker</td>
<td>Anglo-Protestant Settlers</td>
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security against Native Americans and foreign agents. Most policy was directed toward enabling settlement, or at least containing it in ways that Congress saw as best fitting the national interests. Clearly, many settlers were unsatisfied with land laws, the administration of territories, the lack of attention paid by Congress, and many other aspects of territorial life, but when Congress passed legislation during this period, it was largely constructed to benefit the “right” kind of settlers. This left out, of course, slaves and Native Americans. It also affected the territorial residents who were part of preexisting settlements, such as the French in the Ohio River Valley and New Orleans. These people, while not as inferior as non-whites, were nonetheless seen as unprepared for republican institutions.

There was also a distinct understanding during this first era that while the territorial governments were authoritarian at worse and undemocratic at best, they were temporary. They were designed, as loosely as they were, to encourage ascension to statehood rather rapidly. There is no question that the Northwest Ordinance’s purpose was to prepare these fledgling governmental units for statehood, through a progression of different administrative arrangements. The Northwest Ordinance contained within it, a guarantee of many rights to territorial residents. While not as extensive as the Bill of Rights of the United States Constitution and with a checkered record of enforcement, the rhetoric behind the Northwest Ordinance and its intended purpose were certainly an expansion of democracy and civil rights from what was a traditional view of colonial empire. The United States did not see their treatment of territories as that of imperialism per se, but rather a temporary paternal relationship, with increasing rights and responsibilities afforded to the territories.

Checks and balances present a challenge for classification. In one perspective, it was the relationship between the Senate and House, over the issue of balancing slave power that drove
most of American policy choices regarding territorial expansion and statehood decisions. At the same time, however, outside of when slavery as an institution was directly threatened, early territorial policy was not as importantly affected by checks and balances. Besides the important exception of the *Dred Scott* opinion, the Supreme Court never directly challenged Congressional dominance or presidential powers over territories. Given the backlash to that case in many ways Taney’s overreach demonstrates just how deferential the federal judiciary typically was, and for practical reason, to Congressional dominance in the realm of territorial policy.

The president and Congress were not typically at odds over most territorial policy either. Given the importance regarding slavery, checks and balances should be considered a primary mechanism during the first era, but its impact should be qualified in that sense as well. In some ways, though, it would be easy to argue that the lack of contestation over territorial policy between the branches or the states and Congress, was in itself an important determinant, and in that sense, it only provides additional weight to the classification.

Finally, while the remaining mechanisms of technological change and the party system all mattered during the first era, they were not the primary determinants of Congressional action. While it had not yet taken on the shape of the modern party system recognizable today, by the 1830s there were well developed political parties, able to oppose one another, support national candidates and hundreds of local organizations, and work together to shift policy. At the same time, the party system that existed prior to the Civil War was not particularly divided over territorial issues. The primary factors in territorial policy, at this time, dealt with the institutional development of Congress and the executive branch, as well as issue of slavery. Before the Civil War parties were secondary to the determinants of territorial policy.
McCarty et al. investigated roll-call voting on territorial expansion and new state admissions and found that during the early 1800s, voting on these topics “were votes on the principal dimension of political conflict…largely a North-South vote.” They found that by the 1830s, with the rise of the Whig Party, admission votes were still primarily sectional divisions, rather than directly partisan. The primary qualification to this was hostility toward the Whigs in the West, due to that party’s opposition to expansion generally. This certainly affected territorial acquisition, but had less impact on territorial management, since the territorial expansion had already occurred at that point. While there were instances of clear partisan divergence, many votes regarding admissions decisions saw significant divisions within parties as well.

Similarly, while technology affected the expansion of commerce and settlement and communication and travel became more efficient, it’s not clear that territorial policy would have been markedly different had there not been the same advances. Certainly it might have occurred at a much slower pace, but this does not necessarily mean that the administration would have been significantly different. While the first period’s territories were typically short-lived (compared to later periods), this had less to do with technology per se, and more to do with the national goals associated with expansion.

*Mechanisms Operating in the Continental Empire Period*

The Civil War fundamentally altered the United States in innumerable ways. Its impact upon territorial politics was no exception. The period surrounding the war, and particularly the battle over Reconstruction, pushed partisan politics to the forefront of American government. For territories this caused a dramatic shift from the primary concern being the expansion of slavery to which party would most benefit from a particular admission. This led to a situation where if either the House or Senate were competitively balanced between the parties, the only way to gain
admission was to balance the potential partisan benefits. Instead of a free and a slave state it was a Republican and a Democratic state, but the practice continued. At times when one party was more dominant, however, they would move to admit only those states which would support them with national representatives. McCarty et al. found that in the era between the end of the Civil War and the early 1900s, partisan voting rose significantly over time, but that the parties themselves were inconsistent about their support for statehood, probably due to uncertainty about which national party would benefit more from the addition of new U.S. Senators and Representatives\textsuperscript{3}. For instance, New Mexico appealed to sympathetic Republicans during Reconstruction, but then found themselves aligned with Democratic party politics by the end of the 19\textsuperscript{th}-century.

The solidifying of the two-party system was not the only factor internal to national government that mattered during this period. Checks and balances remained important as it drove admission decisions, affected the ability of Congress to administer territorial policy, and mattered to the decreasing salience of territorial politics during the period. As stated above, admission decisions were primarily driven by partisanship and the ensuing balance between the parties. This was affected, however, by the ability of Senators to frequently block admission attempts, especially when in the minority. While usually the rhetoric cited the lack of population, the limited economies, or the unsuitability of territorial residents, for denying statehood, partisanship was commonly an underlying concern.

This was also affected by the rules and norms of Congress, which had developed greatly during the last half of the 19\textsuperscript{th}-century. A development of the House as a majoritarian institution, with centralized leadership, and the Senate as a bastion of minority party rights had occurred by the late 19\textsuperscript{th}-century\textsuperscript{4}. The filibuster, as a tool for protecting the minority in the Senate, was in
place as well. Additionally, both chambers had fully developed committee systems, which had even undergone significant changes in structure, by the end of the century. Committees dealing specifically with territorial issues existed in both the Senate and House by the time of the Civil War and territorial delegates were provided with membership on it during this period as well.

The targets of policy, both social and geographical, made a huge difference in the second era of territorial policy. In terms of social targets (see Figure 12.3), there were a few important shifts from the earlier period.

*Figure 12.3: Policy Targets during the Continental Empire Era*

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<td>Deserving</td>
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<tr>
<td>Stronger</td>
<td>Appointed Territorial Officials</td>
</tr>
<tr>
<td>Weaker</td>
<td>Anglo-Protestant Settlers, Reservation Native Americans</td>
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First and most evident in the case studies was the existence of a sizeable population of Spanish-speaking Catholic Hispanics in the new Southwestern Territories of New Mexico and Arizona. The “otherness” of these people within the American system led them to be largely regarded as undeserving of beneficial policies. This was not always the case, but at best Congressional decisions for New Mexico were seen as patronizingly paternalistic, at worse, racist and xenophobic. This tied into a growing resistance to applying democratic ideals and civil protections to people markedly different from the dominant “whiteness” of United States culture. Although Tichenor found that nativism against Europeans during the last part of the 19th-century
was muted by opposition from the political system against policy change, there were well-documented restrictions placed on Chinese immigrants \(^5\). By the end of the second period (1912), even efforts against closing off European immigration would be more successful. These waves played into the degrading national perspectives toward Hispanics. Congressmen pointed out that a significant portion of the population was illiterate in any language, that courts functioned in Spanish, and the Roman Catholic Church operated (poorly) a school system and dominated local politics, wholly against the “separation of church and state” doctrine.

Geographical policy targets also mattered during the second era. The Northwest Ordinance, the Organic Acts that grew out of them, and the plethora of laws regarding homesteading and selling of public lands, all had certain assumptions about the types of lands they were to cover. Policy was designed for fertile lands, where settlement would be rapid, relatively dense, and based on small-scale agriculture. Congress was very slow to adapt to the fact that the West was completely different. While some cash crops could be grown in the most fertile valleys, the vast majority of the arid west required large plots of lands for ranching or specific mining claims. As Thomas Alexander argued in his examination of the federal land survey system in western territories in the latter part of the 19th-century, “[R]esistance from Midwesterners and easterners who held an erroneous conception of conditions in the Mountain West made life for the westerner much harder than it need have been.”\(^6\)

A final major mechanism during this period was an increase in technological changes that modernized the United States. The industrialization of the country’s economy and the rapid expansion of the railroad had somewhat mixed, but incredibly influential, impacts on territorial policy. The increasing need for raw materials, especially from mining, meant that western exploration became a history of “rushes” to strike it rich in finding pockets of valuable minerals.
Railroads mattered in the growth of the entire country, but for territories they literally drove expansion. Wyoming Territory’s population was almost entirely contained within a small radius surrounding the route of the transcontinental railroad through the southern part of the region. New Mexico’s lack of a railroad connection to the rest of the country kept it not only from being developed economically, but also from being promoted as a place to settle. Few Americans wanted to move to an area largely devoid of modern conveniences, plagued by conflict, and where they might not be able to communicate with a large portion of the population unless they spoke Spanish.

National security was not as predominant during this period as a mechanism for territorial policy. This was primarily due to the fact that between 1865 and 1898, the only land acquisition was Alaska, which was not even given a territorial government of any type until 1884. The territories considered part of the second era in this study were all part of the United States by the 1850s, even if there was not an organized territorial government to oversee the specific area. With the completion of the continental expansion in terms of acquisition, there was far less concern in the United States over foreign influence in attempting to subvert the loyalty of territorial residents. The United States, between the Mexican-American War and the Spanish-American War, also did not face a lot of external threats in general. The Civil War and Reconstruction efforts overrode internationalism. Other than in the context of the Civil War, such as the fighting in New Mexico, and the continued suppression of aggressive Native American tribes, there was significantly less concern over issues of national security and law and order during this period.
Mechanisms Operating in the Insular Empire Period

The dawn of the 20\textsuperscript{th}-century saw a United States that was vastly different from that of just a few decades earlier. Crisscrossed by railroads, an enormous growth in industry, growing class conflicts over wealth inequality, a retrenchment of race-based oppression against blacks, and a growing anti-immigration sentiment all mattered, amongst many other changes. Territorial policy was caught up with these changes as well. Most importantly, by 1912, all of the contiguous continental territories had been admitted as states, leaving just Alaska and a number of insular possessions left in territorial status. The expansion of American empire beyond the central North American landmass had tremendous impact in a variety of areas.

Imperialists in Congress and the presidential administrations of the last decade of the 19\textsuperscript{th}-century helped to manage the post-Spanish-American War acquisitions of Cuba, Puerto Rico, Guam, Philippine Islands, Hawaii, American Samoa, and a spattering of uninhabited islands throughout the Pacific Ocean. The rhetoric in support of these actions ranged from releasing the people in these places from the oppressive European-style imperialism of Spain to desiring strategic military and economic outposts within the Caribbean and Pacific Oceans. The influence of a few major political actors in Congress and the executive pushed the United States toward acquisition despite a vocal and concerned opposition. Checks and balances, as well as the party system, worked during these debates, to ensure independence for Cuba, territorial permanence for Puerto Rico, and a massive effort to democratize the Philippines. Puerto Rico’s geographical location at a main entry point from the Atlantic Ocean to the Caribbean Sea was vitally important. This only became more significant after the Panama Canal was finished. Eventually the Philippines were granted independence, but only after U.S. politicians realized that the political and economic costs of retaining the possession outweighed any benefits.
The Supreme Court also played a distinct role in the early part of the third period, when it decided in favor of Congressional authority in the *Insular Cases*. While the decisions in these cases were in line with precedent regarding plenary power of the national legislature when it came to territorial administration, they applied to a new type of territory. For the first time in American history, the country had acquired places that were not considered as likely candidates for statehood. The Supreme Court, instead of curbing Congress’s ability to retain permanent territories, provided it with a vast amount of latitude, extending only the most fundamental Constitutional protections to insular residents and governments. Congress, in summary, could define territories how it wished, and based upon those classifications, could treat them as inferior entities, and in some ways even, foreign.

Concerns over national security played prominently into territorial policy during this third period as well. This can be seen in how the territories were administered. Alaska, for example, was purchased for its potential value as a military outpost and supply station for ships traveling to East Asia. The concerns of the residents were far from prominent in Congress, especially since prior to World War II, the non-Native population of the territory was incredibly small. Alaska’s importance grew due to World War II, which renewed its worth as a military post and drove the economic development of the territory. Puerto Rico, which was not actually a central part of the Spanish-American War effort, was occupied by the United States because of its geographic position. Cuba was granted sovereignty quickly partially because of public pressure and partially because its location was less militarily important, but there was much less parallel claims against the continued possession of Puerto Rico.
While it may have been a coincidence, it is more likely that the acquisition of places like Puerto Rico and the Philippines, with large established populations of non-Anglo people, and a history of poor political administration, fed into the growing racist xenophobia of the period. The United States in the early portion of the 20th-century was a place where discrimination against non-whites, or those perceived as such, rose to extreme levels. From lynching in the South to the growth of eugenics as an accepted social science, racism became even more meaningful in American society. These attitudes infected the perception of territorial policies. While Puerto Rico would eventually gain some self-government through the Jones Act of 1917, it was not until the early 1950s that they were given self-governing autonomy surpassing that of territories in the second or first eras of territorial policy. Most of the other territories, such as Guam and American Samoa, were not even given territorial governments until after World War II. Alaska, which was purchased in the 1860s, was not considered a territory, with a full organic act, until 1912. Figure 12.4 demonstrates how the social targets of policy during this third period were seen largely as both undeserving and weak.
Mechanisms Operating in the Informal Empire Period

The two primary mechanisms which shifted territorial policy into the fourth period were concerns over national security and the rapid changes in technology during the last half of the 20th-century. The fortuity of the United States emerging from World War II with a burgeoning economy, especially compared to the devastated industries of most of Europe and the Soviet Union, as well as the enormous militarization that accompanied the war, meant that the U.S. was positioned as a world superpower. The United States no longer had any incentive to actually occupy or acquire new physical lands, other than tangibly minor procurements for the creation of military installations. Using American commerce and industry, backed by the authority of the U.S. military and the carrot and stick of financial aids or sanctions, Congress can simply pressure other nations to work toward its national interest. Expansion is no longer focused on population or settlement, but about spreading American political and cultural values across the world. This was only possible because of the increasing globalization of business and the ability of the United States to enforce its priorities through military and economic pressures.

What has been perhaps as notable, in terms of direct territorial policy, however, is the impact or rather the lack of an impact, changes during the past half century have had. The United States still administers the governments of numerous insular territories, containing millions of people. While most have been granted U.S. citizenship, not all have. Additionally, while for example, Puerto Ricans now have much more autonomy over territorial affairs than any territory was given during the first three eras, they still do not have voting representation in the United States Congress (and only representation at all in the House), do not have influence in the Electoral College, and there is no guarantee that Congress will not suspend their constitution at
any time. Unlike the states, territorial governments, regardless of their current status, are still at the mercy of Congressional benevolence.

This comes at a time when the United States has finally started to match its rhetoric of liberty and civil rights to its treatment of all citizens. The growth in social movements, of protection of minority rights in U.S. courts, and an influential international human rights regime have had an impressive effect on many aspects of U.S. government. Yet, that impact has been somewhat muted when it comes to territorial relations. Saliency is certainly a reason why, as most Americans do not consider the modern relationship of the national government to the remaining territories, even if they even know it exists at all. Much of the renewed discussion about the existence of an American Empire seems more interested in the globalization of Western values, than about the continued inferior political status of the governments of millions of American nationals and citizens.

**Territorial Policy and American Empire**

Imperialism is a national project. While it can be promoted by a monarch or a dictator, it can also easily be accomplished by a democratically elected legislature. This study has attempted to demonstrate that the United States Congress has engaged in precisely this project over American history. While the lands, the people affected, and the reasons for expansion shifted over time, the narrative of the American saga has been one of empire. While controversial, this assertion is hardly novel. Many political leaders have questioned the expansionism of the country over the past two and a half centuries. Yet, at the same time, Americans were different. Constructs such as manifest destiny and a belief that one could actually practice benign
expansion pervaded political rhetoric whether one examines the debates occurring in 1812 over Canada, in 1846 over Mexico, or 1898 regarding the Philippines and Puerto Rico.

Nugent is strongly critical of this, noting that the only exceptional aspect of American expansion was, “that nineteenth-century Americans truly believed that their providential mission and destiny permitted, even demanded, that they behave imperialistically; that they were exempted from normal rules against theft or invasion of other people’s territory; and that their profound belief in their own racial superiority exempted them from regarding others as equals.”

Jefferson’s “Empire of Liberty” was, in this perspective, a fundamental hypocrisy. Freedom, republican virtue, and American-style democracy, were simply the excuses used to deny that the United States was really an empire, even if somewhat different than European empires.

At the same time, Nugent does admit that, “Since its beginning the United States has oscillated between republic and empire, the institutions and ideals of the first coexisting uneasily with the behavior of the second.” Perhaps in some ways, each of the four periods highlighted in this study were each their own system of empire. As much as the mechanisms which caused shifts between the periods mattered to differentiate them from one another, it is the fascinating ways in which they were connected, dependent upon the previous decisions made or declined to be made, that drives this project. American empire exists today and has existed in some form for the entirety of U.S. history.

Congressional decisions have created, maintained, and reworked this empire throughout American history. During the various periods of territorial policy they changed what this system meant, how it operated, and who it impacted, but they were frequently seen as the primary drivers of the construction of the American empire. The shift toward an informal empire in the latter half of the 20th-century demonstrates not that territorial policy is less important, but that
what used to be targeted at areas possessed directly by the national governments has now been
replaced by a paradigm that protects U.S. interests on a global scale. This is fundamentally
different than territorial policy aimed at New Mexico Territory in the 1870s or Wisconsin
Territory in the 1840s, but it grew out of that legacy nonetheless. In developing the American
political system, therefore, the extension of territorial policy had played an important role
throughout American history. That role, in turn, has been dominated by the United States
Congress.

Congress however is not alone in this project of empire and reacts to other actors and
external events just as much as it takes initiative in crafting a national program for expansion.
The overall lack of sustained opposition to their actions from either the presidency or courts can
be seen as vindication of that program. It perhaps more directly reveals, however, the shared
assumptions of national interests in territorial expansion and administration. The belief in
Manifest Destiny, in republicanism, and in American capitalism, appeared to drive the overall
direction of territorial politics. At the same time, Congress was largely ignorant toward the needs
of the people actually living on the frontier and provided relatively minimal funding while
attaching significant political restrictions on territorial governments. The mechanisms which
helped to encourage shifts in territorial policy between the four periods outlined in this study
highlight the role of Congress in this policy realm, but do not necessarily demonstrate how that
role might apply to other, more heavily contested, issues.

Territorial policy was incredibly important in the creation of the United States as a socio-
geographic and economic world power, but many of the struggles were between the residents of
the territory and the national legislators who did not directly represent them. While members of
Congress clashed over the goals of territorial politics and American empire, the details of
territorial administration were less salient nationally. This study has highlighted the way in which members of Congress that were responsible for but not accountable to territorial residents, nevertheless sought to create a structure for managing territories that balanced practical and ideological concerns. This program of territorial administration, created via a complicated and evolving territorial policy-system, allowed the U.S. Congress to take the lead in “making” the United States what it is today.

1 “Durable Shift” is a direct reference to Orren and Skowronek’s definition of APD in The Search for American Political Development.
4 See Binder, Sarah, Minority Rights, Majority Rule, 1997.
5 Tichenor, Daniel, Dividing Lines, see Chapters 3-5.
7 Nugent, Habits of Empire, 236.
8 Nugent, Habits of Empire, 317.
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