AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 5: The Jacksonian Era – Powers of the National Government/Territorial Acquisition and Governance

**Congressional Debate on the Annexation of Texas (1844)[[1]](#footnote-1)**

The annexation of Texas in 1845 was politically and constitutionally controversial. The political controversy began when Texas petitioned to join the Union in 1836 immediately after gaining independence from Mexico. Americans were initially hesitant. Texas would add at least one more slave state to the Union. Annexation risked war with Mexico, which continued to contest both Texas independence and the location of Texas’s borders. The constitutional controversy began when President Tyler submitted an annexation treaty to the U.S. Senate in the spring of 1844. The treaty failed by a wide margin to win the two-thirds vote needed for ratification. Once the treaty failed, supporters of annexation proposed admitting Texas by a joint resolution. The joint resolution only needed support from a simple majority of those voting in both the House and the Senate.

Both the House and Senate engaged in lengthy debates over whether Texas could constitutionally be annexed by a joint resolution. Jacksonian proponents of the joint resolution insisted that Article IV, Section 3, which declares “New States may be admitted by the Congress,” permitted majorities in both Houses of Congress to admit as states both American territories and foreign countries. Whig opponents asserted that a treaty was the only constitutional means by which the United States could make any agreement with a foreign country.

Proponents of annexation gained a strong majority in the House and a weaker majority in the Senate. The annexation of Texas was almost immediately followed by a war with Mexico, which led to the acquisition of an even greater amount of land in the West, largely completing manifest destiny.

SENATOR Levi Woodbury (Democrat, New Hampshire)

. . . The friends of the resolution maintained that Congress could admit new States, whether the territory out of which they were formed ever had previously been in the Union or not. . . . The friends of the resolution said that Congress could organize States in what had been foreign territory, whether acquired by the treaty-making power or by legislation. They denied a treaty was indispensable. . . . Its friends relied on the simple letter of the constitution, plain, and in accordance with its spirit, without any implication or forced construction in the matter. The constitution said that new States may be admitted by the Congress into the Union. And what were those States? Did not a State consist of lands and people? The clause then meant the new lands and people may be admitted into the Union. Gentlemen denied this, and insisted that before we could admit a State we must interpolate a requirement to go to a foreign government by means of the treaty power, and thus buy the territory out of which it was to be formed. How must these conflicting views strike the country in respect to principle? The friends of the measure on his side of the House stood now just where they had always stood. They supported the constitution in its express grants of power; while the gentlemen on the other side relied upon construction and implication for destroying one of these express grants of power. We go for the plain common-sense meaning of words, while you resort to refinements and subtleties. . . .

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. . . I will remind you of an important difference between the treaty as submitted to the Senate, and the joint resolution now proposed for adoption. It was by treaty proposed to annex Texas as a Territory; now it was proposed to admit Texas as a State. It never had been proposed to admit a State by the treaty power. The treaty was to obtain it as a Territory; and even then it was held that, if we got the territory first, still the State must be admitted by Congress, and Congress alone. We did not now undertake to ratify a treaty. The treaty had been repudiated and its subject matter, the getting of Texas merely as a Territory. The Senate was now asked to act with the House under another substantive power in the constitution. . . . Could the treaty-making power by mere implication take away from Congress an express grant made to Congress alone in the constitution? . . . [W]hat express grant [did] the constitution contain[] to the treaty-making power either to buy territory or admit States? The gentleman could show none, while we could show such a one to Congress to admit States. Thus the attempt is made, indirectly and stealthily, to strip Congress of this express grant, in a class of cases which come plainly within its language.

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SENATOR William Rives (Whig, Virginia)

. . . What would it profit us should we gain Texas, if thereby we lost our regard for that sacred instrument which was the palladium of our liberty and happiness? The mode in which Texas was to be acquired, in its aspect upon the principles of our political compact, was, with him, a vital and paramount consideration. We had heretofore made important acquisitions of foreign territory, more than doubling the area of our original limits; but we had made the acquisition by means of the treaty power, and in the case of Texas, too, the treaty power had been called into action to achieve the measure of annexation, but the treaty not having received the constitutional sanction of two-thirds of this body, it was now at last discovered that all this reference to the treaty-making power was a mere useless ceremony; a work of supererogation; an idle, unmeaning formality; and that the object could be better accomplished by a mere majority of the two Houses of Congress. Under these circumstances, the question now put to the judgment and conscience of every senator was, whether this summary mode of proceeding was warranted by the constitution, and in conformity with that good faith which the people of the several States had pledged to each other when they adopted the constitution and promised to abide by it.

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. . . Under the power of Congress to admit new States into the Union, it was contended that a mere majority of the two Houses of Congress could enter into stipulations and agreements with foreign States for their incorporation into our political system, although the power of treating with foreign States had been expressly restricted to the President and two-thirds of the States, as represented in this body. Would it not be most extraordinary, indeed, that the wise and sagacious men who framed the constitution should have placed so strong a check on the most unimportant transactions of this government with foreign powers, such as the payment of a sum of money, the surrender of criminals, the fixing of some small and unimportant boundary line, by requiring the assent of two-thirds of the States, and yet should have abandoned to a simple majority of the two Houses the vast, formidable, transcendent power of treating with a foreign nation for its incorporation into our Union?

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. . . [W]e must obtain foreign territory by the treaty-making power; then we might admit new States from that territory by the legislative power. This was the law and constitution of our land. . . .

Let us now, Mr. President, attempt to follow out in the visions of the future what was likely to occur, if, in the face of the remonstrances of those who took their stand upon the plighted faith of the constitution, this should be consummated by a mere majority of the two Houses of Congress. . . . The same legislative majority which passed the joint resolution might repeal it. . . . Who could say how future elections might turn out? What security had gentlemen that the next Congress, by their majority power, might not repeal the act of the present Congress, and, when Texas came for admission, the door be slammed in her face—what then?

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And he now turned to his southern friends on that floor, and he would invoke their sober attention to what he should submit to their consideration. The entire slaveholding portion of this Union could place themselves for safety only on the sacredness of the constitution. . . .

. . . Would the senators representing that interest set the example of trampling on the guarantees of the constitution, and of admitting the absolute and unlimited power of the majority?

1. Excerpt taken from Congressional Globe, 28th Cong., 2nd sess., App., pp. 234, 378–382. [↑](#footnote-ref-1)