

SECESSIONISM IN NORTHERN QUEENSLAND AND THE TORRES STRAIT ISLANDS: REALITY OR FANTASY?

JAMIE FELLOWS* AND MARK DAVID CHONG#

Abstract

The push to make northern Queensland into a separate state or states, has a long history. Torres Strait Islanders and the North Queensland Separatist League are among those who in the past have advocated for formal separation. Despite the political and constitutional advantages that would accrue to these groups, any serious attempt at secession would most likely not go beyond north Queensland, and would remain within the realms of political pandering by some local politicians at election time. Focussing on two distinct regions in north Queensland which have entertained separatist musings over many decades—the Torres Strait Islands, and a larger area from the Tropic of Capricorn northwards—this paper explores some of the legal and historical complexities of secessionism in northern Queensland.

I INTRODUCTION

For most Australians, the very idea of splitting Queensland into separate states within the Commonwealth may appear anachronistic and somewhat curious, but by no means a politically realistic proposition. Nevertheless, for some who reside in northern Queensland,¹ this topic enflames many a heart. What reasons might exist for some people in the northern regions of the state to long for formal separation from the south? Is it greater wealth and autonomy? Misplaced parochialism? Or, is the push to make north Queensland into a separate state a desire to express the region's 'northern' identity? The origins of secessionism in north Queensland² run as far back as the mid-19th century and this desire to separate continues to agitate, albeit sporadically, to the present day.³ Some advocates assert that a new state should be formed from the

*Lecturer in Law, James Cook University

#Lecturer in Criminology and Criminal Justice Studies, Social Sciences, James Cook University

¹ The exact definition of the region known as north Queensland (NQ) is contentious. Some advocate NQ to include all the area from the tip of Cape York Peninsula across to the Northern Territory border, as far south as Rockhampton. However, there are those who argue an alternative boundary should extend only as far south as Ingham. There are also advocates who argue that North Queensland should consist of the entire region of the state north of the Tropic of Capricorn.

² Secessionism is the process of creating a new state or territory by one of a number of ways. See Trischa Mann, ed., *Australian Law Dictionary*, 2nd ed. (Oxford University Press, 2013), 648. When referring to secessionism in the Queensland context, unless mentioned otherwise, the term refers to the separation of one or more geographical regions of Queensland breaking away and forming new states but retaining its membership of the Commonwealth of Australia—as opposed to becoming a new 'nation state'.

³ See, eg, Brigid Andersen, 'Split Queensland in two or face 'a reckoning across Australia,' *ABC News*, 1 April 2016 <http://www.abc.net.au/news/2016-04-01/push-for-north-queensland-to-become-a-separate-state/7293548>; Anthony Galloway, 'Push for Separate State of North Queensland,' *Townsville Bulletin*, 9 June 2015; Glenn Davies, 'The Fight for the Seventh State', *Independent Australia*, (online), 2 August 2013, <https://independentaustralia.net/politics/politics-display/the-fight-for-the-7th-state,5586>; Liz McKinnon, 'The 7th State', *Townsville Bulletin*, 2 June 2007, 1; Christine Doran, *North Queensland Separatism in the Nineteenth Century* (PhD Thesis, James Cook University, 1981), 399.

Tropic of Capricorn, extending westwards to the Northern Territory border, and northwards to the tip of Australia's territorial limits. A second group in the Torres Strait Islands advocates for separation of the Torres Strait Islands from Queensland.

The constitutional mechanism for the addition of new states is provided for in the *Commonwealth Constitution*⁴ and the *Constitution Act of Queensland*.⁵ The Queensland Constitution requires a referendum only when altering the Legislative Assembly; however, there is some ambiguity as to whether a referendum would be required in order to alter a state boundary. Further, no constitutional guidance is provided as to when secession *should* occur. That is, under what circumstances is it appropriate to form a new state, or states? This normative question is left to the people to answer for themselves.

Constitutional arrangements aside, there is a number of other impediments which could mean that north Queensland and the Torres Strait Islands may never become separate states in a formal sense. The first of these impediments would be the strident opposition from the Commonwealth. The Commonwealth would object to separation because this cleavage would create yet another state to negotiate with over Commonwealth funding, for example. Other challenges to separation might include any number of the following: the problems associated with the drafting of a new 'North Queensland' constitution; issues regarding the location of a suitable capital city; election of the premier; allocation of the new boundary; determining the name of the state; determining the most appropriate governance model of a new legislative body; and responding to any ramifications that might result by changing the composition of the existing Federal Senate. Perhaps the most intractable of issues would boil down to finance, both in term of resource distribution, taxation, and concessions.

This paper explores some of these key constitutional and historical complexities that have dogged the secessionist push in Northern Queensland. As such, the first section of the paper discusses various historical elements of secessionism in Queensland within two distinct regions where people have expressed pro-secessionist views: the Torres Strait Islands; and the vast area north of the Tropic of Capricorn.⁶ The discussion will then turn to the constitutional issues arising from creating separate states. This will be followed by an examination of possible problems that might be encountered by forming a new state of North Queensland. Lastly, the discussion will consider the various ways in which secession might be justified.

II ORIGINS OF SECESSION IN NORTH QUEENSLAND

The move for North Queensland to become a separate state dates as far back as 1857 when John Dunmore Lang advocated for a separation of the northern frontier of Australia in his seminal text, *Freedom and Independence for the Golden Lands of Australia*.⁷ Lang, a Scottish Presbyterian minister, migrated to Australia in 1822, and

⁴ *Commonwealth of Australia Constitution Act 1900* (Imp) ss. 121, 123, 124.

⁵ *Constitution Act 1867* (Qld) s53(1) ('Queensland Constitution').

⁶ The reason for examining these two regions is simple—in these two regions secessionism appears most popular today. It should be noted that other separatist movements in Queensland, and indeed Australia, have existed throughout Australia's colonial and post-colonial history, such as in New England and Western Australia. While interesting and sharing some commonalities, this paper will focus solely on the northern Queensland experience.

⁷ John Dunmore Lang, *Freedom and Independence for the Golden Lands of Australia: The Right of the Colonies and the Interests of Britain and of the World* (F Cunningham, 1857) 335. Lang advocated

was an early republican who espoused the benefits of the separation between Australia and Britain.⁸ He argued that due to the large areas of uninhabited “wastelands” that exist throughout Australia, it would be necessary to create a further colonial boundary, along with a new administrative capital, from the Tropic of Capricorn to the tip of Cape York Peninsula.⁹ This was to ensure that all further northern advancement would be done under the oversight of the “Australian Union” government. Such a move would prevent any squatters from declaring,

themselves independent, and to annex themselves as a Sovereign State to the Australian Union; just as the American Squatters did in the State of Texas. Great Britain would thus lose the entire benefit of the Land Revenue which might otherwise be derived from this extensive territory, while the Australian Republic would reap no advantage from it.¹⁰

Lang feared that the existing colonial boundaries were too large to be adequately regulated for legitimate development. He believed that the existing boundaries would ultimately lead to a ‘common receptacle for lawless characters of all descriptions, and no regular government would be practicable within it until it had declared independence’.¹¹ Lang saw the orderly development of the northern part of Australia central to the establishment of a northern frontier that would enable the development of trade and commerce not only within the colony, but also with Australia’s neighbours to the north. Such an outcome, Lang believed, was an essential element to an autonomous “Australian Union”.¹²

Nothing much came of Lang’s ideas at the time – it was not until much later, in the middle half of the 20th century, that interest to separate northern and southern Queensland gained momentum. This revitalised interest was predominantly sparked, as Fitzgerald argues, by a number of developmental projects coming to fruition in the northern and central regions of the State.¹³ Fitzgerald asserts that the push for regional ‘progressive enterprise’ was driven in part by the newly formed alliance between the Country Party and the Liberal Party government on the basis of economic development.¹⁴ With this development came a renewed push for a form of separation on the basis of a perception of “uneven development and unfair opportunities for the northern and central areas of Queensland”.¹⁵ Such a notion was expressed by the Queensland Liberal member for Capricornia in the House of Representatives, George Henry Pearce, when he stated in 1957 that,

North Queensland is on the verge of great development and it will be done within the next 15 years. If we do not develop

that the “Australian Union” comprise of “Seven United Provinces”. The first being New South Wales, second Van Diemen’s Land, third South Australia, fourth Victoria, fifth Cooksland, sixth Tropic of Capricorn and the seventh Flindersland.

⁸ D W A Baker, “John Dunmore Lang (1799–1878),” <<http://adb.anu.edu.au/biography/lang-john-dunmore-2326/text2953>>.

⁹ Lang, above n 7, 335–6.

¹⁰ Ibid.

¹¹ Ibid, 336–7.

¹² Ibid, 335–49.

¹³ Ross Fitzgerald, *A History of Queensland* (University of Queensland Press, 1984), 289–90.

¹⁴ Ibid, 289.

¹⁵ Ibid.

this vast, rich area ourselves, we will be doing it under slave labour conditions for other people.¹⁶

The honourable member was alluding to the possibility of the north losing autonomy in relation to developmental projects, in the event that separation from government in Brisbane was not achieved. Even as late as the 1950s, there is evidence of Queensland representatives in the Federal Parliament of Australia espousing the fears of what would come should northern Queensland maintain the status quo with regards to the State boundaries.¹⁷

Fitzgerald asserts that such beliefs can be interpreted in the broader context of xenophobia and fear stemming from WWII and the perceived 'Asian invasion'.¹⁸ Given that northern Queensland was of pivotal importance in Australia's war effort during the Pacific War against Japan, and bore a large part of the psychological brunt of the conflict,¹⁹ some merit can be ascribed to Fitzgerald's assertions. The collective fear in the minds of north Queenslanders in the wake of the threat of a full Japanese invasion—whether that threat was real or not—could be seen as a contributing factor for solidifying feelings of regional solidarity and secessionism.²⁰ The irony is that two decades later it was the conservative Queensland National Party, under the leadership of Premier Joh Bjelke-Petersen, which embarked upon initiatives to invigorate Queensland by helping foreigners, particularly the Japanese, to develop parts of the State.²¹

III THE TORRES STRAIT ISLANDS AND SECESSION

Over time, various groups in the Torres Strait Islands (TSI) have advocated for a form of secession from mainland Queensland.²² The TSI experience is somewhat different to other secessionist drives in Queensland for a number of reasons. The first difference is that the people of the Torres Strait Islands constitute a very small proportion of the population of Queensland.²³ Secondly, separation of the TSI from

¹⁶ George Henry Pearce MHR reported in *Courier Mail*, 13 September 1957, 5, cited Ross Fitzgerald, *A History of Queensland* (University of Queensland Press, 1984), 289.

¹⁷ *Ibid.*

¹⁸ Fitzgerald, above n 13, 289.

¹⁹ See, e.g. Louis Morton, ed. *The War In the Pacific: Strategy and Command – The First Two Years*, United States Army in World War II (1969) especially chapter IX that depicts the intense mobilisation of Allied forces in and around the region of north Queensland; For other sources that similarly describe the intensity of the Pacific War, see also Loyd E Lee, *World War II in Asia and the Pacific and the War's Aftermath, with General Themes: A Handbook of Literature and Research* (Greenwood Press, 1998); and Saburo Ienaga, *The Pacific War 1931–1945* (Pantheon Books, 1978).

²⁰ Paul Burns, *The Brisbane Line Controversy: political opportunism versus national security 1942–45* (Allen & Unwin, 1998).

²¹ Fitzgerald, 300.

²² Sarah Elks, 'For Mabo's sake, let my island home go: Torres Strait elder George Mye', *The Australian* (Sydney), 15 October 2011; For reference to the 'People's Movement for Torres Strait Autonomy', see 'Torres Strait fails in independence move', *ABC Radio Australia*, 3 January 2012 <<http://www.radioaustralia.net.au/international/2009-08-10/torres-strait-fails-in-independence-move/150592>>; for a discussion on the issues surrounding TSI autonomy, see, Anna Shnukal, 'Torres Strait Islanders' in Maximilian Brandle (ed) *Multicultural Queensland 2001: 100 years, 100 communities, A Century of Contributions* (Department of Premier and Cabinet, 2001) 18-19.

²³ Queensland's population: 4.5 million people; population in the Torres Strait Islands approximately 53,000 - 63,000 people – Queensland Government Statistician's Office, 'Population, Aboriginal and Torres Strait Islander Queenslanders, 30 June 2011,' Queensland Government, accessed 26 May 2016, <<http://www.qgso.qld.gov.au/products/reports/pop-atsi-ql-2011/pop-atsi-ql-2011.pdf>>; Office of Economic and Statistical Research, 'Population and Dwelling Profile – Torres Strait Islands.'

Queensland can be argued as much on the basis of culture, as it can for geographical distinctiveness.²⁴ A third difference is that some advocates of the TSI model of separation, believe that greater autonomy in the TSI does not necessarily represent a separation from the State of Queensland *per se*. Rather, greater independence could be achieved in the form of granting greater powers to existing administrative statutory bodies in the Torres Strait.²⁵ There are those in the region, however, who are calling for greater autonomy in the form a territory similar to the Northern Territory or the Australian Capital Territory.²⁶

The TSI are a group of 18 islands which are located within five main clusters: the Top Western Islands, Western Islands, Central Islands, Eastern Islands, and the Inner Islands, which when combined, cover an area of approximately 48,000 km².²⁷ There are also two peninsula communities: Bamaga and Seisia.²⁸ The resident population of the entire Torres Strait Island group was estimated to be between 53,000 to 63,000 people which represents approximately 0.3% of the total Australian population.²⁹

Evidence suggests that Torres Strait Islanders have inhabited the region for up to 25,000 years prior to documented European or Asian cohabitation.³⁰ From the time of European settlement, the TSI were primarily used intermittently as a port for supplies for voyagers travelling north.³¹ With the advent of pearling from the 1850s, settlements in various areas began to develop, and by around 1870 the industry employed over 500 Islanders working on pearling vessels.³² Accordingly, it would be incorrect to assume the people of the Torres Strait Islands are a homogenous group of Islanders.³³ The ethnic mix of the region is not only linked to its close neighbour, Papua New Guinea, but their Asian neighbours to the north. Both have greatly influenced the region's multicultural manifestation.³⁴

The administrative structure of the Torres Strait Islands is governed by a series of local Community Councils, with the exception of Thursday Island, Horn Island and

Queensland Treasury and Trade, accessed 17 February 2015,

<<http://www.qgso.qld.gov.au/products/reports/pop-housing-profiles-lga/pop-housing-profile-torres-strait-island.pdf>>.

²⁴ For an insightful historical account of the struggles of Torres Strait Islanders' recognition of "unique separate island identities, pan-identity, and an emerging national identity under a form of regional self-regulating governance", see Elizabeth Osbourne, *Throwing off the Cloak: Reclaiming self-reliance in Torres Strait* (Aboriginal Studies Press, 2009).

²⁵ For a discussion on the political structures and administrative features of the Torres Straits, see, W Sanders, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?* (The Australian National University, 2004), 268.

²⁶ Sarah Elks, 'Anna Bligh Supports Torres Strait Islands Secession,' *The Australian* (online), 12 October 2011, <<http://www.theaustralian.com.au/national-affairs/state-politics/anna-bligh-supports-torres-strait-islands-secession/story-e6frgczx-1226164349650>>.

²⁷ John Burton, 'Torres Strait Regional Authority: Community Profiles,' Australian Government, <http://www.tsra.gov.au/the-torres-strait/community-profiles.aspx>.

²⁸ *Ibid.*

²⁹ The Australian Bureau of Statistics, 'Demographic, Social and Economic Characteristics Overview: Torres Strait Islander Peoples,' Oct 2010, Australian Bureau of Statistics, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter260Oct+2010>.

³⁰ For an excellent commentary on this see also Anna Shnikal, Yuriko Nagata and Guy Ramsay, *Navigating Boundaries: The Asian Diaspora in Torres Strait* (Pandanus Books, 2004).

³¹ Jeremy Beckett, *Torres Strait Islanders: Custom and Colonisation* (Cambridge University Press, 1987), 5–6.

³² *Ibid.*

³³ Shnikal, Nagata and Ramsay, above n 30, 2–10.

³⁴ *Ibid.*

the Prince of Wales Islands which are governed by the Torres Shire Council.³⁵ Integral to this governance framework is the Torres Strait Regional Authority (TSRA) which is an Australian Government Statutory Authority that was established to conduct a range of activities such as to make policy, monitor the implementation of certain programs, and advise the relevant minister on matters pertaining to the region.³⁶ Thursday Island is the main administrative centre in the region and is the site of various Queensland and Commonwealth Government offices. Despite the remoteness and the overall size of the inhabited centres, both tiers of government are heavily involved in the day-to-day running of the region.³⁷ Particular government services include the Australian Customs Service, Australian Federal Police, Australian Fisheries Management Authority, Australian Quarantine Inspection Service, Centrelink, Australian Departments of Defence (Army and Navy), Foreign Affairs and Trade, and Immigration and Citizenship plus the Queensland Departments of Aboriginal and Torres Strait Islander Partnerships, Education, Health, Aboriginal and Torres Strait Islander Housing and QBuild to mention a few.³⁸

Thus, the TSI have clearly experienced a sense of being ‘conquered’. Beckett, however, has described this ‘conquest’ as:

not a catastrophe that left them dispossessed of their land and deprived of their traditional means of livelihood. Rather through a coincidence of commercial and government policies, they were confined to their islands as a labour reserve, dependent on certain commodities yet able ... to maintain themselves by subsistence means.

The Islanders were restricted in their movements ... First missionaries and later government officials reconstructed and managed their communities along lines deemed appropriate to their new status as Christians and British subjects.³⁹

Beckett calls this a process of ‘domestication’ which came about through collective changes to the social fabric of the Torres Strait and was transmitted generationally.⁴⁰

IV TORRES STRAIT BORDER DISPUTES AND SOVEREIGNTY CLAIMS

The declaration of sovereignty by the Crown was seen by many, particularly by the Indigenous inhabitants, as yet another European ‘conquest’.⁴¹ However, no matter how one sees the territorial delineation of the land and sea surrounding the continent, there were a number of debates between the colonial administrators regarding legitimate territorial boundaries for the Australian continent. These contentions included the Torres Straits, and was played out in several controversial episodes involving disputed territory, given its close proximity to its northern neighbours, and the vast distance between them and the nearest administrative centre.

³⁵ Burton, above n 27, 27.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Beckett, above n 31, 6.

⁴⁰ *Ibid.*, 6–7.

⁴¹ *Ibid.*, 6.

In 1893, the border of the Torres Strait was in contention due to the confusion arising with the outer islands near, what was at the time, British New Guinea.⁴² The confusion was due to the fact that the islands of Saibai, Dauan and Boigu were situated within kilometres of the New Guinea coast. As Samuel Griffith, the then premier of Queensland, asserted in his argument regarding the delineation of the region, “those at Saibai ... differ in few, if any respects from their neighbours on the mainland of New Guinea”.⁴³ He then devised a plan to extend the British New Guinea border south of the three islands, which would have placed those islands under the stewardship of the then New Guinea Colonial Government. However, due to a number of events, including Queensland becoming a State of the newly formed Federation of Australia, the plan was stalled.⁴⁴

Griffith conceding those islands to the British New Guinea territory is understandable given the difficulties faced in maintaining an effective administration from Brisbane. Another reason could simply be that the islands were not an effective source of income, but rather they represented a substantial cost for the newly formed State of Queensland. Aside from the benefits of political pragmatism and expediency of decisions associated with early colonial administration, the ease with which Griffith himself was willing to relinquish parts of the region could possibly highlight a number of significant issues. Firstly, that there was genuine uncertainty in the minds of those responsible for the administration of the newly established State apparatus as regards the exact nature of the region itself. Despite a number of apparent extrinsic similarities and concessions granted due to geographical proximity, it is highly likely that the administrators thought, as Griffith so boldly asserted, that the region was in fact historically and culturally part of New Guinea and should therefore remain as such.

A second border issue arose in the mid-1970s with the Whitlam Federal Labor Government’s plan to allow the newly formed independent nation of Papua New Guinea to extend its territorial borders south to the tenth parallel.⁴⁵ The Australian Government was aware of the potential for seabed mining exploration but was prepared to give the newly formed nation access to this area.⁴⁶ The Australian Government then had a dispute with the Bjelke-Petersen Queensland Government regarding the relinquishing of the territory, because the former were, according to Premier Bjelke-Petersen, ‘ignoring the rights of the Islanders’.⁴⁷ Ironically, even though the Islanders sided with the Queensland Government, the primary motivation of the Bjelke-Petersen administration was to actually secure for itself rights over seabed exploration and, thus enhance the state’s long-term commercial interests.⁴⁸

More recently, the push for an independent Torres Strait was given some impetus by the former Premier of Queensland, Anna Bligh, when she wrote to then Prime Minister, Julia Gillard in December 2011 and requested that the region ‘become a

⁴² John Singe, *The Torres Strait* (University of Queensland Press, 1979), 113–6.

⁴³ *Ibid.*, 115.

⁴⁴ *Ibid.*, 115–6.

⁴⁵ Allan Patience, ed., *The Bjelke-Petersen Premiership 1968–1983: Issues in Public Policy* (Longan Cheshire, 1985) 123.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* Ultimately, the plan never went ahead and the matter was settled when the new Fraser Federal Government took power and was able to negotiate a settlement with the new PNG Government and Queensland.

self-governing territory of Australia'.⁴⁹ Former premier Bligh, stated that the exact form that this would take has not yet been decided as 'there are several models that could be explored to give the Torres Strait the autonomy its residents desire'.⁵⁰ To that end, some devolvement, similar to that of the Northern Territory or the Australian Capital Territory (ACT) could well be feasible.⁵¹

V NORTH QUEENSLAND – TROPIC OF CAPRICORN NORTHWARDS

Financial autonomy through the exploitation of regional natural resources and agriculture is a theme that runs deeply as a basis for secessionist movements in north Queensland. In 2010, a number of Queensland mayors put the issue squarely on the agenda when arguing for an autonomous northern Queensland because the 'region's wealth is being depleted by the population growth in Queensland's south-east corner'.⁵² These mayors were deeply concerned that the revenue derived from "mining, farming and tourism" in the north was going to facilitate a "southern" development with only a disproportionately low share of any profits being returned to the region.⁵³ Other vocal proponents of secession include the Federal Member for Kennedy, Bob Katter who claims, among other things, that due to the vast distances, and the capital of Queensland being located in the south-east corner of the State, there has often been a 'a mistrust of and sometimes open dislike of the southeast by Queenslanders living to the north'.⁵⁴ Mr Katter asserts that because of this, '[Queenslanders] have been economically massacred in the north ... it's the tyranny of the majority being in south-east Queensland – the winner takes all'.⁵⁵

Due to the so-called 'mining boom' and possibly overcrowding and strain on infrastructure and resources in the south-east of the State, the region of north Queensland has experienced an influx of people in recent years.⁵⁶ It has therefore been contended that as a large concentration of the future of Queensland's population will be living in north Queensland, there are strong grounds for advocating for a separate state.⁵⁷ In fact, Anna Bligh, the former Premier of Queensland has espoused

⁴⁹ Brad Ryan and Kirsty Nancarrow, 'Moore Talks Mooted on Torres Strait Secession,' ABC News, 9 December 2011, <http://www.abc.net.au/news/2011-12-09/more-talks-mooted-on-torres-strait-secession/3722060>.

⁵⁰ Ibid.

⁵¹ Ibid. Not surprisingly, the proposal does have its critics and a number of vocal opponents to the move have voiced concerns about the costs involved and the workability of any plan.

⁵² Nicole Butler, 'North Queenslanders Spruik Secession Plan,' ABC News, (2010), <http://www.abc.net.au/news/2010-08-10/north-queenslanders-spruik-secession-plan/938808>. See also, Michael Conaghan, 'North Queensland Wants Secession,' (2010), Liberty Australia, <http://www.la.org.au/news/160810/north-queensland-wants-secession>. According to the author, 98 of the 100 delegates voted in favour of an 'independent North Queensland' at a North Queensland Local Government Association meeting in August, 2010.

⁵³ Ibid.

⁵⁴ John Ward, 'The Source of Bob Katter's Independence,' Independent Australia, (2011), <http://www.independentaustralia.net/2011/australian-history/the-source-of-bob-katter%e2%80%99s-independence/>.

⁵⁵ Ibid.

⁵⁶ Luise Straker, 'Could North Queensland Be A Separate State?' 612 ABC Brisbane, (2010), <http://www.abc.net.au/local/stories/2010/08/10/2978401.htm>.

⁵⁷ Ibid. The demographer, Bernard Salt, argues that projecting out 20 or 50 years, north Queensland's population could rival most other regional centres around Australia, and by Australian standards, would constitute a large concentration of people who would want self-determination. See, also, Cairns Post, 'Far North Queensland State Claim Divides Population,' (2009), *Cairns Post*, with historian Geoffrey Blainey also advocating a separate North Queensland state.

the benefits of a regional capital in Townsville,⁵⁸ and those very same statements could be used to support the creation of a new state, with this city as its centre. According to Bligh,

Townsville is already Australia's largest tropical city and the largest service centre in the nation's north, extending to PNG and the Western Pacific Islands. It has a broad based economy, a major port, rail links and an international airport, world class tertiary education and research facilities and tropical expertise, major health facilities, permanent defence facilities, strong links to the resource sectors of the North West and North East Mineral Provinces, and is close to the Great Barrier Reef.⁵⁹

Nevertheless, notwithstanding such political support among local government and regional parliamentary elites, just how proponents of a new state in Queensland will achieve their goal, is still heavily dependent upon the constitutional framework that provides for such amendments. Of primary importance in this regard are the *Commonwealth Constitution*⁶⁰ and the *Queensland Constitution*.⁶¹

VI CONSTITUTIONAL PROVISIONS FOR ESTABLISHING NEW STATES

The process for creating extra territory within Australia is provided for within the *Constitution* (Cth) and is relatively straightforward from a legal perspective. The relevant provision is found in s 111 of the *Constitution*⁶² that allows a state to surrender part of its territory to the Commonwealth. Once this territory is surrendered, the Commonwealth subsumes control and, pursuant to section 122, has exclusive jurisdiction.⁶³ Interestingly enough, it was held in *Paterson v O'Brien*⁶⁴ that s 111 is not read subject to s 123, and as such a referendum is not required, thereby reducing the potential costs in implementing such an endeavour.

Whether this would satisfy the secessionists is debatable since autonomy in such an arrangement is not absolute. This is because the Commonwealth Parliament can always override Territory legislation.⁶⁵ An example of this occurred with the Commonwealth Government overriding the euthanasia laws in the Northern Territory⁶⁶ and the Civil Unions Act in the ACT.⁶⁷ Thus, it may be doubtful that a Territorial model would suit a future state of 'North Queensland' on the basis that such a model does not bring to fruition any ambition of self-determination.⁶⁸ A further

⁵⁸ Anna Bligh and Paul Lucas, 'Joint Statement: Townsville Taskforce Delivers Plan for State's Second Capital,' 8 July 2011,

<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=75624>

⁵⁹ *Ibid.*

⁶⁰ *Commonwealth of Australia Constitution Act 1900* (Imp).

⁶¹ *Constitution Act 1867* (Qld); and *Constitution of Queensland Act 2001* (Qld).

⁶² *Commonwealth of Australia Constitution Act 1900* (Imp).

⁶³ Gabriel Moens and John Trone, *Lumb & Moens: The Constitution of the Commonwealth of Australia*, 7th ed. (2007), 407–8.

⁶⁴ (1978) 138 CLR 276, 281.

⁶⁵ Moens and Trone, 432–4.

⁶⁶ See especially *Wake v Northern Territory* (1996) 109 NTR 1, 9.

⁶⁷ See Federal Register of Legislative Instruments: F2006L01810.

⁶⁸ Kevin Clements, *Lines in the Sand: Federal Implications of Statehood for Australia's Northern Territory* (2006), 20–25.

reason why a Territory would be an unattractive solution as opposed to statehood is because of the lack of political clout it will have in the Federal Senate due to the current allocation of senators to the states (12 each) as opposed to the Territory (two each).⁶⁹

Consequently, if a territorial arrangement is unpalatable, the secessionists will have to avail themselves of s 121 of the *Constitution*, as this confers power to the Federal Parliament to ‘establish’ or ‘admit’ new states to the Commonwealth.⁷⁰ This however would raise an intriguing question as to whether ‘North Queensland’ would be ‘admitted’ or ‘established’ as a separate state. There is a legal distinction between the two concepts and according to Moore, the phrase “admits to the Commonwealth” was originally intended to include British colonies geographically situated outside the Commonwealth of Australia.⁷¹ According to Quick and Garran, under the *Commonwealth Constitution*, there are two classes of states: original states at the time of federation and new states created thereafter.⁷² Any region that was not qualified to join the Commonwealth as an original state would later be ‘admitted’.⁷³

As such, the most likely constitutional provision allowing North Queensland to become a separate State would be s 124.⁷⁴ Lumb and Ryan point out that ‘if North Queensland were to be created a new State, this would come under s 124 ... [and] the Federal Parliament would still have the power of ‘establishing’ the new State under s 121’.⁷⁵

Pursuant to Section 124 of the *Constitution*:

A new State may be formed by separation of territory from a State, but only with consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.⁷⁶

Permission would be required from the Queensland Parliament in order to alter any of the existing Queensland boundaries.

Section 53(1) of the *Constitution Act 1867* (Qld) requires a referendum to be held if there is to be an altering of, *inter alia*, ss 1 and 2 (matters relating to the Legislative Assembly). Any proposed alteration that would affect, for example, the boundary of the State of Queensland, would be considered an alteration of the Queensland Legislative Assembly, primarily because there would be a corresponding alteration in

⁶⁹ “Parliament of Australia: The Senate,” Parliament of Australia, accessed 22 September 2015, <http://www.aph.gov.au/Senate/senators/homepages/state.asp?state=qld>.

⁷⁰ *Commonwealth of Australia Constitution Act 1900* (Imp) s. 121.

⁷¹ William Harrison Moore, *The Constitution of the Commonwealth of Australia*, 2nd ed. (1910), 593.

⁷² John Quick and Robert Garran, *The Annotated Constitution of the Australian Commonwealth* (1901), 967–969. Original States include NSW, Qld, Tas, SA, WA, Vic and New Zealand.

⁷³ *Ibid*.

⁷⁴ The *Commonwealth of Australia Constitution Act 1900* (Imp) provides that a new State may be formed by separation of territory from a State but only with the permission of the Parliament thereof.

⁷⁵ R D Lumb and K W Ryan, *The Constitution of the Commonwealth of Australia Annotated*, 2nd ed. (Butterworths, 1978), 377.

⁷⁶ *Commonwealth of Australia Constitution Act 1900* (Imp).

the number of members—currently 89 according to s 11 of the *Queensland Constitution*.⁷⁷

VII PROBLEMS WITH CRATING THE NEW STATE OF ‘NORTH QUEENSLAND’

Some have stated that secessionist plans in Queensland range from being ‘laughable’⁷⁸ to that of creating an environment that would lead to economic and cultural disintegration between the two regions.⁷⁹ Aside from the political difficulties associated with mounting a campaign to secede territory from the existing Queensland State boundary, the result, from an economic perspective, could lead to a diminution for both regions as any separation would lead to a “loss of sense of state, of Queensland being this big, diverse state ... we’ve got our Western Queensland areas ... our farming communities ... that’s the sort of rich tapestry, the rich mosaic that forms Queensland”.⁸⁰

A new *Constitution* would need to be drafted and it is suggested that a Convention would have to be established for this purpose.⁸¹ The *Constitution* of the new state would be the fundamental document outlining the principal framework under which the new state would operate.⁸² An important issue relates to where the boundary of ‘North Queensland’ would be drawn.⁸³ There are numerous proposals and one such scheme put forward by the Australian Labor Party in 1920 places the boundary on the 22nd parallel.⁸⁴ This proposal appears to be the most commonly accepted by the separatists today and it includes large tracts of land containing natural minerals and resources and agriculture.

The location of the capital of North Queensland is yet another matter requiring consideration. The problem is exacerbated due to the (friendly) rivalry between Cairns and Townsville; and no doubt other towns in the region would argue their case as being an equally viable alternative.⁸⁵ Lessons could be learnt by the rivalry that existed between Sydney and Melbourne whereby Canberra was seen as an amicable solution. According to Gibbney, the rivalry existed due to the obsession to have ‘government as close to hand as possible’.⁸⁶ It is suggested that the lack of transport and communication networks in that era contributed to such an obsession,⁸⁷ a problem that does not exist so much today.

⁷⁷ *Constitution of Queensland Act 2001* (Qld) s11.

⁷⁸ Daniel Bateman, ‘Is North Queensland Reality or Pipedream?’ (2010), *Cairns Post*, http://www.cairns.com.au/article/2010/08/11/121865_local-news.html. Deputy Premier Paul Lucas laughs off the idea of North Queensland becoming a separate state and quips that Cairns and Townsville could never agree on a capital city.

⁷⁹ Dave Stopford, ‘North Queensland Calls Get Louder But Go South,’ (2010), *Sub-Tropic*, <http://subtropic.com.au/2010/09/17/north-qld-secession-calls-get-louder-but-go-south/>.

⁸⁰ *Ibid*.

⁸¹ Ulrich Ellis, *Why New States Are Vital To Australia: The Case for the Seventh State* (1964), 27–9.

⁸² *Ibid*, 28.

⁸³ *Ibid*.

⁸⁴ Ulrich Ellis, *New Australian States* (1933), 237.

⁸⁵ ‘A Glimpse Back In Time,’ (2007), *Insight*, accessed 24 September 2007 <<http://www.insight-tmq.com.au/history.htm>>.

⁸⁶ Jim Gibbney, *Canberra 1913–1953* (1988), 12.

⁸⁷ Geoffrey Blainey, *The Tyranny of Distance: How Distance Shaped Australia’s History* (Macmillan 1966), 248–70.

A Full or Partial Separation?

'Separation' in a constitutional context, implies a shift in the boundaries with a corresponding redevelopment of the political structure.⁸⁸ This would necessarily lead to a restructuring of existing administrative and financial arrangements within the state.⁸⁹ The North Queensland Self-Government League (NQSGL) have previously indicated that decentralising the public administrative and financial functions from Brisbane is necessary for the region to be completely autonomous.⁹⁰ The notion of financial separation for the northern regions—as opposed to cartographical and political—was sometimes used by Brisbane “to pacify discontented northerners”⁹¹ particularly in relation to revenue derived in the north from the agriculture and mining sectors.⁹² One plan had the then colony separated into districts and each district would have autonomy for its own revenue and expenditure.⁹³

In relation to the structure of a 'North Queensland' Parliament, questions arise as to whether it would be established as a 'unicameral' chamber, similar to the current Queensland Parliament as a result of the dissolution of the Legislative Council (upper house) in 1922. A 'unicameral' Parliament is also being used in the Northern Territory, Australian Capital Territory and New Zealand.⁹⁴ A question for consideration is whether the functions of local government would also be taken over by the new state as in the ACT.⁹⁵ Given that north Queensland is still geographically a large and diverse area, to do so would add unnecessary complexity and it may be better to retain the existing local government arrangements (at least in the short to medium term).⁹⁶ A new State of 'North Queensland' would likewise have implications for the current Federal Senate as it will increase the number of senators by an additional 12 members coming from 'North Queensland' - thus creating a greater representation of North Queensland despite disquiet in other states due to over-representation.⁹⁷

B Links with the early 'slave trade'

One controversial aspect that is often associated with the early settlement of North Queensland is that of the 'slave trade'.⁹⁸ Indeed, Lang himself declared that obtaining cheap labour from 'Malay Christians' accustomed to tropical climates would be no problem due to them being a 'superior class of people' to other colonised races, and

⁸⁸ See *Commonwealth of Australia Constitution Act 1900* (Imp) ch VI, s. 124.

⁸⁹ For general discussion of financial separation see Christine Doran, *North Queensland Separatism in the Nineteenth Century* (PhD Thesis, James Cook University 1981), Ch 5.

⁹⁰ Liz McKinnon, "The Seventh State," *Townsville Bulletin*, 2 June 2007, 1.

⁹¹ Christine Doran, *North Queensland Separatism in the Nineteenth Century* (PhD Thesis, James Cook University, 1981), 116.

⁹² Macrossan (Kennedy) *Queensland Parliamentary Debates* vol 24, 1887, 1237.

⁹³ Doran. It is interesting to note that despite a number of Bills coming before the Legislative Assembly, none were ever passed.

⁹⁴ Bryan Pape, *Federalism for the Second Century* (Working Paper, University of New England, 2007), 16–17.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ See Paul Keating's remarks: 'Questions Without Notice – Parliament of Australia', (4 November 1992), accessed 21 September 2015, in relation to the Senate comprising "unrepresentative swill". <http://parlinfoweb.aph.gov.au/piweb/error_link.aspx?Folder=HANSARDR&ID=101774&Criteria=D oc_date:1992-11-04;questioner_id:6T4;responder_id:NH4;page:2547;>.

⁹⁸ See especially, Edward W Docker, *The Blackbirders: The Recruiting of South Seas Labour for Queensland 1863–1907*; William T Wawn, *The South Sea Islanders and the Queensland Labour Trade*, Pacific History Series 5 (Australian National University Press, 1972).

'would thus be all amalgamated in due time with the general population of the new settlement ... under their European leaders'.⁹⁹

Some critics of secession in Queensland argue that "[secession] has its roots in the region's past, when slave labour was used to build up the sugar industry" and is very much to do with economic and racial exploitation.¹⁰⁰ Orsag argues that 'North Queensland separatism was born from the fight between two racist schools of thought'.¹⁰¹ In the past, the struggle consisted of a desire by the south to keep the region free of "non-whites" versus the agriculturalists' need to use 'slave labour' from regions in the Pacific.¹⁰² Although historical, such a past will surely resurrect feelings of insecurity among many minority groups within the region.

VIII A GENERAL RIGHT TO CLAIM SECESSION?

Although the *Constitution* provides the constitutional basis for which secession can be achieved in Australia, the document is silent in regards to instances when new states *should* be created. In the absence of such an instruction manual, normative questions remain as to *when*, and under *what* circumstances *should* secession occur? Put another way, the relevant questions are: 'Is there a general right to claim for secession, and if so, under what criteria would that claim be made?'

To frame the issue in terms of rights is informative. A general right—albeit impliedly under Australia's present constitutional framework—to advocate for secession, arises due to the inclusion in the *Constitution* of a mechanism for creating new states. The assertion that rights do have a place within this context is valid if one is to consider the fundamental nature of the political and legal system which Australia has adopted. The tenets of Australian political philosophy are not only instructive in assessing the legitimacy of a group's claim for separation, they form the very basis for which a claim for any right to secession is founded.

Arguments for secession are supported, for example, where there is harsh subjugation by the state of a particular group—the Kurds in Northern Iraq, or China's assertion of sovereignty over Tibet, for instance. Under those circumstances it would be uncomplicated to assert that some form of independence or separation from tyranny would be a legitimate goal if such an action would free those who were oppressed. Do similar circumstances however exist to support the North Queenslanders' or the Torres Strait Islanders' push for separation? Despite the injustices that may have occurred in Queensland's past, it is implausible to assert that the State of Queensland currently subjects its citizens to the level of oppression as in the examples mentioned

⁹⁹ Lang, above n 7, 338.

¹⁰⁰ Tom Orsag, 'North Queensland: Slaving Towards Secession,' (2007), Socialist Worker Australia, <http://www.socialistworker.org.au/online-features/north-queensland-slaving-towards-secession/>.

¹⁰¹ Ibid.

¹⁰² Ibid. For additional reading and comprehensive coverage of the slave trade throughout Northern Australia, see, Edward Wybergh Docker, *Blackbirders: The Recruiting of South Seas Labour for Queensland 1863-1907* (Angus and Robertson, 1970); William T Wawn, 'The South Sea Islanders and the Queensland Labour Trade: A Record of Voyages and Experiences in the Western Pacific from 1875 to 1891' in Peter Corris (ed), *The Pacific History Series* (Angus and Robertson, 1973); Clive Moore, *Kanaka: A History of Melanesian Mackay* (Institute of Papua New Guinea Studies and University of Papua New Guinea Press, 1985).

above—even during the controversial days of Premier Sir Joh Bjelke-Petersen.¹⁰³ Therefore, it is arguable that the present circumstances in north Queensland do not represent a situation where the citizens are faced with ill-treatment from the state. Thus, any justification for secession must be derived elsewhere.¹⁰⁴

One theorist that examines the justification of claims to secede, is Buchanan in his article, 'Theories of Secession'.¹⁰⁵ Buchanan raises two fundamental questions regarding the legitimacy of secession:

(1) Under what conditions does a group have a moral right to secede, independently of any questions of *institutional* morality? and

(2) Under what conditions *should* a group be recognised as having a right to secede as a matter of international institutional morality, including a morally defensible system of international law?¹⁰⁶

The crux of Buchanan's argument is that in order to address the first question, it must first be considered in the absence of any laws or impositions stemming from the *institution* by which legitimacy is derived. The second question relates to how international legal institutions ought to respond to the secession.¹⁰⁷

Ultimately, whether or not there is a valid claim to secession is a normative question because there is no legislative directive, other than the *Constitution*, to derive guidance on whether secession would be legitimate. There is no entrenched 'right' to secession just the same as there are no entrenched rights on a whole range of other equally important issues in Australia.

IX CONCLUSION

The problem with north Queensland forming a new state, or states, does not lie with the procedural mechanism for which to amend existing boundaries or form new states, but rather the validity of the reasons why one region could legitimately make a claim for secession within the State and/or Commonwealth. As such, the political debate and the rationale of those who agitate for change, is just as important as the legal process.

This discussion has examined two examples of groups that have agitated for some form of separation from the existing state boundary and governance framework in Queensland, these being the Torres Strait Islands and a second group generally represented by the North Queensland Separation League. Although the historical, sociological and anthropological circumstances of the two groups are diametrically different, they share some common ground regarding secession. Both groups seem to

¹⁰³ See, e.g. Editorial, 'Life and Times of Joh Bjelke-Petersen,' *The Sydney Morning Herald*, 25 April 2005, <http://www.smh.com.au/news/Editorial/Life-and-times-of-Joh-BjelkePetersen/2005/04/24/1114281447908.html>; Patience, ed.

¹⁰⁴ However, there is strong evidence that atrocities did occur within Aboriginal and Torres Strait Islander communities at various junctures throughout Queensland's history. See, e.g. Henry Reynolds, *Why weren't we told?: a personal search for the truth about our history* (Penguin, 2000).

¹⁰⁵ Allen Buchanan, 'Theories of Secession,' *Philosophy and Public Affairs* 26(1), (2006): 31–3.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

be basing their arguments on the need to exercise their 'rights' of financial and cultural autonomy.

In reality, however, whether or not there is sufficient impetus for change to create a new North Queensland State remains to be seen. While there are some good reasons why those who advocate for secession in the Torres Strait Islands may have a valid case for separation on cultural grounds, the matter is far from settled. If one group is successful in seceding a new state, then surely other groups throughout Australia would likewise have a compelling case to argue—surely a situation that would lead only to greater instability in the longer term for Australia as a whole. Given the political, social and economic complexities that exist in creating a new state or states in Queensland (or for anywhere else in Australia, for that matter), secession for north Queensland remains and will continue to remain for the near future, fantasy rather than reality.

