

Sec. 3—New States

Cl. 2—Property of the United States

consistent with the admission that the title passed and vested according to the laws of the United States.”³¹⁹ In construing a conveyance by the United States of land within a state, the settled and reasonable rule of construction of the state affords a guide in determining what impliedly passes to the grantee as an incident to land expressly granted.³²⁰ But a state statute enacted subsequently to a federal grant cannot operate to vest in the state rights that either remained in the United States or passed to its grantee.³²¹

Territories: Powers of Congress Thereover

In the territories, Congress has the entire dominion and sovereignty, national and local, and has full legislative power over all subjects upon which a state legislature might act.³²² It may legislate directly with respect to the local affairs of a territory or it may transfer that function to a legislature elected by the citizens thereof,³²³ which will then be invested with all legislative power except as limited by the Constitution of the United States and acts of Congress.³²⁴ In 1886, Congress prohibited the enactment by territorial legislatures of local or special laws on enumerated subjects.³²⁵ The constitutional guarantees of private rights are applicable in territories which have been made a part of the United States by congressional action³²⁶ but not in unincorporated territories.³²⁷ Congress

³¹⁹ *Wilcox v. McConnell*, 38 U.S. (13 Pet.) 498, 517 (1839).

³²⁰ *Oklahoma v. Texas*, 258 U.S. 574, 595 (1922).

³²¹ *United States v. Oregon*, 295 U.S. 1, 28 (1935).

³²² *Simms v. Simms*, 175 U.S. 162, 168 (1899). *See also* *United States v. McMillan*, 165 U.S. 504, 510 (1897); *El Paso & N.E. Ry. v. Gutierrez*, 215 U.S. 87 (1909); *First Nat'l Bank v. County of Yankton*, 101 U.S. 129, 133 (1880).

³²³ *Binns v. United States*, 194 U.S. 486, 491 (1904). *See also* *Sere v. Pitot*, 10 U.S. (6 Cr.) 332, 336 (1810); *Murphy v. Ramsey*, 114 U.S. 15, 44 (1885).

³²⁴ *Walker v. New Mexico & So. Pac. R.R.*, 165 U.S. 593, 604 (1897); *Simms v. Simms*, 175 U.S. 162, 163 (1899); *Wagoner v. Evans*, 170 U.S. 588, 591 (1898).

³²⁵ 24 Stat. 170 (1886).

³²⁶ *Downes v. Bidwell*, 182 U.S. 244, 271 (1901). *See also* *Mormon Church v. United States*, 136 U.S. 1, 14 (1890); *ICC v. United States ex rel. Humboldt Steamship Co.*, 224 U.S. 474 (1912).

³²⁷ *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922) (collectively, the *Insular Cases*). The guarantees of fundamental rights apply to persons in Puerto Rico, *id.* at 312–13, but what these are and how they are to be determined, in light of *Balzac's* holding that the right to a civil jury trial was not protected. The vitality of the *Insular Cases* has been questioned by some Justices (*Reid v. Covert*, 354 U.S. 1, 14 (1957) (plurality opinion); *Torres v. Puerto Rico*, 442 U.S. 465, 474, 475 (1979) (concurring opinion of four Justices)), but there is no doubt that the Court adheres to it (*United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1990); *Harris v. Rosario*, 446 U.S. 651 (1980)). Applying stateside rights in Puerto Rico are *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974) (procedural due process); *Examining Bd. v. Flores de Otero*, 426 U.S. 572 (1976) (equal protection principles); *Torres v. Puerto Rico*, 442 U.S. 465 (1979) (search and seizure); *Harris v. Rosario*, *supra* (same); *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 7–8 (1982) (equality of voting rights);