**The Standoff at Eagle Pass: Out of 18th century divisions, a 21st century constitutional crisis**

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On 22 January 2024, the Supreme Court of the United States vacated a lower court order, and effectively allowed the federal US Border Patrol to continue to clear wire set up by the Texas National Guard at Shelby Park in Eagle Pass, Texas to prevent migrant crossings from Mexico across the Rio Grande River.

The issue, which strikes at the heart of the centuries-old fundamental debate over federal versus state power, has become a new *cause célèbre* for American conservatives, libertarians, and the alt-right.

Republican Texas Governor Greg Abbott has vowed to continue erecting razor wire and deny access to Border Patrol agents seeking to remove it. He ignored a deadline of 26 January from the Department of Homeland Security requesting access to Shelby Park.

Governor Abbott has accused President Biden of “violat[ing] his oath to faithfully execute immigration laws enacted by Congress”, and declared that as a result, Texas has invoked its “constitutional authority to defend and protect itself”, an authority which “supersedes any federal statutes”. In response, a letter by 25 Republican Governors, that is, every Republican Governor except one (Vermont), expressed their solidarity with Abbott, also accusing the Biden administration of “abdicating its constitutional compact duties to the states”.

***Ideological and legal background to the dispute***

At its core, the dispute is one of the oldest and most fundamental in United States legal and political theory, a dispute over authority, and where it lies.

The term ‘compact’ in the above quotations is key. Proponents of ‘compact theory’ argue that the United States was formed via compact (agreement or treaty) between its constituent state governments, that the federal Government is a creation of the states. Consequently, in this view, states – rather than federal courts or agencies – have the final authority to determine the limits of the power of the federal Government and can nullify federal laws deemed unconstitutional. This theory was one of the bases of the secession of the southern states in 1860-1, which led to the American Civil War.

‘Compact theory’ contrasts with what is often referred to as ‘social contract theory’, whose proponents argue that the United States is a contract between the *people* governed within the states and the federal Government, rather than between the states and the federal Government.

Some opponents and analysts have raised concerns over the invoking of Article 4 § 4 and Article 1 § 10 of the United States Constitution in the statements by both Abbott and the Republican Governors. Put briefly, these Articles declare that the United States (the federal Government) shall protect each constituent state against invasion, and that states may not keep troops or enter into agreements with other states without the consent of Congress “unless actually invaded”. By declaring the migration issue at Texas’ southern border an ‘invasion’, Governor Abbott and his fellow Governors have argued that the federal Government has failed in its constitutional duty, thereby setting the stage for inter-state agreements and law enforcement cooperation without the consent – and in this case, in disobedience of – the federal Government. Indeed, at least 10 Republican-governed states have also pledged to send their states’ National Guard to aid the Texas National Guard at the border. Donald Trump, currently the frontrunner for the Republican presidential nomination, has supported this move.

***Potential future developments and risks***

That Governors have invoked the ideas of a broken “compact” has led some analysts to fear echoes of the secession and Civil War of the 1860s. Despite repeated allusions to secession by some senior Texas Republicans over the years, including in cases over the 2020 presidential election, we do not assess a ‘Texit’ to be a serious imminent possibility.

Nonetheless, the ongoing standoff over Eagle Pass risks creating a major constitutional crisis between federal and state Government, and federal and state law enforcement agencies, reopening old, and in some cases never healed, scars over questions of states’ rights which still flow through the public discourse of many states. In an election year, the issue risks being even further weaponised by all sides, which could lead to increasing divisions between state and Government, between states, migrants and ‘natural born’ Americans, and the judiciary. As part of its doctrine of political warfare, known as ‘active measures’, Russian politicians and social media channels have eagerly spotlighted the crisis and its divisions, and ‘information laundered’ pro-secessionist, anti-federal Government content.

Moreover, the presence of multiple state National Guards would act as a force multiplier, further increasing the tension, particularly considering the presence of arms. Such a crisis would be further exacerbated should Biden heed the call by some Democrats to invoke Title 10 and federalise the Texas National Guard, bringing it under presidential, rather than gubernatorial authority. How members themselves would react to that move is uncertain, but Telegram channels sympathetic to the State of Texas’ stance on the issue have strongly emphasised guards’ Texan, over their American, identity.

Moreover, the use of language of ‘invasion’, secession, and civil war – including by serving members of Congress – has also mobilised activist and militia-type groups eager to ‘hold the line’ in Texas. For many of these organisations, dislike of alleged ‘federal overreach’ has long been a core grievance. On 29 January, a ‘Take Back Our Border’ convoy began travelling from Virginia Beach, through Florida, Louisiana, and Texas, with rallies scheduled near Eagle Pass, Yuma in Arizona, and San Ysidro in California. Organisers said they anticipate 700,000 vehicles to participate.

Organisers of the ‘Take Back Our Border’ convoy insist it will be peaceful, and officials have avoided explicitly calling for violence. Social media chatter suggests that participants understand the spotlight on the border situation, and urge restraint. We therefore assess that a ‘civil war’, particularly between pro-Abbott Republican state forces and right-wing groups versus federal and/Democrat forces is currently unlikely.

However, chatter also expresses a deep mistrust of the federal Government, and, at times, increasingly belligerent rhetoric towards it. From a security perspective, in this febrile atmosphere, aggravated by likely armed protestors and law enforcement, it is not inconceivable that localised clashes between units, activists, and protestors could flare up. Other realistic possibilities include vigilante action by individuals towards migrants in border areas, or ‘lone-wolf’ attacks (perpetrated by individuals on either side of the dispute) on officials, Guard forces, or infrastructure associated with federal, state, judicial, or law enforcement purposes.