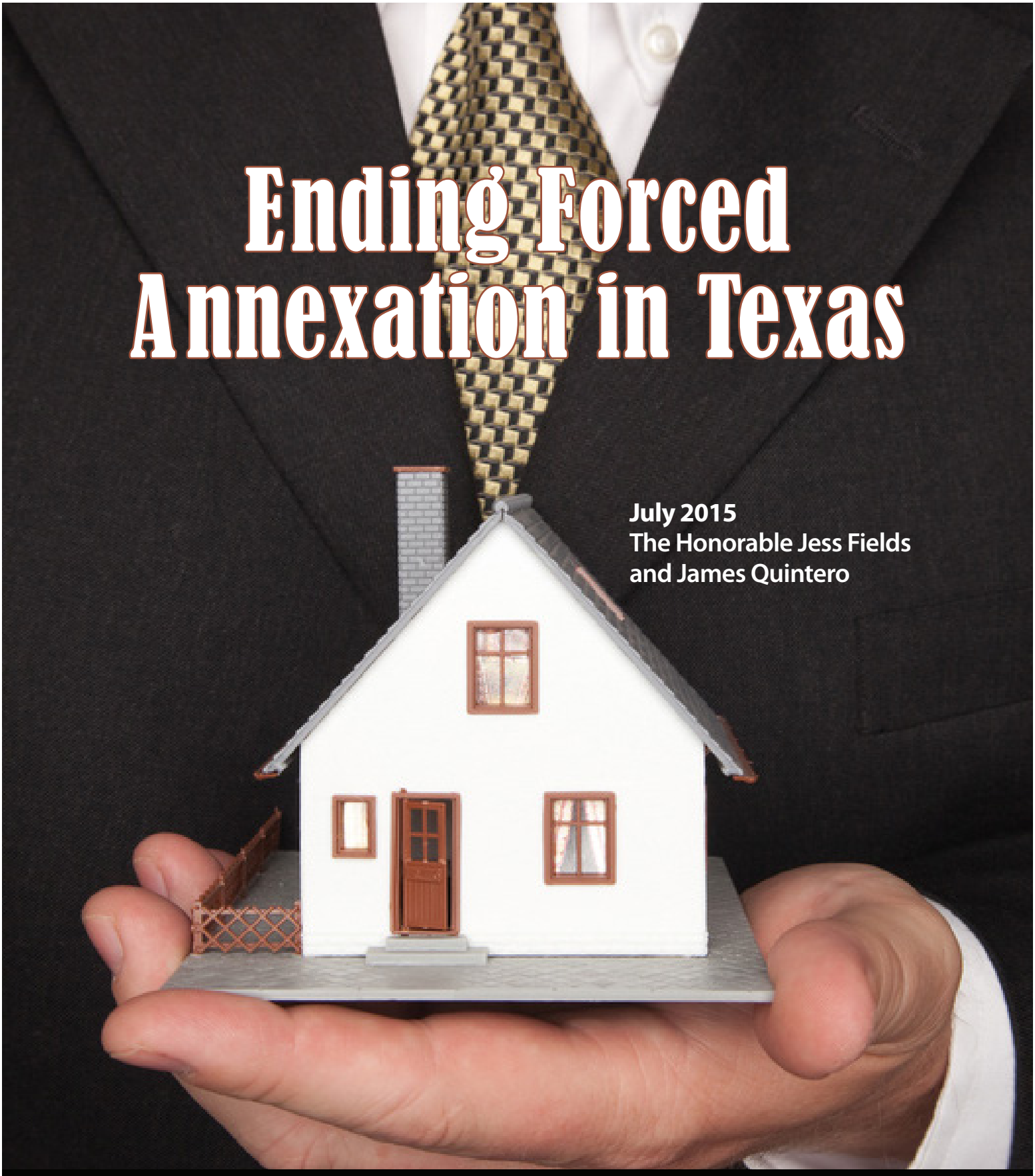

Ending Forced Annexation in Texas

July 2015
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and James Quintero

Texas Public Policy
FOUNDATION

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Center for Local Governance
Texas Public Policy Foundation

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Executive Summary

Texas cities practice involuntary annexation on a regular basis. Property owners and residents currently have no opportunity to consent to their annexation under the law, and challenging the decision is virtually impossible.

The history of Texas points to voluntary general law annexation via petition which is, to this day, the primary means of annexation for general law (also known as statutory) cities in Texas. Home rule cities have had the ability to involuntarily annex since the passage of the Home Rule Amendment to the Texas Constitution in 1912.

A series of abuses, particularly by the city of Houston, led to some limited reforms of involuntary annexation over the years. This includes the Municipal Annexation Act of 1963 that created the Extraterritorial Jurisdiction, and further reforms passed in the late 1990s after Houston's controversial annexation of Kingwood.

In spite of these reforms, the practice of involuntary annexation is still the law in Texas. Property owners are regularly annexed without their consent, and many annexations, both large and small, continue to be controversial. In direct contrast to common assumptions that large-scale annexations are no longer happening in Texas, San Antonio recently began studying a massive 66-square-mile annexation that would add roughly 200,000 people to the city by 2020. The annexation would make San Antonio the fifth largest city in the nation.

Involuntary annexation has a number of potential downsides. It strikes a clear contrast with the history of the United States and our nation's long deference to self-determination as being the ultimate cornerstone of governance. The Founding Fathers clearly envisioned a system in which individuals could choose which jurisdiction they wanted to live in, and in which the rights of the citizens were preserved above all else. Forced annexation could not be farther from the founding vision of protecting sovereign individuals' rights from the power of government.

It also has questionable fiscal consequences. While municipalities often target areas for annexation based on the prospect of a more robust tax base, there are questions raised in scholarly studies about how viable many annexations are and what kinds of strains they place on service provision within municipalities. When cities expand, so too do their fiscal obligations—and the strains placed upon existing services, as well as the penchant to create more debt, are all too real.

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 should be abolished to protect property owners and residents.

Finally, involuntary annexation can have undesirable social consequences. Annexation rarely targets poor, low-income areas. Instead, most annexations are value plays, seeking to bring in the wealthiest properties that will expand the tax base the most. Lower-income communities may or may not want to be annexed, but they are clearly treated differently.

In light of these adverse effects of involuntary annexation, the Texas Legislature should enact reforms to require the consent of a majority of residents in order to annex.

For areas with a population of 200 or less, the process of annexing a community ought to be done by petition. For areas with a population size exceeding 200 persons, it should be accomplished via election held on a regularly scheduled election date. If residents don't own a majority of the property in the area proposed for annexation, then property owners should also be petitioned. If a majority of property owners agree to the annexation, if necessary, and if consent is obtained from the qualified voters of the area to be annexed, then annexation should proceed in a quick fashion that is not delayed by unnecessary bureaucratic processes. In addition, voluntary annexation should be sped up by the allowance of agreements between cities and property owners to provide a certain level of services. Finally, citizens of the city initiating the annexation should have the option to reject the annexation if they can muster the signatures of 10 percent of the last municipal election's vote total and vote to reject it in an election.

Texans should not lag behind other states on the essential question of property rights. Now is the time for involuntary annexation reform.

These are fair and equitable reforms that give cities a quicker, less bureaucratic annexation process, while giving residents the ability to consent to their future. Texans should not lag behind other states on the essential question of property rights. Now is the time for involuntary annexation reform.

Introduction

Municipal annexation has long been controversial in Texas, with proponents and opponents differing greatly on how to address such basic matters as property rights and self-determination. While annexation may be the nominal question, the real issue at hand centers around a more fundamental debate on the role of government.

For their part, cities are often focused on the added tax revenue and regulatory control that annexation gains them, but can sometimes underestimate or neglect other considerations, such as capital costs and long-term operations and maintenance expenses associated with providing equivalent services to the annexed area.

Property owners, meanwhile, often resent being annexed against their will. Concerns that their property rights are being infringed upon are not currently addressed by current annexation law and procedure, but continue to be raised. These fundamental questions underlying annexation policy deserve an answer.

Local governments have always been given a certain degree of deference in Texas, because Texans value local decision-making. Indeed, a 1980 study found that Texas law gave its cities the greatest "local discretionary authority" of any state in the nation.[1] However, Texas also has a rich history of protecting the rights of its citizens from government intrusion and infringement. The broad discretionary authority exercised by cities can, and does, impinge on the rights of Texans in the area of annexation. This recognition has seen other states move toward reform.

Indeed, in recent years, many states have passed reform of municipal annexation authority. In April 2014, the Tennessee General Assembly passed, and the Governor signed, a bill ending involuntary annexation. North Carolina passed a similar bill in 2012 that "provides affected property owners with notice and multiple opportunities to comment on, and contribute to, the annexation plan."[2] Both require a referendum of the citizens who live in an area proposed for annexation.

In Texas, involuntary annexation is not only legal, but commonly used by cities. Citizens regularly rise up against municipal annexations of their property, but with little recourse available to them, such efforts are usually fruitless.

Texas is the largest of a dwindling number of states (including Indiana, Kansas, Kentucky, and Nebraska) that allows involuntary annexation. In the vast majority of states, however, annexation requires some kind of input from the area to be annexed—whether by election or petition.[3]

More than ever before, Texans are wary of having their property rights stripped away. As government at all levels seems increasingly bellicose toward the natural rights that Americans have long held dear, it is the duty of all concerned with maintaining the just and proper role of government to question institutions that threaten individual liberty.

To that end, this study shall consider annexation in Texas, both from a historical and a modern perspective, to shed light on the status of the issue in our state and where it stands in our country. It will consider the arguments of both the proponents and opponents of involuntary annexation, and provide a broader philosophical perspective on the issue.

Finally, we shall conclude with a comprehensive policy proposal for lawmakers that would reform the present annexation law to include the protection of both property owners' rights while also addressing concerns regarding restrictions of local authority.

The Creation of Home Rule Annexation Authority

Municipal annexation has a storied history in Texas.

Under the original Republic of Texas and then the state, cities were required to pass a bill through the Legislature in order to annex property. Indeed, cities themselves were created, not by local incorporation, but by state law. In 1858, Texas began allowing for local incorporation and general law annexation via petition.[4] Then in 1912, the Home Rule Amendment to the Texas Constitution allowed cities of 5,000 in population to adopt, through election, home rule charters that gave them significant power to make decisions locally.[5] To be more specific, home rule charters gave cities the authority not prohibited them by the state, including the authority to annex territory outside existing municipal boundaries.

To understand why home rule charters were created in the first place, one must understand the background of something called Dillon's Rule. Dillon's Rule is a legal theory that localities should wield no more authority than that specifically delegated to them by state statutes. With the exception of home rule charter cities, Texas is, to a great extent, a Dillon's Rule state. For instance, general law cities have limited statutory authority compared to home rule cities.

To understand why most states adopted Dillon's Rule, one must consider Justice John Forrest Dillon, for whom it was named, and the problem he was trying to address. Dillon was a famous Iowa State Supreme Court Justice in the 1860s who was elevated by President Ulysses S. Grant to the Eight Circuit Court of Appeals in 1869.6 During this period, many large American cities were rife with special interest influence and outright corruption. It was during this time that New York City was infamously run by the corrupt "Boss" Tweed and his political machine known as Tammany Hall, which stole millions from the city.[7]

Because of such problems, Dillon did not trust local government, calling it "unwise and extravagant." His 1868 ruling in *Clinton v. Cedar Rapids and the Missouri River Railroad* found that: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature."[8] This laid the foundation for his theory, which he delineated further in Commentaries on the Law of Municipal Corporations.

Nearly simultaneously, however, Justice Thomas Cooley of the Michigan Supreme Court was arguing the exact opposite. In 1871's *People v. Hurlburt*, Cooley wrote that "local government is a matter of absolute right; and the state cannot take it away."[9]

These two legal theories competed for years, but Dillon's Rule largely won as the 1870s came to a close. States began to become involved in many matters of largely local concern, and cities in states that adopted Dillon's Rule were drastically limited in the authority they could exercise.

The backlash over Dillon's Rule led to the movement toward home rule cities, whereby localities could establish charters that served as a sort of local constitution. Missouri was the first to adopt a constitutional home rule provision in 1875, but Texas was not far behind with its 1912 law.

After 1912, there was virtually no limit whatsoever on the authority wielded by cities to annex, as long as they qualified to adopt home rule charters. Many did, and it was not long before municipal annexation authority was regularly—and dramatically—being exercised throughout the state.

The Harris County Annexation War

Perhaps the greatest example of how unchecked Texas municipalities' annexation authority once was is the annexation war that occurred between Houston and smaller cities of south and east Harris County during the postwar period of the mid-20th century. Today, the city of Houston covers 634 square miles, big enough to contain New York, Washington, Boston, San Francisco, Seattle, Minneapolis, and Miami.[10] But it wasn't always that way.

From its inception, Houston consistently grew. By 1940, Houston had reached a size of 72.8 square miles. For the sake of comparison, Washington, D.C. comprises only 61.4 square miles.[11]

Then, concerned about being cut off by suburban towns incorporating around it, Houston decided that it wanted to grow—and fast. It found a leader in Mayor Oscar Holcombe, who took the initiative in growing the city through forced annexations.

But in order to grow the city, Holcombe had to deal with the neighboring cities. The most ambitious of these, arguably, was Pasadena—an industrial community with its own dreams of growing bigger. As the decade of the 1940s wound down, the war between Houston and Pasadena over territorial expansion became steadily more intense. Houston, as it would turn out, had the last laugh in the battle.

The December 31, 1948, issue of the Lubbock Evening Journal, in a story entitled "Houston Annexation Doubles City's Size," noted that "Sprawling Houston took a big chunk from outlying areas today, doubling its present size with an annexation of 115 square miles where 111,000 persons reside."[12]

The story paraphrased unnamed councilmen saying "… all limits within a 15-mile radius of the heart of downtown Houston would be adjoined to the city proper."[13]

The August 20, 1949, issue of the Galveston Daily News, in a story entitled "Race to the Sea," stated:

> One of the most interesting intercity rivalries in Texas today is that between Houston and Pasadena… this particular conflict involved Houston's apparent attempt to encircle Pasadena, possibly with the idea that it might be able, in so doing, to force the smaller industrial city to give up the ghost and become a part of the sprawling Babylon on the bayou.[14]

The story went on to say that since "… Houston went on its annexation binge, and Pasadena did the same thing…" they had become "… almost like two families living in a duplex."[15]

The conclusion of the story presaged the concerns of lawmakers who would later pass annexation reforms: "… overexpansion too rapidly is a dangerous thing, as both Houston and Pasadena probably will discover in time."[16]

In reality, Pasadena could never compete with Houston's aggressive annexations. Indeed, the 1940s were just the beginning of the rapid expansion of Houston.

In the coming years, Houston would grow to resemble the massive city that it is today. By the end of the 1950s, it constituted close to 1 million residents and 350 square miles.[17]

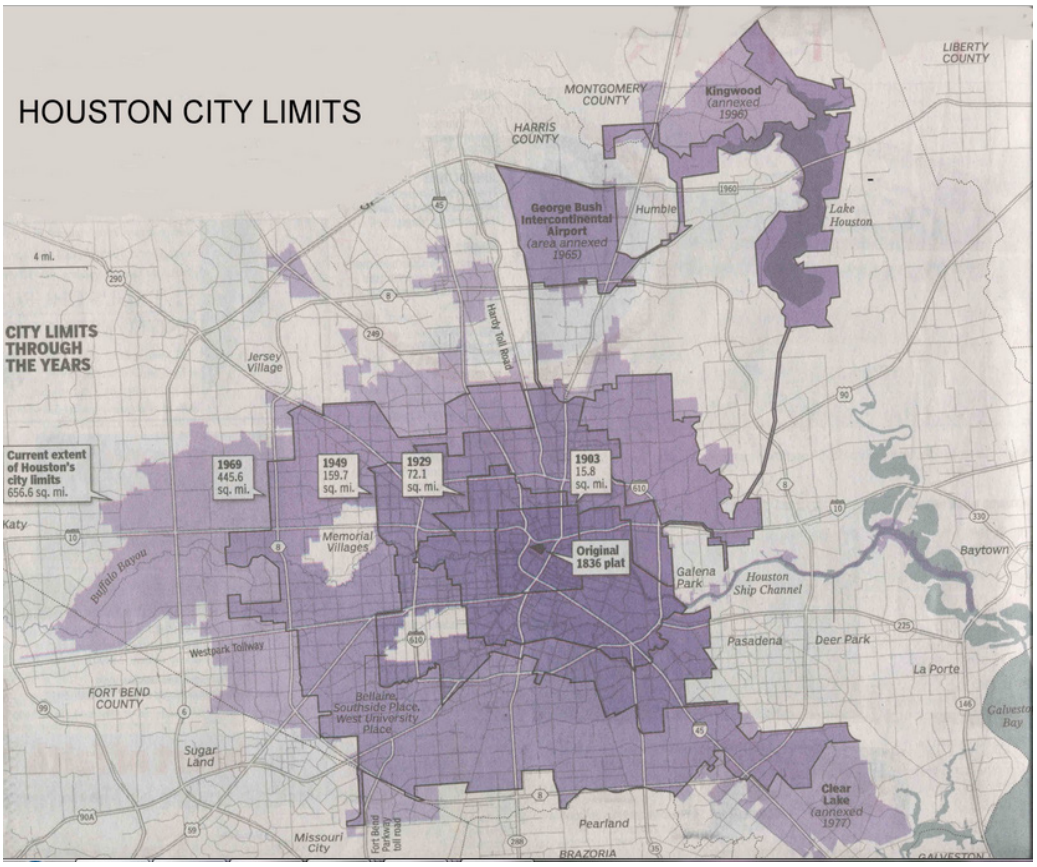
Not long after Houston's rapid expansion and territorial battles with surrounding cities, the annexation process was reformed to include what is now known as the Extra-Territorial Jurisdiction, or ETJ, with the Municipal Annexation Act of 1963. Cities retained much of their authority to annex citizens without consent, but how much annexation could take place was constrained to within the ETJ.

In the mid-1990s, Houston again stirred controversy by rushing through the annexation of Kingwood, a large suburb north of Lake Houston, northeast of George Bush Intercontinental Airport, and far away from the then-city limits of Houston. Because Kingwood was then isolated as an island of higher property values in that part of Harris County, Houston used what is now referred to as "shoestring annexation" to draw a line up Highway 59 to create a contiguous area for annexation purposes. It was very controversial and ultimately led the Texas Legislature to reexamine municipal annexation authority as the 1990s came to a close.

The Kingwood annexation eventually led to another set of legislative reforms at the turn of the century, primarily ensuring that cities planned for annexation and the provision of services, and placed a time limit on how long a city could delay before fully providing services to a newly annexed area.

While Houston's annexation history is not necessarily indicative of the entire state, or how other municipalities have conducted annexations over time, it does parallel the municipal awakening to annexation authority, and the subsequent legislative responses, over the years.

Source: www.innerloophouston.com



While Houston's annexation history is not necessarily indicative of the entire state... it does parallel the municipal awakening to annexation authority.

The current annexation statute reflects legislative reforms initiated in large part due to Houston's annexation activities. There are, generally speaking, two kinds of annexation in Texas for municipalities: general law and home rule annexation.

General Law Annexation

General law cities in Texas are statutory cities. That is, their authority to act upon various issues derives entirely from state statute. In this sense, the relationship between general law cities and the state of Texas may be said to be governed by Dillon's Rule. They may do only what the legislature or the Constitution gives them the authority to do.[18] Therefore, state statute defines specifically what and how a general law city may annex.

With few exceptions, the commonality to general law annexation is that it is voluntary and initiated by property owners. The exceptions are extremely specific and generally bracketed to only include particular municipalities at particular population levels. For example, one such exception stipulates that a municipality with a population of 1,762-1,770, "part of whose boundary is part of the shoreline of a lake whose normal surface area is 75,000 acres or greater," may practice involuntary annexation, that is, not seek the consent of landowners as most general law cities must.[19]

In most cases, however, general law cities may only annex if the annexation is voluntary.

Type A general law cities are allowed to annex areas where a majority of qualified voters vote in favor of annexation and the area is one-half mile or less in width. An area adjacent to a Type B general law city may vote in favor of being annexed,[20] subject to a total size requirement depending upon the population of the municipality.[21] Interestingly, statute does not stipulate any particular method of voting by the residents, only that the vote be acceptable to the city council and that three voters file an affidavit regarding the vote.[22]

Home Rule Annexation

In stark contrast to general law cities, home rule cities in Texas have great latitude to annex without need of any consent from those being annexed. This broad authority is subject to any restrictions required by a city's charter, although most home rule charters prescribe the broad authority allowed by state law.[23]

That authority is outlined in Chapter 43 of the Texas Local Government Code. Although municipalities may unilaterally annex without the consent of property owners, home rule annexation is nonetheless governed by certain statutory restrictions, as follows:

- Home rule cities may only annex within their Extraterritorial Jurisdiction (ETJ), unless they own the land.[24]
- Every home rule city must prepare and maintain a municipal annexation plan.[25]
- Municipal annexation plans must be made available on the websites of home rule cities, if applicable, including the posting of any amendments to add or withdraw areas from the plan.[26]
- Home rule cities must compile a "comprehensive inventory of services and facilities provided by public and private entities" for any areas proposed for annexation.[27]
- Municipalities may not annex a total area more than 10 percent of their current municipal corporate limits. However, if a city does not annex 10 percent of its area within a year, it may carry that authority over to the next year, so that the area which may be annexed is subject to cumulative rollover based upon how much less than 10 percent of its total area a city actually annexed. However, the total annexation for a given year cannot exceed 30 percent of current incorporated area, even with rollover.[28]
- Municipalities must prepare a service plan for any area proposed for annexation within nine months of the service inventory, detailing how municipal services will be provided to the area once it is annexed.[29]
- Municipalities must provide to the annexed area an equivalent level of municipal services provided to current residents and property owners. Within most cases, this must be accomplished within 2 1/2 years after the effective date of the annexation. Cities may also propose a schedule to extend services that extends the deadline for service provision to 4 1/2 years.
- Some services that are provided by cities to residents must be provided immediately to annexed areas as soon as the effective date of annexation. These are police and fire protection, emergency medical services, solid waste collection (unless residents use private providers), operation and maintenance of water and wastewater facilities not serviced by another local authority, road and street maintenance, operation and maintenance of parks facilities, and operation and maintenance of any other public facilities.[30]
- Before annexation proceedings may be initiated, two public hearings must be held within 90 days of the inventory of services being provided to the public, with at least one hearing being held in the area proposed for annexation if a facility for doing so is available, and if more than 20 residents of the proposed area file a written protest of the annexation with the city secretary. Notice of these hearings must be posted on the city's website, if applicable, as well as in a newspaper.[31]

While there are some other stipulations under the relevant statutes, these are the primary restrictions on home rule annexation authority.

The Case for Self-Determination

There are significant philosophical, economic, and social consequences associated with involuntary annexation. Each needs to be fully addressed. The following sections address these areas one by-one, and in some depth. For involuntary annexation to be a just policy, it needs to answer three questions: Is it right? Is it fiscally responsible? And, finally, is it socially responsible? As the reader will discover, not only does annexation fail on any one of these accounts, but quite certainly on all of them.

The Philosophical Case Against Involuntary Annexation

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 the 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 that is 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.

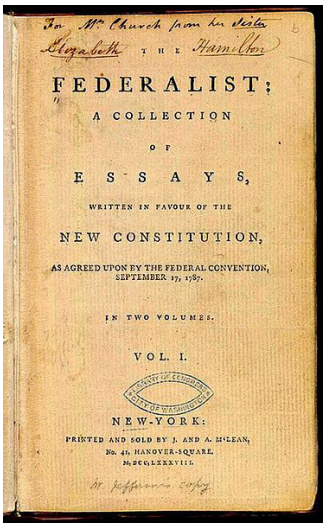
As the republic matured, westward expansion brought territories and then new states developed from the landscape. This did not, for the most part, happen as a result of federal authority being imposed upon the residents of the territories. Largely, it was at least partially the result of the residents 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 show 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. For example, 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.[32]


THE FEDERALIST;
A COLLECTION
OF
ESSAYS,
WRITTEN IN FAVOUR OF THE
NEW CONSTITUTION,
AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.
IN TWO VOLUMES.
VOL. I.
NEW-YORK:
PRINTED AND SOLD BY J. AND A. M'LEAN,
No. 41, HANOVER-SQUARE.
M,DCC,LXXXVIII.

Source: commons.wikimedia.org

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 gov-

erning 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 50 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.

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 that is closer, most rational individuals would choose the latter. 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 authorities given 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 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.[33]

Brandeis acknowledged the ability of states to serve as "laboratories of democracy," as the term that sprang from his opinion famously became known. 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 second, 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, the state 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.

The Economic Case Against Involuntary Annexation

Annexation is most often couched not as a question of philosophy, or whether local governments have some inherent right to annex that supersedes other considerations, but as a question of economics. Sometimes this takes the simple form of adding more tax revenue. In some cities, there is a more complex planning question of managing growth via the regulatory controls available to a city, as opposed to having development occur in an unregulated way just outside the municipal boundaries.

Putting aside the different, but related questions of how much cities should tax and spend or how much they should regulate, it is easily acknowledged that both uses

make sense, whether or not they are justifiable unto themselves. It is also obvious that annexation affords a solution to both—absorb more property into the city to pay more taxes, and grab more property to manage how growth occurs.

Yet, it is not enough to merely assume that municipalities know precisely what kinds of policies to pursue independent of market forces and outside variables. It cannot be taken for granted that cities, acting on their own to determine the number of residents they should have and the amount of property that should be within their city limits, know precisely what kinds of services to provide or at what level.

What this means is that a city, acting to annex a property, determines that it knows precisely the right level of service provision for its citizens inclusive of that property. When property owners do not consent to the annexation, however, the potentiality for market forces to interact with the public choice of how to allocate public goods is eliminated. The city is acting in a vacuum, and quite possibly inefficiently, in how it allocates public resources.

Far better is the model proposed by Charles M. Tiebout in his influential 1956 article "A Pure Theory of Local Expenditures." Tiebout proposed that local governments necessarily respond to the preferences of the population in how they allocate government resources, as long as people are free to move from place to place and choose their jurisdiction. He wrote: "If consumer-voters are fully mobile, the appropriate local governments, whose revenue-expenditure patterns are set, are adopted by the consumer-voters."[34]

In other words, if the citizen (here, the "consumer-voter") is able to move from place to place, then a market will be created whereby the governments reflect the preferences of their populations. A reduction of the concept would simply be that people vote with their feet.

On its face, this makes a great deal of sense. Who has not observed cities rise and fall in accordance with changing preferences of populations? In the 18th and 19th centuries, the urbanization that accompanied the Industrial Revolution was a result of individual wishes to move where jobs and opportunity were more plentiful, as opposed to rural areas where there was less.

In modern-day America, cities such as Buffalo and Detroit have undergone large-scale population declines due to, among other factors, the loss of traditional local industries and the development of suburbs and exurbs.

Detroit is worth a look, however, due to not only its clear loss of industrial prowess, but also for other factors presaging its population decline. While it is certainly true that America's changing economy, as well as the development of suburbs, played large roles in the decline of Detroit's population, it is hard to now pin the responsibility only on these factors.

Source: commons.wikimedia.org

Indeed, in recent years, much of the population decline in Detroit has been squarely the cause of poor local policy, which has resulted in the largest municipal bankruptcy in American history. Those who can afford to flee Detroit have done so; those who cannot have stayed behind and suffered one of the most dangerous cities in the United States with poor schools, crumbling public services, and few opportunities for improving their station in life.

One cannot rule out that many have left Detroit simply because its government has failed the people.

Voting with one's feet does not entail that for every small change in policy there will be a mass exodus; nor does it mean that every person is equally empowered through his economic situation to make the choice to move from place to place.

Instead, the general rule, Tiebout postulates, is that "… the consumer-voter moves to that community whose local government best satisfies his set of preferences."35 This also lends an understanding to how the decisions of

individuals in choosing where to live affect the level of public expenditures in a given community.

A practical implication of this is in tangible public goods such as parks. If three cities existed adjacent to one another, but only one provided a high level of public expenditure for parks, that community's level of public expenditures could only be maintained if public commitment to that amenity continued. If individuals moving to the community did not care for the expenditures on parks, they would express that desire by voting for public officials committed to reducing expenditures on parks and shifting that spending elsewhere, or cutting them altogether.

However, if in such a community, people moved in and continued their commitment to public expenditure on parks, not only would the city continue its expenditures, but the other two adjacent communities might also be incentivized to raise their spending on parks as well. However, the ultimate choice rests with the voters of the communities themselves: the public services that are provided at a given time are ultimately held to account by the existing voters of that community.

Prospective residents do not have the luxury of hand-picking from a basket of services, so they choose communities that suit their needs and desires. This concept is not only supported by Tiebout's theory—it derives from basic economic elements present in both the neoliberal and the Austrian schools. Austrian economists would speak of such ordering of priorities as a natural condition of the human experience, that people prioritize their wants and needs within themselves by the very process of making a decision. In choosing a community to live in, these ordinate preferences are expressed by what takes precedence—be it better schools, nicer parks, better roads, or the lowest tax rate.

Non-Austrians would apply public choice theory to this process of choosing a community, due to the nature of the incentives involved. A neoliberal economist might say that individuals making such a choice are motivated by preferences and factors that ultimately lead them to maximize their utility in one community or another.

Whichever method one chooses to apply, it is clear that, all other things being equal, individuals choose communities that best suit their preferences, and that the "market" for municipal services, if one can call it that, ebbs and flows around the shifting and varying preferences of different individuals. That these people have a right to choose where to live is implicit in their ability to express a preference in the first place.

But if the person who chooses to live at the outskirts of a city but not in it, or in an unincorporated subdivision, is annexed, what then? The choices he has made with regard to his property and what kinds of services he requires are no longer respected; in point of fact, they are disregarded entirely.

Just as when government intervenes in the market for private goods and services, involuntary annexation produces unintended consequences by interfering with the expected or normal outcome of a transaction; in this case, between a person and the jurisdiction he chooses to live in. Property owners in an unincorporated county in Texas have chosen to live just so, and unless they seek annexation by their own action, are thus satisfied with their choice to live in this manner. If it were not so, they would not have made that choice. Whether or not the choice of living without certain services seems "rational" to the public planner, no value judgment can be made about the choice made by people whose preferences differ from that of the perceived ideal. Therefore, a municipality that seeks to create a different outcome—that is, to eschew the preference of those who live in unincorporated areas—will quite possibly end up creating a situation where, at best, the property owner is dissatisfied with the municipality doing the annexation. At worst, the property owner will change his behavior in response to the annexation.

The first scenario is political, but it has real effects. If many people are forcefully annexed into a municipality and are unhappy with their new jurisdictional status, they will respond in ways that change the dynamic of the existing community as well as that within which they already live. They may decide to revolt against the status quo in the city that annexed them, changing the order of things for those existing residents who might have been content with the policies of the city.

The second scenario is economic, and produces the greatest damage. If property owners who are annexed involuntarily change their behavior in response to the annexation, grave harm has been done to the market for property and the natural order of growth and development.

Suppose a person who lives on the outskirts of a charter city of 5,000 where one storage complex operates, is planning to build one in order to compete with the existing business. Building the competing business would add more storage units to the market, possibly benefiting more consumers, and might drive the price of units down through market competition. At the very least, the competitor might have a more difficult time maintaining monopolistic prices with a nearby competitor.

However, upon being annexed, that property owner might lose his right to build a storage complex—a business that might be deemed unsightly within the newly annexed area's plan. In such a scenario, he may have to dispose of his property at a lower value than otherwise, and in turn, the market will lose the additional units and price competition it would have gained from the original, intended use. These unintended consequences crop up wherever annexation is done, but it is that which is not seen—the uses that are barred because of new regulations, and the increased cost of development, which prevent development or value from being what it otherwise would be—that creates the greatest negative impact.

Involuntary annexation creates a cascade of negative consequences that endanger the ability of the marketplace to respond to citizen preference for goods and services, and prevents economic growth from occurring as it ought to by interfering with the market.

The Social Case Against Involuntary Annexation

We have previously noted that perhaps the two most often used reasons for defending involuntary annexation were to "expand the tax base" and to "manage growth." If these phrases were allowed to stand on their own, unchallenged, then we can see why a planner might find them attractive. What city doesn't want more revenue and higher-quality growth, however that is defined?

The patent problem with both matters is that they relegate an entire segment of society to the dustbin of policymaking. Namely, both justifications for annexation take no heed of the poorest citizens who live outside of cities.

Expansion of the tax base is inherently discriminatory, because it requires cities to maximize the value they get from the properties they choose to annex. In this case, that value is tax value. To maximize tax value, the most highly appraised commercial and residential properties are preferred to those that yield a lower taxable value. The net result of this is that poor communities are rarely annexed, particularly if other options exist for municipal boundary growth.

Growth management is, like expansion of the tax base, an inherently discriminatory justification for annexation. Generally speaking, managing growth is really about making sure that the growth is as high-value and high-quality as possible. Managing growth is not about inclusion, but exclusion—some uses are allowed, while others are not.

A perfect example of this is the location of manufactured home communities in relation to major cities. Few major cities provide much opportunity for subdivisions focusing on such low-value growth to occur, even if the market demands it. As a result, many such communities are pushed to the fringes of cities, even far out into unincorporated areas. Lacking services such as regular municipal policing and other services provided largely by cities but less so by counties, these communities exist a world apart from the cities they orbit. They will continue to, because cities likely will not annex them once they are established outside the corporate limits.

The exceptionally common practice of preferring wealthier areas to poorer areas in annexation is evidence of the inherently discriminatory nature of the policy. Government is picking and choosing who it wants to constitute the growth of the municipality, which, as the economic case showed, deviates from the equilibrium of municipal services needed to meet the actual demand of the marketplace. If involuntary annexation were shuttered, it is reasonable to hypothesize that poor communities on the fringes of cities, as well as those within cities currently, would be some of the primary beneficiaries of the inclusiveness of annexation by consent, instead of by force.

Additionally, voluntary annexation has another potential benefit to better integrate low-income areas into their communities. Because these low-income areas at the fringes of cities potentially have the most to gain from an influx of new city services brought about by annexation, they become power brokers in the process of gaining consent for annexation. They are empowered to become part of the decision-making process by having an outsized role in how annexation is conducted, when, and where.

The Fiscal Implications of Involuntary Annexation

Annexation has been noted to have uncertain fiscal implications for the communities involved, both the annexing entity as well as those being annexed. Edwards (1999) noted that "… the fiscal effects of annexation are not obvious, nor are they easily predicted."[36] The fiscal consequences of an annexation depend largely upon the circumstances in which the annexation occurs, as well as variables in the cost of service provision which may or may not be out of the control of the municipality.

One difficulty that arises in estimating the costs to service annexed areas is in the frequent necessity of issuing debt to finance new projects that may become necessary as a result of annexation. Edwards and Xiao (2009) highlighted the fact that debt is often taken out to finance the service costs of annexation.[37] The bond issuances to pay for extending services to annexed areas will expand the debt burden of the municipality whether or not the tax base ever expands through development in the annexed area. If the annexed area fails to develop in such a manner as to expand the tax base to cover the debt service, taxpayers will nonetheless be on the hook for those expanded services.

Allowing municipalities the power of involuntary annexation violates basic principles of the American republic.

Edwards and Xiao (2009) also discovered that cities who annex frequently have lower per-capita expenditures on police and fire services.[38] Why is this? This is likely not the result of any efficiencies in servicing more spread out areas, but the fact that to properly do so would be much more expensive. As a result, municipalities face a strong disincentive to expand such services, especially in light of the fact that expensive capital projects such as water and wastewater extensions are so often necessary. That means less spending on police and fire per capita as a result. This is supported in much earlier research that focuses on Texas cities with Cho (1969), who found a "…slight correlation with higher taxes and moderate correlations with lower expenditures…"[39]

The increase in service area is not merely correlated to lower per capita spending, but may also result in other inefficiencies in government service provision. Edwards and Xiao (2009) further concluded that while efficiencies may be more difficult to achieve with lower density resulting from annexation, municipalities that maintain higher density, perhaps through less annexation, are more likely to benefit find such efficiencies.[40] "Our research shows that service delivery and administrative efficiencies are certain with higher density development," they write.[41]

An interesting dichotomy arises here between the professed planning preferences of many local officials and their actual practice in the policy realm of annexation. Many in the planning community seek denser development in the interest of having more sustainable services, and for other reasons. This does not mean policies are necessary to force such densities upon communities; rather, that these sorts of policies, often referred to as "smart growth," are in widespread use.

One could imagine that the need for such policies would be diminished if communities were to, as it were, "live within their means" when it came to territorial expansion. It is prudent to ensure that the services of the community, whatever they might be, are well provided to the residents of the population within the existing boundaries before expanding rapidly. It is the wild expansionist tendencies of those cities practicing aggressive annexation that is often irresponsible, from the standpoint of providing services.

Constitutional Questions of Annexation

There is another issue with involuntary annexation—that of property rights.

As the result of an annexation proceeding, a municipality subjects the properties being annexed to property taxes. If, during the annexation proceeding, there is no mechanism by which the properties being annexed may approve or disapprove the annexation via a vote or petition, the property owners are being subject to taxation involuntarily. Given that property taxes subject a person's property to an extraordinary amount of government power due to government's ability to place a lien on a property failing to pay property taxes (which gives courts the power to seize the property), it is clear that annexation that includes the compulsion of property taxes upon newly annexed properties is, in essence, a taking. The property taxes and the ability of a local government to coerce annexed properties and ultimately to seize their properties deprive landowners of due course of law, which arguably violates Sec. 19 of the Bill

of Rights, Article 1 of the Texas Constitution, because citizens have no recourse during the annexation process as it presently exists.

> Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Involuntary annexation proceedings also appear to violate Sec. 17 of the Texas Bill of Rights because the forcible collection of a property tax and the threat of property seizure via lien is tantamount to a takings without "adequate compensation being made." Sec. 17 also prohibits takings without "the consent of such person" unless the takings is for a purpose exempted within the law.

Involuntary annexation could also potentially violate the Texas Bill of Rights by acting as bills of attainder, which are specifically prohibited under Sec. 16. Bills of attainder are acts of a legislative body that single out an entity for punishment. Because the annexation process provides no recourse for property owners being annexed, it may constitute a bill of attainder against any individual or multiple property owners who are singled out to be annexed by a municipal government in Texas. Annexation proceedings do not require a reason to be given.

Protection from bills of attainder is also one of the only specific liberties that the United States Constitution protects for citizens of both the federal government and the states. The Supreme Court case *Fletcher v. Peck* (1810) argued that "a Bill of Attainder may affect the life of an individual, or may confiscate his property, or may do both."[42]

The Heritage Guide to the Constitution notes that "Bills of attainder also required the 'corruption of blood;' that is, they denied the condemned's heirs the right to inherit his estate."[43] By depriving family members (and other potential inheritors of a property) their ability to inherit through seizure of the property, annexation without vote or petition further represents a Bill of Attainder.

Individuals are made the target of an attainder by being singled out, and an annexation proceeding singles out very specifically the properties and owners to be annexed.[44] It is hardly an impersonal process that represents the general welfare described in Article 1, Section 8 of the United States Constitution.

James Madison wrote in Federalist 44, "Bills of attainder, ex post facto laws, and laws impairing the obligations of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. ... The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community."[45]

The Regulatory Takings Inherent in Annexation

The takings aspect of annexation does not simply come through taxation, however. There is also a very real regulatory takings inherent in annexation that, unlike the new taxes annexation begets, is rarely discussed. This is the regulatory takings aspect of annexation. It is, perhaps, best illustrated with an example.

Suppose you own 50 acres within the extraterritorial jurisdiction (ETJ) of a city and are within the city's short-term annexation plan. Because you are not presently zoned, being in the county, you are reasonably free to improve your property as you wish. You may be subject to some restrictions the city has placed upon the ETJ, but these likely will not affect your ability in any significant way to improve your property as you desire. Now, suppose you have plans to build a sizeable 5,000 sq. ft. steel shed on a part of your property, and while it is a fairly large structure, you have no plans to wire it for electricity, water, or wastewater. Your plans have been drawn up but not yet implemented. As long as you are in the county, the materials, labor, and services required to build your shed will cost $30,000.

Now suppose that the city has decided to proceed with annexation of your property. The annexation will place your property in a zoning designation that prohibits the building of a basic steel structure, so you will have to meet the development requirements of the city you now reside in. In addition, you will have to meet the requirements of a masonry ordinance which requires the external use of masonry on any new building. Further, you will be forced to provide utilities to whatever detached structure you build, and adhere to a much stricter and more updated set of building codes.

Once you are annexed, still wanting to build a shed, you modify the plans to meet the codes and requirements of the city and figure up all the costs, and the most basic 5,000 square foot shed you can build will now cost $80,000.

That $50,000 difference is a loss to you—you did not want, desire, nor need the additional cost or features. Nor did you desire or need the additional regulatory process and approval process necessary to build the shed within the city. Your shed might even be located in a stand of trees where no one can see it. Regardless of all these considerations, you will still be subject to these additional regulatory costs.

That $50,000 represents a takings that affects you directly. You now face a choice of either paying an additional $50,000 to build what you previously could build much more cheaply, or you must choose to not build the shed, in which case you have lost the value of the shed entirely, both to you and your property value. The resultant unrealized gain in property value also represents a financial loss, although it is impossible to calculate exactly. Needless to say, you do not come out a winner because of the additional cost you must bear.

The regulatory takings aspect of annexation is rarely discussed, but it is all too real. Every year, in many cities, annexation represents a significant regulatory takings that residents are unlikely to be aware of, because the current annexation process does not require an explanation of all additional regulatory burdens upon newly annexed properties. These property owners, therefore, are often very much unaware of all the regulations that will greet them upon their entry into the city. Even if they want to be annexed, they may not understand the scope of new regulations that will affect them and what it will do to their ability to improve and use their property.

At the very least, however, if property owners and residents were given the chance to consent to annexation, or if they decided to be annexed of their own accord, they would be providing the government with their consent to regulate them. Being annexed entails much more than services and taxes; this regulatory feature must be considered as well, because annexed property owners and residents may lose rights that they take for granted in an unincorporated area. If annexed involuntarily, this is an exceptionally unjust situation.

An Equitable Solution for Annexation Reform in Texas

Proponents and opponents of the present annexation situation may never completely agree as to what constitutes an ideal compromise. Municipalities are unlikely to voluntarily give up their authority to annex involuntarily, and residents in unincorporated areas outside of municipalities have little recourse to defend against annexation. This means that, in Texas' case, a statewide solution is necessary—as has been already passed by many other states.

This does not mean that residents and property owners in unincorporated areas, particularly those within the Extraterritorial Jurisdiction of cities, should have complete control over the annexation process. The municipality itself may not have "rights," but the citizens therein do, and they may seek policies that create a desire to annex. Where the compromise, so to speak, must come in is that these residents, through their city, cannot violate the rights of property owners in unincorporated areas.

Therefore, an equitable solution for annexation reform in Texas must include several key components:

- It must protect the rights of property owners and residents in unincorporated areas, particularly within the Extraterritorial Jurisdiction;
- It must allow cities to initiate the annexation process;
- It must allow annexation to occur in a timely fashion, in other words, without undue delays.

The third point is particularly important, because under current law, both voluntary and involuntary annexation proceedings tend to take a very long time and require a great deal of bureaucratic wrangling. This should not be the case; if annexation is done in a proper manner—that is, with the consent of those being annexed—there should be no reason for excessive statutory delay. This also allows cities to have more opportunities to annex even if annexation becomes, in a sense, more "difficult" because of some requirement of consent. Additionally, it provides an opportunity for voluntary annexations—those initiated by the property owner—to be significantly shortened in duration, due to the pre-existing consent of the property owner(s) seeking annexation.

In the following sections, equitable annexation reform will be explained according to three distinct situations that it covers, which likely account for all instances of municipal annexation: voluntary annexation initiated by property owners, annexation initiated by municipalities of areas with low population (fewer than 200 residents), and annexation initiated by municipalities of areas with high population (200 or more residents).

A Proposal for Voluntary Annexation

Voluntary annexation should not be subject to unnecessary delays. The principle at hand in voluntary annexation is simple: a property owner consents to be annexed by seeking annexation. As a result, the process should take no longer than the amount of time necessary to obtain full agreement between the property owner and the municipality.

In order to allow cities and property owners to more readily come to an understanding regarding the services provided after an annexation occurs, property owners seeking voluntary annexation should be able to negotiate with a city and draw up a service agreement that outlines the specific responsibilities of the city and property owners.

For example, a property owner seeking annexation may only care about obtaining police and fire coverage, but does not need other improvements, such as sewer service. He may wish to place this stipulation in an agreement with a city; therefore, it is to the city's advantage to have the property owner able to consent to a lower level of services than might be required by the current service inventory in statute.

Similarly, the property owner may wish to obtain a certain kind of zoning designation after he is annexed, and allow the city to forego certain services in the interest of obtaining that designation. In either case, it is the agreement which would stipulate the terms—and the agreement must be signed off on by both the property owner and the municipality.

Once a property owner (or owners) agrees to the terms of annexation, the city should be able to annex quickly. A reasonable solution would be for the city to hold a public hearing and then, no sooner than 10 business days later, post for final passage of the annexation. This would speed up voluntary annexation to a process that could take as little as a few weeks, which would clearly benefit both municipalities and property owners.

A Proposal for City-Initiated Annexation with Fewer Than 200 Residents

Because of the many kinds of annexations that are conceivable, it makes sense to split the annexation process up in statute into smaller and larger segments. In moving toward a consent-driven process, the Legislature should also recognize that not all populations need the same kind of consent. For a larger area, it may be feasible to seek an election. For a smaller area with fewer than 200 residents, it is not necessary.

Therefore, the proposal recommended for such small-scale annexations is to use a process of seeking consent by petition. As with voluntary annexation, there is no need to overly complicate the process and take longer than necessary. However, in the interest of respecting the rights of the people who are to be annexed, it is important to allow enough time for either consent to be granted or for people to decide to reject a proposed annexation.

To that end, the core process should take no more than a few months, allowing the bulk of the time for the residents to consider granting consent, or denying it.

The following is the proposed procedure for a municipality to annex an area containing no more than 199 residents:

- The municipality shall pass a resolution clearly establishing intent to annex the area, and including detailed descriptions and maps of the properties to be annexed, as well as a full description of the services to be provided after annexation, using the existing inventory of services already required by statute. The resolution marks the beginning of a 90-day period in which the informational and petition gathering processes shall be contained.
- The first 30 days shall contain at least one public hearing to be held by the municipality in the area to be annexed, not sooner than 21 days and not further than 30 days after the passage of the resolution initiating the annexation process. Within seven days of the passage of the resolution, notice shall be mailed to every property owner of the annexation hearing and forthcoming petition process, as well as information regarding service provision after annexation.
- A 60-day petition collection period shall follow the 30-day informational process. The municipality may solicit petitions by going door to door, mailing notices, and making phone calls. However, the petitions must be signed in person.
- A resident of the area to be annexed who is not registered to vote at the beginning of the petition process may be allowed to sign the petition in the affirmative or negative if registered to vote at least 30 days prior to signing the petition; however, the

municipality may not register voters in order to gather more signatures.

- If the voting age population in the area proposed for annexation (that is, the number of persons residing in the area who are at least 18 years of age and in good standing to register to vote, whether or not they are indeed registered), do not own at least 50.1 percent of the total land area of the area to be annexed, then at least 50.1 percent of the non-resident property owners must also consent to the annexation through a petition process concurrent to the process for qualified resident voters, except that the non-resident property owners need not be registered to vote in the same county or counties where the annexation is taking place. Additionally, they may provide verified signatures electronically for expedience.
- Those who sign the petition may give written notice in person, prior to the petition period closing, that they wishes to remove their name from the petition.
- If the petition process closes and a sufficient number of signatures from qualified voters and non-resident property owners (if necessary) have not been obtained, the annexation process is closed, and the city may not propose the same area for annexation for a period of at least one year.
- If the petition process closes and a sufficient number of signatures have been obtained from qualified voters and non-resident property owners (if necessary), then the city shall finalize the annexation process by holding one more public hearing and then an additional final meeting for deliberation, and final passage, at least 10 business days apart. Additionally, the public hearing shall not be held until all property owners have been notified of the results of the annexation petition process.

Of note, property owners who are not residents nonetheless have a right to their property that ought to be recognized and protected within the annexation process. For this reason, such non-resident property owners are considered within the seeking of consent if they represent more than half of the properties sought for annexation. This is a reasonable compromise between always seeking to include the property owners who are not residents and never including them. Under current law, non-residents are not considered. This proposal is equitable for cities, residents, and property owners alike. This also speeds up the annexation process such that it may occur in less than four months, as long as consent is obtained.

Procedures for City-Initiated Annexation of an Area Containing 200 or More Residents

For a larger population, a petition becomes more challenging. In this instance, it is reasonable to hold an election as is required by many states with consent-driven annexation processes. If a municipality wishes to annex an area larger than 200 residents, it ought to seek an election.

To that end, an election should be held, but not on a holiday or some strange date when no one is able to participate. Instead, it behooves the municipality to hold the election on a date that is standard. Under current Texas law, the May municipal election date, which is the second Saturday of May, or the November election date, which is the first Tuesday in November, are the standard election dates.

Municipalities seeking to annex 200 or more residents should seek consent in an election occurring on one of these standard dates, allowing for the maximum participation of those residents, but potentially allowing for less money to be spent than would be if an election was not already being held on that day.

Importantly, municipalities cannot hold the election sooner than 90 days from the passage of the resolution of intent to annex; this allows for a full public debate within the area proposed for annexation, and provides time for public hearings. A municipality should hold at least two—one in the first month, and one in the second 60-day period. If municipalities wish to hold more, it would be their decision to do so, but they would not be required to or prevented from that broader level of engagement.

The following is the proposed procedure for a municipality to annex an area containing 200 or more residents:

- The municipality shall pass a resolution clearly establishing intent to annex the area, and including detailed descriptions and maps of the properties to be annexed, as well as a full description of the services to be provided after annexation, using the existing inventory of services already required by statute. The resolution shall also establish the date of election for the annexation.

- The annexation election shall take place in a fixed polling place or places within the area proposed for annexation. If a suitable location is not available, it shall take place in the nearest available location within the municipal limits.
- The annexation election may only take place on the May or the November regular election dates. The municipality may choose either, however, the election date must be no sooner than 90 days from when the resolution is passed calling for it.
- The first 30 days after the resolution is passed shall contain at least one public hearing to be held by the municipality in the area to be annexed, not sooner than 21 days and not further than 30 days after the passage of the resolution initiating the annexation process. Within seven days of the passage of the resolution, notice shall be mailed to every property owner of the annexation hearings, election, as well as information regarding service provision after annexation.
- An additional public hearing shall be held in the 60-day period following the first 30 days; between days 31 and 90 after the passage of the resolution.
- The election shall only be open to qualified voters of the area proposed for annexation.
- If the voting age population in the area proposed for annexation (that is, the number of persons residing in the area who are at least 18 years of age and in good standing to register to vote, whether or not they are indeed registered), do not own at least 50.1 percent of the total land area of the area to be annexed, then at least 50.1 percent of the non-resident property owners must also consent to the annexation through a petition process during days 31 through 90 after the resolution is passed, except that the non-resident property owners need not be registered to vote in the same county or counties where the annexation is taking place. Additionally, they may provide verified signatures electronically for expedience. The municipality may collect these petitions only between days 31 and 90 after the resolution has been passed. The municipality may solicit petitions by going door to door, mailing notices, and making phone calls, however, the petitions must be signed in person.
- Once the election has been held, all property owners must be notified of the result of the election. If at least 50.1 percent of qualified voters in the area proposed for annexation have voted in the affirmative, and a petition of non-resident property owners has been signed by a sufficient number in the affirmative, a public hearing shall be held and, at least 10 business days after, a meeting for deliberation and final passage of the annexation process as well.

The election process for seeking consent to annex, which is used by many states, need not be overly burdensome. To that end, once consent is obtained, the annexation is done. It does not require additional steps, beyond a simple public hearing and then final passage by the governing body. As with the petition process, the election process of seeking consent can be accomplished in as little as four months, and yet still allows for full resident and property owner consent to be considered in the annexation process, whether there are 201 or 20,000 residents involved.

Other Proposed Changes to Statute

Many states' annexation reform proposals have included some level of consent by the municipality's residents also. While there is merit in including the voices of existing residents, to some extent their ability to hold their elected officials responsible for a poor financial decision lays at the ballot box. Additionally, there are some local charter provisions that would already cover the ability of citizens to either halt or end an annexation process.

However, because it is such a common inclusion in annexation reform proposals, and because there are conceivable instances in which a community may strongly oppose an annexation for some reason, the statute should be amended to include a provision to allow existing residents of the municipality to delay the annexation for a period of time.

Here is what this proposal could look like:

- A city's residents, during days 31 through 90 after the passage of the resolution declaring intent to seek annexation, may terminate the annexation process if at least five qualified voters who are city residents gather petition signatures numbering at least 10 percent of the total voters of the most recently held regular municipal election to call an election in which city residents may vote to reject the annexation with a majority vote. If the annexation is stopped by local petition, it may not be attempted again by the municipality for a period of two years.

- While this is a high threshold, if an annexation produces a great amount of opposition, it will not be an insurmountable barrier by which citizens may hold their local government accountable.
- Another important difference with this proposal and existing statute is that the new statute should apply to both general law and home rule municipalities. There is no reason to discriminate against general law cities by only delegating to them a limited annexation authority. Home rule and general law cities should, as long as consent is obtained, be able to annex in the same fashion. The only limit, inasmuch as it is not also reformed, should be the extraterritorial jurisdiction.
- Another change that should be enacted is that areas proposed for annexation, whether city initiated or property-owner initiated, do not need to be contiguous as long as they fall within the extraterritorial jurisdiction of the municipality. This may seem a strange concession, but it allows for cities to not have to draw contiguous boundaries that may inadvertently bring in unwilling property owners in order to get to an area farther out in their extraterritorial jurisdiction. As long as the city is able to provide services, contiguity in municipal boundaries is not necessary—at least with the extraterritorial jurisdiction in place.
- Finally, limited-purpose annexation, which allows cities to gain tax dollars and regulatory authority without providing services, should be eliminated as part of moving annexation to a consent-driven process. This has not been addressed within the prior pages as it is altogether a different mechanism, but nonetheless allows government to exercise its authority over individuals in unincorporated areas without their consent.

Reverse Intergovernmental Aid

Before concluding this study, it is worth addressing another issue that is often brought forward by cities as a reason for needing to annex involuntarily. It is also commonly brought up by the Texas Municipal League (TML), which represents the majority of Texas cities as members and lobbies on their behalf for preserving local authority on most things, including their ability to involuntarily annex.

In presentations and in testimony, the TML has repeatedly referred to a concept that it calls "Reverse Intergovernmental Aid" (RIGA), as a primary reason why Texas cities need to retain the authority to annex involuntarily.[46] The argument is that most states aid cities directly out of their budgets, while Texas provides little financial assistance to cities, and in fact takes money from cities through RIGA. As a result, the power to annex involuntarily exists as a counterweight to RIGA, and so long as it exists, the ability of RIGA to negatively affect cities is limited.

It is difficult to gauge the fiscal positives of involuntary annexation taken as a whole, for reasons previously described here. That said, the TML is correct about RIGA's harmful effect on Texas cities, and as part of broader reform of statutes affecting local governments generally, it is necessary to include RIGA in the discussion.

In order to address RIGA, which the TML pegs at hundreds of millions of dollars, several state agency fees and programs would need to be eliminated. First is the Texas Comptroller's cut of sales tax remittance to municipalities. The TML estimated in 2012, this figure rose to $137 million, which accounts for a significant portion of the operating budget of the Comptroller's office.[47]

Additionally, another major component of RIGA is the amount of municipal court fines remitted to the state, which the TML reports at a $227 million for 2012.[48]

Another player in RIGA is the Commission on Fire Protection, which generates its budget of nearly $4 million through "fees on cities and firefighters," and is tasked with generating even more revenue to go into the state's general fund.[49]

Conclusion

Annexation has almost always been a controversial issue in Texas, with advocates on both sides offering widely different views on matters of property rights and self-determination. But much of the real debate centers on the proper role of government.

Perhaps more than ever, Americans are becoming acutely aware of the need to protect their property rights, as government at the federal, state, and local levels seem inclined to diminish the natural Constitutional rights that have long been held in esteem. It is the duty of all Texans to question the policies and institutions threatening our individual liberty and property rights. ★

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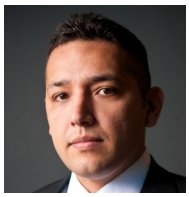

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