



# The Philosophical Case Against Forced Annexation

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In Texas, cities wield the authority to annex property outside their city limits involuntarily—that is, without the consent of the property owners being annexed. This policy, which has stood for over a hundred years in Texas, should provoke great concern among defenders of the rights of individuals and property owners. It also raises a question about what principles are really at stake when government imposes its will upon individuals, including new regulations and taxation, without their consent.

## Key Points

- Texas cities practice involuntary annexation on a regular basis.
- At its roots, annexation reform has to do with establishing the proper role of government and protecting property rights.
- Involuntary annexation reform in Texas is a critical reform that should be addressed to protect property owners and residents.

In the beginning of the American republic, one of the fundamental principles at issue was the question of government's relationship with the people. Was the government in some sense to rule the people, as had been the case under the British crown? Or was it to exist as a servant of the people, tasked with particular powers to be exercised within certain limits?

That question was largely resolved when one considers how the Founding Fathers resolved the matter. Instead of unifying all separate colonies into a single state under which varying territories, geographically distinct but with little independent governing authority, had to rest, they sought a far more decentralized form. Indeed, the first form of government chosen—the Articles of Confederation—clearly delegated the vast majority of power to the states and virtually none to the federal government. Arguably, the Articles of Confederation established, not a central government at all, but a coalition of the several states. After problems of coordination arose as a result of the near-complete independence of the states, calls for a new governing document arose.

Out of that arose the most famous governing document in human history—the United States Constitution. The Constitution was developed to improve the Articles of Confederation by creating a stronger central authority to bind the states together as a more apparent national government. Yet while it created a far more robust federal government than had existed in the years after the American Revolution, it was nonetheless based on the very same principles as that prior government. Namely, that states were independent—not merely from one another, but in many ways, from the federal government as well.

This deference was far more than implicit. The Constitution itself is a document of enumerated powers, meaning that the national government can do nothing not expressly authorized within it. The Tenth Amendment to the Constitution clearly defers to the states in all matters not addressed by the Constitution. Similarly, there are few references to the states being restricted by the national government within the Constitution.

As the republic matured, westward expansion brought territories and then new states developed from the landscape. This did not, for the most part, happen as a result of federal authority being imposed upon the residents of the territories. Largely, it was at least partially the result of the residents of the territory pursuing, often aggressively, annexation into the Union. Some territories did not want to be annexed for a long time, while some sought annexation for years before it was granted.

The history of the United States Constitution and the development of the states shows a great deal of respect for the principle of self-determination. Citizens had many states to choose from, and if they were not a state, they had to consent on some level to form one. While not explicitly protected within the Constitution, the freedom of movement is strongly implied by the Privileges and Immunities Clause, among other clauses within the Constitution. If you didn't like life in Massachusetts, you could move to New Hampshire instead.

John Locke, the English philosopher whose ideas were instrumental in the formation of the Constitution, argued that each person has fundamental rights that cannot be violated by any government. But Locke did not stop there. He further argued that to be proper, government depended upon the consent of the governed. The principle inherent in Locke's philosophy is that government involves some measure of voluntary compliance, at least at base—for Locke believed that each individual is ultimately sovereign. To delegate some of his authority to a government, a person must first have a say in doing so.

This was made clear in *Federalist* 39, written by James Madison:

“First. In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively

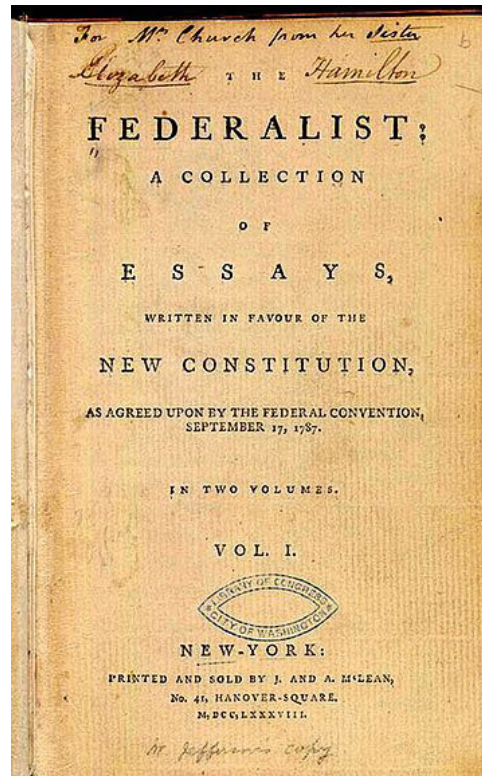
belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a NATIONAL, but a FEDERAL act.”<sup>1</sup>

Aside from being a powerful statement in defense of federalism, Madison's words are also relevant to individuals living outside of a municipality and threatened by annexation. Government, deriving its power from the

people and only from the people, cannot usurp the rights of the people. At the same time, the ultimate governing authority, that is, the people, delegate some measure of authority to ever-escalating levels of government. There was never a question, however, in the minds of the founders, where the ultimate authority resided.

Ultimately, the basic principle of self-determination is essential to the Lockean belief in self-governance. Individuals have a right to decide which government they live under. In modern parlance, this means fifty states, but it also means thousands of localities. In Texas alone, there are well over one thousand different cities.

Clearly, if we are to be consistent, allowing municipalities the power of involuntary annexation violates basic principles of the American republic.



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Here, some will object, citing the oft-invoked “local control.” This is an attempt to take a preference and turn it into a principle. If choosing between a government farther away from the people or one closer, most rational individuals would choose the latter; that is, he would prefer local decision-making over decision-making by faraway authorities. That does not mean, however, that the government closer to him is any more justified in violating his rights than the one farther. When speaking of annexation, proponents of unbridled municipal authority will often refer to a “right” that localities have. This is a clear sign of ideological murkiness. Governments have no rights. They have only those authorities delegated them by the people—the people who, recall, have by their consent formed the government in the first place for

certain purposes. There is no local government “right” to annex a person against his will.

If it were so, local governments, or at least cities, would necessarily be as sovereign entities unto themselves. This notion is patently absurd, and strikes against everything that the United States was founded upon. Supreme Court Justice Louis Brandeis famously wrote in *New State Ice Co. v. Liebmann*:

“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment.”<sup>2</sup>

Brandeis acknowledged the ability of states to serve as “laboratories of democracy,” as the term that sprang from his opinion famously became. But in so doing, he also explicitly acknowledged two very important precepts: first, that no state could be a “risk” to the rest of the country; this, in fact, was so apparently obvious to Brandeis and to his intended audience that it bore no further elaboration; and secondly, that the “Court has the power to prevent an experiment” should its effects be harmful.

Without addressing the substantive questions relating to the relationship between the states and the federal

government, Brandeis is correct: states are empowered to do many things on their own, in fact most things, but they ultimately answer to the people and are checked by a higher level if things go awry.

So too are cities empowered to do many things, most especially home rule charter cities. However, when they run afoul of the rights of their citizens, or impinge in some way upon the governing ability or authority of other municipalities, they must be checked—and as subdivisions of the state, that is the appropriate authority to do so.

In respecting and recognizing the role of the state to restrict municipalities when they step over the line, we do not abandon the principle that government ought to be as close to the people as possible—but instead, we place the protection of the individual above the protection of the government. Government should never be able to wittingly or unwittingly trample upon the rights of the people, because the people are the fount of all government power—as such, it is not only right, but essential, to restrict that authority when it falters in preserving the rights of the people above all else.

Involuntary annexation is an unjust exercise of government power, because the ultimate authority for that power rests with the people. Government is the servant—not the master. ★

## Endnotes

<sup>1</sup> The Federalist No. 39: *Conformity of the Plan to Republican Principles*, Independent Journal, Wed., January 16, 1788 [James Madison] Constitution.org.

<sup>2</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) U. S. Supreme Court, Justia version (case law online).

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