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Other U.S. territories also continue to struggle with status issues

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The Virgin Islands is not the only part of the United States with issues of self-governance and self-determination to contend with in the present day.

The United States has four other unincorporated territories under its flag. Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands and American Samoa all have the same sorts of questions of political status and self-determination to grapple with.

Three of these are unincorporated territories, just like the Virgin Islands. One of them is a covenant commonwealth.

People born in three places are U.S. citizens. In one, they are considered U.S. nationals.

One is still governed by an Organic Act. One has no federal court, and one has no representation in Congress.

To this day, none has taken a step forward to make a final determination of their political status.

"They all face the same indefinite status, but the dynamics of the relationship seem different," said Jon Van Dyke, a constitutional law professor at the University of Hawaii and an expert on the U.S. unincorporated territories. "They're all dealing with it in different ways."

Van Dyke said that some years ago, officials from the five unincorporated territories and commonwealths came together in Washington, D.C., to try to discuss the issues facing them.

"They all came away with different ideas," Van Dyke said. "People enjoyed working together, but there was no common work plan."

Arnold Leibowitz is a Washington, D.C.-based attorney who has advised and provided counsel for constitutional, status and governance issues in the Virgin Islands, Guam,

Palau, the Northern Mariana Islands, American Samoa, Washington, D.C., and Puerto Rico. He said that in the territories today, people are more deeply affected by the same sorts of larger problems as people in the states - like the lack of access to quality health care. These problems are more governance issues and can be solved by better leaders, and less political status issues, Leibowitz said.

"I don't think there is a real passion for these issues anywhere," Leibowitz said. "Right now, I don't see any territory interested in status change."

Pedro Malavet is a professor at the University of Florida's Levin School of Law who has written about the United States' relationship with Puerto Rico and teaches a class about the history and legal issues of the U.S. territories. The hold that the United States government has on all of the territories, he said, is also a disincentive for any sort of change.

"You can have as much interest in having self-government as you want," Malavet said. "Really, what you are doing is engaging in a request for Congress to do something."

American Samoa

The Samoan Islands, located in the southern part of the Pacific Ocean, have long been of strategic interest to Western nations. In the late 19th century, Germany, Great Britain, and the United States all tried to lay claim to the island chain.

In 1900, Samoan chiefs on the islands of Tutuila, Manua and Samoa signed a deed of secession to the United States. The deed, which Congress did not formally accept until 1929, stated that chiefs of local towns would be able to retain rule over those municipalities, but general control and governance of the islands would remain with the United States.

The United States initially implemented military government in American Samoa, and Congress never formulated an Organic Act for the territory. The absence of an Organic Act means that American Samoa is not only an unincorporated territory of the United States, but it is also an unorganized territory - lacking a fundamental governing document from the federal government.

American Samoa's governance stayed under the U.S. Navy until 1951, when it was transferred to the jurisdiction of the U.S. Interior Department. A local constitution was drafted in 1960 and revised in 1967. Both of these constitutions were approved by the U.S. Interior Department and put into effect.

Former High Court of American Samoa Chief Justice Arthur Morrow was a part of both groups that drafted constitutions for the territory.

"I kept in touch with the Department of the Interior, informing it as to what the committee was writing into the draft constitution," Morrow wrote in his memoirs,

published in 1974.

While both constitutions were accepted by the Interior Department, Congress passed a law in the 1980s stating that the territory's constitution cannot be changed without approval from the federal government.

American Samoa has some interesting governance quirks. It is not a part of the federal court system, although it is a part of the United States. Rulings from the High Court of American Samoa are appealed to the federal court in Hawaii. In his memoirs, Morrow wrote that Samoans have been loath to become part of the federal court system because its rulings would be likely to go against traditional Samoan values - like native land ownership and the chief system - enshrined in the territory's constitution.

Additionally, people born in American Samoa are not U.S. citizens, but they are U.S. nationals. This distinction means that native-born Samoans are affiliated with the United States, but none of the rights and privileges of U.S. citizenship apply to them.

Last year, American Samoa selected a Future Political Status Study Commission to take a look at other U.S. territories and freely associated states to make recommendations for American Samoa's future. Van Dyke and Leibowitz served as counsel and advisers to the commission, which released its report earlier this year.

Van Dyke said that the members of the commission are content with the status quo and are especially interested in preserving their land rights, which the U.S. government could change if a closer relationship were sought.

"The unorganized and unincorporated status is favored by a majority of American Samoans for two main reasons: (1) The continuation as a part of the United States, and (2) The freedom to live by our culture," the report states. "The twin pillars of our political status are, therefore: association with the United States and continuation of the Samoan culture."

Northern Mariana Islands

Until 1975, the Northern Mariana Islands were a part of the U.S. Trust Territories of the Pacific Islands formed under the auspices of the United Nations after World War II. In the decades following the war, the trust territories were all either moving toward independence or a closer relationship with another country.

The Northern Mariana Islands, a 14-island archipelago in the Pacific Ocean, sought to move closer to the United States. A covenant between the islands and the United States that brought that closer relationship was approved, but it had many caveats. One was that a local constitution be drafted and ratified.

New Jersey attorney Neal Solomon had just graduated from law school and started working for a small law firm. The Commonwealth of the Northern Mariana Islands

hired Solomon's firm to be legal counsel for its constitutional convention, and Solomon found himself in a crash course on political relationships, constitutions and forging partnerships.

"They had just negotiated a deal with the United States and were very gung-ho," Solomon remembered.

Because the Northern Mariana Islands are a negotiated covenant commonwealth, they received some governance rights that other territories and states do not have. They have control over immigration and offshore territorial waters, but the island territory has no elected representative to Congress.

The covenant does not allow *carte blanche* authority to continue in the hands of the commonwealth's government. It provides that Congress can take away immigration control from the commonwealth and put it into the federal government's hands. Under the leadership of V.I. Delegate to Congress Donna Christensen in the House of Representatives and the U.S. Senate Committee on Natural Resources, legislation to place the commonwealth under federal immigration laws is currently under consideration.

"The CNMI needs stability and the Marianas region needs security. This bill makes a leap in that direction," Christensen said in a July press release announcing the legislation. "There is real opportunity here to address past abuses and unpredictable immigration policies that did not result in a healthy and productive CNMI economy. The U.S. military's reinvestment in the Marianas region should make everyone want to make these islands secure."

In letters written to publications in June, former chief justice of the Commonwealth of the Northern Mariana Islands Supreme Court Jose Dela Cruz said that Congress ought to proceed carefully and with full input from the people of the commonwealth.

"The people of the CNMI may be politically powerless vis a vis the U.S. government, but the people of the CNM should not be treated as second-class citizens, as some commentators and certain individuals would like others to think," Dela Cruz wrote. "Any 'implementing' legislation enacted by the present U.S. Congress should and must further the intent of the Covenant. It should not diminish the Covenant's purpose, intent and objectives; nor should any implementing legislation adversely affect the welfare and well-being of the people of the CNMI. The people of the CNMI, it should be emphasized, are a party to that solemn agreement, not 'a party after the fact' as some bureaucrats appear to think."

Christensen has also introduced legislation to give the Commonwealth of the Northern Mariana Islands its own nonvoting delegate to Congress.

Leibowitz said that the Northern Mariana Islands' economy has been hurt by Japan's recent economic recession, and has had issues with illegal immigrant labor coming from

China and Korea. The issue of providing the commonwealth with a nonvoting representative in Congress also has long been discussed, he said.

The need to have more control over labor and Customs issues, as well as the right of the people of the Marianas to be represented in Washington are what Leibowitz thinks is driving the pending legislation. Changing the commonwealth's status or its relationship with the United States does not seem to have anything to do with it, he said.

"These are just good governance issues," he said.

Malavet said that the bills pending before Congress drive home the federal government's relationship with the Mariana Islands.

"If they want something, they can take it away," he said.

Guam

An island in the Pacific Ocean, Guam has historically been regarded as a strategic military stronghold. At the conclusion of the Spanish-American War in 1898, the United States took control of the mid-Pacific island from Spain.

The island, which is currently home to large U.S. military bases, was under military rule until 1950, when Congress approved an Organic Act for Guam and gave residents statutory U.S. citizenship.

After Congress passed the 1976 law authorizing the Virgin Islands and Guam to write their own constitutions, the territory elected delegates to a constitutional convention.

Attorney Solomon was invited to serve as legal counsel to that convention as well. He remembers that the convention did not go smoothly.

"In Guam, there was a lot of hostility," Solomon said. "Some of the delegates put in things that they shouldn't. They tried to pass something like controlling labor or immigration, limiting the military's rights."

Leibowitz was also a legal adviser to Guam's constitutional convention. He remembers that the president of the convention, Carl Gutierrez, threw his hat into the political ring and announced his candidacy for governor in 1978. Gutierrez made the constitution his main political issue in the campaign, Leibowitz said. By identifying his gubernatorial candidacy with the constitution, people who did not support one did not support the other.

"Suddenly, he had everyone against him," Leibowitz said.

Gutierrez lost his 1978 bid for governor, but was successful in a second try 16 years

later.

In a 1979 referendum, the proposed constitution was defeated.

Since then, the territory has changed its focus from drafting a constitution to determining its political status.

Guam is just north of the Commonwealth of the Northern Mariana Islands, and has proposed changing itself into a commonwealth similar to its neighbor. Guam's Commission on Self-Determination sent the island's voters a proposal that would turn the territory into a commonwealth. Under this plan, Guam would have greater autonomy - allowing island leaders to have a say in domestic and international relations and requiring mutual consent from the federal government and Guam for federal laws to apply to residents of the territory.

For more than a decade, Guam's nonvoting delegate to Congress proposed bills that would enact Guam's transition to commonwealth. In 1997, the House of Representatives' Committee on Resources considered the legislation at a hearing.

The proposal did not receive a favorable reception. In an opinion on the legislation, the U.S. Justice Department stated that although the federal government has been inconsistent in allowing contracts with commonwealths requiring approval from both sides to apply federal laws, those clauses run counter to existing U.S. law and are completely unenforceable.

Then-Deputy U.S. Interior Secretary John Garamendi told Congress that President Bill Clinton's administration felt the mutual consent provision was unconstitutional, and added that nothing could be established preventing future Congresses from unilaterally modifying the law creating Guam's commonwealth.

Since then, plans to further determine Guam's status have been placed on the back burner for the most part. Guam currently has an active Commission of Decolonization, but no plans to go forward with a status plebiscite.

"It seems like everyone is still locked in this sort of limbo status," Professor Van Dyke said. "Like they're stranded out in the ozone."

Leibowitz said that the nativist movement on Guam looked larger than it actually was. A few people with loud voices agitated for the changes, which many Guam residents might not have agreed with. Today, the main internal issue involving the United States that Guam is dealing with its plans to relocate more military troops to the island territory.

"The status change issue is dead," Leibowitz said.

Puerto Rico

The Virgin Islands' closest United States neighbor has a long and storied history of status struggles. While its official name indicates that Puerto Rico is a U.S. commonwealth, in actuality the island remains an unincorporated territory of the United States.

People born in Puerto Rico are United States citizens. Like their neighbors in the Virgin Islands, Puerto Ricans have no votes in Congress, no control over Customs and immigrations regulations, and no electoral votes to participate in electing the United States president. Different movements toward potential statehood have started and stopped throughout the last half-century with no definitive determinations reached.

Located to the west of the U.S. Virgin Islands, the United States acquired Puerto Rico at the conclusion of the Spanish-American War. Throughout the 20th century, the federal government used Puerto Rico to create a sort of template for territorial governance elsewhere.

Under the Foraker Act, which was passed by Congress in 1900 to establish basic governance in Puerto Rico, the island territory was granted a non-voting representative to the House of Representatives. To this day, the formula for the Puerto Rico congressional representative - a resident commissioner elected to a four-year term - has stayed the same. Aside from the name and term length, the job description and limitations of the Puerto Rican resident commissioner are much the same as those for any congressional representative from U.S. territories.

While the U.S. government was completing its purchase of the Virgin Islands in 1917, Congress passed laws to grant U.S. citizenship to all born in Puerto Rico.

And before Congress revised the Virgin Islands' Organic Act, it permitted Puerto Rico to draft its own constitution. The federal law allowing for a locally drafted Puerto Rico Constitution was codified in 1950, and Puerto Rican voters ratified their constitution in 1952. The construction of the Puerto Rico Constitution, which allows the island to be internally self-governing, kept it from appearing on the United Nations' list of non-self-governing territories.

Malavet said that the construction of Puerto Rico's constitution and its status as a commonwealth makes it appear that the island is part of a compact that is equally binding between the U.S. and Puerto Rico. But appearances, he said, can be deceptive. As with any territory, the United States has the ability to unilaterally alter any portion of its relationship with Puerto Rico.

"The name 'commonwealth' is a huge misnomer," Malavet said. "It is suggestive of a British commonwealth, which is something completely different. All of the labels that are given are carefully chosen. The U.S. is happy to execute colonial power, but it does

not want to be seen as a colonial power."

Puerto Rico's political status struggle is often a part of the commonwealth's debate, with political parties on the island based on different status options - like statehood and commonwealth.

"It's the only thing we do," Malavet said jokingly.

Since the 1960s, Puerto Ricans have voted on several status plebiscites - elections where they cast ballots to try to determine their future political status. All of them ended with inconclusive results. In most of them, the majority of voters have favored the commonwealth status - though results are nonbinding because the election and status options were not first authorized by Congress.

Leibowitz recalled one of the status plebiscites. The three options that voters could choose from were keeping the status quo, beginning the process to become a state, or NOTA - none of the above. The option garnering the most votes was NOTA, which was devastating to the statehood movement, Leibowitz said.

"If you can't beat nothing, you are nothing," Leibowitz said.

Malavet said that the national spotlight - as well as important attention from Washington policymakers - was on Puerto Rico in the early 2000s when massive protests about U.S. Navy bombing and military exercises on the island of Vieques resounded. Bombing stopped on Vieques and Washington seemed to be poised to pay more attention to Puerto Rico's other issues, but the terrorist attacks of Sept. 11, 2001, turned policymakers' eyes to other global matters, Malavet said.

"The inattention of Congress was very demoralizing," Malavet said. "It brings back that we have very little power. That's what makes a movement lose steam."