NOTES

A MACROSTUDY OF MICRONESIA: THE ENDING OF A TRUSTEESHIP

INTRODUCTION

Twenty-five years ago the United States undertook an obligation to administer over 2,000 small islands in the Central Pacific. From 1945 to 1960, the United States completely ignored the needs of these islanders and the responsibility it had assumed. The primary American interest in these islands was as a site for testing missiles and hydrogen bombs. For the past twelve years, the United States has fervently endeavored to rectify its former neglect of these islands, recognizing their value to its security.

This article will present the background, both historical and legal, of these islands and further explore the conflict over their future territorial status. Apart from the political questions raised by a change in this relationship, important constitutional questions are presented. The answer to these questions will not only affect the status of other territories associated with the United States, but will also define the degree to which the United States can be integrated under the Constitution with cultures whose values and beliefs are different from its own.

MICRONESIA: THE BEGINNING

Environment

Micronesia[1] is a geographical term which describes three archi-

[1] Micronesia means small islands. J. Coulter, The Pacific Dependencies of the United States 162 (1957); E. Kahn, Jr., A Reporter in Micronesia 10 (1966). The 2,141 islands of Micronesia stretch over 2,400 miles, but comprise only 687 square miles of land—less than half the size of Rhode Island. *Hearings on H.R. 17619 Before a Subcomm. of the Senate Comm. on Appropriations*, 91st Cong., 2d Sess., pt. 1, at 505 (1970); Special House Subcomm. on Territorial and Insular Affairs, 84th Cong., 1st Sess., Report on the Trust Territory of the Pacific Islands 1 (Comm. Print 1955). There are 97 inhabited islands, both volcanic islands and coral atolls, with over 102,000 inhabitants. U.S. Dep't of State, Pub. No. 8520, 23rd Annual Report, Trust Territory of the Pacific Islands 1 (1971) [hereinafter cited as 23d Annual Report, TTPI]; J. Coulter, *supra* at 163-64; S. De Smith, Microstates and Micronesia 119-22 (1970); Special House Subcomm. on Territorial and Insular Affairs, Report on the Trust Territory of the Pacific Islands, *supra* at 2-3. The Micronesians came to the island from Southeast Asia about 1500 B.C. E. Kahn, *supra* at 10. *See* Riley, *Storm over Micronesia*, Saturday Review, Sept. 13, 1969, at 56, 90.

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pelagoes, the Carolines, the Marianas, and the Marshalls, spread over three million square miles of the Pacific Ocean just north of the equator.[2] Today Micronesia is used as an equivalent for the "Trust Territory of the Pacific Islands," or TTPI, which includes all three archipelagoes except the island of Guam.[3]

The long distances between these small islands have created great cultural diversity. There are at least nine major languages, many more dialects and at least seven cultural groupings.[4] There is little cultural or ethnic uniformity in Micronesia, apart from the ability to adjust to tropical island life.[5]

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[2] 23d Annual Report, TTPI, *supra* note 1, at 1; E. Kahn, *supra* note 1; Jacobson, *Our Colonial Problem in the Pacific*, 39 Foreign Affairs 56, 57 (1960).

[3] J. Coulter, *supra* note 1; 23d Annual Report, TTPI, *supra* note 1; Bergbauer, Jr., *A Review of the Political Status of the Trust Territory of the Pacific*, 22 Naval War College Review 43 (No. 10 1970); Blaz & Lee, *The Cross of Micronesia*, 23 Naval War College Review 59, 61 (No. 10 1971).

Guam is an unincorporated territory of the United States, 48 U.S.C. § 1421a (1970), ceded to the United States by Spain in 1898 in the treaty ending the Spanish-American War, Treaty of Peace with the Kingdom of Spain, Dec. 10, 1898, 30 Stat. 1754, 1755 (1899), T.S. No. 343. Until 1950, Guam was governed by the Secretary of the Navy; then President Truman transferred administration to the Secretary of the Interior, Exec. Order No. 10077, 3 C.F.R. 279 (1949-53 Comp.), *as amended by* Exec. Order No. 10137, 3 C.F.R. 320 (1949-53 Comp.). In 1950, Congress enacted an Organic Act of Guam, Act of Aug. 1, 1950, ch. 512, § 1, 64 Stat. 384, which provides a government and U.S. citizenship for Guamanians, 48 U.S.C. § 1421*l* (1970). In 1968, Congress further enacted legislation providing for an elected governor, 48 U.S.C. § 1422 (1970). For further history of Guam see P. Carano & P. Sanchez, A Complete History of Guam (1966); J. Coulter, *supra* note 1, at 127-157; S. De Smith, *supra* note 1, at 112-16.

GUAM

[4] 23d Annual Report, TTPI, *supra* note 1, at 3-4; J. Coulter, *supra* note 1, at 169; E. Kahn, *supra* note 1, at 87-88; Special House Subcomm. on Territorial and Insular Affairs, Report on the Trust Territory of the Pacific Islands, *supra* note 1, at 3; De Smith, *Micronesia's Dilemma: U.S. Strategy vs. Self-Determination*, 11 War/Peace Report 14 (No. 1 1971); Johnson, *The Trust Territory of the Pacific Islands*, 58 Current History 233, 235 (1970).

[5] 23d Annual Report, TTPI, *supra* note 1, at 3. To attempt to describe the different cultural patterns and social structures that exist in Micronesia is beyond the scope or capacity of this publication. Suffice it to say that there are a multitude of complex and sophisticated societies. Most are based on some form of matrilineal relationship. 23d Annual Report, TTPI, *supra* note 1, at 4, 87-88; J. Coulter, *supra* note 1, at 251, 266, 312; E. Kahn, *supra* note 1, at 69-71. The most stratified society exists in Yap with nine social classes. There is social separation which can be compared with India where higher classes do not engage in occupations which the lower classes have traditionally done. The lowest class has a status described as "somewhere between that of a slave and an untouchable." E. Kahn, *supra* note 1, at 133; J. Coulter, *supra* note 1, at 224-25. However, the clan and extended family structure, most prevalent in Micronesia, has given its inhabitants a meaningful and stable social system, which has withstood four hundred years of occupation and even today provides many of the essential welfare services that modern Western governments provide for their citizens. 23d Annual Report, TTPI, *supra* note 1, at 98. An exception occurs in the Marianas where the inhabitants, called Chamorros,

First Contact

Micronesia's experience with both European and Asian rulers has lasted over 400 years during which the major decisions affecting these islands were made by non-Micronesians thousands of miles away.

The first Micronesian contact with European civilization came in 1521 when Ferdinand Magellan landed on Guam.[6] Spain later colonized Guam and used it principally as a water stop for the Spanish galleons traveling between Manila and Mexico. Spanish rule of the Marianas was absolute and bloody.[7] Outside the Marianas, the Spanish had little control; from the 1780's, whalers and merchantmen of various countries visited these islands.[8]

In 1885, German imperial dreams spilled into the Pacific when Germany seized the Marshall Islands.[9] After the Spanish-American War in 1898 and the cession of the Philippines and Guam to the United States, an impoverished Spain sold the remaining Marianas and the Carolines to Germany for $4.5 million.[10] Germany quickly tried to develop the islands both economically and strategically. Cable and radio stations were built and mineral resources were exploited.[11] But Germany's grandiose plans were soon extinguished.

Shortly after the outbreak of World War I, the Japanese Impe-

were at one time an indigenous group, but are today a mixture including Spanish and Filipino blood. Since they have had the most extensive contact with, as well as occupation by, Europeans, they have a more Westernized society with a unicellular family system and individual land ownership. J. Coulter, *supra* note 1, at 131, 179, 183-84; Blaz & Lee, *supra* note 3, at 62.

[6] P. Carano & P. Sanchez, *supra* note 3, at 41; S. De Smith, *supra* note 1, at 112; Buergbauer, *supra* note 3, at 44.

[7] J. Coulter, *supra* note 1, at 170. Spanish rule of the Marianas and their attempt to control and christianize the inhabitants were continually interrupted by bloodily suppressed revolts. One estimate saw the population of Guam decline from 50,000 in 1540 to 2,500 in 1783. P. Carano & P. Sanchez, *supra* note 3, at 61-109. *See* S. De Smith, *supra* note 1, at 112, 122.

[8] S. De Smith, *supra* note 1, at 123; E. Kahn, *supra* note 1, at 20.

[9] German control over the Marshall Islands was recognized in 1885. Pope Leo XIII, chosen to adjudicate the dispute between Germany and Spain over the islands, decided that Spain still controlled the Caroline Islands, but gave Germany the right to trade and establish settlements there. J. Coulter, *supra* note 1, at 171; S. De Smith, *supra* note 1, at 123; E. Kahn, *supra* note 1, at 21; N. Meller, Congress of Micronesia 9 (1969).

[10] E. Kahn, *supra* note 1, at 21; N. Meller, *supra* note 9, at 9-10; O'Connor, *America's Frontier in the Far East*, National War College Forum 57, 59 (1970).

[11] S. De Smith, *supra* note 1, at 124. *See* O'Connor, *supra* note 14, at 60-62. The Germans suppressed a revolt on Ponape in 1910 by Micronesians who did not want to do forced labor; seventeen Ponapeans were executed and the rest of that community was exiled to Palau, a thousand miles away. E. Kahn, *supra* note 1, at 22. *See* J. Coulter, *supra* note 1, at 271-72.

rial Navy seized the islands for the rapidly growing Empire of Japan.[12] In February, 1916, Japan and England signed an agreement recognizing Japan's right to all the German islands north of the equator and England's right to those south of the equator.[13] United States opposition on both strategic and moral grounds prevented Japanese annexation of Micronesia at the Versailles Conference.[14] Instead, the same principle of non-annexation that was applied to the former Turkish possessions was applied to all German overseas possessions.

Mandate

The Versailles Peace Conference, in creating the League of Nations, included in Article 22[15] of the League Charter a new view of dependent areas. These areas were to be administered as a "sacred trust" for "peoples not yet able to stand by themselves."[16] A mandate system was developed in which each dependent territory was given to a mandatory power whose actions were accountable to a Permanent Mandates Commission.[17] Japan was given a Class C Mandate over Micronesia.[18]

The Japanese occupation of Micronesia was industrious and secretive. Within twenty years Japan fully developed the islands economically.[19] But in order to achieve this result, they introduced settlers from Japan, Formosa and Korea. By 1940, these settlers out-

[12] Blaz & Lee, *supra* note 3, at 62; O'Connor, *supra* note 10, at 62.

[13] Bergbauer, *supra* note 3, at 44. *See* E. Kahn, *supra* note 1, at 23; Blaz & Lee, *supra* note 3, at 63.

[14] S. De Smith, *supra* note 1, at 125; E. Kahn, *supra* note 1, at 23; Bergbauer, *supra* note 3, at 44.

[15] League of Nations Covenant art. 22.

[16] League of Nations Covenant art. 22, para. 1, states:

> To those colonies and territories which . . . are inhabited by peoples not yet able to stand by themselves . . . there should be applied the principle that the well-being and development of such peoples form a *sacred trust* of civilization . . . . (emphasis added)

[17] League of Nations Covenant art. 22, para. 7, 8, 9.

[18] S. De Smith, *supra* note 1, at 125. *See* League of Nations Covenant art. 22, para. 6; E. Kahn, *supra* note 1, at 23-24; H. Kelsen, The Law of the United Nations 568 (1966); Bergbauer, *supra* note 3, at 44-45; O'Connor, *supra* note 10, at 62.

[19] O'Connor, *supra* note 10, at 63. In 1930, Micronesian imports totalled $30 million and exports totalled $50 million. Fishing, mining and the production of sugar and copra were the main industries. *See generally*, P. Clyde, Japan's Pacific Mandate (1935).

numbered the indigenous population.[20] Although the Japanese had brought economic prosperity to Micronesia, they turned the Micronesians into "onlookers" on their own islands.[21] Japan also followed a policy of isolating the islands from non-Japanese contact. After withdrawing from the League of Nations in 1935, Japan began to fortify the islands in preparation for the conquest of Southeast Asia.[22]

During the Second World War, Micronesia was the scene of bitter fighting as the United States Navy strategically leapfrogged through on the way toward the Japanese home islands. There was tremendous destruction: many islands were completely flattened and many Micronesians were killed. The United States had become the new occupier of Micronesia.[23]

MICRONESIA: TRUSTEESHIP

The Strategic Dilemma

After the war, the status of Micronesia remained unsettled because of a conflict between the United States policy of no territorial aggrandizement as a result of the war and its future strategic interest in the Pacific. This conflict was resolved by the creation of a "strategic" trusteeship at the San Francisco Conference that formed the United Nations. Micronesia subsequently became the only "strategic" United Nations trusteeship.[24] This status, reinforced by the actual trusteeship agreement between the United States and the United Nations, gave the United States virtually unlimited control over the islands.

Micronesia the only UN strategic trusteeship.

The Allied Powers early gave attention to the shape of a postwar world. In the Atlantic Charter of 1941,[25] the United States pledged not to obtain any territorial gain as a result of the war. The Cairo Conference in 1943, however, decided that Japan would be

[20] S. De Smith, *supra* note 1, at 125.

[21] S. De Smith, *supra* note 1, at 126-27.

[22] Bergbauer, *supra* note 3, at 46; O'Connor, *supra* note 10, at 63-64.

[23] Bergbauer, *supra* note 3, at 46; O'Connor, *supra* note 10, at 65-66.

[24] *See* S. De Smith, *supra* note 1, at 127; E. Kahn, *supra* note 1, at 27. *See generally* VII, VIII, XII S. Morison, History of the United States Naval Operations in World War II (1958).

[25] *Joint Declaration of the President of the United States and the Prime Minister of Great Britain*, 5 Dep't State Bull. 125 (1941). *See* N. Meller, *supra* note 9, at 385; R. Emerson, *American Policy Toward Pacific Dependencies*, in America's Pacific Dependencies 8 (R. Emerson ed. 1949).

stripped of all territory except the home islands.[26] This was reaffirmed at the Potsdam Conference in 1945.[27] Both logically and realistically, the United States, which was in the process of occupying Micronesia, had the major voice in the final disposition of the islands. However, difficulties arose because of strong disagreement within the United States government. The State Department wanted the islands to be held as a United Nations trusteeship by the United States, while the War and especially the Navy Departments wanted outright annexation.[28]

Naval authorities advanced two arguments for complete American control. The first was that America had made a "heavy expenditure of blood and treasure" to gain possession of the islands.[29] Secondly, and more importantly, the Navy did not want to make the same mistake made after World War I, namely, that of renouncing military and political control of the islands and perhaps allowing a foreign power to control the Central Pacific.[30]

The basic plan for the trusteeship system was agreed upon by the Allied Powers at Yalta, with the details of disposition of the territories left until a later agreement.[31] After three years, President Roosevelt approved a compromise plan that would create a separate category of "strategic" trusteeship under which Micronesia would be

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[26] *Cairo Declaration*, 9 Dep't State Bull. 393 (1943). *See* N. Meller, *supra* note 9, at 385; W. Perkins, Denial of Empire: The United States and its Dependencies 320 (1962).

[27] *Proclamation Defining Terms for Japanese Surrender*, 13 Dep't State Bull. 137 (1945).

[28] J. Murray, Jr., The United Nations Trusteeship System 29-30 (1957); Bergbauer, *supra* note 3, at 46-47. Annexation resolutions were introduced in Congress in 1944, R. Chowdhuri, International Mandates and Trusteeship System 41-43 (1955); J. Pratt, America's Colonial Experiment 350 (1950); R. Emerson, *The United States and Trusteeship in the Pacific*, in America's Pacific Dependencies 19 (R. Emerson ed. 1949). *See* N. Meller, *supra* note 9, at 385-86; R. Russell & J. Muther, A History of the United Nations Charter, 336-46, 573-87 (1958); R. James, *The Trust Territory of the Pacific Islands*, in America's Pacific Dependencies 119-23 (R. Emerson ed. 1949).

[29] A. McDonald, Trusteeship in the Pacific 55 (1949).

[30] Ambassador Austin stated before the Security Council:

> Tens of thousands of American lives, vast expenditures . . . were needed to drive the Japanese aggressors from these islands, which constitute an integrated strategic physical complex vital to the security of the United States. The American people are firmly resolved that this area shall never again be used as a springboard for aggression against the United States . . . .

2 U.N. SCOR, at 409-10 (1947). *See* E. Pomeroy, Pacific Outpost—American Strategy in Guam and Micronesia XV (1951); O'Connor, *supra* note 10, at 66.

[31] W. Tung, International Law in an Organizing World § 65, at 117 n.138 (1968).

placed.[32] This plan was adopted by the San Francisco Conference and is included in Chapter XII of the United Nations Charter.[33]

In United States We Trust

The United Nations, unlike the League of Nations, differentiated between types of trusteeships according to strategic importance rather than their stage of development.[34] In listing the basic objectives of the trusteeship system,[35] Article 76[36] puts the furtherance of international peace and security before political, economic and social development. This reflects the preoccupation of the drafters with international security in contrast to the more recent emphasis of the members of the United Nations on political advancement.[37]

The Charter provides that an area may be designated as a strategic trusteeship and that decisions which affect strategic trusteeships are to be made by the Security Council.[38] The only limitation on the administering authority of a trust territory is that the basic objectives of Article 76 must be followed.[39] The interpretation of these objectives, however, is left to the Security Council. This arrangement gives the United States with its permanent seat on the Security Council virtually unlimited control over TTPI if it wants to exercise its veto.[40]

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[32] L. Weiler & A. Simons, The United States and the United Nations 27-28 (1967); E. Kahn, *supra* note 1, at 31.

[33] U.N. Charter arts. 82-83. The articles were adopted at the insistence of the United States to insure its control of Micronesia. F. Wilson & C. Marcy, Proposals for Change in the United Nations 289 (1955). *See* A. McDonald, *supra* note 29, at 54; J. Murray, *supra* note 28, at 30; E. Sady, The United Nations and Dependent Peoples 26 (1956).

[34] League of Nations Covenant art. 22, para. 3. "The character of the mandate must differ according to the stage of the development of the people."

[35] The trusteeship system allows a state to administer a territory for the benefit of the inhabitants under a trusteeship agreement under the supervision of the United Nations, H. Kelsen, *supra* note 18, at 566. *See* 1 Public Papers of the Secretaries-General of the United Nations 77 (A. Cordier & W. Foote eds. 1969); Ngodrii v. Trust Territory, 2 T.T.R. 142, 146-47 (Trial Div. Palau District 1960) (administering authority is to act like a trustee).

[36] U.N. Charter art. 76.

[37] C. Toussaint, The Trusteeship System of the United Nations 251-52 (1956).

[38] U.N. Charter arts. 82-83. *See* N. Bentwich & A. Martin, A Commentary on the Charter of the United Nations 154-55 (1969); H. Kelsen, *supra* note 18, at 615; C. Toussaint, *supra* note 37, at 119-20. *See also* U.N. Charter art. 16; 1 D. O'Connell, International Law 372 (1965).

[39] U.N. Charter arts. 76, 83, para. 2; N. Bentwich & A. Martin, *supra* note 38, at 155-56; H. Kelsen, *supra* note 18, at 637, 639-40. *See also* 1 D. O'Connell, *supra* note 38, at 365-66.

[40] U.N. Charter art. 83, para. 1; N. Bentwich & A. Martin, *supra* note 38, at 155; H.

The United States has insisted on certain interpretations of the Charter in regard to trusteeships, especially TTPI, which have generally been accepted. The United States contended that

> [a]s a result of the war, Japan has ceased to exercise, or to be entitled to exercise, any authority in these islands. [This termination of authority was confirmed by the Cairo and Potsdam Declarations and the instrument of surrender of Japan].
>
> All authority in these islands is now exercised by the United States [which] is in possession of [the islands].[41]

It should be noted that the Charter places no obligation on any country to bring territories under the trusteeship system.[42]

The United States views the trusteeship agreement "in the nature of a bi-lateral contract between the United States . . . and the Security Council"[43] and the agreement itself defines the power the administering authority may exercise. There is some disagreement over whether the administering authority is bound to follow resolutions passed by the United Nations,[44] but it is clear that the Security Council cannot impose greater obligations than those already contained in the agreement without the consent of the administering authority.[45]

Kelsen, *supra* note 18, at 649; C. Lakshminarayan, Analysis of Principles and System of International Trusteeship in the Charter 191-92 (1951); C. Toussaint, *supra* note 37, at 122; S. Rep. No. 8, 79th Cong., 1st Sess. 9 (1945).

[41] *Submission of U.S. Draft Trusteeship Agreement for Japanese Mandated Islands*, 16 Dep't State Bull. 416, 419 (1947) (Statement by W. Austin before the U.N. Trusteeship Council, Feb. 26, 1947).

[42] N. Bentwich & A. Martin, *supra* note 38, at 149; H. Kelsen, *supra* note 18, at 570; R. Russell, The United Nations and United States Security Policy 32-33 (1968); Parry, *Legal Nature of the Trusteeship Agreements*, Brit. Y.B. Int'l L. 164 (1950).

[43] 2 U.N. SCOR, at 476 (1947). *See* Cameroons v. United Kingdom, [1963] I.C.J. 15, 113; N. Bentwich & A. Martin, *supra* note 38, at 151; R. Higgins, The Development of International Law through the Political Organs of the United Nations 284-87 (1963); Marston, *Termination of Trusteeship*, 18 Int'l & Comp. L.Q. 1, 8-9 (1969); Parry, *supra* note 42, at 175-76, 184-85.

[44] The administering authority is not bound by United Nations resolutions. R. Chowdhuri, *supra* note 28, at 301; C. Toussaint, *supra* note 37, at 225; Alig v. Trust Territory, 3 T.T.R. 64, 67 (Trial Div. Mariana Islands Districts 1965) (only the administering authority can determine how the terms of the trust agreement are to be carried out). *Contra*, J. Castañeda, Legal Effects of United Nations Resolutions 143-45 (1969).

[45] J. Castañeda, *supra* note 44, at 145-149.

Although the United States proposed the concept of "strategic trusteeship" specifically to solve the problem of Micronesian status, it was not until November 6, 1946, after much debate, that President Truman stated that the former Japanese mandated islands would be placed under the United Nations trusteeship system.[46] On February 2, 1947, an agreement acceptable to the Departments of State, War and Navy was finally submitted to the United Nations.[47]

The agreement encountered no major opposition in the Security Council.[48] In fact, it had the "unexpected" support of the Soviet Union. Only four amendments to the agreement were presented; the United States accepted three, but rejected the Russian amendment which provided for the termination of the trusteeship *solely* by action of the Security Council.[49] On April 2, 1947, the agreement, as amended, was unanimously approved.[50] President Truman then approved it under authority granted by a joint resolution of Congress.[51]

Under the trusteeship agreement, Micronesia is designated as a strategic area and the United States is the sole administering authority with full executive, legislative and administrative power over the trust territory.[52] Preferential economic treatment for United States

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[46] O'Connor, *supra* note 10, at 66.

[47] J. Murray, *supra* note 28, at 51.

[48] R. Emerson, *supra* note 28, at 22. Ambassador Gromyko said the Soviet Government felt it was fair that the islands be placed under United States trusteeship since the United States played the decisive role in the victory over Japan. 2 U.N. SCOR, at 415 (1947).

[49] R. Chowdhuri, *supra* note 28, at 22; J. Murray, *supra* note 28, at 74-75.

[50] S.C. Res. 21, 2 SCRD, at 16, U.N. Doc. S/INF/2/Rev. 1 (II) (1947). A second resolution requesting the Trusteeship Council to supervise United States administration of TTPI in accordance with U.N. Charter art. 83, para. 3, was adopted unanimously, S.C. Res. 70, 4 SCRD, at 12, U.N. Doc. S/INF/3/Rev. 1 (1947).

[51] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189. This agreement was signed by the President pursuant to authority H.R.J. Res. 233, ch. 271, 61 Stat. 397 (1947). *See In re* Reyes, 140 F. Supp. 126, 130 n.1 (D. Hawaii 1956); E. Kahn, *supra* note 1, at 31; E. Plischke, Conduct of American Diplomacy 433 (3d ed. 1967).

[52] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3302 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 190 (Articles 1, 3). *See* Ngiruhelbad v. Merii, 2 T.T.R. 631, 635 (App. Div. 1961); A. McDonald, *supra* note 29, at 59. But the United States must act in accordance with the provisions of the Charter, and especially of Article 76 which cites the basic purpose of the trusteeship system as being to further international peace and security and to promote the political, economic, social, and educational advancement of the inhabitants. Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3302-03 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 192, 194 (Articles 4, 7). *See* Ngodrii v. Trust Territory, *supra* note 35.

citizens is permitted.[53] The agreement further allows the formation of administrative unions with other United States territories.[54] However, there can be no alteration or termination of the agreement "*without the consent* of the administering authority."[55]

Sovereignty

The Charter is silent about the legal status of a trust territory.[56] It has been assumed, however, that the administering authority has only limited sovereignty over the territory.

Sovereignty over colonies and possessions is completely vested in the mother country.[57] Under both mandate and trusteeship concepts, the administering country exercises *de facto* sovereign power over the territory.[58] Where the *de jure* sovereignty lies, however, has never been satisfactorily decided.

The United States has *never* claimed sovereignty over TTPI.[59] Rather, it is a "qualified sovereign", merely exercising powers of sovereignty as administering authority.[60]

That residual sovereignty rests with the inhabitants of the territory is a better theory than the traditional view that the owner has the right to dispose of the territory as he wishes.[61] However, considering the contractual nature of the trusteeship agreement, it appears that legal status, at least until the trust arrangement ends, is equally

[53] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3303 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 194 (Article 8).

[54] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3304 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 196 (Article 9).

[55] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3305 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 198 (Article 15) (emphasis added).

[56] R. Chowdhuri, *supra* note 28, at 235; *see* Manual of Public International Law § 5.10, at 263 (M. Sorensen ed. 1968).

[57] Manual of Public International Law, *id.* at § 5.09, at 262.

[58] Manual of Public International Law, *id.* at § 5.10, at 264.

[59] U.S. Dep't of State, Pub. No. 2784, Draft Trusteeship Agreement for the Japanese Mandated Islands 10 (1947). *See* Callas v. United States, 253 F.2d 838, 840 (2d Cir.), *cert. denied*, 357 U.S. 936 (1958); Brunell v. United States, 77 F. Supp. 68, 70-71 (S.D.N.Y. 1948).

[60] *In re* Ngiralois, 3 T.T.R. 303, 308 (Trial Div. Palau District 1967); Alig v. Trust Territory, *supra* note 44, at 67 (exercise power of eminent domain); Calvo v. Trust Territory, 4 T.T.R. 506 (App. Div. 1969) (qualified sovereign). *See Hearings on S.J. Res. 143 Before the Senate Comm. on Foreign Relations*, 80th Cong., 1st Sess. 21 (1947).

[61] Sayre, *Legal Problems Arising From the United Nations Trusteeship System*, 42 Am. J. Int'l L. 263, 270 (1948).

divided among the inhabitants, the administering authority and the United Nations.[62]

MICRONESIA: "RUST TERRITORY"—THE RETURN TO PARADISE

The early period of American administration over Micronesia is as notable for what it neglected to do as for what it did. As United States interests and activities went deeper into Asia, Micronesia became a nut "to be buried in the South Seas and not disturbed until winter—when the hardships of political climate would stimulate growing hunger for a reliable western Pacific defense line."[63]

At first, the Navy was given administrative responsibility for Micronesia.[64] It tried to begin the reconstruction of the war-shattered islands, but its main accomplishment was to remove the 70,000 Japanese nationals who lived on the islands.[65]

In 1951, President Truman transferred administration of TTPI to the Department of the Interior.[66] It was a blow to Micronesia when the relatively "free spending Navy left and Interior took over" with its smaller budget.[67] During this period both Congress and the Executive displayed an indifference to TTPI reflected in its limited budget which averaged only $6 million a year, most of which went toward the salaries of American administrative personnel.[68] These were quite accurately known as the "lean" years.[69]

Although there were vast problems of administration caused by the devastation of the war, the collapse of the Japanese-based economy, and the vast geographical and cultural distances that separated the islands, the United States pursued a policy of "benign neglect"

Navy administers initially

1951 - Interior (except for Saipan - see p. 153

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[62] 1 D. O'Connell, *supra* note 38, at 368-69.

[63] O'Connor, *supra* note 10, at 73.

[64] Exec. Order No. 9,875, 3 C.F.R. 658 (1943-48 Comp.).

[65] Blaz & Lee, *supra* note 3, at 65. *See generally* D. Richard, United States Naval Administration of the Trust Territories of the Pacific Islands (1957).

[66] Exec. Order No. 10,265, 3 C.F.R. 766 (1949-53 Comp.).

[67] Bergbauer, *supra* note 3, at 47.

[68] S. Pompey, Micronesia 93 (1968). *See Hearings on H.J. Res. 1161, H.J. Res. 1258, & H.J. Res. 1265 Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs*, 91st Cong., 2d Sess. 10 (1970); Johnson, *supra* note 4, at 236; Mink, *Micronesia: Our Bungled Trust*, 6 Texas Int'l L. F. 181, 196 (1971).

Not until 1954 did Congress get around to legislating for TTPI. Then it only stated that until Congress further provides for its government, all governmental authority in TTPI rests with the President, 48 U.S.C. § 1681 (1970).

[69] S. Pompey, *supra* note 68.

toward Micronesia.[70] The United States fostered what has been described as a "zoological park" environment in which the clock was to be turned back and the native inhabitants left undisturbed to return to their original society.[71] This policy was implemented both consciously and by indifference and neglect on the part of American leaders.[72] In fact, this was an impossible goal to reach. While the Trust Territory might have been retrogressing materially, the contact the Micronesians had had, especially under the Japanese, with a westernized economy and way of life had altered their outlook as to how they wanted to live and develop their society.[73]

The United States has failed to provide those basic social and economic services that are normally provided by a government, but it has spent billions of dollars to use the islands for its own strategic purposes.[74] For example, while TTPI headquarters was in Hawaii, and after 1954 in Guam, the Central Intelligence Agency spent over $25 million building facilities on Saipan to train Nationalist Chinese guerrillas for the "eventual" return of the Nationalist government to the mainland.[75]

The most important and widely known American activity in TTPI during this time was the use of some of the Marshall Islands for the testing of nuclear and thermonuclear devices.[76] From 1946 to 1963, the United States, on the basis of strategic necessity and without consultation, uprooted the inhabitants of Eniwetok and Bikini atolls so that their land could be used to test nuclear weapons. The cost, in both social and political terms, of these actions and the ensuing problems of compensation are still being felt today.[77]

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[70] S. De Smith, *supra* note 1, at 133-34, 137 (Rust Territory); Bergbauer, *supra* note 3, at 68-69; Mink, *supra* note 68.

[71] N. Meller, *supra* note 9, at 16. *See* Blaz & Lee, *supra* note 3, at 64-65; Mink, *supra* note 68, at 194 (severe restrictions on entry of non-Micronesians).

[72] Mink, *supra* note 68, at 184.

[73] J. Coulter, *supra* note 1, at 10-11.

[74] E. Kahn, *supra* note 1, at 64; *see* Blaz & Lee, *supra* note 3, at 66.

[75] E. Kahn, *supra* note 1, at 39-40; S. De Smith, *supra* note 1, at 135; N. Meller, *supra* note 9, at 17-18; *Trust Betrayed*, 225 Economist 734 (1967).

[76] S. De Smith, *supra* note 1, at 135. For conflicting views of legality of these tests see McDougal & Schlei, *The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security*, 64 Yale L.J. 648, 654-55 (1955); Margolis, *The Hydrogen Bomb Experiment and International Law*, 64 Yale L.J. 629 (1955).

[77] J. Coulter, *supra* note 1, at 307; E. Kahn, *supra* note 1, at 75-77, 80-82; Blaz & Lee, *supra* note 3, at 59, 65-66; Mink, *supra* note 68, at 196-97.

Instead of TTPI becoming a showcase for less developed countries of the world, American administration resulted in Micronesia becoming a "showcase of neglect."[78]

1960+

MICRONESIA: THE GREAT LEAP FORWARD

At the beginning of the 1960's, the influence of the non-European powers began to rise and renewed interest was focused on the lesser developed areas of the world. With a new administration in Washington, the United States' phlegmatic policy toward TTPI changed to one of accelerated development. But after a decade of effort there still remain fundamental problems which create uncertainty about the future of Micronesia.

The achievement of statehood for Hawaii in 1959 revived American interest in the Pacific.[79] It not only pushed America's frontier two thousand miles toward Asia, it also incorporated a harmonious population whose mixture of Asian, Polynesian, and Caucasian inhabitants was heretofore unknown in the United States.

UN Resolutions

United Nations

In the United Nations, the increasing number of Afro-Asian members led to a new emphasis in the General Assembly on eliminating the remaining colonial empires. Two resolutions adopted in 1960 reflect this new emphasis. Resolution 1541(XV)[80] provided a guide to those principles which determine the obligation of a member to transmit information about dependent territories as called for under Article 73e[81] of the Charter. In defining the point at which a dependency becomes self-governing, thereby terminating the necessity for the transmission of information to the United Nations by the member, the resolution provided for three contingencies: a sovereign indepen-

get!

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[78] Mink, *supra* note 68, at 185.

> The responsibility for seeing that the American advantages are balanced with a concern for the future of the Micronesian . . . peoples involved has been disregarded by the Congress. . . . An ignoble parsimony, based on indifference to planning for the integration of its wards in some form of Pacific development, has crippled the conscience of the holders of the public purse. . . .

T. Adam, Western Interests in the Pacific Realm 173-74 (1967).

[79] Blaz & Lee, *supra* note 3, at 66; Mink, *supra* note 68, at 186.

[80] G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29, U.N. Doc. A/4684 (1960).

[81] U.N. Charter art. 73, para. e.

dent state, free association with an independent state, or integration with an independent state.[82]

This carefully worded resolution was overshadowed the next day by a hastily drawn resolution by forty-six African and Asian members after Premier Khrushchev's call for a resolution demanding an immediate end to colonial rule everywhere.[83] The result was Resolution 1514(XV),[84] entitled the "Declaration on the Granting of Independence to Colonial Countries and Peoples," in which the previous day's acknowledgement of different possible statuses for dependent areas was forgotten and self-determination that resulted in independence *now* was recognized as the only goal toward which a dependent area might strive.[85] This resolution reflected a fundamental change in United Nations objectives from international security and peace to the achievement of political independence and the end of colonialism. During the 1960's all the African and two Pacific trusteeships became independent. Today only TTPI and New Guinea remain.[86]

The Great Leap

With a decrease in the number of trusteeships, the United Nations 1961 Visiting Mission was able to inspect TTPI thoroughly.[87] The report was fair and in strong language pointed out the many deficiencies existing in the islands. The new Kennedy administration, aware of the implications of Resolution 1514(XV), quickly responded and changed United States policy toward Micronesia.[88] The decision was made to bring Micronesia into the twentieth century as soon as possible.[89] Following the recommendations of a special commission,[90]

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[82] Annex, Principle VI, G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29, U.N. Doc. A/4684 (1960).

[83] S. De Smith, *supra* note 1, at 38.

[84] G.A. Res. 1514, 15 U.N. GAOR, Supp. 16, at 66, U.N. Doc. A/4684 (1960).

[85] S. De Smith, *supra* note 1, at 38-40.

[86] Blaz & Lee, *supra* note 3, at 66-67.

[87] Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1961, 27 U.N. Trusteeship, Supp. 2, U.N. Doc. T, 1582 (1960).

[88] S. De Smith, *supra* note 1, at 136-37; Bergbauer, *supra* note 3, at 67.

[89] Blaz & Lee, *supra* note 3, at 68. Under Secretary of State Nicholas Katzenbach stated:

> Despite some lean years . . . and . . . continued shortcomings, we have for the last several years engaged in a major effort to *accelerate the territory's development*. (emphasis added)

Status Commission Proposed for Pacific Islands Trust Territory, 58 Dep't State Bull. 729 (1968) (Statement by Under Secretary of State Nicholas Katzenbach before the Subcommittee

1961 (?) Saipan put under Dept of Interior

the headquarters of TTPI was moved to Saipan from Guam, special security restrictions on entry were relaxed, and the Saipan district was transferred from naval control, placing the whole trusteeship under the Department of the Interior.[91] Major emphasis was placed on education and health programs.[92] A program to make English the universal second language in the trusteeship was begun.[93] Peace Corps volunteers were introduced in 1966.[94] But the major change in American policy was fiscal; the TTPI budget increased from $7.5 million appropriated in fiscal year 1961 to $17.5 million in fiscal year 1963, $35 million in 1968 and $60 million in fiscal year 1971.[95]

Nevertheless, this decade of effort and millions of dollars did not solve the fundamental problems that two decades of neglect, executive indifference and ignorance had created.[96]

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on Territorial and Insular Affairs of the Senate Committee on Interior and Insular Affairs, May 9, 1968).

[90] E. Kahn, *supra* note 1, at 48-49. This commission was known as the Solomon Commission after Anthony M. Solomon. Last year several Micronesians released an alleged unpublished portion of the Solomon Commission Report that recommended that United States policy should attempt to guide Micronesia into a permanent union with the United States. N.Y. Times, Jan. 10, 1971, at 7, col. 1.

[91] Exec. Order No. 11,021, 3 C.F.R. 600 (1959-63 Comp.), 48 U.S.C. § 1681 (1970). *See* U.S. Dep't of Interior, Annual Report 144, 152 (1963); *The Trust Territory of the Pacific Islands*, 47 Dep't State Bull. 264 (1962) (Statement by M. Wilfred Goding before the U.N. Trusteeship Council, May 31, 1962).

[92] Blaz & Lee, *supra* note 3, at 67-68. *See* S. De Smith, *supra* note 1, at 138. In 1958 there were no public high schools in Micronesia, there was one in 1962, and today there are eight public high schools (plus ten church-supported high schools). 23d Annual Report, TTPI, *supra* note 1, at 127, 131; E. Kahn, *supra* note 1, at 104. In 1957 there was no Micronesian who had graduated from college; today over 600 Micronesians are enrolled in undergraduate and graduate programs in over eight countries. 23d Annual Report, TTPI, *supra* note 1, at 133; E. Kahn, *supra* note 1, at 106, and a Community College of Micronesia has been established on Ponape, *The Trust Territory of the Pacific Islands*, 63 Dep't State Bull. 254, 255-56 (1970) (Statement by Edward Johnston, June 3, 1970).

[93] 23d Annual Report, TTPI, *supra* note 1, at 128; E. Kahn, *supra* note 1, at 13, 89.

[94] Blaz & Lee, *supra* note 3, at 68. *See* E. Kahn, *supra* note 1, at 49-50.

[95] Blaz & Lee, *supra* note 3, at 59; Mink, *supra* note 68, at 186. *See* 26 Congressional Quarterly Almanac 244 (1970).

[96] *See* T. Adam, *supra* note 78, at 169; Mink, *supra* note 68, at 190-91; *The Trust Territory of the Pacific Islands*, 57 Dep't State Bull. 367 (1967) (Statement by Lazarus Salii before the U.N. Trusteeship Council, June 8, 1967); Quigg, *Coming of Age in Micronesia*, 47 Foreign Affairs 493, 508 (1969); *Trust Betrayed*, 225 Economist 734 (1967).

One of the most serious controversies between Micronesians and the United States—war claims—is just being settled. The claims for both war and post-war damage by Japan and the United States resulted in an agreement between Japan and the United States to pay five million dollars each to satisfy the war claims. Agreement with Japan Concerning Claims: Trust Terri- war claims

The Economy

The most manifest failure of United States administration of Micronesia has been economic development. It has been noted that after twenty-five years "large areas of Micronesia had not been restored to the prewar standard of living under the Japanese."[97] The latest Visiting Mission, in 1970, reported that they could not find significant signs of progress in the territorial economy as a whole.[98] In fact, until recently, the second largest export from TTPI was scrap metal salvaged from the wrecks of World War II.[99]

The problems faced by the administering authority are immense. Vast distances, limited land and natural resources, and cultural patterns have combined to mitigate against rapid economic development. Especially constraining is the lack of population[100] and the ease of living on subsistence agriculture.[101] However, in those economic areas in which Micronesia should have some advantage, there has been little progress. With three million square miles of ocean, development of marine resources should receive the highest priority. Despite attempts at development, fishing is not a significant factor in TTPI's economy.[102] It has been retarded not only by Micronesia's cultural values, but more importantly by the high tariff wall imposed by the United States against canned fish.[103]

The one bright area for economic development is tourism. In the last few years, with TTPI becoming more accessible by air, the num-

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tory of the Pacific Islands, April 18, 1969, [1969] 20 U.S.T. 2654, T.I.A.S. No. 6724. The United States authorized another twenty million dollars for post-secure Micronesian claims, S. Res. 860, 92d Cong., 1st Sess. (1971). *See Hearings on H.J. Res. 1161, supra* note 68; Mink, *supra* note 68, at 187-89; Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1970, 37 U.N. Trusteeship, Supp. 2, at 107, U.N. Doc. T/1713 (1970) [hereinafter cited as 1970 Visiting Mission Report].

[97] S. De Smith, *supra* note 1, at 128.

[98] 1970 Visiting Mission Report, *supra* note 96, at 70.

[99] Quigg, *supra* note 96, at 493.

[100] Quigg, *supra* note 96, at 496.

[101] S. De Smith, *supra* note 1, at 134; 23d Annual Report, TTPI, *supra* note 1, at 43, 99-100; Gruening, *Statehood for Micronesia*, 209 Nation 664 (1969); Hartley, *Forgotten Islands*, Wall Street J., Oct. 15, 1969, at 1, col. 1 (E. ed.); Quigg, *supra* note 96, at 499.

[102] In 1970, fishing provided the second largest export for the trust territory, $988,801 (One plant owned by Van Camp Sea Food Co. accounted for over 90 per cent of this amount.). However, imports of canned fish were $957,657, leaving a trade surplus of only $31,144. 23d Annual Report, TTPI, *supra* note 1, at 57, 244-45.

[103] Hartley, *supra* note 101, at 27, col. 4; Johnson, *supra* note 4, at 238. *See also* Kahn, Jr., *Micronesia Revisited*, The New Yorker 98, 112 (Dec. 18, 1971).

ber of tourists has rapidly increased.[104] However, even with outside capital and expertise to develop a tourist industry, the prospect of "[t]he influx of a mass of visitors whose numbers might substantially exceed the total population of Micronesia cannot be contemplated without misgivings. . . ."[105] Unlike many Caribbean islanders, Micronesians are unwilling to give up their land and dignity for the tourist dollar.

Culture and Tradition

Another dilemma created by the United States' attempt to push Micronesia into the twentieth century is the effect on Micronesian culture and traditions. While there is no monolithic culture among the islanders, there are some basic similarities created by the geographic limitations of Micronesia.[106] One similarity is described as an extended family system.[107]

> Micronesia's political, social, and economic systems were built around kinship ties and in some places, attendant complex class cleavages, and these lineage (extended family) relationships continue to play an important role. . . .[108]

For centuries these relationships have provided a stable and relatively prosperous society. In TTPI, recognized customary law, when not in conflict with statutory law, is given the full force and effect of law by the courts.[109]

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[104] 23d Annual Report, TTPI, *supra* note 1, at 44-45; Kahn, *supra* note 103, at 112; Mink, *supra* note 68, at 193-94.

[105] 1970 Visiting Mission Report, *supra* note 96, at 58.

[106] *See* note 5 *supra*.

[107] 23d Annual Report, TTPI, *supra* note 1, at 98; 1970 Visiting Mission Report, *supra* note 96, at 34.

[108] N. Meller, *supra* note 9, at 4.

[109] 1 TTC § 102 (1970) which provides that:

> The customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory shall be preserved [and] shall have the full force and effect of law. . . .

1 TTC § 14 (1970) states that the Trust Territory bill of rights shall not "invalidate any part of the existing customary law, except as otherwise provided by law." Ichiro v. Bismark, 1 T.T.R. 57 (Trial Div. Palau District 1954) (dictum). *See* Lalou v. Alliang, 1 T.T.R. 94, 99-100 (Trial Div. Palau District 1954) (custom is a law established by the long usage of a common practice). *See also* Rudmich v. Chin, 3 T.T.R. 323, 328 (Trial Div. Palau District 1967)

The eleemosynary onslaught of the United States has had an important effect on this culture. Today people are moving out of the extended family to the district centers and are beginning to enjoy the material advantages of an affluent society.[110] While the islanders demand better services and changes, they want to keep these changes within a Micronesian context. There is misgiving about the extent and pace of change.[111] The Micronesians realize that it is up to them to exert influence on contemplated change in order to preserve the meritorious values and traditions of the past.

Land

The most important problem that the United States has to resolve is that posed by Micronesian concern for their *land*. To Americans, that word signifies vast stretches of mountains, desert, plains, woodlands and cities that people from all over the world came to use. To a Micronesian, the use and disposition of land is not an economic matter. It is the basis upon which his society and culture is organized; the social and political rights vested in land are more important than its economic value.[112] Although there are many types of land tenure, land is usually held by a clan or lineage as tenants in common.[113] From this land tenure system, the value and character of Micronesian life has developed.

> Land in Micronesia is a very scarce commodity and commands a place in the people's lives far beyond the feeling of Americans whose laws consider land as something which can be assigned a monetary value. Land in Micronesia is still equated with people. . . . In Yap, a person's name is directly

(customary land law of 1941 still in effect, 1 TTC § 105 (1970)); Umiich v. Trust Territory, 3 T.T.R. 231 (Trial Div. Palau District 1967) (marriage and divorce rights are affected by custom, 39 TTC §§ 4, 55 (1971)).

[110] 23d Annual Report, TTPI, *supra* note 1, at 100.

[111] *See* J. Coulter, *supra* note 1, at 10-11; W. Perkins, *supra* note 26, at 324; 1970 Visiting Mission Report, *supra* note 96, at 22; Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands, 25 U.N. SCOR, Special Supp. 1, at 11 (1970) (observation of Australian representative).

[112] 23d Annual Report, TTPI, *supra* note 1, at 60. *See* 1970 Visiting Mission Report, *supra* note 96, at 37; Mink, *supra* note 68, at 181.

[113] *Hearings on H.J. Res. 1161, supra* note 68, at 53, 62. *See also* J. Coulter, *supra* note 1, at 176, 198, 250-51, 264-67.

> associated with one or more parcels of land. House platforms, even though a house may not have been there for years, are spiritual residences of family ancestors. The inheritor of a given parcel of land is automatically placed in a position of prestige and power. . . .[114]

So strong is the influence of land that class distinctions in Yap are based mainly on whether the clan's location is on good or bad land.[115] Immigrants from Palau must build their houses over the water because they cannot buy land in Yap.[116]

Since Micronesian society and culture is based on land ownership, the past practices of Germany, Japan, and the United States have seriously affected this ownership.[117] The question of land was the reason for the first island-wide conference in 1949[118] and the major question faced by the first Congress of Micronesia.[119] Today, as in the past, the Micronesians simply want control over their own land.

The United States has claimed it recognizes this problem and has implemented programs that protect the Micronesians' interest in their land.[120] Unfortunately, from past experience the Micronesians do not trust United States intentions or promises. The United States

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[114] 23d Annual Report, TTPI, *supra* note 1, at 60.

[115] J. Coulter, *supra* note 1, at 219, 224. *See* E. Kahn, *supra* note 1, at 133-34.

[116] Cowles, *The Island of Yap—Plenty of Big Wheels But Few Big Spenders*, N.Y. Times, Nov. 7, 1971, § 10 (Travel), at 28, col. 5.

[117] McGrath, *Resolving the Land Dilemma*, 19 Micronesian Reporter 9 (No. 1 1971). *See* E. Kahn, *supra* note 1, at 70; Blaz & Lee, *supra* note 3, at 70-71.

[118] N. Meller, *supra* note 9, at 182-83.

[119] Blaz & Lee, *supra* note 3, at 70.

[120] High Commissioner Johnston told the Trusteeship Council that land was the most sensitive issue in Micronesia and that the Micronesian interest in the land would be fully protected, *The Trust Territory of the Pacific Islands*, 61 Dep't State Bull. 222, 226 (1969) (Statement by Edward Johnston, June 6, 1969).

1 TTC § 105 (1970) provides that the law concerning use and transfer of land in 1941 is in full force and effect unless "changed by express written enactment made under the authority of the Trust Territory." *See* Limmine v. Lainj, 1 T.T.R. 107, 111 (Trial Div. Marshall Islands 1954). Further, 51 T.T.C. § 11101 (1970) states:

> Restrictions on land ownership. Only citizens of the Trust Territory or corporations wholly owned by citizens of the Trust Territory may hold title to land in the Trust Territory. . . .

See Palting v. Guerrero, 4 T.T.R. 160 (Trial Div. Mariana Islands District 1968). At present the United States controls the public land of TTPI, which is sixty per cent of the total land. *Hearings on H.R. 17619*, *supra* note 1, at 562; *see* 1970 Visiting Mission Report, *supra* note 96, at 38. The United States claims that it is holding this public land in trust for Micronesians, Blaz & Lee, *supra* note 3, at 71.

administrative authorities still possess unlimited control over land through a broad "eminent domain" power.[121] The United States has never negotiated with the Micronesians prior to taking their land,[122] and Micronesians view with hostility American policy in this regard.[123]

The 1970 Visiting Mission declared that land was the main political issue between the United States and the Micronesians.[124] As one Palauan leader, Toad Ngotel said:

> "Our land . . . is . . . the most valuable asset we have. Take any of it away from us for bases or any other reason, regardless of the method of compensation, and to that degree you have weakened our culture, [and] destroyed our potential for economic and political independence."[125]

STRATEGIC INTEREST

The strategic importance of TTPI in the Second World War as the jumping-off point for Japan's conquest of the Southwest Pacific

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[121] Blaz & Lee, *supra* note 3, at 70; 10 TTC §§ 1 *et seq.* (1970) (eminent domain). *See* Mink, *supra* note 68, at 181.

[122] Quigg, *supra* note 96, at 501-03.

[123] The following are two illustrations of the seriousness with which the Micronesians view American land policy. In 1969 when Secretary of the Interior Walter Hickel visited the Palau District of Micronesia, his party included three Department of Defense officials, including Lieutenant General Lewis W. Walt, former Marine Commander in Vietnam. As General Walt inspected the relatively unpopulated island of Babel, looking for an amphibious training area, the Palau District legislature unanimously voted a resolution declaring that they did not want any military bases on their islands. Kahn, *supra* note 103, at 100; Mink, *supra* note 68, at 197; Riley, *supra* note 1, at 59. Secondly, in 1947 the United States developed a missile testing base on the Kwajalein atoll. In the early 1960's, all the residents of the major island were relocated on a small island of the atoll Ebeye for security and safety reasons. It took the Army until 1964 to negotiate a highly favorable lease of $10 an acre per year for the Micronesian land. This is in contrast to the over $1 billion spent to equip the anti-missile test base. In April, 1970, the Micronesians unexpectedly moved to the missile base and staged a sit-in. Faced with this "American" type of influence, the Army within eight months renegotiated the lease and substantially increased the compensation. Blaz & Lee, *supra* note 3, at 66. The 1967 United Nations Visiting Mission found no agricultural activity or fishing on Ebeye.

> Ebeye thus has the characteristics of an urban dormitory [and] lacks the resources provided by economic, agricultural [and] other activities of its own. . . .

It characterized the living conditions as unhealthy. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1967, 34 U.N. Trusteeship, Supp. 2, at 33, U.N. Doc. T/1658. *See* E. Kahn, *supra* note 1, at 67-68.

[124] 1970 Visiting Mission Report, *supra* note 96, at 37.

[125] Riley, *supra* note 1, at 60.

and the United States' road to the defeat of Japan has never been forgotten by American political and military leaders. With the dynamic forces in and resulting policies toward Asia today, it is important to the future of TTPI that the United States' strategic interest be accurately understood.

Pacific Power

It is a truism that the United States is a Pacific power.[126] American mercantile influence from the 1780's and military influence from Perry's "opening" of Japan in 1856 have been felt throughout the Pacific basin. Ever since the end of World War II, a primary objective of American policy has been to control the Central Pacific.[127] With bases on Hawaii, Midway, Wake, Guam and in Micronesia, American leaders felt that not only did the continental United States have protection from possible attack, but that it could successfully exercise its enormous power to protect its interests in Asia.[128]

The United States needs dependable bases in order to exercise its power.[129] Treaty arrangements with other Pacific countries are not as satisfactory as bases held in sovereign American territory. These do not "lie at the mercy of changing political currents."[130] For, despite enormous military power, Professor De Smith has observed:

> In the Pacific, American dominance is neither comprehensive nor assured. On the western seaboard lie two giants, Russia and Communist China . . . . ANZUS, SEATO, and an irregular chain of bases and insular possessions have not been enough to give America a sense of security in the Pacific.[131]

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[126] Girling, *The Guam Doctrine*, 46 Int'l Affairs 48, 50 (1970). *See* Johnstone, *The United States As A Pacific Power*, 58 Current History 193 (1970).

[127] *See* T. Adam, *supra* note 78, at 12; J. Coulter, *supra* note 1, at 367; Senate Foreign Relations Comm., Report on the Charter of the United Nations, S. Rep. No. 8, 79th Cong., 1st Sess. 12 (1945); Special Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs, 84th Cong., 1st Sess., Report on the Trust Territory of the Pacific Islands 10 (Comm. Print 1955) (U.S. must maintain absolute control over TTPI for security reasons); *Hearings on S.J. Res. 143 Before the Senate Comm. on Foreign Relations*, 80th Cong., 1st Sess. (1947); Commission to Study the Organization of Peace, Strategic Bases in the Pacific—Plan for Trusteeship 4 (1946); Austin, *supra* note 41, at 417; *Explanatory Comments on Draft Agreement*, 16 Dep't State Bull. 420 (1947).

[128] O'Connor, *supra* note 10, at 70-71, 74.

[129] T. Adam, *supra* note 78, at 11-12, 18.

[130] T. Adam, *supra* note 78, at 13.

[131] S. De Smith, *supra* note 1, at 81.

Therefore, the United States looks with more than cursory interest at the islands of Micronesia.

A major Micronesian concern is that in withdrawing from Vietnam, Okinawa and the Philippines, the United States plans to establish extensive bases in TTPI to implement the Nixon Doctrine.[132] The visit of Lieutenant General Walt in 1969 did not relieve these anxieties. At present, the only military bases in the trust territory are the Army's missile range facility at Kwajalein, a satellite tracking station on Truk Island and radio stations on Ponape and Palau.[133]

Military Presence

The main American military presence in the Central Pacific is on Guam. From there, American military forces can secure lines of communication with their allies in Asia.[134] At present, Guam has sufficient facilities to handle all of the United States' military needs. Any need for expansion as a result of the pullback of American forces from Asia could easily be found in the empty World War II airfields and harbors of the other Marianas, Saipan and Tinian.[135] Their residents have already petitioned the United States for reactivation of these facilities.[136]

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[132] Blaz & Lee, *supra* note 3, at 77, 79. The Future Political Status Commission of the Congress of Micronesia in its public hearings was most surprised to find a high "degree of anxiety at the prospect of the location of U.S. military bases in Micronesia." Future Political Status Commission, Congress of Micronesia, 3d Cong., 2d Sess., Report 26 (1969) [hereinafter cited as Future Political Status Report]. *See* Bergbauer, *supra* note 3, at 49; Hartley, *supra* note 101, at 27, col. 4; Johnson, *supra* note 4, at 237.

For the most recent discussion of the Nixon Doctrine, see *U.S. Foreign Policy for the 1970's—Building for Peace - Report to Congress*, 65 Dep't State Bull. 341, 344-45 (1971) (News Conference of President Nixon, Sept. 16, 1971).

[133] E. Kahn, *supra* note 1, at 33; Bergbauer, *supra* note 3, at 49. The Department of Defense is using or retains for use only 3.87 per cent of the total land of TTPI. F. Williams, Report on the Future Political Status—Trust Territory of the Pacific Islands 27 (1971).

[134] T. Adam, *supra* note 78, at 173; H. Wiens, Pacific Island Bastions of the United States 56-57, 119 (1962); Blaz & Lee, *supra* note 3, at 78.

Samuel Eliot Morison has stated:

> The control of sea communication through the Pacific and Indian Oceans by the United States Navy is a "must." No other force can do it. . . .

Morison, *American Strategy in the Pacific Ocean*, 62 Oregon Hist. Rev. 5, 45 (1961). *See generally* E. Pomeroy, *supra* note 30; *Hearings on H.R. 17619*, *supra* note 1, at 415-16.

[135] Blaz & Lee, *supra* note 3, at 79-80. *See* F. Williams, *supra* note 133, at 31-37.

[136] Blaz & Lee, *supra* note 3, at 78.

Strategic Denial

Hanson W. Baldwin has suggested that, while the focus of American military activity should remain in the Marianas, the United States has a continuing requirement to deny the use of any other islands to another foreign power.[137] The Second World War demonstrated the absurdity of attempting to hold Guam in the midst of hostile military bases in Micronesia.[138] It is essential to United States' security that it control or at least influence Micronesia to the extent of excluding any other military power from using any islands to threaten U.S. military bases on Guam.[139] At present, this need for U.S. military exclusivity is met by the concept of "strategic" trusteeship.[140] It is clear that even though

> [t]echnological developments, economic crises and political reappraisals lead to frequent changes in appreciations of strategic requirements . . . it can be assumed that the United States will *at least* continue to attach importance to *denying* hostile foreign powers access to . . . facilities [in Micronesia].[141]

In seeking a new relationship, both Micronesian and American leaders must be cognizant of certain operative facts. First and foremost is the continuing need for strong American military facilities on Guam. However, these military bases would prove ineffectual, unless the United States maintained exclusive military control of Micronesia. A treaty or other agreement would not be a sufficient safeguard for these bases. Finally, there must be some definite decision and explanation of all possible needs for bases within Micronesia. Vague promises and secret Department of Defense survey team visits do not induce the credence which the Micronesians deserve.

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[137] H. Baldwin, Strategy for Tomorrow 280 (1970).

[138] Johnson, *supra* note 4, at 234. *See* R. Russell, *supra* note 42, at 241.

[139] N. Meller, *supra* note 9, at 394; Special Subcomm. on Territorial and Insular Affairs, Report on the Trust Territory of the Pacific Islands, *supra* note 127, at 9 ("From a security standpoint our major concern lies in preventing the islands from ever being occupied by any other nation."); *Hearings on S.J. Res. 143*, *supra* note 127, at 18 (Chief of Staff Dwight D. Eisenhower); Kluge, *Will the U.S. Ever Let Micronesia Go?*, Wall Street J., Sept. 28, 1970, at 14, col. 3.

[140] A. McDonald, *supra* note 29, at 58.

[141] S. De Smith, *supra* note 1, at 73 (emphasis added).

MICRONESIA: POLITICAL INSTITUTIONS

There has been one outstanding achievement in TTPI. The United States, by careful planning, has developed the concept of democratic, representative government there.[142] TTPI is governed by the Secretary of the Interior as authorized by the Congress and the President of the United States.[143] The Secretary is vested with responsibility for the executive, legislative and judicial administration of civil government in the Trust Territory.[144]

Executive

Executive authority is vested in a High Commissioner appointed by the President and confirmed by the Senate.[145] He is charged with directing the government and administering the laws of TTPI.[146] To assist him, he has a headquarters staff and a District Administrator to administer each of the six districts into which TTPI is divided.[147]

Judiciary

Judicial authority is vested in a High Court of the Territory

[142] Future Political Status Report, *supra* note 132, at 8; Mink, *supra* note 68, at 198.

[143] 48 U.S.C. § 1681 (1970) (originally enacted as Act of June 30, 1954, ch. 423, § 1, 68 Stat. 330, *as amended*, Act of Aug. 22, 1964, Pub. L. No. 88-487, § 1, 78 Stat. 601). This statute authorizes the President to provide for the civil government of TTPI. The power to legislate for TTPI is based on the treaty power and the necessary and proper clause. Congress has the power to legislate for TTPI to carry out the treaty obligations of the trust agreement for TTPI. Note, *Executive Authority Concerning the Future Political Status of the Trust Territory of the Pacific Islands*, 66 Mich. L. Rev. 1277, 1280-81 n.6 (1968). *See* Neely v. Henkel, 180 U.S. 109, 121 (1901) (Congressional power to legislate for Cuba in "aid of treaty obligations."). President Kennedy in 1962 delegated full authority for the civil government of TTPI to the Secretary of the Interior, Exec. Order No. 11,021, 3 C.F.R. 600 (1959-63 Comp.), 48 U.S.C. § 1681 (1970). *See also* Calvo v. Trust Territory, *supra* note 60; 23d Annual Report, TTPI, *supra* note 1, at 10.

[144] Exec. Order No. 11,021, § 1, 3 C.F.R. 600 (1959-63 Comp.), 48 U.S.C. § 1681 (1970).

[145] Department of Interior Order No. 2,918, 34 Fed. Reg. 157 (1969). The appointment of the High Commissioner by the President must be made with the advice and consent of the Senate, 48 U.S.C. § 1681a (1970).

[146] Department of Interior Order No. 2,918, 34 Fed. Reg. 157 (1969). *See also* 23d Annual Report, TTPI, *supra* note 1, at 17; Kahn, *supra* note 103, at 103.

[147] 23d Annual Report, TTPI, *supra* note 1, at 19-21. TTPI is divided into six administrative districts, five of whose administrators are Micronesians. The third ranking executive official, the Executive Officer, is also a Micronesian. 23d Annual Report, TTPI, *supra* note 1, at 1, 20. *See generally* Johnston, *supra* note 92, at 259; *The Trust Territory of the Pacific Islands*, 55 Dep't State Bull. 388, 390 (1966) (Statement by William R. Norwood before the U.N. Trusteeship Council, June 27, 1966).

whose members are appointed by the Secretary of the Interior.[148] The court is supposed to be "independent" of both the executive and legislative branches.[149] The law applicable to TTPI includes the trusteeship agreement, United States laws that apply to TTPI, Executive Orders of the President, orders of the Secretary of the Interior, and the laws of the Trust Territory Code.[150]

The Trust Territory Code is the statutory law of TTPI and includes the typical bill of rights most American state or territorial law contains.[151] However, there are two significant distinguishing features between a Micronesian and an American bill of rights. First, there are restrictions on the rights of non-Micronesians to own land and to engage in business enterprises in TTPI. Land ownership is restricted to citizens of TTPI and to corporations wholly owned by TTPI citizens.[152] Non-Trust Territory citizens or corporations can do business in TTPI only if they obtain a permit from the District Economic Development Board.[153] Second, most codified law, including the bill of rights, is subject to and limited by existing custom, unless custom is explicitly intended not to apply.[154] Custom has an important role in Micronesian society, especially customs about law, mar-

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[148] Department of Interior Order No. 2,918, 34 Fed. Reg. 160 (1969). *See* 23d Annual Report, TTPI, *supra* note 1, at 17, 29-35.

[149] Department of Interior Order No. 2,918, 34 Fed. Reg. 160 (1969). *See* 23d Annual Report, TTPI, *supra* note 1, at 17.

[150] 1 TTC § 101 (1970). *See generally* Sechelong v. Trust Territory, 2 T.T.R. 526, 530 (Trial Div. Palau District 1964).

[151] The TTPI Bill of Rights is contained in 1 TTC §§ 1-14 (1970).

[152] 57 TTC § 11101 (1970). *See* Palting v. Guerrero, *supra* note 120, at 162 (contract between lawyer and client giving him land for services rendered declared illegal since the lawyer was not a trust territory citizen); 1 TTC § 13 (1970).

[153] 33 TTC §§ 1-19 (1970) (Foreign Investor's Business Permit Act, Pub. L. No. 3C-50 (1970), *amending* Act of Sept. 18, 1968, Pub. L. No. 4-22). *See* Trust Territory v. Triad Corp., 4 T.T.R. 300, 310-11 (Trial Div. Mariana Islands District 1969), in which the court held that the Foreign Investor's Act is not prohibited by the interstate commerce clause of the United States Constitution; 23d Annual Report, TTPI, *supra* note 1, at 45-47.

[154] 1 TTC § 14 (1970). *See also* 1 TTC § 102 (1970). For example, the right to a jury trial is not included in the Trust Territory Bill of Rights since juries are foreign to the Micronesian social system of justice. In 1965, the first Congress of Micronesia authorized the creation of a jury system on a district option basis, 5 TTC §§ 501 *et seq.* (1970). The first jury trial was held five years later in the Marshall Islands, 23d Annual Report, TTPI, *supra* note 1, at 29. *See* Sechelong v. Trust Territory, *supra* note 150, at 529. The TTPI courts have decided to apply the procedures of *Miranda* and *Escobedo* "so far as they are applicable to conditions existing in the Trust Territory." Trust Territory v. Poll, 3 T.T.R. 387, 398 (Trial Div. Ponape District 1968). *See* Meyer v. Trust Territory, 3 T.T.R. 586 (App. Div. 1965); 23d Annual Report, TTPI, *supra* note 1, at 32-34.

riage and social relationships. It is the Micronesian common law, and it takes precedence over Anglo-American common law in TTPI courts.[155]

Legislative

Legislative power in TTPI is vested in a Congress of Micronesia.[156] This Congress is a bicameral legislative body whose organization and powers are based on American legislative models.[157] However, there are important limitations on the power of this Congress. Legislation cannot be inconsistent with treaties, international agreements, laws of the United States applicable to TTPI, Executive Orders of the President, orders of the Secretary of the Interior, or the first twelve sections of the Code of the Trust Territory.[158] Thus the Congress cannot amend its own Constitution, since this is incorporated in a Secretarial Order. Furthermore, the power of appropriation of the Congress is limited solely to locally raised revenues.[159]

The establishment of a Congress of Micronesia is the latest step in the creation of institutions which will eventually lead to complete self-government. Prior to 1961, during the naval administration of the islands, American administrators followed a policy of encouraging growing governmental responsibility among local leaders and councils.[160] They intended to build up political responsibility gradually among the Micronesians rather than create an "instant government" that would prove unworkable.[161]

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[155] 1 TTC § 103 (1970). *See* Ngiramulei v. Rideb, 2 T.T.R. 370 (Trial Div. Palau District 1962).

[156] Department of Interior Order No. 2,918, 34 Fed. Reg. 157-58 (1969).

[157] *See* Department of Interior Order No. 2,918, 34 Fed. Reg. 157-58 (1969); 23d Annual Report, TTPI, *supra* note 1, at 18; Mink, *supra* note 68, at 198.

[158] Department of Interior Order No. 2,918, 34 Fed. Reg. 158 (1969); 23d Annual Report, TTPI, *supra* note 1, at 18; S. De Smith, *supra* note 1, at 145.

[159] Department of Interior Order No. 2,918, 34 Fed. Reg. 158 (1969); S. De Smith, *supra* note 1, at 145. Ninety-seven percent of the TTPI budget is funded from the budget of the Department of the Interior, and approved by the United States Congress as part of the Federal budget. Total United States expenditure in TTPI exceeded $75 million per year. Locally raised revenue totaled $2 million. F. Williams, *supra* note 133, at 59-61. *See* 23d Annual Report, TTPI, *supra* note 1, at 237-40.

[160] U.S. Dep't of Navy, Handbook on the Trust Territory of the Pacific Islands 45 (1948).

[161] Midkiff, *Administering the Pacific Trust Territory*, 29 Dep't State Bull. 150, 150-51 (1953) (Statement by Mr. Midkiff before the U.N. Trusteeship Council, July 3, 1953); Meller, *American Pacific Outposts: Guam, Samoa, and the Trust Territory*, 41 State Government 204, 207 (1968).

The administrators introduced the selection of leaders by an elective system.[162] At the same time, the United States encouraged the chartering of formal municipalities to provide popular local government which would assume responsibility for local problems.[163] In recent years, there has been a major attempt to decentralize power to the district and municipal levels.[164]

As local governmental units were established, the administering authority began to implement a plan to create a territory-wide legislative body. In 1956, the High Commissioner appointed an Interdistrict Advisory Council.[165] In 1961, a Council of Micronesia with two elected members from each district replaced it.[166] In 1964, after consultation in Micronesia and Washington, the Secretary of the Interior issued an order creating an elected Congress of Micronesia.[167]

To evaluate a new governmental institution like the Congress of Micronesia after only seven years is very difficult. But, despite the lack of experience and limited power, most observers have praised the Congress for its achievements, hard work, and dedication. Its impact has increased political involvement and interest throughout TTPI and it has tended to draw together the divergent sections of Micronesia.[168]

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[162] In July, 1947, the first district-wide legislature was organized in the Palau Islands. N. Meller, *supra* note 9, at 51. *See Trust Territories Progress Toward Self-Government*, 25 Dep't State Bull. 1024 (1953) (Statement by Ambassador Francis B. Sayre before the U.N. Trusteeship Council, Dec. 5, 1952). Today, all six administrative districts have active district legislatures. 23d Annual Report, TTPI, *supra* note 1, at 21-22.

[163] Quigg, *supra* note 96, at 497-98.

> [United States] policy has been one of gradually strengthening and improving the existing municipal government to the point where they can assume complete responsibility of governing their local areas, while at the same time gradually developing larger regional bodies toward the same goal. . . .

Codding, Jr., *The United States Trusteeship in the Pacific*, 29 Current History 358, 361 (1955).

[164] 23d Annual Report, TTPI, *supra* note 1, at 21; Kahn, *supra* note 103, at 103.

[165] *See* S. De Smith, *supra* note 1, at 136; N. Meller, *supra* note 9, at 184. *See Hearings on Reports on Pacific Affairs, 1965. Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 89th Cong., 1st Sess., ser. 16, at 16 (1965).

[166] Goding, *supra* note 91, at 265. *See Hearings on Reports on Pacific Affairs, 1965, supra* note 165.

[167] Department of Interior Order No. 2,882, 29 Fed. Reg. 13,613 (1964); S. De Smith, *supra* note 1, at 143. See N. Meller, *supra* note 9, for the best history and analysis of the Congress of Micronesia.

[168] S. De Smith, *supra* note 1, at 145, 150-52; N. Meller, *supra* note 9, at 373-74, 377; 1970 Visiting Mission Report, *supra* note 96, at 111. In the first election for the Congress over eighty per cent of the registered voters cast ballots, E. Kahn, *supra* note 1, at 57. In the latest election even television was used. 18 Micronesian Reporter 43 (Nov. 4, 1970).

Professor Norman Meller, who has closely observed the development of the Congress of

From its inception, the Congress came into conflict with the High Commissioner on many issues. Prominent among them have been the problems of land ownership and eminent domain, wage discrimination between United States and Micronesian employees of the administering authority, and attempts to prevent non-Micronesians from acquiring control over the economy of TTPI.[169]

But the most important problem facing the Congress of Micronesia is the problem of self-government and executive responsibility. Today there is no popularly elected executive in TTPI responsible to the people. Most major decisions are made over eight thousand miles away in Washington by bureaucrats, political appointees, and Congressmen who neither represent nor have sufficient interest in Micronesia.[170]

Frustration over this policy is personified in the issue of who controls the Federal portion of the TTPI budget. At present, the High Commissioner submits a proposed budget for expenditure of Federal funds to the Congress of Micronesia for review; he must also submit to the Secretary of the Interior any recommendations he does not adopt.[171] This recent cooperation in budget planning, however, cannot overshadow the complete lack of power over the "purse" by Micronesians, since the U.S. Congress may completely ignore their recommendations.[172] This frustration has been recognized by United Nations Visiting Missions over the last decade and, despite pacifying

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Micronesia, stated:

> In Micronesia . . . where American-style legislatures with limited functions and restricted legislating capacity have been structured, a new political elite, both paralleling the chiefly elite and also comprised of those traditional leaders who have been able to make the adaptation, observe appropriate representative practices. . . . the same representative roles are replicated . . . as found in the four American states surveyed [the trustee, the politico, and the delegate].

Meller, *Representational Role Types: A Research Note*, 61 Am. Pol. Sci. Rev. 474, 477 (1967).

[169] *See* Blaz & Lee, *supra* note 3, at 70-71; Mink, *supra* note 68, at 181, 187.

[170] *See* W. Perkins, *supra* note 26, at 146. The Trusteeship Council has recommended an elected executive, Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands, *supra* note 111, at 22. The possibility of a cabinet-style government has been suggested, 1970 Visiting Mission Report, *supra* note 96, at 115. *See* Future Political Status Report, *supra* note 132, at 13.

[171] Department of Interior Order No. 2,918, Amendment No. 1 (Aug. 13, 1970). *See The Trust Territory of the Pacific Islands*, 65 Dep't State Bull. 209 (1971) (Statement by Edward Johnston).

[172] 1970 Visiting Mission Report, *supra* note 96, at 112-13. *See* S. De Smith, *supra* note 1, at 148-50.

American statements, the major Trusteeship Council recommendation to the United States has been "to enlarge the financial responsibility of the Congress [of Micronesia] by progressively extending its power to include appropriations of U.S. financial subsidies."[173]

The Debate Over Status

As political awareness and sophistication have grown, Micronesian leaders have become increasingly dissatisfied with their lack of real self-determination over their lives and land. Frustrated by the limitations of the present governmental organization, Micronesians have exerted their efforts toward changing their political status. The future political status of TTPI has become the overriding issue between the United States and Micronesia.[174] Micronesian leadership which the United States has helped develop has now seized the initiative and is effectively using the structure of democratic government to try to achieve self-government.[175]

The first step toward self-determination came in August, 1966, when a joint resolution was passed by the Congress of Micronesia petitioning President Johnson "to establish a commission to consult with the people of Micronesia" in order to determine what future political alternatives were open to TTPI.[176] One year later, President Johnson recommended to Congress that a Status Commission for TTPI be created.[177] But this recommendation, as well as various proposed Organic Acts for TTPI, were not adopted.[178]

Future Political Status Commission

Discontented with the inaction in Washington, the Congress of Micronesia established a Future Political Status Commission to investigate the feasibility of various political alternatives available to

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[173] 23d Annual Report, TTPI, *supra* note 1, at 146; Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands, *supra* note 111, at 19.

[174] *The Trust Territory of the Pacific Islands*, 61 Dep't State Bull. 227, 229 (1969) (Statement by Senator Barja, June 6, 1969).

[175] Blaz & Lee, *supra* note 3, at 69.

[176] H.R.J. Res. 49 (1966) (Congress of Micronesia). *See* S. De Smith, *supra* note 1, at 170; Blaz & Lee, *supra* note 3, at 71; Mink, *supra* note 68, at 198.

[177] *Presidential Letter to Congress*, 57 Dep't State Bull. 363 (1967). (Letter from President Lyndon B. Johnson to Congress, Aug. 21, 1967).

[178] S. De Smith, *supra* note 1, at 170-71; Blaz & Lee, *supra* note 3, at 71; Mink, *supra* note 68, at 199.

Micronesia.[179] This Commission, under the leadership of Representative (now Senator) Lazarus Salii of Palau, was directed to inquire into four areas: to develop and recommend a program of political education and action; to present a range of alternatives open to Micronesia for its future political status; to recommend procedures by which the wishes of the Micronesian people could be ascertained; and to set forth a comprehensive analysis of the status of other developing nations that have become self-governing.[180]

After a series of meetings and visits to Washington, Puerto Rico, the Virgin Islands and the United Nations, the Future Political Status Commission issued an Interim Report in June, 1968.[181] This report was written in a cautious manner and presented only the tentative findings of the Commission.[182] The Interim Report identified nine possible political alternatives for Micronesia, but concluded that further investigation was needed.[183] The Commission then continued its travels, visiting and talking to the political leaders of other territories in the Pacific including the newly independent countries of Western Samoa and Nauru. It also held public hearings in every district of TTPI.[184]

In July, 1969, the Future Political Status Commission issued its final report.[185] The report was based upon two principles which the Commission felt were indispensable for Micronesia's future: complete self-government and free association with the United States.[186] The Commission recommended that TTPI be constituted a fully internally self-governing state which would "negotiate entry into a free association with the United States." If Micronesia could not gain this status, the Commission recommended independence as an alternative.[187] The Commission sees self-government as

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[179] S.J. Res. 25 (1967) (Congress of Micronesia). *See* S. De Smith, *supra* note 1, at 170; Blaz & Lee, *supra* note 3, at 71; Mink, *supra* note 68, at 199.

[180] S.J. Res. 25 (1967) (Congress of Micronesia). *See* S. De Smith, *supra* note 1, at 171; Future Political Status Report, *supra* note 132, at 2.

[181] S. De Smith, *supra* note 1, at 171; Blaz & Lee, *supra* note 3, at 72.

[182] *See* S. De Smith, *supra* note 1, at 171-72.

[183] S. De Smith, *supra* note 1, at 173-75; Mink, *supra* note 68, at 199.

[184] Blaz & Lee, *supra* note 3, at 72.

[185] Future Political Status Report, *supra* note 132.

[186] Future Political Status Report, *supra* note 132, at 5. *See* S. De Smith, *supra* note 1, at 177-78.

[187] Future Political Status Report, *supra* note 132, at 8-9, 11.

> [t]he direct and unconstrained involvement of the Micronesian people in the foundation of their government and, specifically in the preparation, adoption, and subsequent amendment of the basic documents of government. . . .[188]

Self-government would result in Micronesian control of all branches of government and internal control of all funds, policies, programs, and appointment of personnel. Any other recommendation would continue Micronesia's quasi-colonial status and "would prove degrading to Micronesia and unworthy of America."[189]

In its report, the Commission also recognized the importance of America's security interest in the area.[190] It evaluated the American record in TTPI by stating that "the United States has not lacked goodwill, but it has lacked a clearly defined objective in Micronesia."[191] America has not promoted economic development sufficiently, nor has it handled such problems as land and war claims to the satisfaction of Micronesians.[192]

Recognizing Micronesia's need for outside aid, the Commission proposed that the United States continue to use the most precious item in Micronesia, *land*, for military bases, provided that adequate terms could be negotiated.[193] The Commission hoped by this mutuality of benefits to create a new type of relationship, a "historically unique partnership, between Micronesia and the United States."[194]

Political Status Delegation

In August, 1969, the Congress of Micronesia endorsed the report of its Future Political Status Commission and created a Political Status Delegation, under the leadership of Senator Lazarus Salii, to take part in discussions which would identify the major political, legal and administrative questions of Micronesia's future status and to

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[188] Future Political Status Report, *supra* note 132, at 17.

[189] Future Political Status Report, *supra* note 132, at 8.

[190] Future Political Status Report, *supra* note 132, at 8.

[191] Future Political Status Report, *supra* note 132, at 12. *See* 1970 Visiting Mission Report, *supra* note 96, at 131.

[192] Future Political Status Report, *supra* note 132, at 14.

[193] Future Political Status Report, *supra* note 132, at 9, 24.

[194] Future Political Status Report, *supra* note 132, at 8.

press for quick determination of status.[195]

The first meeting between the Political Status Delegation and United States officials occurred in Washington in September, 1969. These were preliminary discussions which reached agreement only on certain technical problems of association such as access to courts, postal and banking facilities, and elimination of tariff barriers. The question of control of land and revocable association were left unresolved.[196]

The second meeting took place on Saipan in January, 1970. The American delegation, headed by Assistant Secretary of the Interior Harrison Loesch, offered the Micronesian delegation a draft bill which provided that TTPI would become an unincorporated territory of the United States. The Political Status Delegation found this offer totally unacceptable in that it allowed the United States Congress rather than the people of Micronesia to determine the design and control of their internal government.[197]

Jan 1970 – Micro reject U.S. proposal to become unincorporated territory.

The third meeting, in May, 1970, also took place on Saipan. The United States delegation placed a new offer before the Political Status Delegation in response to discussions at the previous meeting. It offered Micronesia the status of Commonwealth of the United States which in essence "would become part of the United States and would as a result assume certain obligations and receive certain rights and benefits."[198] The Political Status Delegation again rejected the American proposal and demanded that the discussion center on whether the United States would accept the Delegation's own proposal for free association.[199]

May 1970 – US offers Commonwealth status. Rejected.

In July, 1970, the Political Status Delegation issued its first report.[200] After recounting the substance of the previous meetings, it concluded that an impasse had been reached.[201] It blamed much of

[195] Act of Aug. 29, 1969, Pub. L. No. 3C-15 (1969); S.J. Res. 63 (1969) (Congress of Micronesia). *See* Report of the Political Status Delegation, 3d Cong., 3d Sess., Congress of Micronesia 1-2 (1970) [hereinafter cited as Political Status Delegation Report].

[196] Political Status Delegation Report, *supra* note 195, at 2-4. *See* Blaz & Lee, *supra* note 3, at 73-74; Mink, *supra* note 68, at 201.

[197] Political Status Delegation Report, *supra* note 195, at 4. *See* Blaz & Lee, *supra* note 3, at 74.

[198] Political Status Delegation Report, *supra* note 195, at 31. *See* Blaz & Lee, *supra* note 3, at 74; De Smith, *supra* note 4, at 15; Mink, *supra* note 68, at 201-02.

[199] Political Status Delegation Report, *supra* note 195, at 37-43. *See* Blaz & Lee, *supra* note 3, at 74-75; Mink, *supra* note 68, at 202-04.

[200] Political Status Delegation Report, *supra* note 195.

[201] Political Status Delegation Report, *supra* note 195, at 44.

this result on the overriding and inflexible security interest which the United States had in Micronesia and on the fact that the United States delegation was unable to consider the unique position and circumstance of Micronesia. The United States had, therefore, based its offer on its past experience with its other possessions and territories.[202] The Commission reiterated dedication to its concept of internal self-government through either free association with the United States or independence[203] not only to achieve human dignity, but also to preserve the values and traditions of the Micronesian heritage.

MICRONESIA: STATUS PROBLEMS

Before continuing analysis of recent developments affecting the future status of TTPI, several important political and legal questions must be analyzed. The problems presented by self-determination, termination of the trusteeship agreement, Micronesian separatism and TTPI's relationship with Guam must all be settled before any change of status for Micronesia can be achieved.

Self-determination and Self-government

One word which constantly arises when discussing status is self-government. The Micronesians want it,[204] the United Nations Charter promotes it,[205] and the trusteeship agreement obligates the United States to develop political institutions which encourage it.[206] Unfortunately, self-government is intertwined with the concept of self-determination which, since 1960, has been a primary goal of the majority of United Nations members.[207] Although the word "self-government" is widely used, it has escaped authoritative definition.[208]

In 1960, General Assembly Resolution 1514(XV),[209] Declaration on the Granting of Independence to Colonial Countries and Peoples, brought the word "self-determination" out of obscurity in Article

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[202] Political Status Delegation Report, *supra* note 195, at 44-46.

[203] Political Status Delegation Report, *supra* note 195, at 46.

[204] Political Status Delegation Report, *supra* note 195, at 11.

[205] U.N. Charter art. 73, para. b, art. 76, para. b.

[206] Trusteeship Agreement for the Former Japanese Mandated Islands, April 7, 1947, 61 Stat. 3301, 3302 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189.

[207] *See* text p. 152 *supra*.

[208] U. Sud, United Nations and the Non-Self-Governing Territories 96 (1964).

[209] G.A. Res. 1514, 15 U.N. GAOR, Supp. 16, at 66, U.N. Doc. A/4684 (1960).

I(2)[210] of the Charter, where it was expected to promote friendly relations between nations, and made it the basis of a crusade against colonialism. The United Nations created a special committee, the Committee of Twenty-Four, to implement this resolution.[211] One author described the Committee of Twenty-Four as "a committee that wants every place on earth to be independent, whether it is ready or not or whether it likes it or not."[212] Every year the Committee of Twenty-Four approves a resolution urging the colonial powers to grant independence to American Samoa, the Virgin Islands, Guam, Anguilla, Saint Helena, and Pitcairn Island, whether or not their people want independence.[213]

Although the words "right of self-determination" appear in many United Nations resolutions and covenants, self-determination is not a legal right,[214] but a political principle, because it applies to peoples and not to individuals.[215] Furthermore, it is limited to peoples of nation-states considered as a whole. Even the most anti-colonial nations do not recognize the right of self-determination of national minorities like the Ibos in Nigeria, the Katangese in the Congo, or the Southern Sudanese.[216]

The term "self-government" has a firmer foundation. The Charter identifies self-government as the goal which all non-self-

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[210] U.N. Charter art. 1, para. 2.

[211] S. De Smith, *supra* note 1, at 43-44; U.S. Bureau of International Organization Affairs, Dep't of State, Pub. No. 8276, United States Participation in the United Nations for 1966, at 196 (1967).

[212] E. Kahn, *supra* note 1, at 43.

[213] *See, e.g.*, G.A. Res. 2709, 25 U.N. GAOR, Supp. 28, at 99, U.N. Doc. A/8028 (1970). These resolutions continue to include Guam even though the Guam legislature specifically rejected independence and stated its desire to remain in continued association with the United States, U.S. Bureau of International Organization Affairs, Dep't of State, Pub. No. 7943, United States Participation in the United Nations for 1964, at 249 (1965). *See* E. Kahn, *supra* note 1, at 229.

[214] *See* Mustafa, *The Principle of Self-Determination in International Law*, 5 Int'l Law. 479, 481 (1971).

[215] *See* Marston, *supra* note 43, at 25-28; Mustafa, *supra* note 214, at 48. Professor O'Connell states:

> A fundamental difficulty with the argument that the Charter has created a *right of self-determination* in subject peoples is that it speaks itself only of a 'principle' and not of a right. . . . (emphasis added)

1 D. O'Connell, *supra* note 38, at 337. *Cf.* Bowett, *Self-Determination and Political Rights in the Developing Countries*, 1966 Am. Soc'y Int'l L. Proc. 129, 131-32.

[216] *See* Mustafa, *supra* note 214, at 483-87. *See* Emerson, *Self-Determination*, 1966 Am. Soc'y Int'l L. Proc. 135, 136-39.

governing territories should eventually reach and which administering authorities must promote.[217] Although the term itself is vague and left undefined by the Charter, a series of General Assembly resolutions has identified its components.[218] Self-government is reached when a territory emerges as a sovereign state, or becomes freely associated with an independent state, or is integrated with an independent state.[219] The latter two statuses require a free and voluntary choice of the people of the territory, having full knowledge of the change of status and expressing their choice in a democratic method.[220] If the territory becomes an associated territory, it must have the right to determine freely an internal constitution.[221] If the territory becomes integrated with an independent state, the inhabitants of both territories must have equal status and rights of citizenship without discrimination.[222]

UN interp of "self government"

Termination

Article 76b[223] of the Charter implies that a territory's status as a trusteeship will not be permanent.[224] However, the Charter does not contain any time limit for trusteeship status nor does it provide any specific method for its termination.[225] The issue of trusteeship termination was raised at the San Francisco Conference, but was never satisfactorily answered.[226]

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[217] U.N. Charter art. 73, para. b, art. 76, para. b. *See* J. Murray, *supra* note 28, at 214.

[218] G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29, U.N. Doc. A/4684 (1960).

[219] Annex, Principle VI, G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29, U.N. Doc. A/4684 (1960).

[220] Annex, Principle VII & Principle IX, G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29-30, U.N. Doc. A/4684 (1960).

[221] Annex, Principle VII, G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29-30, U.N. Doc. A/4684 (1960).

[222] Annex, Principle VIII, G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 30, U.N. Doc. A/4684 (1960).

[223] U.N. Charter art. 76, para. b.

[224] Marston, *supra* note 43, at 4-5. *See* N. Bentwich & A. Martin, *supra* note 38, at 153; C. Lakshminarayan, *supra* note 40, at 147-48; Note, *supra* note 143, at 1289.

[225] Marston, *supra* note 43, at 4. *See* N. Bentwich & A. Martin, *supra* note 38, at 157-58. Professor Quincy Wright observed that:

> The Charter . . . is not a model of precise drafting. It is full of ambiguities and even inconsistencies making possible wide divergencies of interpretation and development. . . .

Q. Wright, International Law and the United Nations 33 (1960).

[226] R. Chowdhuri, *supra* note 28, at 62-63. When the issue of termination was brought up

Several theories have been advanced on how a trusteeship may be terminated. One authority believes that, in principle, the Security Council may unilaterally terminate the trusteeship agreement. Unfortunately, under international law the territory would then return to the *status quo ante foedus*.[227] Since Japan has renounced its mandate over Micronesia,[228] the United States would retain authority over the islands because it now occupies and possesses them.[229] Besides, the veto power of the United States would prevent such action.

Another authority contends that the United States could terminate the trusteeship agreement without action by the Security Council.[230] If the United States fulfills the terms of the trusteeship and Micronesia reaches self-government or independence, no action by the Security Council would be necessary.[231] And under American law, the President of the United States alone could make such a determination.[232] This determination, however, would probably not be recognized by the United Nations or by international law.[233] It would be contrary to the national interest of the United States to disregard the legal and moral obligations undertaken in the trusteeship agreement.[234]

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for consideration, the United States and United Kingdom representatves observed that any change in a trust territory's status would be by agreement of the parties concerned depending on the merits and circumstances at that time. R. Chowdhuri, *supra* note 28. *See* C. Lakshminarayan, *supra* note 40, at 56, 232. *But see* 2 U.N. SCOR, at 475 (1947) (Ambassador Austin); Marston, *supra* note 43, at 18 ("The United States veto power, however, makes the problem academic").

[227] Marston, *supra* note 43, at 29, quoting McNair, The Law of Treaties 520 (1961).

[228] Treaty of Peace with Japan, Sept. 8, 1951, [1952] 3 U.S.T. 3169, 3172, T.I.A.S. No. 2490, 6 U.N.T.S. 45. *See* Marston, *supra* note 43, at 30.

[229] 2 U.N. SCOR, at 413 (1947). *See* Marston, *supra* note 43, at 29.

[230] Nelson, *The Termination of Treaties and Executive Agreements by the United States: Theory and Practice*, 42 Minn. L. Rev. 879, 890 (1958). *See* E. Plischke, *supra* note 51, at 459.

[231] *See* Nelson, *supra* note 230, at 879.

[232] Nelson, *supra* note 230, at 890. *See* Note, *supra* note 143, at 1282-83, 1289-90. The President may even annex outlying islands by executive agreement without the concurrence of Congress, Note, *supra* note 143, at 1290-91. *See generally* 1 D. O'Connell, *supra* note 38, at 465, 499.

[233] *See* S. De Smith, *supra* note 1, at 185; Marston, *supra* note 43, at 36-37.

[234] Blaz & Lee, *supra* note 3, at 80. A federal court has held that:

> [u]nless it unmistakably appears that a Congressional act was intended to be in disregard of a principle of international comity, the presumption is that it was intended to be in conformity with it. . . .

The Over-the-Top, 5 F.2d 838, 842 (D. Conn. 1925). The joint resolution approving the TTPI trusteeship agreement clearly indicates that TTPI should be administered in accordance with and under the trusteeship provisions of the Charter of the United Nations, H.R.J. Res. 233,

The United States government, along with many authorities, has accepted the thesis that trusteeship agreements are a compact, contractual in nature, in which the consent of both parties (the administering authority and, in the case of TTPI, the Security Council) is needed for modification or termination.[235] Certainly Article 79[236] of the Charter and Article 15[237] of TTPI's trusteeship agreement seem to contemplate such an arrangement.[238]

The United States will face a major problem if the termination of its trusteeship over Micronesia leads to any status besides complete independence. Even though Resolution 1541(XV)[239] provides two alternatives to independence which would satisfy the requirements for self-government, many United Nations members would oppose anything less than independence.[240] Since the Security Council would vote on termination of the trusteeship, nine votes, including those of the Soviet Union and the Peoples' Republic of China, would be necessary.[241] At the minimum, an open and internationally-supervised plebiscite would have to be held, offering Micronesian independence as one of the choices.[242] Only if the people of Micronesia approve a new arrangement with the United States in "a sovereign act of self-determination"[243] is there hope of approval by the United Nations.

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ch. 271, 61 Stat. 397 (1947). *Cf.* Oyama v. California, 332 U.S. 633, 649-50, 673 (1948) (Black, J., & Murphy, J., separate concurring opinions).

[235] C. Toussaint, *supra* note 37, at 125.

> Under general international law the terms of a treaty can be altered only with the consent of all contracting parties, unless the text of the treaty provided for another way to alter the terms. . . .

H. Kelsen, *supra* note 18, at 654. *See* note 43, *supra*.

[236] U.N. Charter art. 79.

[237] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3305 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 198. *See* Note, *supra* note 143, at 1289 & n.44.

[238] Sayre, *supra* note 61, at 289. Future Political Status Report, *supra* note 132, at A-1.

[239] G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, at 29, U.N. Doc. A/4684 (1960); United States Participation in the United Nations for 1966, *supra* note 211, at 212.

> [T]he status of trusteeship may be terminated not only by placing the trust territory under its own sovereignty, but also by leaving the territory under the sovereignty exercised over it during the period of trusteeship, provided that the political status of self-government is guaranteed to the inhabitants of the trust territory. . . .

H. Kelsen, *supra* note 18, at 660.

[240] *See* S. De Smith, *supra* note 1, at 51-52.

[241] U.N. Charter art. 27, para. 3. *See* Marston, *supra* note 43, at 13.

[242] S. De Smith, *supra* note 1, at 184; Political Status Delegation Report, *supra* note 195, at A-3 to A-5.

[243] F. Williams, *supra* note 133, at 11.

Unification versus Separatism

As a territory, Micronesia does not exist for many of its inhabitants. It is an artificial political entity created by outside forces.[244] Many Micronesians identify only with the island or island group on which they were born.[245] Great distances between islands, cultural diversity, and differing self-interest are barriers to the achievement of a Micronesian nation.[246]

Separatism is strongest in the Marianas. At least seventy per cent of the people are Chamorros and are closely related to the inhabitants of Guam.[247] For over a decade there has been a significant movement in the Marianas for integration with Guam.[248] The Future Political Status Commission recognized this movement and gave considerable thought to its implications for Micronesian unity.[249] The United Nations Visiting Mission finally admitted that this movement existed, after hoping in vain for nine years that it would whither away.[250]

The reason for the Marianas' movement to integrate with Guam, besides kinship, language, and religion, is the feeling that the Chamorros are a powerless minority within TTPI and, more particularly, that they do not exercise their proportionate influence in the Congress of Micronesia.[251] The first political party developed in Micronesia, the Popular Party, was founded to promote integration with Guam.[252] Despite strong opposition, in 1970 the Popular Party defeated every congressional candidate who supported the Micronesian "state" envisaged by the Future Political Status Commission.[253]

Early in 1971, after the Congress of Micronesia adopted what

[244] S. De Smith, *supra* note 1, at 155; C. Grattan, The Southwest Pacific Since 1900, at 536 (1963); Jacobson, *supra* note 2, at 57. *See* Blaz & Lee, *supra* note 3, at 80.

[245] H. Wiens, *supra* note 134, at 108. *See* W. Perkins, *supra* note 26, at 326.

[246] S. De Smith, *supra* note 1, at 120; Gruening, *supra* note 101, at 665; Quigg, *supra* note 96, at 495.

[247] S. De Smith, *supra* note 1, at 159, 161; 19 Micronesian Reporter 41 (No. 3 1971).

[248] S. De Smith, *supra* note 1, at 160-62. *See* Jacobson, *supra* note 2, at 62; Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1964, 31 U.N. Trusteeship, Supp. 2, at 55, U.N. Doc. T/1628 (1964).

[249] Future Political Status Report, *supra* note 132, at 33-34, 136-37.

[250] Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1967, *supra* note 123, at 48.

[251] 1970 Visiting Mission Report, *supra* note 96, at 27.

[252] S. De Smith, *supra* note 1, at 160-61.

[253] Blaz & Lee, *supra* note 3, at 81. *See* N.Y. Times, Oct. 1, 1972, at 6, col. 1.

the Marianas considered an unequal income tax law, the Marianas District Legislature unanimously approved a resolution informing the United Nations that the Marianas intended to secede from TTPI by force if necessary.[254] Within twenty-four hours, the building which housed the Congress of Micronesia was destroyed by arson and the non-Marianas' members of Congress were quickly flown off Saipan.[255]

Fragmentation is opposed at present by both the United States and the United Nations.[256] The Future Political Status Commission wisely refrained from taking sides on this issue and left its resolution to the United States and the United Nations.[257] But the Commission did state that it would not oppose outside political unions which were the freely expressed wish of the majority of the inhabitants of any district.[258] Both the Commission and the Future Status Delegation have proposed institutional changes to resolve some of the inter-district conflicts and to alleviate fears of domination by any one district.[259]

A most serious problem facing Micronesia is this tendency toward fragmentation. This tendency is not unique to Micronesia; other groups of small islands like the proposed West Indies Federation have fallen victim to it.[260] Anguilla's struggle to return to its British colonial status rather than to continue as part of a logical union with St. Kitts and Nevis is a warning that the task ahead will be difficult for Micronesian leaders.[261]

Guam

The island of Guam is geographically part of Micronesia.[262] In 1898, the American military need for a coaling and cable station halfway between Hawaii and the Philippines brought about the sepa-

[254] Blaz & Lee, *supra* note 3, at 81; 19 Micronesian Reporter 41 (No. 1 1971).
[255] Blaz & Lee, *supra* note 3, at 81; 19 Micronesian Reporter 43 (No. 1 1971).
[256] 1970 Visiting Mission Report, *supra* note 96, at 137.
[257] Future Political Status Report, *supra* note 132, at 37.
[258] Future Political Status Report, *supra* note 132, at 37.
[259] Future Political Status Report, *supra* note 132, at 22. *See* Political Status Delegation Report, *supra* note 195, at 50-52.
[260] S. De Smith, *supra* note 1, at 63, 76-77.
[261] S. De Smith, *supra* note 1, at 64-68.
[262] *See* note 1 *supra*.

ration of Guam from the rest of Micronesia.[263] During the past twenty-five years, the United States has administered TTPI and Guam separately even though they are only a short ferry ride apart. The reason for this phenomenon is two-fold. First, Guam is an American possession and Guamanians are American citizens who desire a closer relationship to the United States.[264] Guam's struggle for self-government over the last fifty years has centered on developing political institutions appropriate for permanent association with the United States.[265] This course of action has never been officially endorsed for TTPI. Second, while the trusteeship agreement provided for possible administrative union with other United States territories,[266] the problems faced by other administering authorities in the United Nations when they attempted to implement such a policy discouraged the United States from this course of action.[267]

Nevertheless, some future ties seem quite possible. The Future Political Status Commission found widespread interest throughout Micronesia in some type of relationship with Guam.[268] The Commission felt that the present "ad hoc, random partnership between Guam and the Trust Territory will be increased and improved in the future. [They] might eventually comprise a single political unit."[269] It would be difficult for future leaders of both territories to keep apart islands which share close geographical, ethnic and economic interests.[270]

MICRONESIA: FUTURE STATUS

Statehood

Statehood is one status considered by the Future Political Status Commission of the Congress of Micronesia.[271] Others have also considered this possibility. In 1965, a resolution was introduced in the United States Senate to annex TTPI, Guam and other American

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[263] *See* note 1 *supra*.

[264] 48 U.S.C. §§ 1421a, *l* (1970).

[265] *See* note 213 *supra*.

[266] Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3304 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 196 (Article 9).

[267] E. Sady, *supra* note 33, at 170.

[268] Future Political Status Report, *supra* note 132, at 37.

[269] Future Political Status Report, *supra* note 132, at 38.

[270] *See* N. Meller, *supra* note 9, at 391-92; E. Sady, *supra* note 33, at 170.

[271] Future Political Status Report, *supra* note 132, at 48-49.

Pacific possessions and to incorporate them into Hawaii as counties to create "one great Pacific State."[272] Another proposal would create a separate State of Micronesia comprising TTPI and Guam.[273] However, the legal, economic, and cultural problems statehood would present to TTPI prevent this status from being acceptable to the Micronesians.

To make Micronesia a state, Congress would have to incorporate it affirmatively into the Union of the States.[274] Congress would also have to provide a territorial government and determine when Micronesia is ready for statehood. This process could be objectionable to both sides. Congress could contend that Micronesia is too distant both geographically and culturally from the United States to be quickly admitted into the Union.[275] An indefinite period of Congressional rule would then frustrate the Micronesians' desire for self-government.[276]

Another problem arises because all territories may become states under conditions no more favorable than those of earlier states.[277] The Micronesians would therefore be required to relinquish their independent sovereignty to the United States and be satisfied with the distribution of sovereignty between the states and the Federal government established by the Constitution. The Micronesians would thus lose exclusive sovereignty and control over their land, since any United States citizen could then buy land or operate a business there. Micronesia would be subject to federal taxation and have but a small voice in Washington. Additionally, there would be little prospect of preserving Micronesian culture.[278]

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[272] Gruening, *supra* note 101.

[273] Gruening, *supra* note 101, at 665.

[274] *See* text p. 181-82 *infra*.

[275] What led to statehood for Hawaii was the establishment of "stable" citizenship (*i.e.*, Americanization) through education, W. Perkins, *supra* note 26, at 79.

[276] Congress did not establish a government for Alaska for seventeen years, W. Perkins, *supra* note 26, at 33. Barring special legislation, Congressional control is not unlike the present unsatisfactory system. *See, e.g.*, 48 U.S.C. §§ 1453, 1454, 1460a, 1461, 1471, 1478, 1479 (1970).

[277] Wormuth, *The Constitution and the Territories*, 29 Current History 337, 338 (1955).

[278] *See* Political Status Delegation Report, *supra* note 195, at 46-47.

Unincorporated Territory

1. Status

Early in its history, the Supreme Court held that the United States has the inherent sovereign power to acquire territory by conquest, annexation, or cession.[279] Congress had the right, under this sovereign power and under Article IV, Section 3, of the Constitution, to govern and legislate for this territory.[280] Until 1898, the question of whether the Constitution operated fully in the territories was moot since Congress had expressly incorporated each territory into the United States.[281]

In 1898, as a result of the Treaty of Paris,[282] the United States acquired territory inhabited and fully developed by peoples whose customs and laws were different from those of the United States. An intense legal debate parallelling the political debate on annexation took place over whether the Constitution applied *ex proprio vigore* to these new possessions.[283] The election of 1900 decided the political question of annexation. Beginning in 1901, in what came to be known as the *Insular* cases,[284] the Supreme Court decided the constitutional

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[279] American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 542 (1828) (Marshall, C.J.).

[280] Serè v. Pitot, 10 U.S. (6 Cranch) 332, 336-37 (1810); American Ins. Co. v. Canter, *supra* note 279, at 542-43.

[281] *See* Downes v. Bidwell, 182 U.S. 244, 322-38 (1901) (White, J., concurring). *See* Granville-Smith v. Granville-Smith, 349 U.S. 1, 4 (1955). *Cf.* Foster v. Neilson, 27 U.S. (2 Pet.) 253, 303, 306 (1829) (Marshall, C.J.); Fleming v. Page, 50 U.S. (9 How.) 602, 614-15 (1850).

Previously, in Thompson v. Utah, 170 U.S. 343, 347 (1898), the Court held that the constitutional provisions relating to the right to trial by jury applied to the territories. On the other hand, the Court in Mormon Church v. United States, 136 U.S. 1, 42, 44 (1890), stated:

> The power of Congress over the Territories . . . is general and plenary, arising from and incidental to the right to acquire the Territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the Territory . . . . Doubtless Congress, in legislating for the Territories would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution . . . but these limitations exist by inference [from the] general spirit of the Constitution from which Congress derives all its powers, [rather] than by any express and direct application of its provisions.

[282] Treaty of Peace with the Kingdom of Spain, Dec. 10, 1898, 30 Stat. 1754 (1899), T.S. No. 343.

[283] *See* Costigan, Jr., *The Third View of the Status of Our New Possessions*, 9 Yale L.J. 124 (1899); Lowell, *The Status of Our New Possessions—A Third View*, 13 Harv. L. Rev. 155 (1899); Randolph, *Constitutional Aspects of Annexation*, 12 Harv. L. Rev. 291 (1898).

[284] De Lima v. Bidwell, 182 U.S. 1 (1901); Goetze v. United States, 182 U.S. 221 (1901);

question. In the earlier decisions, the Court was far from unanimous.[285] The "modernist" view proposed the extension theory. This theory held that the Constitution was intended to apply only to states and that Congress had *unlimited* extra-constitutional power to govern or dispose of territories unless it formally extended the Constitution to a territory.[286] On the other hand, there was the "fundamentalist" view which strictly construed the power of Congress. Since "Congress . . . has no existence except by virtue of the Constitution,"[287] any action by Congress regulating the territories under Article IV, Section 3, is limited by other restraints imposed by the Constitution. Thus the whole Constitution would *ex proprio vigore* be applied to

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Dooley v. United States, 182 U.S. 222 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, *supra* note 281; Dooley v. United States, 183 U.S. 151 (1901); Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901); Hawaii v. Mankichi, 190 U.S. 197 (1903); Gonzales v. Williams, 192 U.S. 1 (1904); Kepner v. United States, 195 U.S. 100 (1904); Dorr v. United States, 195 U.S. 138 (1904); Rassmussen v. United States, 197 U.S. 516 (1905); Dowdell v. United States, 221 U.S. 325 (1911); Ocampo v. United States, 234 U.S. 91 (1914); Balzac v. Porto Rico, 258 U.S. 298 (1922) (Taft, C.J.).

[285] *See* Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 Colum. L. Rev. 823, 830 (1926); Randolph, *The Insular Cases*, 1 Colum. L. Rev. 436, 440 (1901).

Finley Peter Dunne's Mr. Dooley had some cogent comments on the Supreme Court's decisions.

> "I see," said Mr. Dooley, "th' Supreme Coort has decided th' Constitution don't follow th' flag."
>
> . . . .
>
> 'Ye can't make me think th' Constitution is goin' thrapezin' around ivrywhere a young liftnant in th' ar-rmy takes it into his head to stick a flag pole. It's too old. It's a home-stayin' Constitution with a blue coat with brass buttons onto it . . . .
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> . . . .
>
> [While everyone was waiting, the Supreme Court] "just put th' argymints iv larned counsel in th' ice box an' th' chief justice is in a corner writin' a pome. Brown J. an' Harlan J. is discussin' th' condition iv th' Roman Empire befure th' fire. Th' r-rest iv th' Coort is considherin' th' question iv whether they ought or ought not to wear ruchin' on their skirts. . . .
>
> "Th' decision was r-read by Brown J. . . . we've been sthrugglin' over it iver since ye see us las' an' on'y come to a decision (Fuller C.J., Gray J., Harlan J., Shiras J., McKenna J., White J., Brewer J., an' Peckham J. dissentin' fr'm [Brown J.] an' each other) . . . .
>
> "Some say it laves th' flag up in th' air an' some say that's where it laves th' Constitution. Annyhow, something's in th' air. But there's wan thing I'm sure about.
>
> "What's that?" asked Mr. Hennessy.
>
> "That is," said Mr. Dooley, "no matther whether th' Constitution follows th' flag or not, th' Supreme Coort follows th' iliction returns."

F. Dunne, Mr. Dooley at His Best 72-77 (E. Ellis ed. 1969).

[286] *See* Coudert, *supra* note 285, at 826-30.

[287] Downes v. Bidwell, *supra* note 281, at 382 (Harlan, J., dissenting).

every territory of the United States.[288]

While the adherents of both views continued to press them upon the public, Justice White stated a third view, the doctrine of incorporation,[289] which was progressively accepted by the members of the Court. In 1922, it was definitively enunciated by a unanimous Court.[290] The doctrine of incorporation declares that all powers and governmental functions are conferred or derived expressly or by implication from the Constitution and that under Article IV, Section 3, Congress has the power to govern territories.[291] The doctrine further advocates that the Constitution does not operate in the territories *ex proprio vigore*, except for certain fundamental rights,[292] and that some positive act of Congress is needed to apply the full Constitution to a territory.[293] That act, called incorporation, brings the territory into the Union of States and implies an eventual promise of state-

doctrine of incorporation

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[288] *See* Coudert, *supra* note 285, at 835-38.

[289] *See* Coudert, *supra* note 285, at 830-34.

[290] Balzac v. Porto Rico, *supra* note 284, at 305.

> The *Insular Cases* revealed much diversity of opinion in this court as to the constitutional status of territory acquired by the Treaty of Paris . . . but the *Dorr Case* shows that the opinion of Mr. Justice White . . . in *Downes v. Bidwell* has become the settled law of the court. . . .

Balzac v. Porto Rico, *supra* note 284, at 305. *See* Coudert, *supra* note 285, at 847-48.

[291] Downes v. Bidwell, *supra* note 281, at 288-90.

[292] Downes v. Bidwell, *supra* note 281, at 290-91, 294, 297-98. *See* Kepner v. United States, *supra* note 284, at 122.

This constitutional dichotomy was first enunciated in Mormon Church v. United States, *supra* note 281, at 44, and was definitively stated by the Court in Balzac v. Porto Rico, *supra* note 284, at 313-14.

> [C]ertain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico . . . .

See Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1, 4-5 (1953).

The Court has held that the right to indictment by a grand jury and sixth and seventh amendment rights are procedural rights and do not apply by their own force to unincorporated territories, Balzac v. Porto Rico, *supra* note 284, at 304-05 (sixth and seventh amendments); Ocampo v. United States, *supra* note 284, at 98 (right to indictment by a grand jury); Dowdell v. United States, *supra* note 284, at 332 (right to indictment by a grand jury); Dorr v. United States, *supra* note 284, at 14 (right to trial by jury). *See* Reid v. Covert, 354 U.S. 1, 51-53 (1957) (Frankfurter, J., concurring opinion).

[293] Dorr v. United States, *supra* note 284, at 140, 149. Even the granting of citizenship to the inhabitants of Puerto Rico did not incorporate Puerto Rico into the United States, Balzac v. Porto Rico, *supra* note 284, at 313. "Just what was necessary to manifest an intention by the Congress to incorporate a territory into the United States remained somewhat obscure," Magruder, *supra* note 292, at 4.

hood.[294] Thus Congress is not limited by the same constitutional limitations in legislating for territories under Article IV, Section 3, as it is when legislating for states.[295] This doctrine of incorporation remains valid even today.[296]

2. Analysis

Despite some continued opposition,[297] the doctrine of incorporation rests on a firm constitutional foundation. In the early period of United States expansion when acquired territories were quickly filled with United States citizens or immigrants intending to be assimilated into American society and to accept its legal structure, the only legal

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[294] Granville-Smith v. Granville-Smith *supra* note 281, at 5; Coudert, *supra* note 285, at 834.

[295] Dorr v. United States, *supra* note 284, at 140.

[296] Since the Second World War, the Supreme Court has dealt with the doctrine of incorporation three times. In Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945), Chief Justice Stone held that the dependencies acquired by the Spanish-American War "are territories belonging to, but not a part of, the Union of states under the Constitution." *Id.* at 673. "In exercising [the territorial power] Congress is not subject to the same constitutional limitations, as when it is legislating for the United States." *Id.* at 674.

In 1955, in Granville-Smith v. Granville-Smith, *supra* note 281, at 4-5, Justice Frankfurter restated the distinction between incorporated and unincorporated territories.

Finally, the Court discussed the *Insular* cases in Reid v. Covert, *supra* note 292, at 13-14. In deciding that the fifth and sixth amendments applied to trials of civilian dependents in foreign countries, Justice Black showed his hostility to the doctrine of incorporation by stating, "[W]e have no authority, or inclination, to read exceptions into [the Constitution] which are not there," Reid v. Covert, *supra* note 292, at 14. But he was able only to distinguish the *Insular* cases from the instant case, not to overrule them. Both Justices Frankfurter and Harlan stated that the doctrine of incorporation was still a valid and necessary principle because of the practical requirements for governing diverse dependencies. Reid v. Covert, *supra* note 292, at 51-54, 74-76. *See also* Glidden Co. v. Zdanok, 370 U.S. 530, 547 (1962) (Harlan, J.). The First Circuit has specifically held that Reid v. Covert, *supra* note 292, has not overruled the *Insular* cases, Fournier v. Bonzalez, 269 F.2d 26, 28 (1st Cir. 1959). The doctrine of incorporation has recently been reaffirmed by the Federal courts, *see* Virgin Islands v. Bodle, 427 F.2d 532, 533 n.1 (3d Cir. 1970); Smith v. Virgin Islands, 375 F.2d 714, 718 (3d Cir. 1967); Pugh v. United States, 212 F.2d 761, 762-64 (9th Cir. 1954); Virgin Islands v. Rijos, 285 F. Supp. 126, 129 (D.V.I. 1968).

The passage of an Organic Act providing for a full civil government by Congress "organizes" an unincorporated territory, Smith v. Virgin Islands, 375 F.2d 714, 719 (3d Cir. 1967). *See* S. De Smith, *supra* note 1, at 109-10. The Virgin Islands and Guam are organized unincorporated territories. Howard, Baker, and Jarvis Islands, Johnston Island, Kingman Reef, Midway Island, Navassa Island, Palmyra Island, Swan Island, Wake Island, and Samoa are unorganized unincorporated territories. New York Times Encyclopedic Almanac 182-86 (1971).

[297] Wormuth, *supra* note 277, at 339-40 ("The rationale of the Insular Cases is to be found in the logic of imperialism rather than the logic of law").

includes Guam, V.I.

question raised was whether the Constitution provided for acquisition of the territory.[298] However, no constitutional problem was raised over the acquisition of the continental territories or Alaska once this power was accepted as part of the inherent sovereign power of the United States.[299]

Upon reaching the stature of a world power and recognizing its economic and military needs, the United States acquired a series of overseas possessions inhabited and developed by people who had strong and effective cultures. A great debate developed between those who demanded annexation as part of a "manifest destiny" and those who believed the United States should not become a colonial empire.[300] A third group believed that this was a political question to be decided by Congress and felt that the United States should not impose its culture and values on the new possessions.[301] The rationale for this third view, adopted by the Court in the *Insular* cases,[302] was stated in *Dorr v. United States*:

> [I]f the United States shall acquire by treaty the cession of territory having an established system of jurisprudence, where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long established code [must the preference of the inhabitants] be disregarded, their established customs ignored and they themselves coerced to accept, in advance of incorporation into the United States, a system of trial unknown to them and unsuited to their need. We do not think [the Constitution] intended in giving power to Congress to make regulations for the territories, to hamper its exercise with this condition.[303]

Although this doctrine was intended to apply to the Philip-

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[298] *See* text p. 180 and note 279 *supra*.

[299] *See* text p. 180 and note 279 *supra*.

[300] Coudert, *supra* note 285, at 823. *See* note 283 *supra*.

[301] *See* Downes v. Bidwell, *supra* note 281, at 312-15.

[302] Coudert, *supra* note 285, at 850.

[303] Dorr v. United States, *supra* note 284, at 148. There was fear among the Justices that the United States could not govern people alien to the traditions of common law if all constitutional procedures were applied to them. Coudert, *supra* note 285, at 827-28. *See* Downes v. Bidwell, *supra* note 281, at 306, 311-12; De Lima v. Bidwell, *supra* note 284, at 216.

pines,[304] the argument about the importance of custom applies to other United States territories, including Micronesia.[305] Some have contended that the Constitution should affect every United States citizen under United States jurisdiction.[306] But, as shall later be shown, a strict application of that doctrine would prove insular and contrary to the interests of the American people. As the losing counsel in the *Insular* cases said after the doctrine of incorporation had operated for twenty-five years:

> The doctrine has been sufficiently elastic to permit of a government which, while maintaining the essentials of modern civil liberty, has not attempted to impose upon the new peoples certain ancient Anglo-Saxon institutions for which their history had not adapted them.[307]

3. Micronesia

The Congress of Micronesia has not looked favorably upon possible Micronesian status as an unincorporated territory. When this

[304] Randolph, *supra* note 285, at 469. Justice White believed that if the Constitution was fully extended to the Philippines, it would confer a vested right of United States citizenship upon the inhabitants which could not be rescinded if the islands were then allowed to become an independent nation, Downes v. Bidwell, *supra* note 281, at 318; Coudert, *supra* note 285, at 832. His fears were justified. Although the election of 1900 decided that the United States would annex and occupy the Philippines as a dependency, a continuing debate over its status lasted until 1934 when Congress finally decided that the Philippines should become an independent nation, McDuffie-Tydings Act, 22 U.S.C. §§ 1391 *et seq.* (1970).

[305] Several of the hypothetical illustrations by the Justices about the effect of United States rule over islands with a different culture and values are highly prophetic, *see* Downes v. Bidwell, *supra* note 284, at 306, 311-12; De Lima v. Bidwell, *supra* note 284, at 216.

[306] *See* Reid v. Covert, *supra* note 292, at 13-14; Wormuth, *supra* note 277, at 339-40.

[307] Coudert, *supra* note 285, at 850. In Reid v. Covert, *supra* note 292, at 74-75, Justice Harlan said:

> [T]he *Insular Cases* do stand for an important proposition, one which seems to me a wise and necessary gloss on our Constitution. The proposition is . . . not that the Constitution "does not apply" overseas, but that there are provisions in the Constitution which do not *necessarily* apply in all circumstances in every foreign place. . . . [T]here is no rigid and abstract rule that Congress, as a condition precedent to exercising power over Americans overseas, must exercise it subject to all the guarantees of the Constitution no matter what the conditions and considerations are that would make adherence to a specific guarantee altogether impractible and anomalous. [For example,] the particular local setting, the practical necessities, and the possible alternatives are relevant to a question of judgment, namely, whether jury trials *should* be deemed a necessary condition of the exercise of Congress' power to provide for the trial of Americans overseas.

status was offered to it in early negotiations, the Political Status Delegation found the draft bill "almost totally objectionable"[308] because it conflicted with the basic desires of the Congress of Micronesia and with the intent of the trusteeship agreement. If Micronesia were an unincorporated territory, Congress under Article IV, Section 3, would have complete control over Micronesian government and land, and it would be impossible to protect and preserve a Micronesian heritage from the destructive influence of its American master.[309]

but Guam + V.I avoid by organic Act

Commonwealth

1. Puerto Rico

So far Puerto Rico is the only non-self-governing dependency which has achieved the status of commonwealth. After being ceded to the United States,[310] Puerto Rico was governed by a series of Organic Acts which by 1947 had made Puerto Ricans United States citizens and had provided for an elected governor.[311] This status did not satisfy the Puerto Ricans. In 1950, Congress passed Public Law 600[312] which provides that, with Congress

> [f]ully recognizing the principle of government by consent, sections of this title [providing the mechanism for adoption and approval of a Constitution by the people of Puerto Rico and the Congress of the United States] are now adopted *in the nature of a compact* so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.[313]

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[308] Political Status Delegation Report, *supra* note 195, at 4.

[309] Political Status Delegation Report, *supra* note 195, at 46.

[310] Treaty of Peace with the Kingdom of Spain, Dec. 10, 1898, 30 Stat. 1754, 1755 (1899), T.S. No. 343.

[311] Act of Aug. 5, 1947, ch. 490, § 1, 61 Stat. 770; Act of May 17, 1932, ch. 190, 47 Stat. 158; Organic Act of 1917 (Jones Act), ch. 145, §§ 1, 5, 39 Stat. 951; Organic Act of 1900 (Foraker Act), ch. 191, 31 Stat. 77. Congress ruled Puerto Rico, formulating and changing its governmental structure "without any formal consultation with the Puerto Rican people," Magruder, *supra* note 292, at 5.

[312] 48 U.S.C. §§ 731b-e (1970). (originally enacted as Act of July 3, 1950, ch. 446, 64 Stat. 319).

[313] 48 U.S.C. § 731b (1970) (emphasis added). The next two sections of the Act provided

On July 3, 1952, Congress by joint resolution approved the Constitution of Puerto Rico as a compact[314] and on July 25, 1952, Governor Muñoz Marín proclaimed the creation of the Commonwealth of Puerto Rico.[315]

2. The Concept

Popular Democratic Party leaders and Commonwealth backers contend that the Commonwealth of Puerto Rico[316] is a state voluntarily associated with the United States based on common citizenship and a mutually binding compact.[317] This compact is composed of the Constitution of Puerto Rico, Public Law 600,[318] and the Puerto Rican Federal Relations Act.[319] The Commonwealth created by this compact cannot be changed without the consent of both parties.[320]

for the calling of a constitutional convention and the ratification of the resulting constitution by the people of Puerto Rico and by the President and Congress of the United States. The last section of the Act set forth which existing statutes would apply to Puerto Rico and repealed all others, 48 U.S.C. § 731e (1970). *See* H. Wells, The Modernization of Puerto Rico 203-04, 232 (1969). The only limitation on the Puerto Rican Constitution is that it must provide for a republican form of government and have a bill of rights, 48 U.S.C. § 731c (1970).

[314] H.R.J. Res. 430, July 3, 1952, ch. 567, 66 Stat. 327.

[315] H. Wells, *supra* note 313, at 204.

[316] While "Commonwealth" is the official designation of this political arrangement, in Spanish it is "*El Status De Estado Libre Asociado*" (literally, Associated Free State). H. Wells, *supra* note 313, at 389 n.28; Broderick, *Associated Statehood—A New Form of Decolonisation*, 17 Int'l & Comp. L.Q. 368, 398 n.9 (1968); Marin, *Puerto Rico and the U.S., Their Future Together*, 32 Foreign Affairs 541, 547 (1954).

[317] *The Nature of U.S.-Puerto Rican Relations*, 29 Dep't State Bull. 798, 799 (1953) (Statement by Dr. Antonio Fernos-Isern, Oct. 30, 1953); *Puerto Rico's New Political Status*, 29 Dep't State Bull. 393, 395 (1953) (Statement by Dr. Antonio Fernos-Isern, Aug. 28, 1953). *See* Sola v. Sanchez-Vilella, 270 F. Supp. 459, 461 (D.P.R. 1967), *aff'd*, 390 F.2d 160 (1st Cir. 1968); H. Wells, *supra* note 313, at 236-38; Amato, *Congressional Conservatism and the Commonwealth Relationship*, 285 Annals 23, 27-28 (1953); Gutierrez-Franqui & Wells, *The Commonwealth Constitution*, 285 Annals 33, 33-34 (1953); Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 Geo. L.J. 219, 222-24 (1967); Marín, *supra* note 316, at 546-47.

[318] 48 U.S.C. §§ 731b-e (1970).

[319] 48 U.S.C. § 731e (1970). H. Wells, *supra* note 313, at 237-38.

> In short, the commonwealth-status rests on the compact clause of Public Law 600 and on the reciprocal actions taken by the people of Puerto Rico and by Congress pursuant to other provisions of that act. The over-all significance of the act . . . lies in its recognition that the principle of government by consent now applies not only to Puerto Rico's internal affairs but also to its relations with the United States.

H. Wells, *supra* note 313, at 237-38. *See* Fernos-Isern, *supra* note 317, at 799.

[320] Puerto Rico contends that the "Commonwealth is *sui generis* and its judicial bounds

Clearly the framers of the Constitution of Puerto Rico intend such a relationship.[321] Article 1, Section 1, provides that the political power of the Commonwealth of Puerto Rico

> [e]manates from the people and shall be exercised in accordance with their will, *within the terms of the compact* agreed upon between the people of Puerto Rico and the United States of America.[322]

The intention of Congress is less clear. No definitive statement appears in the hearings or debates of Congress indicating establishment of a new type of territorial status.[323] It is significant, however, that this relationship was not set forth in an Organic Act, the usual way in which Congress unilaterally legislated for the territories.[324] The word "compact" was used both in the enabling legislation[325] and, more significantly, in the joint resolution[326] approving the Constitu-

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are determined by a compact" which cannot be changed without the consent of Puerto Rico and the United States. Leibowitz, *supra* note 317, at 222. *See* H. Wells, *supra* note 313, at 238; Marín, *supra* note 316, at 548; *Puerto Rico's New Political Status*, 29 Dep't State Bull. 392 (1953) (Statement by Mason Sears, Aug. 28, 1953).

[321] De Galindez, *Government and Politics in Puerto Rico*, 30 Int'l Affairs 331, 336-37 (1954).

[322] P.R. Const. art. I, § 1 (emphasis added). In Resolution 22, Constitutional Convention of Puerto Rico (1952), the Convention defined the word "commonwealth" as:

> the status of the body politic created under the terms of the compact existing between the people of Puerto Rico and the United States, i.e., that 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. . . .

And in Resolution 23, Constitutional Convention of Puerto Rico (1952), the Constitution was "established within the terms of the compact entered into by mutual consent, which is the basis of our union with the United States of America." *See* Mora v. Torres, 113 F. Supp. 309, 316-17 (D.P.R. 1953).

[323] H. Wells, *supra* note 313, at 247. *See* S. Rep. No. 1779, 81st Cong., 2d Sess. (1950); H.R. Rep. No. 2275, 81st Cong., 2d Sess. (1950); U.S. Code Congressional and Administrative News 2682-83 (1951). For a detailed study of legislative history that concludes that Congress did not intend to create a compact, see Helfeld, *Congressional Intent and Attitude Toward Public Law 600 and the Constitution of the Commonwealth of Puerto Rico*, 21 Rev. Jur. U.P.R. 225 (1952). *See also* Detres v. Lions Bldg. Corp., 234 F.2d 596, 599-600 (7th Cir. 1956); Nestle Prods., Inc. v. United States, 310 F. Supp. 792, 796 (Cust. Ct. 1970); H. Wells, *supra* note 313, at 243. *Contra*, Americans of Puerto Rico, Inc. v. Kaplus, 368 F.2d 431, 435 (3d Cir. 1966); United States v. Rios, 140 F. Supp. 376, 381 (D.P.R. 1956).

[324] Figueroa v. Puerto Rico, 232 F.2d 615, 620 (1st Cir. 1956).

[325] 48 U.S.C. § 731b (1970).

[326] H.R.J. Res. 430, July 3, 1952, ch. 567, 66 Stat. 327; Lewis, *Puerto Rico: A New*

tion of the Commonwealth. It was obviously the intention of Congress to create a political entity with complete internal self-government connected in some manner to the United States.[327] If a compact resulted without its full consequences being apparent, as Judge Magruder pointed out, this "would not be the first time in history, that the Congress did not realize at the time the full significance of what it was doing."[328]

Certainly the executive branch has recognized this special status of Puerto Rico. In 1953 the United States informed the United Nations that Puerto Rico had achieved commonwealth status and was fully self-governing and that the United States would cease supplying information required under Article 73a.[329] In 1961, President Kennedy issued a memorandum requiring all officials and agencies to observe and respect the compact arrangement when dealing with matters relating to or affecting the Commonwealth of Puerto Rico.[330]

The Supreme Court has not accepted any cases in the last twenty years dealing directly with the question of Puerto Rico's constitutional status and the concept of a compact.[331] However, lower federal courts, led by the District Court of Puerto Rico and the United

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Constitution in American Government, 15 J. Politics 42 (1953). The Senate modified the amendment clause to the Puerto Rican Constitution to state that there could be no amendment to the Constitution without the approval of the United States Congress. This was rejected by the conference committee and language was substituted to state that no amendment could conflict with the United States Constitution, Public Law 600, and the Puerto Rican Federal Relations Act. This language was subsequently approved by the people of Puerto Rico. Amato, *supra* note 317, at 25-26; H. Wells, *supra* note 313, at 204, 235, 381-82 n.28. *See* Magruder, *supra* note 292, at 11-12.

[327] Congress rejected a resolution specifically reserving the power of Congress under Article IV, Section 3, over Puerto Rico. Mora v. Torres, *supra* note 322, at 314. *See* S. De Smith, *supra* note 1, at 109; Lewis, *supra* note 326, at 65.

[328] Magruder, *supra* note 292, at 16.

[329] U.N. Charter art. 73, para. a. This action was approved by the General Assembly, G.A. Res. 748, 8 U.N. GAOR, Supp. 17, at 25, U.N. Doc. A/2630 (1953). Ambassador Henry Cabot Lodge, Jr., declared to the General Assembly that he was authorized by President Eisenhower to state that if Puerto Rico ever adopted a resolution favoring independence, the President would recommend that Congress grant independence to Puerto Rico, 8 U.N. GAOR 311 (1953). *See* E. Sady, *supra* note 33, at 98-100; *U.S. Relationships with Puerto Rico*, 29 Dep't State Bull. 841 (1953) (Statement by Henry Cabot Lodge, Jr., Nov. 27, 1953). *See also* Fernos-Isern, *supra* note 317, at 393-98; Sears, *supra* note 320, for both Puerto Rican and United States statements to the General Assembly's Committee on Information from Non-Self-Governing Territories on Puerto Rico's commonwealth status.

[330] Presidential Memorandum, 26 Fed. Reg. 6695 (1961).

[331] Leibowitz, *supra* note 317, at 249.

States Court of Appeals for the First Circuit, have generally accepted a special commonwealth status for Puerto Rico based upon an irrevocable compact between Congress and the people of Puerto Rico.[332]

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[332] *See* Leibowitz, *supra* note 317, at 227-28. The first major case dealing with the issue of Puerto Rico's commonwealth status was Mora v. Torres, *supra* note 322. An importer had contracted to pay the mainland market price for a shipment of rice. Before the rice was delivered, the Puerto Rican government issued an order fixing a maximum price for rice below the price the importer had agreed to pay. Ruling on the issue of whether the order violated the fifth amendment, the court stated that before the Commonwealth was created the fifth amendment applied to Puerto Rico as a restriction on Congress' power under Article 4, Section 3, to regulate the territories. Mora v. Torres, *supra* note 322, at 313. But now Puerto Rico was not a territory; instead a new relationship had been created based upon a compact between the people of Puerto Rico and the United States.

> As a necessary legal consequence of said compact, neither the Congress of the United States nor the people of Puerto Rico can unilaterally amend Public Law 600 . . . without the consent and approval of the other party to the compact.

Mora v. Torres, *supra* note 322, at 313. Puerto Rico enjoyed total internal self-government which was incompatible with its previous status as a territory; Puerto Rico was not a state or a possession and could issue such administrative orders. Mora v. Torres, *supra* note 322, at 313-14. The commonwealth was a voluntary association of the United States and Puerto Rico based on a compact and common citizenship.

> Congress had the plenary power to make all needful rules and regulations as to Puerto Rico. It has exercised those powers by *granting them away through a compact* with the people of Puerto Rico. (emphasis added)

Mora v. Torres, *supra* note 322, at 319. The court further held that the fourteenth amendment did not apply since Puerto Rico was not a state, and the interstate commerce clause was not applicable, and was not made part of the compact, Mora v. Torres, *supra* note 322, at 319.

Immediately the importer tried to obtain an injunction against the administrative order. The district court held that while the Three-Judge Court Act, 28 U.S.C. § 2281 (1970), did not apply to territories, now that Puerto Rico was a commonwealth, a three-judge court must be convened to enjoin the enforcement of the administrative order, Mora v. Mejias, 115 F. Supp. 610, 611-13 (D.P.R. 1953). In upholding the district court's ruling, the First Circuit held:

> Puerto Rico has . . . not become a State in the federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word. . . . It is a political entity created by the act and with the consent of the people of Puerto Rico and joined in union with the United States of America under the terms of the compact.

Mora v. Mejias, 206 F.2d 377, 387 (1st Cir. 1953).

The view that the Commonwealth of Puerto Rico was created by a compact which establishes a unique relationship with the United States has been continuously upheld by the District Court of Puerto Rico. *See* Volkswagen de Puerto Rico v. Labor Relations Bd., 331 F. Supp. 1043, 1047 (D.P.R. 1970); Alcoa S.S. Co. v. Perez, 295 F. Supp. 187, 197 (D.P.R. 1968); Sola v. Sanchez-Vilella, *supra* note 317, at 460; United States v. Rios, *supra* note 323, at 380-81; Cosentino v. International Longshoremen's Ass'n, 126 F. Supp. 420, 422 (D.P.R. 1954). The First Circuit has always supported the District Court of Puerto Rico. *See* Figueroa v. Puerto Rico, *supra* note 324, where the court held that the right to trial by jury in the Puerto Rican Constitution is not identical to the right to trial by jury in the Federal Constitution. In Puerto Rico, the right to trial by jury is limited to felony cases and the verdict need not be unanimous. Figueroa v. Puerto Rico, *supra* note 324, at 620-21. The court went on to hold the Puerto Rican

3. Vested Rights

Puerto Ricans believe that their compact with the United States is a vested right.[332] Usually one Congress cannot bind or limit a succeeding Congress by a legislative act, but there have been certain exceptions in which Congress has given a vested right which another Congress cannot repeal without the consent of the party in which the right is vested.[334] For example, the compact in which territories become states of the Union cannot be repealed.[335] Vested rights exist in homestead grants,[336] war risk insurance contracts,[337] and bonds redeemable in gold.[338] Recently, the Supreme Court has held that United States citizenship is a vested right which, once granted, Congress cannot divest without the voluntary consent of the citizen.[339]

Constitution not another Organic Act of Congress.

> We find no reason to impute to the Congress the perpetration of such a monumental hoax. Public Law 600 offered to the people of Puerto Rico a "compact" under which, if the people accepted it, as they did, they were authorized to "organize a government pursuant to a constitution of their own adoption.". . .

Figueroa v. Puerto Rico, *supra* note 324, at 620.

Not every decision has accepted the compact thesis. *See* Nestle Prod., Inc. v. United States, *supra* note 323, at 796. It is interesting, however, that when the Seventh Circuit held that Public Law 600 did not change the fundamental status of Puerto Rico as a territory and that it would be treated as such for purposes of diversity jurisdiction under 28 U.S.C. § 1332, Detres v. Lions Bldg. Corp., *supra* note 323, Congress immediately amended 28 U.S.C. § 1332 to include Puerto Rico as a separate entity, Americana of Puerto Rico, Inc. v. Kaplus, *supra* note 323, at 435, 28 U.S.C. § 1332d (1970) now states that for purposes of diversity jurisdiction "[t]he word 'States' . . . includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico . . . ."

[333] Gutiérrez-Franqui & Wells, *supra* note 317, at 33. *See Hearings on the Status of Puerto Rico Before the United States-Puerto Rico Commission on the Status of Puerto Rico*, 89th Cong., 2d Sess., vol. 1, at 73-74, 197-212, 244-45, 250-53 (1966) [hereinafter cited as *Puerto Rican Status Hearings*]; Leibowitz, *supra* note 317, at 224; Magruder, *supra* note 292, at 15.

[334] Magruder, *supra* note 292, at 14-15. *See* Choate v. Trapp, 224 U.S. 665, 674 (1912) (U.S. government bound to vested property right); Union Pacific R.R. v. United States, 99 U.S. 700, 718-19 (1879) (United States bound by its contracts); H. Wells, *supra* note 313, at 249-50. *Cf.* Indian *ex rel.* Anderson v. Brand, 303 U.S. 95, 100 (1938) (contract between state and individual); Treigle v. Acme Homestead Ass'n, 297 U.S. 189, 194, 197 (1936).

[335] *See* Coyle v. Smith, 221 U.S. 559 (1911); Beecher v. Wetherby, 95 U.S. 517, 523-24 (1877).

[336] Reichart v. Felps, 73 U.S. (6 Wall.) 160, 165-66 (1867) (Congress has no power to nullify titles to land confirmed by its agents). *Cf.* Jones v. Meehan, 175 U.S. 1, 32 (1899).

[337] Lynch v. United States, 292 U.S. 571, 577, 579 (1934) (due process clause prohibits Congress from annulling contracts).

[338] Perry v. United States, 294 U.S. 330, 350-51, 353 (1934).

[339] Afroyim v. Rusk, 387 U.S. 253, 267 (1967); Schneider v. Rusk, 377 U.S. 163, 166

4. The Constitutional Basis

At present, there is no consensus as to the constitutional power from which commonwealth status is derived. There are those who contend it is derived from the territorial power of Article III, Section 3;[340] others, from the treaty power of a sovereign nation;[341] and still others, from the Puerto Rican Constitution, Puerto Rican Federal Relations Act, and the rights of United States citizenship.[342] On whichever power commonwealth status is based, Puerto Rico is obviously intended to be neither a territory nor a state.[343] However, in many ways, it is treated as a state.[344] It can, however, perform functions prohibited to the states under the United States Constitution and, at the discretion of Congress and the Government of Puerto Rico, can be treated differently than a state.[345]

Without definitive judicial or legislative recognition, commonwealth status has provided a structure in which an underdeveloped country could rapidly develop its economic and human resources without destroying its distinctive culture and heritage.[346]

(1964); Perez v. Brownell, 356 U.S. 44, 66 (1958) (Warren, C.J., dissenting); United States v. Wong Kim Ark, 169 U.S. 649, 703 (1898).

[340] Americana of Puerto Rico, Inc. v. Kaplus, *supra* note 323, at 436.

[341] *Puerto Rican Status Hearings*, *supra* note 333, at 251 (Abram Chayes testimony).

[342] Leibowitz, *supra* note 317, at 233. *See* Sola v. Sanchez-Vilella, *supra* note 317, at 461; Mora v. Torres, *supra* note 322, at 313-14.

[343] Leibowitz, *supra* note 317, at 233, 240. *See* Guerrido v. Alcoa S.S. Co., 234 F.2d 349, 352 (1st Cir. 1956); United States v. Rios, *supra* note 323, at 380; Cosentino v. International Longshoremen's Ass'n, *supra* note 332; Mora v. Torres, *supra* note 322, at 314; De Galindez, *supra* note 321, at 331; Note, 8 Mercer L. Rev. 360, 362 (1957).

[344] *See In re* Northern Transatlantic Carriers Corp., 300 F. Supp. 866, 867 (D.P.R. 1969) (Puerto Rico has sovereign immunity); Alcoa S.S. Co. v. Perez, *supra* note 332, at 195 (sovereign immunity); Mora v. Mejias, *supra* note 332, at 386 (to challenge a Puerto Rican statute, a three-judge court is needed); Mora v. Torres, *supra* note 322, at 314 (Puerto Rico can amend its own Constitution without the approval of Congress).

[345] E. Sady, *supra* note 33, at 99-100. *See* Volkswagen de Puerto Rico v. Labor Relations Bd., *supra* note 332 (the National Labor Relations Act, 29 U.S.C. § 185a (1970), does not prevent Puerto Rico from regulating violations of collective bargaining agreements); United States v. Rios, *supra* note 323, at 381 (Firearms Act section on transporting firearms in interstate commerce does not apply to Puerto Rico).

[346] H. Wells, *supra* note 313, at 262-63. *See generally* C. Friedrich, Puerto Rico: Middle Road to Freedom 19, 35 (1959); W. Perkins, *supra* note 26, at 159; Magruder, *supra* note 292, at 16.

For pro and con on the question of the status of the Commonwealth of Puerto Rico *see* *Puerto Rican Status Hearings*, *supra* note 333, at 40-47, 70-74, 131-40, 155-59, 172-78, 179-85, 197-212, 274-88, 355-60, 419-35, 534-41.

U.S. commonwealth offer only slightly resembled PR arrangement.

5. United States Proposal

The United States' offer of commonwealth status to Micronesia bears only a slight resemblance to the commonwealth status possessed by Puerto Rico. Under the draft law creating this "Commonwealth of Micronesia," TTPI would be permanently associated with and part of the United States.[347] The United States would assume certain obligations toward Micronesia and receive other rights and benefits.[348] The Micronesians would be given the choice of United States citizenship or the status of nationals.[349] Only to an extent would Micronesia be allowed to draw up a constitution and become internally self-governing.[350] The proposal incorporates numerous limitations on the exercise of internal self-government, from the burdensome and multitudinous rules and regulations of federal regulatory agencies,[351] to Presidential approval of constitutional amendments and pardons, to the appointment of a comptroller for Micronesia.[352] In addition, defense and foreign affairs would be completely controlled by the federal government.[353]

The United States' proposal also treats the paramount issue of land control. Superficially, the islanders are given complete control over land use by non-Micronesians, but other provisions of the bill would nullify this power.[354] The draft bill would apply the privileges and immunities clause of Article IV, Section 2, to Micronesia, which, in effect, would prevent discriminatory legislation by either Micronesia or the United States about the use, lease or alienation of land.[355] Furthermore, despite a complicated process of mutual consultation about federal use of Micronesian land, final authority and power over such use would be vested in the federal government by virtue of its power of eminent domain.[356]

Finally, there is no hint of a theory of mutual contractual obligation as in the Puerto Rican compact. Even though Micronesia is to

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[347] Political Status Delegation Report, *supra* note 195, at 31.
[348] Political Status Delegation Report, *supra* note 195, at 31.
[349] Political Status Delegation Report, *supra* note 195, at 32, C-10.
[350] Political Status Delegation Report, *supra* note 195, at 32-36, C-2 to -4.
[351] Political Status Delegation Report, *supra* note 195, at C-8.
[352] Political Status Delegation Report, *supra* note 195, at D-6, D-13 to -14.
[353] Political Status Delegation Report, *supra* note 195, at 35-36, C-9 to -10.
[354] Political Status Delegation Report, *supra* note 195, at C-7 to -8, D-22 to -25.
[355] Political Status Delegation Report, *supra* note 195, at D-9.
[356] Political Status Delegation Report, *supra* note 195, at D-22 to -25.

draw up its own constitution, Section 311(c) of the draft proposal states:

> The relations of the Government of Micronesia with the Government of the United States shall be subject to the provisions of Article 4, Section 3, clause 2 of the Constitution of the United States. . . .[357]

While irrevocable commonwealth status could be based on this part of the Constitution, the absence of the term "compact" and the restrictive conditions of government coupled with a reliance on Article IV, Section 2, of the Constitution leave the impression that this commonwealth is nothing more than a glorified unincorporated territory.[358]

6. Micronesian Reaction

It is not surprising that the Political Status Delegation found this offer of commonwealth status unacceptable. Although it found many substantial advantages in this proposal, especially in the areas of financial assistance and economic development, the Delegation believed that commonwealth status would not fulfill the requirements of self-government needed to give Micronesians identity and dignity.[359]

The Delegation felt that the proposal sacrificed Micronesian control in three areas: land; laws; and change of political status.[360] The Delegation insisted that there must be *unqualified* Micronesian control of land.[361] Although they were willing to continue United States leases in certain areas, the Delegation felt that legal control must be in the hands of Micronesians to preserve their culture and society.[362] The United States proposals fall far short of this constitutional requirement. The Delegation also contended that the right of Micronesians to draft their own constitution and legislate for their

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[357] Political Status Delegation Report, *supra* note 195, at D-10.

[358] *See generally* S. De Smith, *supra* note 1, at 186.

[359] Political Status Delegation Report, *supra* note 195, at 38.

[360] Political Status Delegation Report, *supra* note 195, at 37-38.

[361] Political Status Delegation Report, *supra* note 195, at 39.

[362] Political Status Delegation Report, *supra* note 195, at 39. *See* De Smith, *supra* note 4, at 16.

own internal affairs should not be restricted by either the United States Constitution or Congress.[363] Without this unrestrained authority there could be no true self-government by the people of Micronesia.[364] Finally, the Delegation objected to the permanent and unilaterally unterminable feature of such commonwealth status.[365] The Delegation stated:

> The United States proposal, however well-intentioned, would make Micronesians an insignificant, remote minority at the mercy of whatever changes in policy, politics, and administration occur in the United States. . . .[366]

As Senator Salii, the Delegation chairman, remarked in the debate on the Political Status Delegation Report:

> I have always thought that Micronesia belonged to Micronesians and that the Micronesians had the right to rule their home islands. . . . The Commonwealth status would make us a part—a permanent part of the United States political family. But we are Micronesians and not Americans . . . . [W]hat is being offered to us is not friendship and it is not partnership. It is ownership, friendly ownership for the time being, but ownership nevertheless.[367]

Independence

The Political Status Delegation Report declared independence the *only* alternative to free association with the United States.[368] Although opposed by the United States on strategic grounds and because of TTPI's insufficient economic development, independence is clearly a valid alternative.[369]

Incorporated in the United Nations Charter and the Trusteeship Agreement for TTPI is the obligation of the United States to pro-

[363] Political Status Delegation Report, *supra* note 195, at 43, 46.
[364] Political Status Delegation Report, *supra* note 195, at 41, 46.
[365] Political Status Delegation Report, *supra* note 195, at 41.
[366] Political Status Delegation Report, *supra* note 195, at 41-42.
[367] Mink, *supra* note 68, at 203-04.
[368] *See* text p. 168 *supra*; Political Status Delegation Report, *supra* note 195, at 11.
[369] Political Status Delegation Report, *supra* note 195, at 28-30.

mote the progressive development of self-government or *independence*.[370] The Micronesian Political Status Delegation contends that this acknowledges a basic right of the Micronesian people and that no other countries' "interest, strategic or otherwise [can] be permitted to compromise or dilute Micronesia's basic right to determine its own destiny."[371] As the Delegation's advisor, Dr. J. Davidson, observed:

> The case for independence rests on two basic premises: that the people of a country desire to control their own affairs and they possess the capacity to do so. Where these premises are applicable, independence provides the firmest foundation upon which to build an effective government.
>
> The size of a country is only marginally relevant to its capacity to control its own affairs. . . .[372]

So far every trusteeship has chosen independence.[373]

After affirming independence as a right, both the Future Political Status Commission and the Political Status Delegation have weighed the advantages and disadvantages of this course of action.[374] A great many Micronesians favor independence.[375] In the eyes of most members of the United Nations, it is the only acceptable status and it would thus be easier for the United Nations to consider termination of the trusteeship.[376] An independent Micronesia would be a

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[370] U.N. Charter art. 76, para. b; Trusteeship Agreement for the Former Japanese Mandated Islands, April 2, 1947, 61 Stat. 3301, 3302 (1947), T.I.A.S. No. 1665, 8 U.N.T.S. 189, 192, 194 (Article 6).

[371] Political Status Delegation Report, *supra* note 195, at 22.

[372] J. Davidson, Samoa mo Samoa 415 (1967).

[373] S. De Smith, *supra* note 1, at 184. *See* Gruening, *supra* note 101, at 665. In the Pacific, both the trust territories of Western Samoa and Nauru have chosen independence, Political Handbook & Atlas of World Affairs 237, 421 (R. Stebbins & A. Amoria eds. 1970). Other Pacific dependencies which have chosen independence are Tonga and Fiji, The Far East and Australia 1161, 1177 (1970).

[374] Future Political Status Report, *supra* note 132, at 45-46; Political Status Delegation Report, *supra* note 195, at 23-24. The advantages include an easier acceptance by the United Nations of the termination of the trusteeship. Micronesia would also be the sole party to determine with whom and under what terms Micronesia would have relationships with other nations. And independence would help the development of a sense of Micronesian identity. *See* S. De Smith, *supra* note 1, at 18.

[375] Uherbelau, *Independence!*, 18 Micronesian Reporter 9 (No. 1 1970).

[376] *See* S. De Smith, *supra* note 1, at 184-85.

sovereign country with full legal control over its own affairs. Any foreign presence would need its explicit approval. As an independent country, it would also be easier to resist United States pressure for more land or privileges.[377]

There are, however, many serious disadvantages to independence which are widely recognized, especially by Micronesian leaders. Lack of natural resources and population, geographical dispersion and communications problems would make the administration of an independent Micronesia very difficult.[378] The lack of economic development and resources, combined with the high standard of living, would almost certainly require outside assistance.[379] The Political Status Delegation even expressed its doubts about whether an independent Micronesia could succeed in obtaining the initial financing necessary to develop a self-sufficient economy. In an association with another power, Micronesia would get the needed resources as part of the compact of association.[380]

While recognizing that United States assent is needed to terminate the trusteeship, the Micronesians want, if independence becomes their goal, to start at once to develop policies and programs which will lead to its successful implementation.[381] Furthermore, they prefer an indefinite prolongation of the trusteeship until this status is recognized by the United States.[382]

Free Association

Free association is the status which the Congress of Micronesia authorized the Political Status Delegation to propose to United States officials.[383] This relationship would have the rights and obli-

[377] Future Political Status Report, *supra* note 132, at 45; Political Status Delegation Report, *supra* note 195, at 24.

[378] Future Political Status Report, *supra* note 132, at 46; Political Status Delegation Report, *supra* note 195, at 24. *See* N. Meller, *supra* note 9, at 389.

[379] Future Political Status Report, *supra* note 132, at 46-47; Political Status Delegation Report, *supra* note 195, at 25. *See* S. De Smith, *supra* note 1, at 181-82; De Smith, *supra* note 4, at 15.

[380] Political Status Delegation Report, *supra* note 195, at 25.

[381] Politican Status Delegation Report, *supra* note 195, at 26.

[382] Future Political Status Report, *supra* note 132, at 25; Political Status Delegation Report, *supra* note 195, at 26.

[383] *See* text p. 169 *supra*.

gations of each party defined by a compact.[384] The Micronesians believe that, while this status would provide the fullest possible internal self-government for them, it must be entered into voluntarily by both parties.[385] Free association would enable Micronesians to draw up their own constitution and have the right to amend it without the intervention of the United States.[386] The United States would handle only the foreign affairs and defense of Micronesia.[387] The Congress of Micronesia believes this status will be the most beneficial because it

> satisfies their basic aspirations to rule themselves and protect their individuality and cultural characteristics, while recognizing the practical considerations which must apply to a territory of small population and limited resources. . . .[388]

The Political Status Delegation believes that any permanent status would not give Micronesians full internal self-government, an indispensable requirement to protect the culture, identity and individuality of Micronesian life and society.[389] Its report contended that, already, United States influence was becoming so dominant that Micronesians were in danger of becoming "Americanized."[390] It wanted to maintain the culture from which Micronesian society establishes its identity and strength.[391]

The Political Status Delegation presented four non-negotiable principles of free association to the United States:

1. That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government;

2. That the people of Micronesia possess the right of self-determination and may therefore choose independence or self-

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[384] Political Status Delegation Report, *supra* note 195, at 15-16. *See* Future Political Status Report, *supra* note 132, at 19.

[385] Political Status Delegation Report, *supra* note 195, at 9-10. *See* De Smith, *supra* note 4, at 16.

[386] Political Status Delegation Report, *supra* note 195, at 14.

[387] Political Status Delegation Report, *supra* note 195, at 16-17.

[388] Political Status Delegation Report, *supra* note 195, at 10.

[389] Political Status Delegation Report, *supra* note 195, at 7, 46-47.

[390] Political Status Delegation Report, *supra* note 195, at 46.

[391] Political Status Delegation Report, *supra* note 195, at 10, 46; Heine, *Free Association*, 18 Micronesian Reporter 11, 12 (No. 1 1970).

government in free association with any nation or organization of nations;

3. That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or government plan at any time; and

4. That free association should be in the form of a revocable compact, terminable unilaterally by either party.[392]

The Delegation felt that American acceptance of these principles and the continued use of present military facilities by the United States would provide for the United States' security interest, satisfy the anti-colonial interests of the United Nations and at the same time provide the political, legal and psychological sovereignty necessary to protect and rebuild a strong Micronesian society.[393]

An example of this type of free association is the relationship between the Cook Islands and New Zealand. The Cook Islands are a thinly populated group of islands spread out across the Southern Pacific. In the early 1960's, New Zealand offered them the options of integration, independence or full internal self-government. This latter status was unanimously chosen by the Cook Island Legislative Assembly and approved by a United Nations supervised general election.[394] Free association gave the Cook Islands complete internal self-government including the power to terminate the association. New Zealand remained responsible only for defense and foreign affairs.[395] Professor De Smith described it as

> an act of faith on the part of the New Zealand Government—an act no doubt facilitated by the value the Cook Islanders placed on their New Zealand citizenship, their unrestricted freedom to emigrate to New Zealand and the 80% contribution made by New Zealand to the local budget.[396]

The greatest American objection to the Micronesian proposal for free association was that the relationship could be unilaterally

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[392] Political Status Delegation Report, *supra* note 195, at 11.

[393] *See* Political Status Delegation Report, *supra* note 195, at B-2 to -4; F. Williams, *supra* note 133, at 2-3.

[394] S. De Smith, *supra* note 1, at 46-48. *See* Harris, *Microstates in the United Nations: A Broader Purpose*, 9 Colum. J. Transnat'l L. 23, 33 (1970).

[395] S. De Smith, *supra* note 1, at 47. *See* Broderick, *supra* nore 316, at 390-92.

[396] S. De Smith, *supra* note 1, at 47.

terminable by either side.[397] This was the exact opposite of the permanent association it envisaged. The United States felt that it could not protect its security interests in the area with a treaty arrangement which could be unilaterally ended for any minor reason.[398] The Delegation tried to assuage American fears by pointing out that Micronesia looked forward to many years of close association which would not be terminated for an insignificant reason.[399] But the Delegation believed that the ultimate power of revocation must be recognized, for only then would the relationship be entered on a voluntary basis.[400] Future generations of Micronesians would be able to make their own evaluations of this relationship based upon prevailing circumstances.[401] To alleviate the United States' fear of abrupt termination under the free association compact, Micronesians are willing to provide for prolonged consideration of any status change by either party through various constitutional processes.[402]

Underlying the concept of free association is the lack of desire on the part of the Micronesians to become American citizens and part of the United States.[403] Rather, they would like to create their own identity with political sovereignty residing solely in the people of Micronesia.[404] Although realizing the strategic and economic necessity of some relationship with the United States, Micronesians believe it also necessary to have a terminable free association under which they will enjoy the attention that an important nation deserves rather than to be "a remote and insignificant fraction of the 'United States political family'."[405]

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[397] Political Status Delegation Report, *supra* note 195, at 7-8.

[398] F. Williams, *supra* note 133, at 67-69; Mink, *supra* note 68, at 201.

[399] Political Status Delegation Report, *supra* note 195, at 12.

[400] Political Status Delegation Report, *supra* note 195, at 11.

[401] Political Status Delegation Report, *supra* note 195, at 11-12.

[402] Political Status Delegation Report, *supra* note 195, at 12. An example of such provisions is the United Kingdom's relationship of associated statehood with its former island territories in the Caribbean. This relationship can terminate only after a ninety-day period has passed after the approval of legislation terminating the relationship and after an island-wide referendum, both needing to be approved by a two-thirds vote. Political Status Delegation Report, *supra* note 195, at 12.

[403] Turack, *Passports Issued on Behalf of Non-State Entities*, 16 N.Y.L.F. 625, 630-35 (1970). *See* Broderick, *supra* note 316, at 385-87, as to the British experience with decolonialization and citizenship.

[404] Political Status Delegation Report, *supra* note 195, at 11, 46. *See* Heine, *supra* note 391.

[405] Political Status Delegation Report, *supra* note 195, at 41-42.

MICRONESIA: RECENT DEVELOPMENTS

Recent Negotiations

During the summer of 1970, the Congress of Micronesia debated the report of its Political Status Delegation. The Congress decided to reject the United States offer of commonwealth status, endorsed the four principles of free association enunciated by the Delegation, and appointed a Joint Committee on Future Status to continue negotiations and to study the economic and political institutions necessary to implement either free association or independence.[406]

After the unsuccessful negotiations on Saipan in May, 1970, the United States undertook a complete review of the situation. In March, 1971, President Nixon appointed Franklin Williams, President of the Asia Foundation, as his personal representative with the rank of ambassador to continue negotiations over the future status of TTPI. Mr. Williams' instructions were to work out an agreement that would preserve Micronesian as well as American interests.[407] The representatives of both parties met in Hawaii in October, 1971, for further talks.[408]

Compact of Association

COMPACT OF ASSOCIATION

This time the American delegation did not present the Joint Committee on Future Status with a draft bill, but came prepared to discuss the basic issues around which a future association would be established.[409] Ambassador Williams stated that the United States had re-evaluated its position on Micronesia and would present proposals designed to satisfy Micronesia's desire for full internal autonomy and self-government, full control over their land and other resources, and full protection for their values, traditions and cultural heritage, and at the same time protect the basic interests of the United States in Micronesia already recognized by the Congress of Micronesia and the United Nations.[410]

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[406] Blaz & Lee, *supra* note 3, at 84.

[407] F. Williams, *supra* note 133, at 1-2. *See* White House Press Release, March 13, 1971; Blaz & Lee, *supra* note 3, at 86. *See also Hearing with Secretary of Interior Morton Before the House Comm. on Interior and Insular Affairs*, 92d Cong., 1st Sess., ser. 92-1, at 14, 16, 24-25 (1971).

[408] F. Williams, *supra* note 133, at 2.

[409] F. Williams, *supra* note 133, at 2, 6-7 (transcript).

[410] F. Williams, *supra* note 133, at 2-3, 8-13 (transcript).

The United States suggested that the interests of both parties would be served by a "Compact of Association" which would delineate the terms of their relationship.[410] Under the Compact, Micronesians would control their own laws by adopting a constitution that need not be consistent with the United States Constitution.[412] They would have full power to legislate and amend their constitution without being subject to modification or interference by the United States.[413] American responsibility would be limited to the areas of defense and foreign affairs as defined by the Compact.[414]

The United States recognized the importance of land in Micronesian life and proposed that under the Compact all lands would be under Micronesian control with no American residual power of eminent domain.[415] The American delegation then outlined the United States' possible future land needs beyond the 3.8 per cent of Micronesian land now being used. These requirements were limited to the island of Tinian in the Marianas and to Palau.[416] The leases for any United States' use of land would be negotiated and recognized in the Compact.[417]

The United States offered to make those federal services and programs that the Micronesians wanted available through the Compact.[418] Free entry of both Micronesian citizens and products would be provided on a reciprocal basis.[419] Furthermore, the United States was willing to provide financial support by a mutually agreeable method.[420]

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[411] F. Williams, *supra* note 133, at 3, 40. The agreement

> would be neither a treaty nor a unilateral legislative act on the part of the United States but would . . . be a binding compact with legal definition of its own and recognized as such by both parties and the world community. The basic division of powers and responsibilities would flow from the force of the voluntary and freely expressed agreement of each party of the Compact . . . .
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> . . . .
>
> The Compact would . . . be presented to both Houses of the United States Congress for approval and to the President . . . for his signature. . . .

F. Williams, *supra* note 133, at 118-19.

[412] F. Williams, *supra* note 133, at 3, 41-42, 44-45.

[413] F. Williams, *supra* note 133, at 3, 42.

[414] F. Williams, *supra* note 133, at 3, 5, 47, 123-38.

[415] F. Williams, *supra* note 133, at 3, 19, 28-29.

[416] F. Williams, *supra* note 133, at 4, 26-27, 31-37.

[417] F. Williams, *supra* note 133, at 3-4.

[418] F. Williams, *supra* note 133, at 5, 48-54.

[419] F. Williams, *supra* note 133, at 7, 110-13.

[420] F. Williams, *supra* note 133, at 5, 57-63.

The final American proposal concerned the alteration or termination of the Compact. The United States contended that the Compact should be amended or terminated only by mutual consent[121] and offered what it thought was a flexible procedure that would protect the interests of both parties.

> After an agreed period of years during which the association could be given a practical test, either party could propose amendments or termination of the Compact. The party to which such proposals were directed would agree to consider them promptly, to respond to them within a specified time, and to negotiate differences between the parties in good faith. Procedures for such negotiations could be agreed upon in advance in order to expedite the resolution of any differences that might arise.[122]

In a joint communique issued at the end of the conference, both parties "agreed that substantial progress was made in narrowing differences and in reaching preliminary understandings in some important areas."[123] Particular emphasis was given to the American recognition of the right of the people of Micronesia to determine their future by a "sovereign act of self-determination," to control their own law without United States interference.[124] The Micronesian delegation described the United States presentation of its needs for land within Micronesia as reasonable.[125]

Termination

Agreement was not reached on all issues. For example, Micronesia's request for non-reciprocal privileges on the free movement of peoples and goods into the United States was not accepted.[126] However, both parties concurred that the major area of disagreement was

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[121] F. Williams, *supra* note 133, at 5, 130.

[122] F. Williams, *supra* note 133, at 6, 65-69.

[123] F. Williams, *supra* note 133, at 10. *See* Micronesian News Service, Oct. 18, 1971, at 3.

[124] F. Williams, *supra* note 133, at 11. *See* Micronesian News Service, Oct. 18, 1971, at 4.

[125] Micronesian News Service, Oct. 18, 1971, at 3-4. *See* F. Williams, *supra* note 133, at 7.

[126] F. Williams, *supra* note 133, at 7, 87-88, 110-13.

the manner of termination.[427] The Micronesians contended that only by having independent control over their internal affairs would they retain their identity.[428] The unilateral right of termination would provide the complete control necessary to preserve Micronesian society. As the delegation observed:

> The ability of Micronesia to unilaterally terminate its relationship with the United States is an *essential protection* for a small nation that wishes to maintain its identity while in a relationship with a large and strong nation. . . . Our delegation maintains that [United States security] interests still can be met under a political association between your country and Micronesia that is subject to unilateral termination by either party. We reiterate our strong desire and willingness to work out termination procedures which will prevent hasty termination based on less than compelling reasons.[429]

The United States believes that only a compact revocable by mutual consent would protect the United States' basic interest in political stability and peace in the Pacific.[430] These responsibilities, it contends, are recognized by the Congress of Micronesia and the United Nations.[431] The American delegation stated:

> These responsibilities [in the Pacific] justify our belief that the United States should have a voice in any decision which might have the effect of *altering seriously* the stability in the area. . . .[432]

Micronesian Sovereignty

In the October, 1971, talks, Senator Salii said that the key to the negotiations was the issue of sovereignty.[433] Adhering to what

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[427] F. Williams, *supra* note 133, at 8, 83, 138. *See* Micronesian News Service, Oct. 18, 1971, at 3.

[428] F. Williams, *supra* note 133, at 139.

[429] F. Williams, *supra* note 133, at 139-40. (emphasis added)

[430] *See* F. Williams, *supra* note 133, at 8, 66-68.

[431] F. Williams, *supra* note 133, at 69, 131.

[432] F. Williams, *supra* note 133, at 131 (emphasis added).

[433] F. Williams, *supra* note 133, at 17.

he believed was the standard definition of sovereignty, *i.e.*, complete control over internal and external affairs, he declared that Micronesia was willing to transfer some powers of defense and foreign relations in return for a unilaterally revocable free association, the relinquished powers to be delineated by the Compact.[434]

The traditional definition of a sovereign state requires that it have a permanent population, a defined territory, a functioning government and the capacity to enter into relations with other states.[435] I disagree with this view and further contend that either under the Micronesian proposal of free association or the United States Compact of Association, Micronesia would be a sovereign state.

Under the Micronesian proposal for free association, even though the United States would conduct TTPI's foreign relations, the unilaterally terminable nature of the association leaves the ultimate power to enter into relations with other states with Micronesia. Micronesia's status, therefore, fits within the traditional definition of sovereignty.

The Compact of Association proposed by the United States presents more difficulties. The requirement of mutual consent for termination seems to circumscribe the ability of Micronesia to enter into relations with other states. However, the term "sovereignty" in international law does not have the same force that the Constitution has in United States law. While some legal theorists and others with less intellectual motives stubbornly cling to the traditional definition,[436] Professor O'Connell has pointed out that international law really "deals with large masses of people and with the facts of power. Its rules are compromises and are not always ideal."[437] Today the traditional definition of "real sovereignty" is inadequate, for most states have accepted some restrictions on their freedom of action. Since these states may be members of the United Nations and parties to its subsidiary organizations, internal covenants and conventions,

> [i]t is probably more accurate today to say that the sover-

[434] F. Williams, *supra* note 133, at 17.

[435] Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097 (1936), T.S. No. 881, 165 L.N.T.S. 19. *See* J. Starke, An Introduction to International Law 89-90 (5th ed. 1963).

[436] C. Fenwick, International Law 126 (4th ed. 1965).

[437] 1 D. O'Connell, *supra* note 38, at 497.

> eignty of a State means the *residuum* of power which it possesses within the confines laid down by international law. . . .
>
> In a practical sense, sovereignty is also largely a matter of degree. Some States enjoy more power and independence than other States. This leads to the familiar distinction between independent sovereign States, and non-independent or non-sovereign States or entities, for example Protectorates and colonies. Even here it is difficult to draw the line, as although a State may have accepted important restrictions on its liberty of action, in other respects it may enjoy the widest possible freedom. "Sovereignty" is therefore a term of art rather than a legal expression capable of precise definition.[438]

A clear example is the case of Liechtenstein. In 1920, Liechtenstein was denied membership in the League of Nations. While recognized as a sovereign state, it did not have full control of its external affairs because most of this power had been delegated to Switzerland. It was denied membership in the United Nations for the same reason, but was overwhelmingly admitted as a party to the Statute of the International Court of Justice.[439]

A case somewhat analogous to Micronesia arose in *Duff Development Co. v. Government of Kelantan*.[440] Kelantan was a state in the Malay Peninsula. First Siam and later Great Britain had the right to administer its foreign relations and to veto its grants of economic concessions and appointments of foreign nationals as officials.[441] The Duff Development Company attempted to sue the Government of Kelantan for the breach of certain mineral concessions.[442] The House

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[438] J. Starke, *supra* note 435, at 91-92. *See* C. Fenwick, *supra* note 436; 1 D. O'Connell, *supra* note 38, at 319. Professor Brierly concludes:

> [S]overeignty . . . is merely a term which designates an aggregate of particular and very extensive *claims* that states habitually make for themselves in their relations with other states. . . . (emphasis added)

J. Brierly, The Law of Nations 47 (6th ed. H. Waldock ed. 1963).

[439] Kohn, *The Sovereignty of Liechtenstein*, 61 Am. J. Int'l L. 547, 547-48, 553-54 (1967). *See* 1 G. Hackworth, Digest of International Law 48-49 (1940).

In 1948, Israel was admitted as a member of the United Nations even though she had no clearly defined boundaries and "the Congo was admitted despite doubts as to existence, let alone effectiveness, of a central government." 1 D. O'Connell, *supra* note 38, at 307-08.

[440] [1924] A.C. 797.

[441] Duff Development Co. v. Government of Kelantan, *id.* at 807.

[442] *Id.* at 812.

of Lords held that although Kelantan's powers were restricted by its agreement with Great Britain, it was a sovereign state and therefore enjoyed sovereign immunity from suit.[443] Viscount Finlay held:

> It is obvious that for sovereignty there must be a certain amount of independence, but it is not in the least necessary that for sovereignty there should be complete independence. It is quite consistent with sovereignty that the Sovereign may in certain respects be dependent upon another Power; the control, for instance, of foreign affairs may be completely in the hands of a protecting Power. . . .[444]

Thus, under either the Compact or free association relationship, Micronesia should be considered sovereign.[445] These relationships should be valid under international law and recognized by the United Nations. Consequently, Micronesia should be recognized as a separate entity and not as part of the United States.

Constitutionality of the Compact of Association

While sovereignty is the important consideration for Micronesia in the international field, the constitutionality of the Compact is important to the United States. As the United States extended its

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[443] *Id.* at 807.

[444] *Id.* at 814. In Advisory Opinion on Customs Régime between Germany and Austria, [1931] P.C.I.J., ser. A/B, No. 41, at 57-58, the court discusses its concept of independence and concludes:

> It also follows that the restrictions upon a State's liberty, whether arising out of ordinary international law or contractual engagements, *do not as such in the least affect its independence*. As long as these restrictions do not place the State under the legal authority of another State, the former remains an independent State however extensive and burdensome those obligations may be. (emphasis added)

Id.

[445] Micronesia's status would be analogous to that of a Protected State. The United States would be responsible for the conduct of foreign affairs and defense under an agreement recognized by international law. But Micronesia would still retain its sovereignty as an independent state and control all other matters which might affect her. *See* 1 D. O'Connell, *supra* note 38, at 384; J. Starke, *supra* note 435, at 104-05. *See also* Rights of Nationals of the United States of America in Morocco, [1952] I.C.J. 176, 188 (Morocco remained a sovereign state after the 1914 Agreements, but had contracted to allow France to exercise certain sovereign powers); Agreement with the Federation of the West Indies on United States Defense Areas, Feb. 10, 1961 [1961] 12 U.S.T. 408, T.I.A.S. No. 4734 (Federation of West Indies a party to an agreement even though still a dependency of Great Britain); J. Brierly, *supra* note 438, at 182; 1 D. O'Connell, *supra* note 38, at 379-84.

boundaries, it stimulated the growth of constitutional theory regarding territorial acquisition. Even before the Constitution was written, the United States provided in the Northwest Ordinance of 1787 for the government of dependent areas.[446] The purchases of Louisiana and Florida brought forth the concept that the United States had an inherent sovereign power to acquire and govern territory.[447] However, with the acquisition of territories after the Spanish-American War, the Court discovered that Congress, under Article IV, Section 3, had the power to extend only the sections of the Constitution it thought necessary to govern the "unincorporated territories."[448]

After World War II, the United States acquired a trusteeship over Micronesia, becoming a responsible protector with obligations to the inhabitants and to the United Nations.[449] Now that relationship is about to undergo a change. The basis of the transformation will be complete Micronesian sovereignty and internal control with the exception of certain mutually selected functions in the areas of defense and foreign affairs which will be retained by the United States. There should be no constitutional objection to this relationship or to the creation of Micronesian laws and institutions that would appear incompatible with the United States Constitution. The Compact does not contemplate incorporation of Micronesia into the United States.[450]

The courts have consistently held that areas over which the United States does not claim sovereignty, even though occupied by the United States, are foreign countries.[451] This has been the position of TTPI for twenty-five years.[452] The increase in self-government and

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[446] W. Perkins, *supra* note 26, at 13. *See* Act of Aug. 7, 1789, ch. 8, 1 Stat. 51.

[447] Serč v. Pitot, *supra* note 280 (Louisiana); American Ins. Co. v. Canter, *supra* note 279 (Florida).

[448] Downes v. Bidwell, *supra* note 281.

[449] *Cf.* Callas v. United States, *supra* note 59, at 840-41.

[450] *See* F. Williams, *supra* note 133, at 118-19.

[451] Neely v. Henkel, *supra* note 143, at 115, 119 (Cuba a foreign country even though occupied by United States military forces); Fleming v. Page, *supra* note 281, at 615, 618 (Tampico, although occupied by United States military forces, was foreign country); Cobb v. United States, 191 F.2d 604, 611 (9th Cir. 1951). *Cf.* United States v. Rice, 17 U.S. (4 Wheat) 246, 254 (1819). *Contra*, Hooven & Allison Co. v. Evatt, *supra* note 296, at 681-82 (Reed, J., dissenting).

[452] *See* Callas v. United States, *supra* note 59, at 839; Aradanas v. Hogan, 155 F. Supp. 546, 549 (D. Hawaii 1957); Callas v. United States, 152 F. Supp. 17, 19 (E.D.N.Y. 1957); *In re* Reyes, 140 F. Supp. 130, 131 (D. Hawaii 1956); Brunell v. United States, *supra* note 59, at 72. *Contra*, Callas v. United States, *supra* note 59, at 844 (Lumbard, J., dissenting).

sovereignty contemplated in the negotiations tend to increase the justification for this holding. Finally, whether applying the inherent sovereign power of the United States,[453] the treaty power,[454] the territorial clause or the necessary and proper clause[455] to Micronesia, the Court must consider that a people of a radically different culture have freely decided to *associate* with the United States, not to become a part of it, but to preserve their own culture, traditions and dignity.[456] In *Reid v. Covert*, Justice Harlan wisely concluded:

> The *Insular Cases* do stand for an important proposition, one which seems to me a wise and necessary gloss on our Constitution. . . . there is no *rigid* and *abstract rule* that Congress, as a condition precedent to exercising power . . . overseas, must exercise it subject to all the guarantees of the Constitution, no matter what the conditions and considerations are that would make adherence to a specific guarantee altogether impracticable and anomalous. . . .[457]

Conclusion

Currently, Micronesia is in a state of flux. While striving for adulthood, it has undergone "a crisis of identity and status."[458] Besides the numerous cultural and ethnic differences within Micronesia, the society as a whole is divided into two distinct personalities.[459] One appears around the district centers and is based on a wage economy which by Micronesian standards is very affluent. Most food, clothes and other necessities are imported. Education and political position, rather than the leadership position in the traditional society have become the ladder to prestige and success.[460] On the outlying islands, however, over fifty per cent of the population remains tied to a tradi-

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[453] *See* Leibowitz, *supra* note 317, at 233.

[454] *See generally* Foster v. Neilson, *supra* note 281, at 313-14.

[455] *See* Neely v. Henkel, *supra* note 143, at 121.

[456] *See* W. Perkins, *supra* note 26, at 14.

Congress has never found itself blocked by the Supreme Court in legislating for dependent areas.

Cf. Foster v. Neilson, *supra* note 281, at 308; E. Sady, *supra* note 33, at 42; Costigan, *supra* note 283, at 132-33.

[457] Reid v. Covert, *supra* note 292, at 74 (emphasis added).

[458] Blaz & Lee, *supra* note 3, at 61.

[459] Blaz & Lee, *supra* note 3, at 82; Future Political Status Report, *supra* note 132, at 20.

[460] 23d Annual Report, TTPI, *supra* note 1, at 100.

tional subsistence economy.[461] These people benefit only tangentially from the increased governmental and economic activity in TTPI. Even the district center life-style is to a large extent illusory. This year the United States will expend $75 million in Micronesia, almost $750 per Micronesian.[462] Of those Micronesians earning wages, almost sixty per cent work for some governmental organization.[463] Furthermore, with imports exceeding exports by five to one, including the expenditure of almost a million dollars for canned fish in a place where fish is plentiful,[464] one must agree with the Political Status Delegation that "the Territory is obviously living beyond its means."[465]

Besides the material diversity in Micronesian life, there is also cultural diversity. Tremendous cultural changes are taking place in Micronesia.[466] Aspirations toward a Western life-style have developed among the young.[467]

To gain control of their own lives many Micronesians are espousing independence.[468] A substantial movement, the Independence Coalition, has already been organized and operates in most areas of Micronesia.[469] One-third of the members of the Congress of Micronesia publicly subscribe to the Coalition.[470] Even Senator Salii, the

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[461] 23d Annual Report, TTPI, *supra* note 1, at 99-100.

[462] F. Williams, *supra* note 133, at 61.

[463] 23d Annual Report, TTPI, *supra* note 1, at 95.

[464] 23d Annual Report, TTPI, *supra* note 1, at 244-45. *See* 1970 Visiting Mission Report, *supra* note 96, at 34.

[465] Future Political Status Report, *supra* note 132, at 34. *See generally* N. Meller, *supra* note 9, at 381.

[466] Chutaro, *Caught in the Squeeze*, 19 Micronesian Reporter 27 (No. 1 1971). *See* Heine, *supra* note 391, at 11-12.

[467] Chutaro, *supra* note 466; Heine, *supra* note 391, at 11-12. *Accord*, T. Adam, *supra* note 78, at 163, 172.

[468] Kluge, *supra* note 139, at 14, col. 2, states that the Micronesian feels "that a nation as large as America cannot permanently associate with a place as small as Micronesia without changing it utterly. . . ." *See* Quigg, *supra* note 96, at 506-07.

> Only a Micronesian government can preserve for the future, those values and traditions that we have inherited from our ancestors and maintained through long years of war and foreign rule.

Future Political Status Report, *supra* note 132, at 15.

[469] Anderson, *The Special Session*, 19 Micronesian Reporter 11, 13 (No. 2 1971); N.Y. Times, June 20, 1971, at 6, col. 1.

[470] The leaders of the Coalition are Representatives Henry Samuel of the Marshall Islands and Hans Williander of Truk Island. Its large membership is not necessarily a cause for alarm.

> There are many questions about the degree of commitment to independence on the

"midwife" of the free association concept, opened his remarks at the Hana meeting last October with a reference to independence.

> We have come here to talk about independence. We wish to be free—to govern ourselves, to deal with the rest of the world on our own terms, to make our own mistakes. We are fully aware that independence . . . will bring its burdens. We are prepared to bear these burdens if we must. . . .[471]

The centuries of foreign colonial domination and exploitation is the unifying principle of Micronesia under these independence advocates.[472] Backed by the anti-colonial feelings of the United Nations, they believe that the only way to achieve dignity and self-respect is through independence.[473]

The advocates of independence, however, present an unrealistic and unfortunate choice for the people of Micronesia.[474] Carl Heine, the staff director of the Joint Committee on Future Status, described this anti-colonial attitude as a manifestation of the extreme nationalism that is sweeping the world.[475] He calls it

> [p]re-eminently a state of mind rather than a state of nature, and it is gradually capturing Micronesia. It is one of the most powerful forces in world politics, and it is the most dangerous. . . .[476]

Professor De Smith recently observed that Micronesian separatism is still a stronger force than Micronesian nationalism. He foresees

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part of many of the coalition members, but its formation could be viewed as strengthening the negotiating position of the Congress vis-à-vis the United States. . . .

Anderson, *supra* note 469; N.Y. Times, *supra* note 469. *See* Quigg, *supra* note 96, at 503.

The Coalition has also led to the formation of an anti-independence party on Truk, *District Digest*, 19 Micronesian Reporter 51 (No. 3 1971).

[471] F. Williams, *supra* note 133, at 1 (transcript).

[472] Uherbelau, *supra* note 375, at 10.

[473] The Trusteeship Council has recently reaffirmed Micronesia's right to self-determination, including independence. Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands, *supra* note 111, at 78.

[474] Bowett, *supra* note 215, at 131; *see The Trust Territory of the Pacific Islands*, 50 Dep't State Bull. 1018-19 (1964) (Statement by Thomas Remengesau before the U.N. Trusteeship Council, May 28, 1964).

[475] Heine, *supra* note 391, at 12.

[476] Heine, *supra* note 391, at 12.

that the most likely result of independence would be "insular fragmentation."[477] This is partially recognized by the Joint Committee on Future Status and other Micronesians.[478]

Micronesian leaders must now face the realities of life, not only in Micronesia, but also in the rest of the world. First, the strategic interests of the United States play an enormous part in its position on Micronesian status.[479] At the present time, the *denial* of the use of Micronesia to other powers is essential to the protection of the United States and necessary to its attempts to help keep order and peace in the Western Pacific and East Asia.[480]

Secondly, Micronesians must re-evaluate their concepts of dignity and freedom. For the last thirty years the ideology of nationalism has swept the underdeveloped countries as it did Europe at the end of the last century. The belief that true freedom lies only in independence, although an understandable reaction to past foreign domination, is contrary to all that has been learned in the past sixty years. Freedom and dignity come in many forms, from a Common Market, to a South Pacific Federation, to free association. Despite the wishes of many, there is no real possibility of preserving and/or returning to Micronesian culture as it was.[481] Will the brave and fearless Mi-

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[477] S. De Smith, *supra* note 1, at 182; De Smith, *supra* note 4, at 16.

> The unity of Micronesia seems to be at least as fragile as the voluntary federation of the British West Indies. The elements of diversity, and the distances between islands, are far greater, and conflicts of interest no less . . . . *Enforced confederation*—and let no one doubt that it is enforced—may yet induce a degree of unity, predicated on a *realistic appraisal of self-interest*, which might, in turn, survive a transition to self-rule. (emphasis added)

S. De Smith, *supra* note 1, at 155-56.

[478] *See* Political Status Delegation Report, *supra* note 195, at 2 (transcript); Chutaro, *supra* note 466, at 30.

[479] F. Williams, *supra* note 133, at 11-13, 67, 118.

As Charles Beard observed, national interest is the major concern of American statecraft. C. Beard, The Idea of National Interest 487 (1934).

> A Great Power, torn between its desire to support international co-operation and the realization that its national integrity depends mainly on its own military preparedness, is likely to find the latter element of policy governing the direction and extent of the former.

A. McDonald, *supra* note 29, at 54.

[480] T. Adam, *supra* note 78, at 165; De Smith, *supra* note 4, at 15. While the United States' strategic interest in Micronesia may be undiminished, the recent proposals put forward by the United States Delegation about military land requirements do show a more honest and flexible approach. *See* Future Political Status Report, *supra* note 132, at 45; Political Status Delegation Report, *supra* note 195, at 25-37. *See also* Johnstone, *supra* note 126, at 195.

[481] Chutaro, *supra* note 466, at 27. *See* Heine, *supra* note 391, at 12.

cronesian students who demand independence give up automobiles and their college educations and return to subsistence farming? Who will provide the jobs, the opportunity, the capital necessary to create a Micronesian society that will live up to the expectations of all the people? Will independence provide this dignity, especially in a Micronesia bankrupt and starved for capital? Will auctioning off its resources or strategic position to the highest bidder promote this dignity?[482]

The Future Political Status Commission stated that "any change of political status which involves a substantial possibility of regression would be unacceptable."[483] Should not the goals of Micronesian and American leaders be to obtain freedom and preserve cultural identity not in extreme nationalistic terms, but rather in terms of human dignity and respect. The past cannot be reconstructed, but its worthwhile values can be saved and put to use in constructing a new Micronesian society.[484] What the Rector of the University of Puerto Rico said about the Puerto Rican struggle for dignity and freedom applies equally to Micronesia.

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[482] *See* De Smith, *supra* note 4, at 15. Will the Micronesian leaders end up like Maltese Prime Minister Dom Mintoff who ordered Great Britain to remove its naval base, but rescinded the order and signed a new agreement after unemployment drastically increased and Malta nearly went bankrupt. He then traveled from country to country seeking aid, N.Y. Times, April 3, 1972, at 9, col. 1. There are many countries that would be willing to give Micronesia aid in order to exploit her economically or politically. Recent developments in the Trust Territory of New Guinea, especially contributions by Japanese business to New Guinea political parties, is clear evidence of what is to come, N.Y. Times, March 21, 1972, at 10, col. 5.

[483] Future Political Status Report, *supra* note 132, at 21. While Micronesia's standard of living compares favorably with that of many new nations, 1970 Visiting Mission Report, *supra* note 96, at 34, "it is difficult to envisage a time when Micronesia could support itself without foreign aid, at a standard of living approaching its present modest level," De Smith, *supra* note 4, at 14; Johnson, *supra* note 4, at 238.

The Political Status Delegation said that Micronesia should decline independence only "for sound reasons related to the quality of Micronesian life . . . ." Political Status Delegation Report, *supra* note 195, at 22-23. The Delegation's Chairman, Senator Salii, once said:

> We would like to have . . . a measure of economic well-being, a measure of acceptable living standards, and a measure of political stability so that . . . Micronesia can meaningfully contribute to the peace and security of the community of nations. . . .

Salii, *supra* note 96, at 378. Senator Bailey Otter describes the goals to which leaders of both Micronesia and the United States must strive:

> The association should be such that whatever the U.S. wants in the area, the U.S. can be offered, and whatever the Micronesians want from the U.S., the Micronesians can get.

Interview: Bailey Otter, 19 Micronesian Reporter 2, 3 (No. 2 1971).

[484] Carl Heine envisages Micronesia's destiny as a bridge between Western culture and Pacific societies, Heine, *supra* note 391, at 12.

> Puerto Rico has been able to distinguish the substance of freedom from the shadows thereof, the reality of collective dignity from the mannerism of sovereignty.
>
> Commonwealth is a breakthrough of intelligence over intelligentsia . . . of reality over utopia, of political pragmatism over political ideology. Under it . . . a small island, devoid of natural resources, beset by social, political, economic, cultural, educational maladjustments has managed to . . . progress in peace, with full regard for human rights. . . .[485]

This goal may be best achieved by Micronesia in free association with the United States.

ADDENDUM

After the preparation of this article, on April 2, 1972, there was another meeting between the Joint Committee on Future Status of the Congress of Micronesia and the President's Personal Representative for Micronesian Status Negotiations at Koror, Palau.[486]

Both sides reached agreement on the basic issues arising from the contemplated change in Micronesia's political status. The relationship between Micronesia and the United States will be determined by a Compact.[487] Complete authority over internal affairs will be vested in the Government of Micronesia. Micronesia will also be able to make agreements involving intergovernmental obligations with other countries and to participate in regional organizations.[488]

The Constitution of Micronesia will be derived from the sovereign power of the Micronesian people and need not be consistent with the Constitution of the United States.[489] The United States would not have any power of eminent domain.[490]

Most importantly, the parties agreed on a principle of unilateral termination to be incorporated into the Compact by which after a

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[485] Benitez, *Puerto Rico—The Year 2000*, 15 How. L.J. 1, 8 (1968). *See* W. Perkins, *supra* note 26, at 150.

[486] Final Joint Communique, April 13, 1972, at 1.

[487] *Id.*

[488] *Id.* at 1-2.

[489] *Id.* at 2.

[490] *Id.* at 3.

certain number of years either party may terminate the Compact.[491] In the event of termination of the Compact, a mutual security pact will provide for the continuation of military leases, options and agreements negotiated before the Compact goes into effect.[492]

While the agreement provides for continuing United States authority over foreign affairs and defense in Micronesia,[493] it clearly contemplates a relationship based on the inherent sovereignty of the people of Micronesia.

Because of the ending of the legal force of the United States Constitution in Micronesia, the termination of the United States' power of eminent domain, and the provision for unilateral termination of the Compact, Micronesia's status is no longer a constitutional question. The United States has always had the power to make agreements and compacts with other sovereign nations.[494]

In the international sphere, termination by compact of the United States trusteeship should present no problems to United Nations' recognition of Micronesian self-determination. It is possible that emotional charges of colonialism and imperialism and demands for independence will be raised and that Micronesia's relationship to the United States will be compared with the French protectorate over Morocco and the British protectorate over Egypt. Such statements would emphasize only the ghosts of the past. There should instead be an emphasis on the newness and creativity of this contractual relationship which is derived from relationships already recognized by the United Nations in Puerto Rico, Greenland, and the Cook Islands. Hopefully, Micronesia's new status will lead to the creation of new relationships by very small territories through a creative constitutionalism to their and the world's benefit.

James C. Dobbs

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[491] *Id.*

[492] *Id.*

[493] *Id.* at 1-2. *But see* N.Y. Times, Oct. 9, 1972, at 6, col. 3, for recent problems in negotiations. 3/

[494] U.S. Const. art. II, § 2.