IS FLORIDA STILL A STATE? THE IMPLICATIONS OF THE ABROGATION OF THE ADAMS-DeONIS TREATY ON FLORIDA'S STATUS UNDER INTERNATIONAL LAW.

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Abstract: The United States acquired the Spanish colonies of East and West Florida in 1819 by virtue of the Adams-deOnis Treaty. At the close of the Spanish American War of 1898, the United States and Spain signed a treaty which “Abrogated” and Annulled” all prior treaties, including the Adams-deOnis Treaty. This article proposes that having handed over sovereignty of the Florida territory, the United States merely occupies the area as a colonial power, subject to the provisions of the United Nations Charter, which provides for territorial self-determination of colonial peoples.

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INTRODUCTION.

Is Florida still one of the United States after April 14, 1903? On that date, the Treaty of Friendship and General Relations of 1902 entered into force.¹ This treaty “abrogated” and “annulled” mostly all the prior treaties between the Spanish Crown and the United States, including the 1819 treaty under which Spain ceded its colonies of East and West Florida to the American government. It was these territories which later were incorporated into the United States as the State of Florida. This article raises some of the tantalizing premises which open up if the United States did actually abrogate the Adams-deOnis Treaty. If the United States continues to occupy the Florida territories in violation of the anti-colonial provisions of the United Nations Charter, and international law, the only alternative legally available to it is to allow the self-determination process specified in the Charter to unfold. The inhabitants of the Florida territories, much like the peoples in Alaska, Hawaii, Puerto Rico, and Micronesia before them, should be given the option to decide what future relationship they will maintain with the United States independence, statehood as one or more states, or commonwealth.

DISCUSSION.

a. The Adams-DeOnis Treaty as the “foundation” of Florida Statehood.

A digression into the historical background is essential to understanding this complex issue. The United States had long coveted Spain's Florida territories.² In 1810 and 1811, Congress authorized the President to take possible pre-emptive possession of the territories of East and West Florida in


² After the Louisiana Purchase in 1804, Spanish Florida was largely cut off from the rest of the Spanish possessions in Mexico and the Southwest. This intensified the American resolve to annex the Florida territories into the United States as quickly as possible.
anticipation of the War of 1812 which was wildly anticipated by the Southern states and dreaded by the North. With the war over, the United States once again began to covet the Floridas. In 1819, under pressure of invasion by General Andrew Jackson, the Kingdom of Spain, the dominant colonial power in the Americas since Columbus, was forced to relinquish sovereignty of its colonies of East and West Florida to the United States. President James Monroe dispatched General Andrew Jackson to undertake a minor police action into Florida on the Georgia to quell bandits which were harassing

3 As early as 1810, American settlers in the area around Mobile, which was then part of West Florida, were urged on by Washington in continuing attempts to declare independence from Spain and join the United States. Joseph Burkholder Smith, James Madison's Phony War: The Plot to Steal Florida, 107 (Arbor House, 1983). In 1811, President Madison in his State of the Union Address, stated the intention for West Florida to be brought into the United States. Later that year, Congress passed a join resolution that authorized the president to take possession of the Floridas if there was a threat of invasion. Agents of the President were instructed to look for reasons to claim that a foreign power had made advances into the Florida Territories. Id. at 117. At the same time, secret negotiations with the Spanish Governor Folch were undertaken to surrender the territories to the United States but proved fruitless. Id. at 123-25.

Congress passed a Resolution authorizing the President to take possession of the Florida Territories so that they did not pass into the hands of a foreign power. Thereafter, Congress passed an Act (An Act concerning an act to enable the President of the United States under certain contingencies to take possession of the country lying west of the river Perdido, and south of the state of Georgia and the Mississippi Territory, and for other purposes and the declaration accompanying the same,” (March 3, 1811) (3 Stat. 471)) keeping the Congressional authorization a secret. 3 Stat. 471. The headnote to these acts and resolutions when finally published in Statutes at Large, in 1845, demonstrates that the United States had a long political history of coveting the Florida Territories and made significant efforts to keep the facts from public scrutiny until after Florida had become a State.

The following resolution and acts passed in 1811 and 1812 were not promulgated until their publication in “the session acts” of the Fifteenth Congress ending April 20, 1818. They are altogether omitted from Justice Story's edition of the laws of the United States, and they are also committed in Davis' and Force's editions of the laws from 1816 to 1827, published under the authority of Congress in 1822 and 1827. They were passed in secret sessions of the Eleventh and Twelfth Congress.

3 Stat 471.


5 President Monroe dispatched General Jackson to undertake a minor police action to quell the troublesome bandits that were invading the borders of southern Georgia from the Spanish territory of Florida. With this thin mandate, Jackson proceeded to invade East Florida, capture Pensacola and the fort of St. Marks, execute several Seminole Indians and English subjects accused of aiding in the skirmishes, and replace the Spanish Governor with his own American appointee. He urged President Monroe to annex the territories at once into the United States. Francis Russell, Adams: An American Dynasty, 190 (American Heritage Publishers 2002).

6 The pressure of the United States government to coerce a given territory to become a State has long been recognized as a violation of international law. The United States has agreed in principle that the annexation of Hawaii was done by coercion and force. See, “Apology Resolution,” Pub. L. 103-150, S.J. Res. 19., 103d Cong., 107 Stat. 1510 (1993), see additionally, “Nation of Hawai'i Homepage” http://www.hawaii-nation. org.
them and fleeing to safety in Spanish Florida. With this thin mandate, Jackson proceeded to invade East Florida, capture Pensacola and the fort of St. Mark's as a “friend of Spain,” execute several Seminole Indians and English subjects accused of aiding in the skirmishes, and replaced the Spanish Governor with his own American Appointee. He urged President Monroe to annex the Florida Territories at once. Jackson wrote to Secretary of War John C. Calhoun that the articles of capitulation “amount to a complete cession [sic] to the u States of that portion of the Floridas under the government of Don Josse Massot.” International pressure forced Monroe to recall Jackson, but the American intentions were clear. Spain could not withstand an American invasion and reopened treaty negotiations to turn over the undefendable colonies to the United States on the best terms possible. After much negotiation, spearheaded by the tenacious John Quincy Adams, later elected president and Spanish Minister Luis de Onis, Spain relented and signed the treaty relinquishing the Floridas to the United States in 1819.

In Article II of the Treaty, the King ceded “to the United States, in full property and sovereignty, all the territories which belong to him, situated Eastward of the Mississippi, know by the

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7 There is strong circumstantial evidence that President Monroe had prior knowledge of Jackson's plan and approved of the covert scheme to oust the Spanish. Jackson wrote to President Monroe in a confidential letter that he would seize the Florida territories by force if the President would indicate his consent. If the plan failed, Jackson wrote that he would publicly accept the blame for the decision. When the outcry over the full scale invasion of the Spain's Florida Territories, including the added British outcry over Jackson's execution of two of its subjects, became intense, Monroe denied that he had ever read Jackson's letter. Jackson later wrote that he destroyed the letter from the President's close advisor that confirming that the President approved of Jackson's actions. H.W. Brands, Jackson: His Life and Times, 323-24 (Doubleday 2005).

8 Id. at 329. In public, Jackson portrayed his motives as purely defensive. In a letter published by the Daily National Intelligencer of Washington, D.C., he wrote (speaking of himself in the third person) that “Major General Andrew Jackson has found it necessary to take possession of Pensacola. He has not been prompted to this measure from a wish to extend the territorial limits of the United States, or from any unfriendly feeling on the part of the American Republic to the Spanish government. The Seminole Indians, inhabiting the territories of Spain, have, for more than two years past, visited our frontier settlers with all the horrors of savage massacre --- helpless women have been butchered and the cradles stained with the blood of innocents.” Of Pensacola, Washington Daily Intelligencer, July 10, 1819 at 3.


10 Treaty of Amity, Settlement and Limits, (Adams-deOnis Treaty), Feb 22. 1819, TS 327, (entered into force Feb. 22 1821). Adams also expressed interest in annexing the Spanish possessions of Cuba and Puerto Rico into the United States and those sentiments were often used to justify the expansionist policies of late 19th and early 20th century America. Annexation: The Statesman of Massachusetts on Acquisition of Territory, N.Y. Times, Jan. 9, 1871 at 1.
name of East and West Florida. The territory was granted solely to the United States. Article VI of the Treaty agreed that at some time in the future the United States would incorporate the territories into the United States as “states” as provide by law. The first part of the transfer from the Spanish Crown to the United States is “self executing” and the admission of the territories as States is not self executing. The United States accepted the lands and provided for a territorial government.

The Adams-de Onis Treaty has always been the bedrock foundation of Florida government. The above named resolutions referred to the authority granted under the Adams-de Onis Treaty. Florida adopted its first “constitution” in 1838 and the boundaries of the State were described as “the Territories of West and West Florida, which by the treaty of amity settlement and limits between the United States and His Catholic Majesty, on the 22\textsuperscript{nd} day of February, A.D., 1819, were ceded to the United States.”

Despite having created a “constitution” and working as an adopted State of the United States, the State of Florida was not a State of the United States. The bitter division between slave and free states before the Civil War prevented Florida from being recognized as a true state until 1845. At that time, Congress passed an act admitting the State of Florida into the United States as a single state, not the two as understood by the Adams-de Onis Treaty or petitioned for by the Territorial Legislature.

\begin{table}[h]
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11 & 11 Bevans at 529. \\
12 & \textit{Id.} at 530. \\
13 & An Act to Authorize the President of the United States to take Possession of East and West Florida, and Establish a Temporary Government Therein. 3 Stat. 523 (March 2, 1819). \\
15 & Fla. Const. Art. XII Sec. I (1838). \\
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The slave state Florida was paired with the free state Iowa to preserve the putrid balance between slave and free states that kept the scab on the wound of slavery before the Civil War. The boundaries of the new State of Florida were described “in the treaty of amity, settlement, and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.” At this point, however, the admission to the Union was not automatic. The State itself must also exercise its sovereignty to accept admission into the Union. The new state legislature created a statute, practically unchanged since 1845, which is currently embodied in Florida Statute Section 6.01 approving “the terms of admission contained in the Act of Congress.” Upon actual admission to the Union, the “de facto” state which had been functioning all that time, became a legitimate state and the Constitution of 1838 became fully operable. All these actions were based on the explicit language and legal foundations of the Adams-deOnis and the State of Florida functioned as one of the United States until the 19th century.

b. The Spanish American War

Tensions had been growing for quite some time to annex more of the Spain's Latin American and Far Eastern colonies into the United States. In 1898, Spain and the United States entered into a conflict when the battleship Maine exploded in Havana harbor, finally launching the Spanish-American War. This short war was concluded with the Treaty of Peace (Treaty of Paris)

17 An Act for the Admission of the States of Iowa and Florida into the Union, 5 Stat. 747 (March 3, 1845).
the American Commissioner, “The treaty,” he said during the negotiations with the Spanish envoys, “can contain anything the victors put into it.”

The short war left a number of outstanding treaties between the United States and the Kingdom of Spain. Thereafter, the two countries undertook to revamp and “clean house” of unwanted treaties the Treaty of Friendship and General Relations of 1902 was signed with that purpose. According to the official United States publication, *Treaties in Force*, this treaty is still in full force and effect. As Justice Scalia wrote for a unanimous court in *Zicherman v. Korean Air Lines*, “a treaty ratified by the United States is not only the law of this land, see Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history (*travaux preparatoires*) and the post-ratification understanding of the contracting parties.” The post-ratification understanding of the parties, as expressed in numerous United States publications is that the Adams-deOnis Treaty is no longer in force by virtue of the 1902 Treaty.

For the purposes of this article, particular attention should be focused on Article XXIX of the 1903 treaty. It reads in its entirety as follows:

All treaties, agreements, conventions and contracts between the United States and Spain prior to the Treaty of Paris shall be expressly abrogated and annulled, with the exception of the Treaty signed the seventeenth of February 1834 between the two countries for the settlement of claims between the United States and the Government of his catholic Majesty, which is continued in force by the present Convention.

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20 33 Stat. 2105; TS 422; 11 Bevans 628 (signed at Madrid, July 3, 1902, entered into force April 14, 1903).
21 In 1916, the United States abrogated Articles XXIII and XXXIV by the provisions of the Seamen's Act, “An Act to Promote the Welfare of the American Seamen in the Merchant Marine of the United States,” 38 Stat 1184 (March 4, 1915). However, in 1966 President Lyndon B. Johnson reviewed the treaty and revived the deleted Articles by Executive Order (Executive Order 11267, 31 FR 807 (Jan. 19, 1966). The President had the capability to delete or revise any supposed “obvious” mistakes in Article XXIX but did not choose to do so.
23 U.S. at 226.
Therefore, the intent of the parties to this treaty could not be clearer and less ambiguous. “Abrogate” and “annul” are ancient words of settled legal meaning. All the treaties including the Adams-deOnis Treaty of 1819, are no longer in force.

**LEGAL CONSEQUENCES OF THE ABROGATION OF THE ADAMS-DEONIS TREATY.**

*a. The United States Cannot Exercise Jurisdiction Over Territory it has Legally Transferred to another Sovereign by Treaty.*

There is no constitutional requirement that legislation dealing with transfer of territory be treated any differently than ordinary legislation. Therefore, the customary rules of statutory interpretation must govern the analysis of the treaty claims. Did the United States and the Kingdom of Spain intend that the 1902 treaty abrogate the Adams-deOnis Treaty?

A definition of a word is controlling and must be followed in any interpretation provided by the courts. Where it is not defined, the court has relied on the common dictionary definition. Bouvier's Legal Dictionary, the standard of the late 19th and early 20th centuries, would give us an idea of the intention of the drafters of the document. In it, “Abrogation” was defined as “2. Abrogation is express or implied; it is express when it is literally pronounced by the new law wither in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new or, in particular terms, as when it abrogates certain preceding laws which are named.” The two nations reviewed all the prior agreements and annulled and abrogated all of them with a few specific exceptions named in the treaty itself. In any official list such as Bevans, of all the treaties executed between the United States


and the Kingdom of Spain prior to the 1902 treaty, each and every one are without exception considered to be abrogated and annulled---including the Adams-de Onis Treaty.\textsuperscript{27} The intention of the parties was clearly expressed. Bevans states in its headnote to the Adams-de Onis Treaty that it was “Terminated April 14, 1903 by treaty of July 3, 1902.”\textsuperscript{28} A treaty will not be deemed to have been abrogated or modified by a later statute unless the intention of Congress is \textit{explicit}. The Court held in \textit{Cook v. United States} that, “The repeal of a treaty, much like the repeal of a statute, acts upon all the events that follow it in time.”\textsuperscript{29} At the turn of the century, it was understood that Congress by legislation, could abrogate or modify a treaty.\textsuperscript{30} The parties undid the transfer of sovereignty in 1903 and have enacted no treaties or agreements to undo that transfer.

A specific congressional action, such as the 1902 Treaty, is not undone by a later statute on a general subject, such as that which might refer to the State of Florida in ordinary legislation.\textsuperscript{31} The intent to abrogate the 1902 Treaty must be clearly expressed.

If a treaty expresses a clear intent, then the Courts are bound to carry it out.\textsuperscript{32} “Abrogate” and “anull” are ancient words of precise legal meaning. A definition of a word is controlling and must be followed in any interpretation provided by the courts.\textsuperscript{33}

Sovereignty and jurisdiction are not set in stone. Instead, they are easily transferred in many

\textsuperscript{27} The Treaty of Paris is still in force and the remaining treaty not abrogated dealt with the payment of outstanding monetary claims and has been fulfilled by its terms. See, 11 Bevans at 537. In \textit{Bevans}, all others are no longer considered in force and effect after the 1902 treaty and the headnotes reflect that fact. (“It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”).

\textsuperscript{28} \textit{Id}. at 528.

\textsuperscript{29} 288 U.S. 102, 120; 53 S.Ct. 305, 311; 77 L.Ed. 641, 650 (1932); Reichert v. Felps, 73 U.S. (6 Wall.) 160 (1867).

\textsuperscript{30} \textit{La Abra Silver Mining Co. v. United States}, 175 U.S. 423, 460 (1899).


\textsuperscript{32} \textit{Inhabitants of the Township of Montclair, County of Essex v. Ramsdell}, 107 U.S. 147, 2 S.Ct. 391, 27 L.Ed. 431 (1883)(“It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”) 107 U.S. at 152.

\textsuperscript{33} \textit{The Reform Party of Florida v. Black}, 885 So.2d 303 (Fla. 2004).
ways. The Republic of Texas was annexed into the United States by Joint Resolution of Congress.\textsuperscript{34} Hawaii was similarly incorporated into the United States by Joint Resolution after President Cleveland rebuffed the efforts to annex it by treaty.\textsuperscript{35} This was the only alternative left to the plantation owners who had deposed the former Queen at gunpoint.\textsuperscript{36} An informal count in the Senate showed that the treaty would have gotten fifty-five or perhaps fifty-eight votes, several short of the sixty one required for a two thirds majority.\textsuperscript{37} The Joint Resolution was signed into law by President McKinley after President Cleveland left office\textsuperscript{38} and lauded by the public as a “war measure” since the United States needed the base as a coal station for its newly acquired Pacific Fleet occupying the Philippine Islands.\textsuperscript{39}

As an more modern example, it merely took an act of the Florida Legislature to transfer all of its sovereignty and jurisdiction over the area of Everglades National Park to the United States government in the 1930s, despite the fact that Florida thereafter considered the disputed lands to be its sovereign territory.\textsuperscript{40} In \textit{U.S. v. Daye}, the Court held that it was not territory of the State after the transfer and the State had no jurisdiction on that land.

As this discussion has shown, the United States and the Kingdom of Spain willingly and knowingly entered into the 1903 Treaty which they intended to abrogate and annul all prior treaties with limited exceptions. A treaty is not just words. It is a legal document designed to carry out some

\textsuperscript{34} “Joint Resolution for Annexing Texas to the United States,” 5 Stat. 787, 28\textsuperscript{th} Cong. 2d Sess. (Approved, March 1, 1845).
\textsuperscript{35} “Mr. Cleveland on Expansion,” N.Y. Times, Dec. 8, 1898 at 1.
\textsuperscript{36} Id.
\textsuperscript{37} Senate Polled on Hawaii, N.Y. Times, July 7, 1898 at 7.
\textsuperscript{38} Hawaii is Now American, N.Y.Times, July 8, 1898 at 7.
\textsuperscript{39} Marshall Everett, “Memorial Edition: Complete Life of William McKinley and Story of his Assassination,” 252-53 (n.p., 1901). The occupation of the Philippine Islands was intended to be a temporary measure until such time as the Philippine people were able to obtain independence. The Philippine Independence Act of 1933, Pub. L. 311, 47 Stat. 761 (1933) also called the Hare-Hawes-Cutting Act, provided for a temporary commonwealth for ten years to be followed by full independence. This legislation was approved by Congress but rejected by the Philippine people because it gave too much power to the United States military. However, the next year, after some negotiations to remove or temper the offending positions a new act, Philippines Independence Act, Pub. L. 127, 48 Stat. 456 (1934), also called the Tydings-McDuffie Act, was passed by Congress and accepted by the Philippine people in 1934. Arnold H. Liebowitz, Defining Status: A Comprehensive Analysis of United States Territorial Relations, 54 (Kluwer, 1989). In some ways, Puerto Rico takes its view of Commonwealth status, and ultimate goal of independence, from the Philippine Model. Id. at 56.
\textsuperscript{40} 696 F.2d 1305, 1307 (11\textsuperscript{th} Cir. 1983).
act. In this case, the transfer of sovereignty of East and West Florida to the United States. Any occupation of the territory handed over to another sovereign nation by treaty is limited to the political right to temporarily “govern and police the territory” not to alter property rights between individuals.\footnote{See, San Lorenzo Title & Improvement Co. v. Caples, 48 S.W.2d 329, 336 (Tex. App. 1932).} The United States has a long standing commitment to the principles of decolonization expressed in the United Nations Charter and the various General Assembly Resolutions attempting to In this case, there is a clear cession of sovereignty over the territory, as a temporary custodian the United States cannot alter fundamental rights, such as property.

There are many references to “the State of Florida” in later documents and legislation, but that by itself does not mean the United States intended to abrogate the 1903 Treaty and unilaterally stake a claim on the Spanish territories. It has been settled since the foundation of American government that a treaty takes precedence over an inconsistent state statute.\footnote{Charlton v. Kelly, 299 U.S. 447, 463; 33 S.Ct. 945, 950; 57 L.Ed. 1274, 1281 (1912).} A specific statute is not submerged by a later one on a general subject.\footnote{Randall v. Loftsgaarden, 478 U.S. 647, 106 S.Ct. 3143, 92 L.Ed.2d 525 (1986); Radzanower v. Touche Ross Co, 426 U.S. 148, 96 S.Ct. 1989, 48 L.Ed.2d 540 (1976).} Further, a treaty will not be deemed to have been abrogated or modified by a later statute unless the intention of Congress is \textit{explicit}. As stated previously, the Court held in \textit{Cook v. United States} that, “The repeal of a treaty, much like the repeal of a statute, acts upon all the events that follow it in time.”\footnote{288 U.S. 102, 120; 53 S.Ct. 305, 311; 77 L.Ed. 641, 650 (1932); Reichert v. Felps, 73 U.S. (6 Wall.) 160 (1867).} The parties undid the transfer of sovereignty in 1903 and have enacted no treaties or agreements to undo that transfer. A treaty is considered to be the “Supreme Law” of the land. The treaty cannot be considered to have been abrogated by Congress unless there was an express abrogation of it. There is a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action.\footnote{Trans World Airlines Inc. v. Franklin Mint, et al, 466 U.S. 243; 104 S.Ct. 1776; 80 L.Ed.2d 273 (1984); Morton v.} The intention of the legislature to repeal
must be clear and manifest.\textsuperscript{46}

There is only one way for Congress to express itself--Congress expresses itself by legislation.\textsuperscript{47} In this case, there is a clear cession of sovereignty over the territory by the ratification of the treaty by Congress. In \textit{United States v. Stuart},\textsuperscript{48} Justice Scalia's concurring opinion makes his view of the Court's standard clear, by stating that, “our traditional rule of treaty construction is that an agreement's language is the best evidence of its purpose and its parties' intent.”\textsuperscript{49} It should be noted in passing that Justice Scalia is the only member of the Court still sitting from the time when this Opinion was drafted and that should an issue of statutory interpretation come before the Court, his views would most likely remain the same. Congress, by legislation, and the President, by Executive Order, can alter the jurisdiction of the Courts. A treaty can divest the United States and its Courts of jurisdiction over property and individuals that would otherwise be subject to its jurisdiction.\textsuperscript{50}

The treaty provisions transferring the sovereignty of East and West Florida to the United States are clearly “self-executing.” By treaty, the Spanish Crown gives up its claim to the lands to the United States. There is nothing left to be done. A “self-executing treaty” requires no additional implementing legislation. Once the treaty is ratified, it is complete.\textsuperscript{51} By a later self-executing treaty, the parties undo

\textsuperscript{46}Mancari, 417 U.S. 535; 94 S.Ct. 247; 41 L.Ed.2d 290 (1974).
\textsuperscript{47}United States v. Borden Co., 308 U.S., 188, 198, 60 S.Ct. 182, 188 84 L.Ed. 181 (1939), (quoted with approval in Morton, 417 U.S. at 551).
\textsuperscript{48}Roeder v. Islamic Republic of Iran, 333 F.3d 228, 238, (D.C. Cir. 2003) ( "Courts have insisted on clear statement from Congress ...") Florida Department of Revenue v. New Sea Escape Cruises, Ltd., 894 So.2d 954 (Fla. 2005) (Legislative intent is the polestar of statutory interpretation and the Court must be guided by the plain meaning of the language contained in the statute),
\textsuperscript{49}489 U.S. 353 (1989).
\textsuperscript{50}Id. at 372. \textit{See also}, Connecticut National Bank v. Germain, 503 U.S. 249; 112 S.Ct. 1146; 117 L.Ed.2d 391 (1992) for the strident tone of the Court's view of judicial interpretation. ("When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete." Rubin v. United States, 449 U.S. 424, 430, 101 S.Ct. 698, 701, 66 L.Ed.2d 633 (1981)")\textsuperscript{49} Id. at 254.
\textsuperscript{51}U.S. v. Postal, 589 F.2d 862, (5th Cir. 1979); State v. Doehring-Sachs, 652 So.2d 420, 422 (Fla. 3d DCA 1995). (The Court held “\textit{Cook} and \textit{Ford} to stand for the proposition that self-executing treaties may act to deprive the United States, and hence its courts, of jurisdiction over property and individuals that would otherwise be subject to that jurisdiction.”) Postal at 875.
\textit{Haitian Refugee Center, Inc. v. Baker, 789 F.Supp. 1552 (S.D. Fla. 1991); Aerovias Interamer. De Panama v. Board of County Commissioners, 197 F.Supp. 230 (S.D. Fla. 1961)} The distinction can become flexible in practice. A non self-executing treaty can become fully operations as domestic law as though it were self-executing by the mere fact that the President, Congress, and Federal Agencies have acted in reliance on it to create policy. People of Saipan, By and
The passage of time itself cannot be indicative of the intent of the parties. An argument could be made that the passage of more than a century without any apparent disruption in the status quo should determine the understanding of the parties. However, there are other examples of long settled disputes of sovereignty which were discovered and found to be erroneous. The interpretation of the Jay Treaty of 1794, the Submerged Lands Act of 1953, and the controversy over the boundaries of the State of Florida for commercial fishing decided in the 1970s are just some of the examples where the plan language of treaties and Congressional acts went ignored or deliberately unrecognized by the United States.

The Jay Treaty of 1794 was signed by the United States and Great Britain to settle the lingering Canadian boundary questions. This treaty was enacted in 1794 and remained in the public consciousness as a valid enactment and was not questioned until the early 20th century. In 1929, the Supreme Court of the United States held in *Karmath v. United States*, that the War of 1812 between the United States and Great Britain had abrogated the Jay Treaty. The Court was faced with evidence that the parties continued to act as though the treaty was still in full force and effect, and as a result, the treaty should still be considered valid. The Court rejected this argument, stating that:

> It is true, as respondents assert, that citizens and subjects of the two countries continued to pass and repass the international boundary line. And so they would have done if there never had been a treaty on the subject. Until a very recent period, the policy of the United States, with certain definitely specified exceptions, had been to open its doors to all comers without regard to their allegiance. This policy sufficiently accounts for the acquiescence of


52 There is no question of the acquiescence of the State of Florida in the process. The intent of the 1902 Treaty was clear. The Adams-deOnis Treaty contained both a self executing provision to transfer the territory of the Floridas to the United States and a non-self executing provision which contained the provision for the eventual absorption of the Floridas Territory granted to the United States into the Union as one or more states. If the parties abrogated the treaty in full in 1902, then both provision were abrogated and the intent to transfer sovereignty of the territory absorbed into the Union and which was subsequently admitted as a State pursuant to the Treaty, was also clearly intended.


54 *See note 58, infra.*

the government in the continued exercise of the crossing privilege upon the part of the inhabitants of Canada, with whom we have always been on the most friendly terms; and a presumption that such acquiescence recognized a revival of the treaty obligation cannot be indulged.\textsuperscript{56}

In more recent times, the United States does not always agree with the straightforward reading of a long standing legislative document defining Florida's territorial boundaries. In 1868, the State of Florida presented its new draft constitution to Congress as a part of Reconstruction after the Civil War.\textsuperscript{57} That Constitution changed the prior reading which rested solely on the Adams-deOnis Treaty and fixed the coastal boundaries with more precision at “three marine leagues” This clear and concise definition remained unchanged into the 1950s when Congress enacted the Submerged Lands Act of 1953\textsuperscript{58} That Act gave the coastal states all lands within the boundaries of each of the respective States which are covered by non tidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter,...\textsuperscript{59} In response to a challenge by the Gulf States of Texas, Mississippi, Louisiana, Florida and Alabama, the Supreme Court of the United States determined the boundary claims of each of the states, reserving Florida's claim for special analysis.\textsuperscript{60} The United States refuted Florida's claim before the High Court, conceding that the constitutional boundary was present in a \textit{plain reading} of the language of the Constitution that had already been in existence for nearly a hundred years, but denying that Congress had “approved” it under the meaning of the Act. The State of Florida, the Court stated in a lengthy examination of the history, \textit{had} a required boundary of “three marine leagues” at the time

\textsuperscript{56} 379 U.S. at 242.

\textsuperscript{57} The 1868 Constitution was forced on the State of Florida in the wake of the state's deliberate stubbornness in refusing to afford the recently freed slaves any meaningful political rights. The 1865 constitution continued restrict the right to vote to “Every free white male person of the age of twenty-one years.” Fla. Const. Art VI. sec. 1 (1865).

\textsuperscript{58} Submerged Lands Act of 1953, 43 U.S.C. § 1301 \textit{et. seq.}

\textsuperscript{59} 43 U.S.C. § 1301(a)(3).

\textsuperscript{60} United States v. Florida, 363 U.S. 121 (1960).
of its readmission to the Union in 1868, and since its Constitution had been thoroughly examined and ultimately approved by Congress, it met the burdens of the Submerged Lands Act. The long settled plain language of the state's boundaries could not be ignored by the United States in that instance and should not be ignored by the United States in its interpretation of the plain language of the 1903 Treaty which abrogated the grant of the Florida Territories under the Adams-deOnis Treaty.

The Florida Constitution of 1968 which superseded the Constitution of 1885 changed the boundaries of the state in significant ways, drawing straight lines where the older document had followed natural boundaries. In the subsequent court challenge, the United States continued to ignore the plain reading of the Florida Constitution, asserting a reading that favored the status quo and the interests of the federal government.\(^{61}\) The current Florida Constitution, as amended, provides that the coastal boundaries of the state can be extended in accordance with “international law,” giving it almost complete flexibility to expand or contract in light of the evolving law of the sea.\(^{62}\)

The United States and the State of Florida have continually resisted any attempts to interpret the plain reading of long established documents in any way other than those that favor the governmental interest being challenged. One can only assume that, if challenged, the governmental parties will assert that the plain reading of the 1902 Treaty is incorrect and that the Adams-deOnis treaty was not actually “abrogated” and “annulled.” Congress must show a deliberate and explicit intent to abrogate a treaty by subsequent legislation specific to the topic in order to render its decision the last word in the matter. This has not happened. The parties have intended that the treaty be abrogated.

**d. President Johnson's Executive Order Reviewed and Revived Provisions of the Treaty**

\(^{61}\) Bateman v. State, 238 So.2d 621, 624 ( Fla. 1970). (“The state's position is that since originally designated in the 1868 Constitution the actual boundary location has remained unchanged to this day in spite of successive alterations of the descriptive language. We cannot agree, for it is clear from close examination of the descriptive wording in the respective constitutions that we are not dealing merely with different methods for describing the same boundary.”).

\(^{62}\) Fla. Const. Art. II Sec.1 (b).
Even presuming that the mere passage of time, as contemplated by the *Karmath* decision did not indicate that a treaty was abrogated, the President of the United States took affirmative steps in the 1960s to review the status of the 1903 Treaty and ratify its basic provisions. In 1966, President Lyndon B. Johnson reviewed the treaty and reinvigorated Article XIV and the Treaty in full. The short Order reads in its entirety:

Under and by virtue of the authority vested in me as President of the United States of America, particularly with respect to the conduct of the foreign relations of this Nation, and in order to ensure that Article XXIV of the Treaty of Friendship and General Relations between the United States and Spain (33 Stat. 2105, 2117) *can be observed and fulfilled with good faith by the United States*, I hereby designate the Attorney General of the United States, and such other officers and employees of the Executive Branch of the Government as he may from time to time specify, to be the "competent national authorities" on the part of the United States within the meaning of Article XXIV of the Treaty. The Attorney General, and the designees specified by him, shall fulfill the obligations assumed by the United States pursuant to Article XXIV of the Treaty in the manner and form therein prescribed.  

*63 See note 21, supra, and accompanying discussion.*

Article XXIV of the Treaty of Friendship and General Relations is a relatively mundane article dealing with shipping matters. It reads as follows:

The Consuls-General, Consuls, Vice-Consuls and Consular-Agents of the two countries may respectively cause to be arrested and sent on board or cause to be returned to their own country, such officers, seamen or other persons forming part of the crew of ships of war or merchant vessels of their Nation, who may have deserted in one of the ports of the other.

To this end they shall respectively address the competent national or local authorities in writing, and make request for the return of the deserter and furnish evidence by exhibiting the register, crew list or other official documents of the vessel, or a copy or extract therefrom, duly certified, that the persons claimed belong to said ship’s company. On such application being made, all assistance shall be furnished for the pursuit and arrest of such deserters, who shall even be detained and guarded in the goals of the country pursuant to the requisition and at the expense of the Consuls-General, Consuls, Vice-Consuls or Consular Agents, until they find an opportunity to send the deserters home.

If, however, no such opportunity shall be had for the space of three months from the day of the arrest, the deserters shall be http://www.unc.edu/diplomat-bin/andipl_browse.pl?field=author&value=marksset at liberty, and shall not again be arrested for the same cause. It is understood that persons who are citizens or subjects of the country within which the demand is made shall be exempted from the provisions of this article.

If the deserter shall have committed any crime or offense in the country within which he is found, he shall not be placed at the disposal of the Consul until after the proper Tribunal having jurisdiction in the case shall have pronounced sentence, and such sentence shall have been executed.
The President has broad power to amend, alter, abrogate and reinstate treaties by Executive Order. As the Supreme Court has frequently mandated, the Executive Branch’s interpretations of treaties is to be accorded strong judicial deference.\textsuperscript{64} President Johnson reviewed the treaty and clearly considered it in force and effect in the 20\textsuperscript{th} century, more than half a century after its ratification.

It is clear that the intention of the parties, by the plain language of the 1902 Treaty, was to delete any and all of the prior international agreements between the two countries, except for a specified few. Without any ambiguity, the Adams-deOnis Treaty was one of those instruments that was considered to have been terminated.\textsuperscript{65} The mere passage of time and common custom does not render the 1902 Treaty void.

\textit{e. International Law disfavors colonialism and the United States has been committed to the principles of decolonization.}

At the close of World War Two, the United States found itself in possession of vast territories such as Alaska, Hawaii, the U.S. Virgin Islands, and Puerto Rico.\textsuperscript{66} As World War II drew to a close in the Pacific, the United States liberated huge swaths of area from Japanese occupation, either militarily or by occupying territories that had been given to Japan to oversee by the League of Nations. The prevailing sentiment in the postwar world was one of decolonization. The centuries-old colonies of the European powers and the more recent acquisitions of the United States were subject to scrutiny. In the United Nations Charter, Article 73, the member states pledged “to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive

\begin{itemize}
\item \textsuperscript{64} See, e.g., El Al Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 168 (1999).
\item \textsuperscript{65} The determination whether a federal statute has abrogated a treaty obligation thus directly implicates the long-established interpretive principle that “an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains.” Murray v. The Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).
\item \textsuperscript{66} In fact, during World War II, several prominent Puerto Ricans petitioned President Roosevelt for the creation of an independent “Free State” of Puerto Rico. \textit{Free State Urged by Puerto Ricans}, N.Y. Times, July 18, 1943, at 24.
\end{itemize}
development of their free political institutions....”

Article 75 of the United Nations Charter established the international trustee system as the mechanism to enforce these goals.

As the dominant power in the Pacific, the newly formed United Nations gave the United States the responsibility for trusteeship over the former Japanese territories under the name of the “Trust Territory of the Pacific Islands” in 1947. Overall, the trusteeship system in the 1950s did little to advance the goals of self determination. The United States government administered the territories militarily through the Department of the Navy until 1951. After public protest, the islands fate was transferred to the civilian Department of the Interior, which exercised total control over the economic and political life of the Islands. The United States, as the official government website states did little to encourage private sector economic growth. It was not until the mid 1970s that the people reasserted their inherent sovereignty which had remained dormant, but intact, throughout the years of stewardship by the League of Nations and the United Nations. Many proposals were discussed, including making the islands a “commonwealth.” There was a long and bitterly contested period of negotiations between the Islanders and the United States. National Security Adviser Henry Kissinger gave the C.I.A. the authorization in 1973 to “assess the possibility of exerting covert influence on key elements


68 United Nations Charter Art. 75 provides that, “The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereafter under subsequent individual agreements. These territories are hereinafter referred to as trust territories.” The United Nations Trusteeship Council continued to function until all the territories placed under its supervision were granted independence on October 1, 1994. In May 1994, according to the United Nations website, the Trusteeship Council suspended its regular meetings and will only meet as needed. “Trusteeship Council,” http://www.un.org/documents/tc.htm.


71 Id.


73 It was revealed that for at least four years before the close of the negotiations that the United States government, acting on orders of Henry Kissinger, had directed the Central Intelligence Agency to wiretap and conduct illegal covert surveillance of the members of the Micronesian delegation. Justice Department Studies Surveillance by C.I.A. On Micronesia Talks, N.Y. Times, Dec. 12, 1976 at 31.
of the Micronesian independence movement and on those other elements in the area where necessary to promote and support United States strategic objectives.”

Failing to yield to outside pressures the Micronesians met in a Constitutional Convention to adopt a Constitution as the Federated States of Micronesia. The United Nations certified that this was the legitimate will of the people and the United States took a very long time (1979-1986) to fully transfer all state functions to the established government.

At the same time, the United States pressed the territories of the Northern Marianas Islands to accept Commonwealth status and a more permanent and lasting relationship with the United States. In 1975, the voters approved the annexation in a plebiscite and the former Trust Territory was absorbed into the United States. Those islands were the first to be annexed directly by the United States since 1917 when the Virgin Islands were bought from Denmark. The United States continues to occupy Guam in violation of the will of the native people of Guam. In 1979, under UN observation, Guam's electorate rejected a proposed Constitution which would have legitimized and confirmed its status as an “unincorporated territory” of the United States. In 1988, the United States Congress refused to enact legislation which would have given effect to Guam's 1987 vote to become a Commonwealth of the United States, similar to Puerto Rico. In 2004, the United Nations General Assembly endorsed a Resolution calling for the United States and the leaders on Guam to enter into negotiations on its future status in accordance with the UN Charter and the 1960 Declaration on Colonialism. To date, the

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75 “Government of the Federated States of Micronesia: History,” see note 56, supra.
76 Richard Halloran, Mariana Plebiscite Favors Political Union with U.S., N.Y. Times, June 18, 1975 at 85. The transfer of the privately owned Swain Island to Guam in 1925 was the last acquisition by the United States. Id.
78 Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands, G.A. Res.
United States still has not acted upon that.

**CONCLUSION.**

At gunpoint, the United States acquired the Spanish territories of East and West Florida in 1819 under the Adams-deOnis Treaty. Nearly a century of American expansionism later, in the aftermath of the Spanish American War of 1898, the United States and Spain entered into the 1902 Treaty which deliberately wiped away all prior treaties, with a handful of detailed exceptions. The Adams-deOnis Treaty was not one of those treaties preserved.

The United States has relinquished sovereignty over the former Spanish colonies and is not entitled to continue to occupy the territories in violation of treaties and international law. If historical precedents are followed as they were with Alaska, Hawaii, and Micronesia, then the peoples in the disputed territories of East and West Florida should be given a choice of self-determination, to chart their own future relationship with the United States. Had the abrogation of the Adams-deOnis Treaty been brought to light much earlier, the Florida Territories would have been included in the United Nations Trusteeship system or in the “non-self governing territories” under the watchful gaze of the United Nations much as Guam and the U.S. Virgin Islands are today.

The question this article poses is... Does Florida continue to be a state after April 14, 1902? The short answer is, “No.” With that clearly decided, the long process of self-determination provided by Article 73 of the United Nations Charter begins.

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