

# SECESSION AS POLITICAL REFORM: THE CASE OF WESTERN AUSTRALIA

Western Australia is deserving of the remedial measure of secession, says **Sukrit Sabhlok**

In my opinion Western Australia should never have entered the Federation, but having done so, there is, I feel convinced, only one complete and satisfactory remedy for her present disabilities, viz., secession.

— J. Entwistle<sup>1</sup>

Last year, Norman Moore boldly suggested that Western Australia ought to secede from the Commonwealth in protest of the carbon tax and Minerals Resource Rent Tax being imposed by the federal government. Moore is Western Australia's mines minister, so the Labor opposition was scathing in its criticism of his comments—calling him 'dangerous,' 'disrespectful' and 'preposterous.'<sup>2</sup>

But is secession really so radical? After all, even Premier Colin Barnett has warned that Western Australia is likely to split from Canberra if revenue created in the state keeps shifting east. Admittedly, Barnett has been careful to tread a fine line by keeping some distance from the more strident elements of the separatist movement. For Barnett, his observation that Western Australia could secede is 'not a threat' but merely 'reality,' and 'a trend you may see over the next 20 years ... the WA economy ... will simply move away from the rest of Australia and get closer and closer to Asia in every respect.'<sup>3</sup>

Secession is not foreign to Australian traditions; it is already occurring in Australia and there should be more of it. North of Perth, near the town of Northampton, there is already a micronation known as the Principality of Hutt River. Previously known as the Hutt River Province, the principality was the first micronation to declare its independence; it does not pay tax to the Australian government, has titles and regalia for its leaders, and issues

its own passports. Other micronations include the Province of Bumbunga in South Australia, the Sovereign State of Aeterna Lucina in NSW, and the Independent State of Rainbow Creek in Victoria, just to name a few. His Imperial Majesty George II of Atlantium observes:

You'll find there's a greater concentration of micro states in Australia than anywhere else—there have been dozens—and if you look at it per capita, Australia is wildly in excess of every other part of the world. It comes from our convict heritage and disrespect for authority. American groups like the Davidian Branch tend to be more violently whacko, whereas Australians are just quaintly eccentric.<sup>4</sup>



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Although secession strikes at the heart of the many debates on Australian federalism, it is not often raised as an option by reformers of intergovernmental relations. Most proposals from experts focus on tinkering with the federal system by changing elements of the tax and grant distribution systems or creating special economic zones that provide targeted relief from federal government intervention.

In rare instances when separation is raised, numerous legal, political and economic obstacles are placed in its way. George Williams writes: ‘The constitution simply does not contemplate any part of the nation breaking away, with no state having the right to unilaterally leave the federation.’<sup>5</sup> Others have opined that departure would leave a seceding state exposed and defenceless against foreign enemies, or that a unified system is essential for minimising inter-jurisdictional conflicts in the Indo-Pacific region. Some have questioned whether secession will yield economic benefits for the breakaway region, as there is no guarantee state governments will be less oppressive than the national one.

This essay analyses the arguments pertaining to the exit of a minority from a majority, that is, to inquire into whether secession is justifiable. The case study of Western Australia will take centre-stage, because in 1933 nearly 70% of West Australians voted in favour of leaving the Australian federation.

### Relevant literature

Public choice economist James Buchanan observes that although much has been written about the theory of external exit, or the notion that people can ‘vote with their feet’ and emigrate from one country to another, little has been written about the ability to withdraw persons, space and goods from an existing country to create a new country—in other words, the capacity to secede.<sup>6</sup>

An edited collection titled *Secession, State and Liberty* (1998) sought to fill this void by compiling essays mounting a vigorous defence of secession from all angles—economic, philosophical and legal. Secession, argues its editor, David Gordon, ‘follows at once from the basic rights defended by classical liberalism.’<sup>7</sup>

Secession is desirable in a free society because it exerts a check on monopolistic centralised power and places a limit on the taxing proclivities of government.

Ludwig von Mises also considers permitting secession as the ‘only feasible and effective way of preventing revolutions and civil and international wars.’<sup>8</sup> In *Liberalism*, Mises does not require jumping through elaborate hurdles but sees a simple majority vote as being sufficient to grant self-determination to every ‘independent administrative unit’ that desires it. Mises’ disciple Murray Rothbard takes the right of secession a step further into the realm of anarchy, where every individual is free to unilaterally exit from the governmental system and contract with private agencies for services provided by the public sector.<sup>9</sup>

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Mises and Rothbard justify their approach on the grounds that individuals have a right to decide who rules them. Current geographic boundaries often merit change since they may be artificial creations carved by some authority. The pursuit of fairness requires us to ‘transform existing nation-states into national entities whose boundaries could be called just, in the same sense that private property boundaries are just; that is, to decompose existing coercive nation-states into genuine nations, or nations by consent.’<sup>10</sup>

Not everyone is quite so sympathetic towards the idea of declaring independence. In *Secession*, Allan Buchanan submits that secession would not be defensible in a perfectly just state. His theory of Remedial Rights Only proposes that extreme circumstances would have to exist before a right to secede could arise—that is, separation is a measure of last resort to be used when a state violates human rights or engages in discriminatory policies towards minorities. Such a view emphasises the notion that it is *the government’s* territory and that in

departing to form a new nation, secessionists are taking what does not belong to them and so should have to rationalise their actions.

Most classical liberal philosophers, however, would disagree with the characterisation of territory as *belonging* to government. Ownership of real property occurs in two ways: original appropriation and the mixing of labour with land, or through voluntary exchange. The process of finding unused land and then adding value to it is known as homesteading and was famously described by John Locke. Yet governments typically do not acquire land through homesteading or voluntary exchange; they are parasitic organisations subsisting on coercively acquired tax revenue, and tend to seize assets through force. So their title to land is not valid or just, and liberal philosophers are unlikely to accept that governments 'own' territory.<sup>11</sup>

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Hans-Hermann Hoppe cites other rationales for secession.<sup>12</sup> First, in an environment where increasing tendencies towards world government are evident (through the IMF, WTO, UN etc.), secessionism fosters economic competition by encouraging the emergence of numerous smaller entities and thereby instilling discipline in governments that wish to prevent their subjects from emigrating to other jurisdictions. Second, secession increases the likelihood these entities will opt for a policy of free trade, since smaller nations find it comparatively difficult to be self-sufficient, given they may lack natural resources or capital and are compelled to import what they need. Free trade is beneficial both because it reduces the prices of goods and services domestically and contributes to peaceful relations.<sup>13</sup>

## Western Australia's dilemma

Federalism is defined as a system of government where sovereignty is constitutionally divided between a central body and constituent units (states or provinces). It can be contrasted with unitary systems such as the United Kingdom, in which political authority is vested in a single sovereign for the whole country. In 1901, Australia was established with the intention of being a federal state—power was to be divided between the Commonwealth and the six states, with each state an equal in its sphere of constitutional authority.

It is clear by now that this ideal has not been achieved in practice. The national government has greatly increased in size and scope over the past century, and the states are rapidly losing their share of the bargain. This trend has been evident at least since 1920, with the High Court's decision on the *Engineers Case*. That case revolutionised the way in which the court interprets the Constitution—no longer was deference to be paid to the importance of upholding the federal-state balance; rather, Commonwealth powers could be given a plenary interpretation if the judges, in their infinite wisdom, decided that the text demanded it.

That Western Australia was always reluctant to enter the Commonwealth is well known; its entry was the product of inducements offered by the federal government coupled with the influence of its goldfields region populated by loyal federalists from the east.<sup>14</sup> Thanks to these two factors, Western Australians in 1900 joined the federation by a margin of more than two to one.

Were the inducements—which comprised five years of tariff protection per section 95 of the Constitution and an intercontinental railway—worth the price of giving up self-government? Lang Hancock points out that between 1890 and 1900 (while free from Canberra), the state enjoyed 'the ten greatest years in the history of [its] development.'<sup>15</sup> Yearnings for these pre-federation days led to secessionist rumblings in 1906, with the Legislative Assembly passing a resolution declaring that federation had 'proved detrimental to the best interest' of Western Australia and that a referendum should

be held to canvass support for ‘the possibility of withdrawing from such a union.’<sup>16</sup>

### **Vertical fiscal imbalance**

Western Australia’s disabilities under federation have been most prominent in the area of raising revenue, courtesy of the *Uniform Tax* cases that allowed the federal government a monopoly over income tax.<sup>17</sup> Sir Robert Menzies is quoted in *e Argus* lamenting the court’s decision: ‘From now on the Government of Australia must be regarded as much more of a unitary Government and much less of a Federal system than was thought to be the case previously.’<sup>18</sup> Henceforth, Menzies indicated, ‘the finances of the States are at the mercy of the Commonwealth.’<sup>19</sup>

With the loss of revenue-raising ability has arisen a gross vertical fiscal imbalance between the states and the federal government. The federal government raises more revenue than it needs, while the states, with the loss of their taxing powers, raise less revenue than they need and depend on the Commonwealth Grants Commission.

### **Unfair distribution of grants**

The commission distributes monies on the basis of a ‘horizontal fiscal equalisation’ formula. The problem is that this formula penalises success by redistributing income away from richer states with low expenditure needs to poorer states with high expenditure needs.<sup>20</sup> So Western Australia is being punished for its booming economy and the low level of social security and health benefits received by its residents.<sup>21</sup>

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Western Australia’s government has frequently complained about receiving an unfair share of revenue from the commission. According to the WA Treasury, in 2010–11 the Commonwealth took \$42 billion from the state, while expenditure for the benefit of the state totalled only \$27 billion, a difference of \$15 billion.<sup>22</sup>

Table 1: Net redistribution of resources, 2010–11(a)

	GST only <sup>(b)</sup>		Total	
	\$ million	\$ per capita	\$ million	\$ per capita
NSW	1,043	144	2,190	301
Victoria	1,085	194	1,314	235
Queensland	99	22	-6,019	-1,325
Western Australia	1,692	730	14,939	6,447
South Australia	-1,244	-754	-5,095	-3,087
Tasmania	-776	-1,524	-3,414	-6,706
Northern Territory	-1,898	-8,272	-3,915	-17,058
Total	0	0	0	0
(a) All Commonwealth outlays and revenue relating to the ACT are allocated to the other states according to population shares. This recognises that the ACT would not likely exist as a separate entity if the federation were dissolved.				
(b) Difference between estimated GST revenue raised from economic activity in each state and GST grants paid to the state.				

Source: WA Department of Treasury.<sup>23</sup>

Table 1 shows that Western Australia's net contribution to the Australian government exceeds that of the other states in both per capita and absolute terms.

So there is some truth to the claim that the state is being milked for taxes (e.g. company tax, income tax, GST) while receiving a smaller amount in return.

### **Regulatory costs**

There are also the regulatory costs of federal government intervention to take into account. The imposition by the Commonwealth of an import tariff, for instance, pushes up production costs on inputs by preventing WA businesses from purchasing these cheaply from overseas. Although tariff rates have declined since trade liberalisation in the 1980s, it remains a legitimate grievance as it protects the interests of manufacturing-intensive eastern states at the expense of Western Australia's agricultural interests.<sup>24</sup>

Federal industrial relations law has likewise

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imposed costs upon consumers and businesses. One example is the *Work Choices* case in which the High Court expanded the scope of Australian government authority to cover almost all aspects of the employer-employee relationship.<sup>25</sup> The effect has been to decrease the responsiveness of industrial laws to local preferences, undermine flexibility, and in turn, increase labour costs for businesses.<sup>26</sup> Instead of being able to set their own standards in consultation with state parliaments, employers in Western Australia must adhere to time-consuming national rules and regulations.

### **Accountability**

Last but not least, federation has diminished the political accountability that is said to be an integral part of liberal democracy. Vertical fiscal imbalance has broken the nexus between

revenue raising and expenditure: the residents of Western Australia, and the other states for that matter, have many of their 'public goods' such as health and school education funded by the Commonwealth, yet the responsibility for spending the money is placed upon the states.

This has led to confusion about which tier of government should be held accountable in the event that performance is below expectations. On the one hand, states pass the blame to the Commonwealth, citing not enough funding and red tape. On the other, federal parliamentarians allege that the states are sanctuaries of mismanagement and incompetence. And while this is going on, average citizens continue to experience the effects of lacklustre outcomes in service provision.

### **Choosing the right remedy**

The result of Western Australia's financial dependence upon the Commonwealth is that it has lost autonomy in a host of policy areas, and this is undoubtedly detrimental for those West Australians who would prefer to retain control over their lives at a local and more accountable level. The situation is aggravated by section 96 of the Constitution, which has been used by the Australian government to guide and oversee planning in health, education and other areas of state responsibility.

In these circumstances, it seems appropriate that secession be considered as one of many possible remedies, the others being some type of reform of federal-state relations—for example, to the grants system, or shifting to a confederal model where the centre is less powerful than the states—or nullification of federal laws on a case-by-case basis (i.e. Western Australia would refuse to obey specific federal laws it believes are outside the proper scope of the central government's powers, but would otherwise remain within the union).

Reforming federalism can be dismissed as an unrealistic course of action; the institutional framework of federation is biased against the states and fixing it is a Herculean task because it would require the federal government to voluntarily scale back its impositions upon the states.

From a practical point of view, nullification and secession are more realistic options because they only require the approval of a majority of voters in a single state, rather than approval by all Australian voters, as would be necessary in any form of constitutional amendment towards a confederal model, for instance. Nullification has been used to good effect in the United States, with socially liberal states such as California resisting federal anti-marijuana laws. Nullification could be a first step before secession as it is less confronting, but secession could be used as a last resort.

Whether nullification or secession is the appropriate remedy will depend upon the level of oppression that West Australians feel they are faced with. If oppression by the Commonwealth is so great that only secession would remedy the problem, then the question of withdrawal should be put to the people in a plebiscite and then departure should be affected unilaterally by the state parliament in accordance with the wishes of its residents whom it is arguably obligated to protect from federal deprivations.

### The legality of secession

When West Australians voted in favour of seceding in the 1930s, the unilateral option was not pursued. Instead, the Labor government at the time decided to appeal to the United Kingdom's Privy Council to grant permission for its withdrawal. This, it was thought, was the proper legal course of action. Yet the council rejected Western Australia's arguments and cut the momentum out of the secessionist movement. Before any future attempt at seceding is made, it should be acknowledged that unilateral secession is a legally valid option for Western Australia to pursue.<sup>27</sup>

Many central governments have used military force against a state that secedes unilaterally. Thus, if Western Australia were to pursue the option of unilateral secession, it risks incurring the armed wrath of the Commonwealth government. Nevertheless, the state has strong constitutional arguments to convince others of the rightness of its cause.

In the first place, Australia's states co-exist with the federal government in a constitutional

contract, and when that contract is breached a valid claim for termination would arise.<sup>28</sup> In his *Kentucky Resolutions of 1798*, Thomas Jefferson demonstrated that the US Constitution was a contract between the states and the federal government, and that 'the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers.'<sup>29</sup> Since early Privy Council and High Court authorities do refer to the Constitution as a 'compact,' this indicates the Jeffersonian doctrine is plausible in the Australian context.<sup>30</sup>

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Second, breaking away cannot possibly be illegal, because if it were, enforcing a judgment against a belligerent state would involve applying significant unauthorised coercion. During the American War Between the States, for example, Abraham Lincoln relentlessly prosecuted the South at the expense of nearly one million Americans who perished. Though Lincoln held that his actions were perfectly constitutional, James Ostrowski thinks otherwise:

In 1861, the Constitution did not authorize the federal government to use military force to prevent a state from seceding from the Union. The Constitution established a federal government of limited powers delegated to it by the people, acting through their respective states. There is no express grant to the federal government of a power to use armed force to prevent a secession, and there is no clause which does so by implication.<sup>31</sup>

It seems unlikely that the Australian Constitution empowers the national government



to invade a belligerent state or garrison troops in what would be—for a short period at least—a military dictatorship in that state. The proposition is itself in conflict with structure of the document, which purports to establish a federal system of elected representatives.

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### Some possible objections

There are some common objections raised against secession. Harry Beran recognises a general right to secede but suggests that withdrawal may be prohibited in situations where a group:

- is too small to assume the basic responsibilities of an independent state
- is not prepared to permit sub-groups within itself to secede
- seeks to oppress a sub-group within itself that cannot secede
- occupies an area fully enclosed by the borders of the existing state
- occupies an area that is culturally, economically or militarily essential to the existing state
- occupies an area that has a disproportionately high share of the economic resources of the existing state.<sup>32</sup>

To what extent are Beran's conditions defensible?

His first condition misses the point because there is probably no size that is 'too small' to secede. City-states like Hong Kong and Singapore are the same size as New York City yet are extremely successful. The second and third objections are equally misguided. That oppressed subgroups are not allowed to secede, although regrettable, does not affect the validity of a secession claim. In a situation where A oppresses B, and B in turn oppresses C, it is not defensible to suggest that A should only stop oppressing B once B has stopped

oppressing C. Beran's fourth claim that enclaves within another nation cannot secede is disproved by the Vatican City, which is surrounded by Rome. So long as free movement of people and goods is permitted by the surrounding state, secession poses no quandary. Finally, the argument about culturally, economically or militarily essential areas can be given short shrift—this requires a value judgment on the part of the rulers on what is 'essential' and likely to disguise exploitation.<sup>33</sup>

It has also been suggested that for much of its history, Western Australia has received financial generosity from Victoria and NSW, which remain net donors to the GST cake, and that it is inadvisable to secede lest the assistance of the other states be required again. However, if Mises, Rothbard and Hoppe are correct, then Western Australia should secede regardless of whether times are good *or* bad because secession improves incentives for wealth creation, and moreover, is the moral right of every West Australian.<sup>34</sup> Defence, infrastructure, law and order, and other services can be provided by the WA government by raising the necessary revenue, forging alliances with other countries, or through competitive private provision.<sup>35</sup> The state need not depend on Commonwealth grants.

### Conclusions

When the evidence is fairly considered, it does seem Western Australia is deserving of the remedial measure of secession. This would dramatically reduce the shifting of blame for policy failures, promote economic integration, and raise standards of living through inter-jurisdictional competition. The proper course of action is to unilaterally split and avoid the futile path of seeking permission from the federal government, Britain or any external party.

Secession was popular in the 1930s largely because of the Great Depression and the poor economic health of Western Australia at the time. Blame for many of the state's ills was shifted to the central government by state politicians and a people desperate for answers to high unemployment. But secession was also relevant in the 1970s, when mining magnate

Hancock financed a pro-secession political party and wrote a book—*Wake Up Australia*—making the case for freedom from the Commonwealth. Hancock's prominent daughter, Gina Rinehart, has likewise spoken in favour of the notion. In the 1990s and 2000s, articles and letters to the editor analysing the pros of leaving the federation kept appearing in the *West Australian* and other media. So there is room to grow and build a movement in favour of secession.

Intriguingly, secession has sometimes been supported by the same Commonwealth that now opposes WA secession! Consider the Howard government's support for East Timor's secession from Indonesia, for instance. Or the precedent set by Australia's own peaceful departure from the British monarchy: *e Statute*

*of Westminster 1942* and the *Australia Act 1986* are examples of separatist tendencies being supported by national parliamentarians.

Since Western Australia will fare better if the rest of Australia is understanding of its actions, the state should first exhaust other potential options—most obviously, nullification. Politicians must take the lead in pointing out that all political safeguards that the framers put in place have miscarried. The Senate, which was supposed to serve as a chamber protecting state interests, has been overtaken by party loyalties. And since the outcome of federal elections is sometimes decided before any WA votes are even counted, residents of the state can be forgiven for considering themselves a marginalised and powerless people.<sup>36</sup>