AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 7: The Republican Era – Judicial Power and Constitutional Authority

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United States v. Texas, 143 U.S. 621 (1891)

In 1890, Congress created a territorial government for the territory of Oklahoma. This action brought to a head a longstanding disagreement between the United States and the state of Texas over the northern boundary of the state. Texas and the United States pointed to different forks of the Red River as the boundary line. To resolve the dispute, Congress authorized the U.S. attorney general to file a suit in equity in the U.S. Supreme Court against the state of Texas seeking title of the disputed land. Texas objected not only to the federal government's claim but also to the claim that the U.S. Supreme Court had jurisdiction to resolve the dispute. State officials contended that this was a political question to be determined by negotiation between the two governments. Failing that, the state argued that the text of Article III of the U.S. Constitution did not give the U.S. Supreme Court original jurisdiction over cases involving a state and the federal government, and thus the only court with jurisdiction to hear such a suit over land titles claimed by the state would be a Texas trial court. In a 7–2 decision, the Court concluded that disputes over state boundaries were legal questions properly resolved by the Court. As to the original jurisdiction over the parties, the majority contended that such jurisdiction was implicit in the design of Article III. The two dissenting justices simply pointed out that the text of the Constitution did not include in its enumeration of the Court's jurisdiction cases involving the federal government and a state government. In a subsequent ruling, the Court awarded the disputed land to the United States. Congress later gave title to the Texas settlers in the disputed territory to the land that they currently occupied and gave them rights to purchase additional land in the Oklahoma territory.

Does the constitutional text support the majority's conclusion? Is the textual argument decisive? Is the enumerated jurisdiction in Article III an exhaustive list? By what principles might the textual enumeration not be exhaustive? What kind of arguments does the majority marshal in support of its position? Is this case analogous to cases involving border disputes between two states? What would be the alternative mode for resolving this dispute if the dissenters are right?

JUSTICE HARLAN, delivered the opinion of the Court.

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The relief asked is a decree determining the true line between the United States and the State of Texas, and whether the land constituting what is called "Greer County," is within the boundary and jurisdiction of the United States or of the State of Texas. The government prays that its rights, as asserted in the bill, be established, and that it have such other relief as the nature of the case may require.

In support of the contention that the ascertainment of the boundary between a Territory of the United States and one of the States of the Union is political in its nature and character, and not susceptible of judicial determination, the defendant cites *Foster v. Neilson* (1829). . . .

In *Foster v. Neilson*, . . . after examining various articles of the treaty of St. Ildefonso, Chief Justice Marshall, speaking for the court, said: "In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the

strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. . . . A question like this respecting the boundaries of nations, is as has been truly said, more a political than a legal question; and, in its discussion, the courts of every country must respect the pronounced will of the legislature."

These authorities do not control the present case. They relate to questions of boundary between independent nations, and have no application to a question of that character arising between the General Government and one of the States composing the Union, or between two States of the Union. By the Articles of Confederation, Congress was made "the last resort on appeal in all disputes and differences" then subsisting or which thereafter might arise "between two or more States concerning boundary, jurisdiction or any other cause whatever;" the authority so conferred to be exercised by a special tribunal to be organized in the mode prescribed in those Articles, and its judgment to be final and conclusive. . . . The necessity for the creation of some tribunal for the settlement of these and like controversies that might arise, under the new government to be formed, must, therefore, have been perceived by the framers of the Constitution, and, consequently, among the controversies to which the judicial power of the United States was extended by the Constitution, we find those between two or more States. And that a controversy between two or more States, in respect to boundary, is one to which, under the Constitution, such judicial power extends, is no longer an open question in this court. . . .

[I]t cannot, with propriety, be said that a question of boundary between a Territory of the United States and one of the States of the Union is of a political nature, and not susceptible of judicial determination by a court having jurisdiction of such a controversy. The important question therefore, is, whether this court can, under the Constitution, take cognizance of an original suit brought by the United States against a State to determine the boundary between one of the Territories and such State. Texas insists that no such jurisdiction has been conferred upon this court, and that the only mode in which the present dispute can be peaceably settled is by agreement, in some form, between the United States and that State. . . . [T]he result [if no negotiated settlement can be reached], according to the defendant's theory of the Constitution, must be that the United States in order to effect a settlement of this vexed question of boundary, must bring its suit in one of the courts of Texas -- that State consenting that its courts may be open for the assertion of claims against it by the United States -- or that, in the end, there must be a trial of physical strength between the government of the Union and Texas. The first alternative is unwarranted both by the letter and spirit of the Constitution. . . . The second alternative, above mentioned, has no place in our constitutional system, and cannot be contemplated by any patriot except with feelings of deep concern.

The cases in this court show that the framers of the Constitution did provide, by that instrument, for the judicial determination of all cases in law and equity between two or more States, including those involving questions of boundary. Did they omit to provide for the judicial determination of controversies arising between the United States and one or more of the states of the Union? . . .

The Constitution extends the judicial power of the United States "to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens or subjects.

"In all cases, affecting ambassadors or other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." . . .

It is apparent upon the face of these clauses that in one class of cases the jurisdiction of the courts of the Union depends "on the character of the cause, whoever may be the parties," and, in the other, on the character of the parties, whatever may be the subject of controversy. . . . The present suit falls in each class, for it is, plainly, one arising under the Constitution, laws and treaties of the United States, and, also, one in which the United States is a party. It is, therefore, one to which, by the express words of the Constitution, the judicial power of the United States extends. . . . [E]xclusive jurisdiction was given to this court [by federal statute], because it best comported with the dignity of a State, that a case in which it was a party should be determined in the highest, rather than in a subordinate judicial tribunal of the nation. Why then may not this court take original cognizance of the present suit involving a question of boundary between a Territory of the United States and a State?

The words, in the Constitution, "in all cases . . . in which a State shall be party, the Supreme Court shall have original jurisdiction," necessarily refer to all cases mentioned in the preceding clause in which a State may be made, of right, a party defendant, or in which a State may, of right, be a party plaintiff. It is admitted that these words do not refer to suits brought against a State by its own citizens or by citizens of other States, or by citizens or subjects of foreign States, even where such suits arise under the Constitution, laws and treaties of the United States, because the judicial power of the United States does not extend to suits of individuals against States. . . . It is, however, said that the words last quoted refer only to suits in which a State is a party, and in which, also, the opposite party is another State of the Union or a foreign State. This cannot be correct, for it must be conceded that a State can bring an original suit in this court against a citizen of another State. . . . Besides, unless a State is exempt altogether from suit by the United States, we do not perceive upon what sound rule of construction suits brought by the United States in this court -- especially if they be suits the correct decision of which depends upon the Constitution, laws or treaties of the United States -- are to be excluded from its original jurisdiction as defined in the Constitution. . . . [The founders] could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. And to what tribunal could a trust so momentous be more appropriately committed than to that which the people of the United States, in order to form a more perfect Union, establish justice and insure domestic tranquility, have constituted with authority to speak for all the people and all the States, upon questions before it to which the judicial power of the nation extends? It would be difficult to suggest any reason why this court should have jurisdiction to determine questions of boundary between two or more States, but not jurisdiction of controversies of like character between the United States and a State.

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The question as to the suability of one government by another government rests upon wholly different grounds. Texas is not called to the bar of this court at the suit of an individual, but at the suit of the government established for the common and equal benefit of the people of all the States. The submission to judicial solution of controversies arising between these two governments, "each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other," but both subject to the supreme law of the land, does no violence to the inherent nature of sovereignty. The States of the Union have agreed, in the Constitution, that the judicial power of the United States shall extend to all cases arising under the Constitution. . . . [C]onsent was given by Texas when admitted into the Union upon an equal footing in all respects with the other States.

We are of opinion that this court has jurisdiction to determine the disputed question of boundary between the United States and Texas.

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Demurrer *overruled*.

JUSTICE FULLER, with whom JUSTICE LAMAR joined, dissenting.

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This court has original jurisdiction of two classes of cases only, those affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party.

The judicial power extends to "controversies between two or more States;" "between a State and citizens of another State;" and "between a State or the citizens thereof, and foreign States, citizens or subjects." Our original jurisdiction, which depends solely upon the character of the parties, is confined to the cases enumerated, in which a State may be a party, and this is not one of them.

The judicial power also extends to controversies to which the United States shall be a party, but such controversies are not included in the grant of original jurisdiction. To the controversy here the United States is a party.

We are of opinion, therefore, that this case is not within the original jurisdiction of the court.