

Sec. 3—New States

Cl. 2—Property of the United States

may establish, or may authorize the territorial legislature to create, legislative courts whose jurisdiction is derived from statutes enacted pursuant to this section other than from Article III.³²⁸ Such courts may exercise admiralty jurisdiction despite the fact that such jurisdiction may be exercised in the states only by constitutional courts.³²⁹

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

GUARANTEE OF REPUBLICAN FORM OF GOVERNMENT

The first clause of this section, in somewhat different language, was contained in the Virginia Plan introduced in the Convention and was obviously attributable to Madison.³³⁰ Through the various permutations into its final form,³³¹ the object of the clause seems

Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico, 478 U.S. 328, 331 n.1 (1986) (First Amendment speech). *See also* *Califano v. Torres*, 435 U.S. 1, 4 n.6 (1978) (right to travel assumed). Puerto Rico is, of course, not the only territory that is the subject of the doctrine of the *Insular Cases*. *E.g.*, *Ocampo v. United States*, 234 U.S. 91 (1914) (Philippines and Sixth Amendment jury trial); *Hawaii v. Mankichi*, 190 U.S. 197 (1903) (grand jury indictment and trial by jury).

³²⁸ *American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511, 546 (1828). *See also* *Clinton v. Englebrecht*, 80 U.S. (13 Wall.) 434, 447 (1872); *Hornbuckle v. Toombs*, 85 U.S. (18 Wall.) 648, 655 (1874); *Reynolds v. United States*, 98 U.S. 145, 154 (1879); *The "City of Panama"*, 101 U.S. 453, 460 (1880); *McAllister v. United States*, 141 U.S. 174, 180 (1891); *United States v. McMillan*, 165 U.S. 504, 510 (1897); *Romeu v. Todd*, 206 U.S. 358, 368 (1907).

³²⁹ *American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511, 545 (1828).

³³⁰ "Resd. that a Republican government . . . ought to be guaranteed by the United States to each state." 1 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 22 (rev. ed. 1937). In a letter in April, 1787, to Randolph, who formally presented the Virginia Plan to the Convention, Madison had suggested that "an article ought to be inserted expressly guaranteeing the tranquility of the states against internal as well as external danger. . . . Unless the Union be organized efficiently on republican principles innovations of a much more objectionable form may be obtruded." 2 *WRITINGS OF JAMES MADISON* 336 (G. Hunt ed., 1900). On the background of the clause, *see* W. WIECEK, *THE GUARANTEE CLAUSE OF THE U.S. CONSTITUTION* ch. 1 (1972).

³³¹ Thus, on June 11, the language of the provision was on Madison's motion changed to: "Resolved that a republican constitution and its existing laws ought to be guaranteed to each state by the United States." 1 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 193–194, 206 (rev. ed. 1937). Then, on July 18, Gouverneur Morris objected to this language on the ground that "[h]e should be very unwilling that such laws as exist in R. Island ought to be guaranteed to each State of the Union." 2 *id.* at 47. Madison then suggested language "that the Constitutional authority of the States shall be guaranteed to them respectively against domestic as