

Revised Syllabus Order and Incorporation of Jefferson's Views

You're right that starting with the foundational historical context (original Week 3 as the new Week 2) before diving into the Territorial Clause (now Week 3) creates a more logical progression. This allows students to grasp the early American attitudes toward expansion—including the transitory theory of territories as temporary holdings en route to equal statehood, rather than permanent imperial possessions—before examining the constitutional text that enabled it. It emphasizes how the U.S. initially rejected European-style imperialism, viewing territories as "in training" for full integration, which starkly contrasts with the Insular Cases' framework.

Regarding Jefferson's reservations: Yes, this fits naturally into the Pre-Insular Foundations week. Jefferson had significant constitutional qualms about acquiring new territories like the Louisiana Purchase (1803), believing the Constitution lacked explicit authority for such expansions and initially favoring an amendment to legitimize it. He ultimately proceeded without one due to strategic urgency (e.g., fears of French control over the Mississippi), rationalizing it as a "guardian" acting for the nation's benefit. This ties into the transitory theory: Jefferson envisioned the U.S. as an "empire of liberty" where new lands would be settled by farmers, temporarily governed, and quickly elevated to statehood to avoid imperial overreach and preserve republican ideals. However, he also worried about rapid settlement disrupting the Union by creating states with divergent interests. These ideas highlight early anti-imperial sentiments that were later subverted in the overseas context of the Insular Cases. I've expanded the new Week 2 to include discussions, key concepts, and readings on this (drawing from historical analyses of Jefferson's writings and the Purchase's debates).

The rest of the syllabus flows sequentially from there (original Weeks 4-13 become new Weeks 4-13), with minor tweaks to transitions for better continuity. Here's the updated outline:

Week	Topic	Key Concepts & Discussions	Required Readings	Assignments/Activities	
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1	Introduction to US	Overview of current territories (Puerto Rico)	- Excerpts from "The Insular Cases and the	Icebreaker discussion: What makes a territory "American"?	
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U.S. Territories (1787-1898)		Insular Cases and the American Empire	Makes a territory American?	
Territories:	Rico, Guam,	Emergence of "American Empire" (Ch.	Submit 1-page response on	
History and Overview	American Samoa, U.S. Virgin Islands, Northern Mariana Islands); Spanish-American War (1898) and territorial acquisition; why this topic is under-taught; teaser on continental vs. insular distinctions and early anti-imperial ideals.	1-2). - ABA Resolution 300 and accompanying report. louisianastatemuseum.org	preconceptions of territorial status.	
2	Pre-Insular Foundations: Early Territorial Law	Northwest Ordinance (1787) as a model for transitory governance toward statehood; Louisiana Purchase and Jefferson's reservations (constitutional authority, need for amendment, rationalization as "guardian" for the nation); transitory theory of territories as temporary, non-imperial holdings to preserve a "republic of farmers" and avoid European colonialism; concerns over Union	- Excerpts from "Constitutional Law Outline" (section on empire and annexation). - "U.S. Territories' Right to Statehood Through Constitutional Liquidation" (excerpt on Ordinance rights). - Supplemental: Jefferson's writings on the Louisiana Purchase (e.g., from Founders Online: "Constitutional Amendment on Louisiana" editorial note); founders.archives.gov "The Louisiana Purchase: Jefferson's constitutional gamble"	Reading response: How did Jefferson's anti-imperial views and the transitory theory foreshadow (or contrast with) Insular exceptionalism? Group debate: Statehood paths as models or contrasts for modern territories.

disruption from (National Constitution
divergent state Center);
interests; Dred constitutioncenter.org
Scott v. Sandford Utah Enabling Act
(1857) and territorial (1894); Oklahoma
implications; paths Enabling Act (1906);
to statehood with McGirt v. Oklahoma
case studies like summary.
Utah (religious
conflicts, federal
interventions via
Enabling Act) and
Oklahoma (Native
land issues, Dawes
Act allotments,
enabling acts);
contemporary
echoes in tribal law
(e.g., McGirt v.
Oklahoma, 2020)
and federalism.

3	The Territorial Clause and	Congressional authority under Art	- U.S. Const. Art. IV, § 3, cl. 2	Activity: Analyze how plenary power evolved from
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Week	Topic	Primary Source	Secondary Sources	Power Overview
	Plenary Power	IV, § 3, cl. 2; plenary power doctrine; links back to pre-Insular history (e.g., how transitory theory influenced early interpretations); comparisons to immigration plenary power (e.g., Chae Chan Ping v. United States, 1889).	- "Plenary Power: Teaching The Immigration Law Of The Territories" (excerpt on plenary power). - Territories: Powers of Congress Thereover (Justia overview).	continental transitory models to insular contexts, considering Jefferson's reservations.
4	The Core Insular Cases: Tariff and Trade Disputes	DeLima v. Bidwell (1901); Goetze v. United States (1901); Dooley v. United States (1901); Armstrong v. United States (1901); Downes v. Bidwell (1901); Huus v. New York and Porto Rico Steamship Co. (1901). Focus on Uniformity Clause and taxation; contrasts with pre-Insular tariff treatments in transitory territories.	- Full opinions: DeLima v. Bidwell; Downes v. Bidwell. en.wikipedia.org - Wikipedia summaries for context.	Case briefing assignment: Summarize Downes v. Bidwell's holding.
5	Expanding the Doctrine: Jurisdictional Issues	Dorr v. United States (1904); Balzac v. United States	- Full opinions: Dorr v. United States; Balzac v. United States	Discussion: Critique the "fundamental rights" vs. full

	Rights and Beyond	Porto Rico (1922); Fourteen Diamond Rings v. United States (1901); Crossman v. United States (1901). Jury trial rights in unincorporated territories.	v. Porto Rico. founders.archives.gov - "The Insular Cases: History and Significance" (ThoughtCo overview).	Constitution distinction, tying to early transitory precedents.
6	Incorporation Doctrine and Racist Underpinnings	Distinction between incorporated (e.g., Alaska) and unincorporated territories; inherent powers doctrine; racism in opinions (e.g., "alien races"); how this diverged from continental assimilation models rooted in transitory theory.	- "The Insular Cases Run Amok" (Yale Law Journal). - "Originalism and the Insular Cases" (Jotwell, 2025).	Guest lecture or video: On colonial legacies.
7	Citizenship in Territories:	Gonzales v. Williams (1904): Statutory	- Gonzales v. Williams; Tuaua v. United States	Midterm paper due: Analyze citizenship disparities.

	Birthright and Naturalization	citizenship (e.g., Jones Act 1917 for Puerto Rico); Non-citizen nationals in American Samoa (8 U.S.C. § 1408); parallels to Native American citizenship paths under transitory frameworks.	(2015); <i>Fitisemanu v. United States</i> (2021). - "Constitutional Citizenship in the U.S. Territories" (Lawfare).	incorporating historical transitory examples.
8	Organic Acts and Territorial Governance	Organic acts as "constitutions" for territories; Education, courts, and local governance (e.g., Guam Organic Act; Revised Organic Act of 1917); comparisons to enabling acts for states like Utah/Oklahoma.	- "Territorial Courts, Constitutions, and Organic Acts, Explained." - Excerpts from territorial organic acts.	Activity: Compare organic acts to state constitutions and transitory enabling acts.
9	Intersections with Immigration Law	Plenary power in territories; Exceptions in American Samoa and CNMI; Unauthorized migration.	- Excerpts from "Immigration and Citizenship" (Ch. 1, 2, 4). - CNMI Long-Term Resident Status (48 U.S.C. § 1806).	Simulation: Legislative debate on extending citizenship to American Samoans (adapted from sample exercise).
10	Modern Supreme	United States v. Vaello Madero	- United States v. Vaello Madero opinion.	Group presentations: Argue for/against overruling the

	Court Rulings and Criticisms	(2022); Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment (2020); Calls to overrule Insular Cases; links to deviations from transitory ideals.	history.com - "Saying What Everyone Knows to Be True" (Columbia Human Rights Law Review). constitutingamerica.org	Insular Cases.
11	Current Issues: Puerto Rico and Economic Disparities	PROMESA (2016); Debt crises; Voting rights in federal elections; contrasts with historical transitory statehood processes.	- "Reexamining the Insular Cases. Again." (Harvard Law School). senate.gov - Excerpts from "American Empire: Puerto Rico and the United States Territories" course description. archives.gov	Policy discussion: Statehood vs. independence.
12	Pacific Territories: Guam, American Samoa, and CNMI	Cultural preservation defenses; Military presence; Self-determination; how these challenge early anti-imperial transitory theories.	- "A Qualified Defense of the Insular Cases" (NYU Law Review). - "The Originalist Case Against the Insular Cases."	Reading response: Balance cultural autonomy with constitutional rights.
13	Future of Territorial Law:	Proposals for incorporation,	- "Including the U.S. Territories in the	

Reforms and statehood, or Constitutional Law
Democratic independence; Role Course" (full article).
Theory of international law; - "How We Study the
Final reflections on Constitution:
empire in Rethinking the Insular
constitutional law, Cases."
including lessons
from Jefferson's
transitory vision.