



CAN WE ACTUALLY TEXIT?



**ANSWERS TO THE MOST ASKED
QUESTIONS ABOUT OUR ABILITY TO
LEAVE THE UNION**

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Didn't the Supreme Court declare secession unconstitutional?

The entire legal argument for the unconstitutionality of States leaving the Union rests on the Supreme Court's decision in the 1869 case of *Texas v. White*. However, when it comes to *Texas v. White*, more and more academics are adopting the stance of historian Dr. Brion McClanahan.

When asked that very question at an academic conference in Florida, his response was an indignant, "So what?"

Dr. McClanahan's attitude toward *Texas v. White* is not based on a denial of facts. In fact, contrary to the concrete pronouncements by Texit detractors, the decision in *Texas v. White* has been debated and debunked extensively starting from the moment Chief Justice Salmon P. Chase issued the majority opinion.

The dissenting opinion, issued by Justice Robert C. Grier, highlighted many of the deficiencies of the Supreme Court's ruling, stating that he disagreed "on all points raised and decided." The assertions made by Chase were so offensive to his contemporaries that Union and Confederate sympathizers, both fresh from the battlefields and still harboring deep divisions, were united in their contempt for his ruling.

Bristling at the usurpation by the judiciary of the power to determine political questions, Lyman Trumbull, a United States senator from Illinois, introduced legislation that, in part, stated, "Under the Constitution, the judicial power of the United States does not embrace political power, or give to judicial tribunals any authority to question the political departments of the Government on political questions."



There is no doubt that Chief Justice Chase, an appointee of Abraham Lincoln, used the opportunity presented by *Texas v. White* to stamp a retroactive "seal of approval" on the federal government's policies and actions during the Civil War. To do so, Chase had to rewrite history and virtually all established law on the subject.

To reinforce his belief that the United States was a "perpetual union," he had to assert the ludicrous argument that the United States Constitution was merely an amending document to the previous Articles of Confederation, citing the Preamble to the Constitution. He then had to ignore that it only took 9 States of the original 13 to ratify the Constitution of 1787 and that, had less than 13 States ratified the Constitution, it would have destroyed the "perpetual union" allegedly created by the Articles of Confederation.

To reinforce his assertion that the United States was an "indestructible Union, composed of indestructible States," Chase had to ignore the existence of West Virginia, and the agreement with the Republic of Texas upon its admission, that it could divide into 4 additional States and that those additional States would be guaranteed admission into the Union if they so chose.

To reinforce his assertion that States, upon entering the Union, gave up all rights of sovereignty and became incorporated in a single, monolithic superstate, Chase had to ignore every reference to the States as individual political entities in the Declaration of Independence, the aforementioned Articles of Confederation, the Northwest Ordinance, the United States Constitution, and all intent of the framers, clearly expressed in the period.

In his zeal to confirm the supremacy of the Union, Chase ascribed qualities



to it that are usually reserved for deities. In effect, he equated the Union to God and established a quasi-religious orthodoxy that requires adherence to a doctrine that elevates the federal government to godhood, its three branches to the Holy Trinity, and the judiciary as its holy priesthood.

There is no doubt that, had the States been exposed to Chase's logic during deliberations over the ratification of the Constitution, they would have soundly rejected it and likely drafted a new Declaration of Independence

The Supreme Court was not and never will be perfect. Some of the most heinous, morally reprehensible, logically flawed decisions have emanated from the Supreme Court. To imbue it with infallibility is to say that, when it upheld slave catching or when it upheld racial segregation, it was right. Yet decisions by the Court in both of those instances have been overturned.

Even Supreme Court Justice Oliver Wendell Holmes, Jr., in the 1904 case of *Northern Securities Co. v. United States*, recognized that the Court could be caught up in the politics and passions of the day and render bad decisions.

"Great cases like hard cases make bad law. For great cases are called great, not by reason of their importance... but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment."

With all its obvious flaws, some academics continue to point to *Texas v. White* as the "silver bullet" that handles all questions related to States separating from the Union. However, others tend to glide over it so as not to have to acknowledge its most significant problem.

Embracing *Texas v. White* requires one to believe the last 150 years never



happened. Since 1869, the world kept spinning. Generations have come and gone, and the Supreme Court has continued to issue rulings that chip away at the foundations of *Texas v. White*. As the entirety of Chase's determination is predicated on the claim that "perpetual union" is the "more perfect union" spoken of in the Preamble of the Constitution, the single ruling by the Court in the 1905 case of *Jacobson v. Massachusetts*, where it was determined that the federal government can gain no powers based on the Preamble, could utterly destroy *Texas v. White*.

The federal government's position on self-determination has evolved to the point of signing international agreements, covenants, and treaties pledging to respect the right of self-determination. The same chorus of voices who declare that *Texas v. White* is the "end all, be all" of decisions on the matter of self-determination of the States are the same voices who declare that subsequent rulings by the Supreme Court obligate the federal government and the States to give treaty obligations, such as those dealing with self-determination, the same weight as constitutional law and argue for its application as such.

Ultimately, though, any question of self-determination is political in nature. It is not, and never will be, a judicial question.

Will the federal government use military force to stop TEXIT?

One cannot reasonably assume that the policy of the federal government from the mid-19th century would be the policy of the federal government two decades into the 21st. There is no current federal policy regarding a State leaving the Union. However, there is current federal policy regarding states and territories leaving currently established political and economic institutions. Those policies involve neutrality or the use of military action in



support of self-determination.

Imagine the scenario. Fifteen million Texans have gone to the polls and voted in a free, fair, and open referendum, conducted under the laws of the State of Texas, and have chosen, by a majority vote, to leave the Union and assert Texas' status as a free and independent self-governing nation- state. Historically, around the world, voter turnout for independence referenda is 85 to 90 percent. Taking the low end, that would mean that 12.75 million Texans would cast their vote in the referendum. Figuring the lowest possible threshold for an independence victory, approximately 6.4 million Texans would vote in favor of independence.

If the federal government opts for a military solution, how would it handle the 6.4 million Texans who voted in favor of independence? Prison? Extermination? What would the justification be for any actions taken against Texans whose sole crime was voting for self-determination in a fair, free, and open referendum? When exactly would this military intervention occur? Would they do it before a vote on Texit to prevent the people having their say? Would they wait until after the results of the vote were tallied and the results announced in favor of independence? Or would they wait until after Texas began the process of extracting itself from the federal system and began asserting its role as a nation among nations?

Under close scrutiny, it becomes apparent that the federal government will not move to stop Texit once it's been decided by the people of Texas and they most certainly won't use the military. It's just too impractical.

First, there would be little to no public support for military action against Texans who voted to leave the Union. A 2011 IBOPE Zogby poll found that 43 percent of respondents believed that States had justification for leaving the Union. For those who consider themselves conservatives, that number



jumps to 65 percent. Military action against Texas, in the absence of some morally reprehensible act, would require a strong consensus from the remaining States and the people in those States. The strong liberal States would likely fall on the side of letting Texas go. The strong conservative States would be split on the issue but would largely be supportive of the basic principle of self-government. With numbers like these, a consensus seems implausible.

The use of military force would bring a swift condemnation from the international community and would damage international relations for years to come. Some countries would likely impose economic sanctions on the United States until the civilian government of Texas was restored and the results of the independence vote respected. It would also cause a tectonic shift in international policy related to the support of democratic institutions, essentially delegitimizing any efforts made by the United States past, present, and future.

You would have to believe that troops would obey an order to fire on millions of Texas civilians and their leaders whose only crime was invoking their right of self-government. With approximately 170,000 Texans serving in the United States armed forces, it would be difficult to get compliance. The ultimate irony is that any Texan in the United States military who took up arms against the lawfully elected government of Texas or its citizens would be guilty of treason under Article 1 Section 22 of the Texas Constitution.

A 2009 poll from the aforementioned Zogby showed a large number of military personnel and their families believed that States had an absolute right to leave the Union. As published in Forbes, "42% of members of the armed forces and 41% of people who have a family member active in the armed forces agree secession is a right..." The fact that 42 percent view it



as a right carries weight. It means they view it as a fundamental freedom, like the freedom of speech or the freedom of religion. Just as it is unlikely that the military would act against those rights when exercised by the civilian population, it is equally unlikely that they would act against Texit.

The most likely scenario, if an order of this nature was given, would be outright disobedience from the highest levels of the military all the way down to the enlisted ranks by at least 42 percent of the military, if not all. If some component of the military followed through on the order, it would likely trigger a domino effect where other States, outraged by the disregard for the political will of the people of Texas, would skip to the end of the process and unilaterally declare independence.

Texas might be the first to leave but, if the federal government used the military to suppress the result, it certainly would not be the last.

Although the lack of public support and impracticality of military action are significant factors, the real reason the federal government won't stop Texas from leaving the Union is one of the biggest drivers of federal policy-economics.

Economies hate disruption. Texit would no doubt be disruptive, but it comes down to what is more disruptive. Ordering military intervention would be economically disruptive and would create shockwaves throughout the U.S. and global economies. Carrying out any military intervention would be even worse. The best course of action for the United States would be to mitigate disruption in the most practical way it can-at the negotiating table. It is the most practical choice open to the federal government in dealing with a successful Texit vote.

To illustrate the oversized role that practicality plays in this arena, one only needs to look at the statements from the federal government on Brexit. In his



now infamous visit to the U.K., President Obama told the British people that, if they voted to leave the European Union, the United States would place the U.K. at the "back of the queue" in negotiating a trade deal. The British people voted to leave the European Union anyway. Now the federal government is currently at the table with the U.K. laying the groundwork for a trade deal. When faced with the choice of irrationally shunning the world's fifth-largest economy, with a GDP only \$1 trillion greater than Texas or rationally executing a trade deal, the federal government chose the practical route.

It is far easier to negotiate a free trade agreement with a Texas that's on its way out the door than it is to militarily occupy its capital in Austin. It is easier to negotiate a currency union with Texas than it is to deal with the possibility of massive insubordination in your military. With a negotiated separation, the federal government has the opportunity to show that it believes in the principles that it has espoused around the world for the last 70 years. It is better to keep goods and services flowing than to have them come to a dead stop. Forced integration into the Union at the point of a gun invites international condemnation and the loss of credibility on the international stage for the next 70 years.

Is TEXIT unconstitutional?

There is no prohibition in the United States Constitution that forbids any state from exiting the union. The Constitution of the United States actually defines the specific acts States are forbidden from committing in Article 1, Section 10. Nowhere in the remainder of the Constitution is the issue of a State leaving the Union explicitly forbidden, nor is power ceded to the federal government to prohibit one from doing so. In this silence, the Tenth Amendment to the Constitution rings loudly.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

- Constitution of the United States, Tenth Amendment

This deafening constitutional silence, coupled with the definitive reservation of power by the States, leaves the decision to the people of a State and to those people alone. For this, we have to look to the Texas Constitution. Article 1, Section 1 not only expressly reserves all sovereignty not granted through the United States Constitution, but it also sets the conditions upon which Texas will remain in the union.

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

- Texas Constitution, Article 1 Section 1

In the very next section of our governing document, the power to determine how Texans govern themselves is clearly declared to reside in the people of Texas alone.

All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

- Texas Constitution, Article 1 Section 2

Is supporting TEXIT treason?

The term treason has become an increasingly popular charge in this divisive political climate. While Texit advocates are the recipients of it at a higher than average rate, it has become far more common in federal partisan wrangling. Obama was accused of treason over the Iran nuclear deal and Trump has been accused of treason for his alleged ties to the Russian government. However, those who seem to be quickest to use the term seem to be most clueless as to its meaning.

Drawing from an English statute from 1351 that was created to limit the scope of treason, the framers of the United States Constitution included a specific definition in Article 3, Section 3, which stated that, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

Recognizing that accusations of treason were often the tool of tyrants, James Madison explained the necessity to clearly define it in Federalist 43.

"As treason may be committed against the United States the authority of the United States ought to be enabled to punish it but as new tangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free governments, have usually wreaked their alternate malignity on each other, the Convention has with great judgment opposed a barrier to this peculiar danger by inserting a Constitutional definition of the crime."

Treason is a criminal act committed by an individual, not a political body and, therefore, cannot be committed by a State. To continue to level the charge of treason, one must believe that the entirety of the population of



Texas who would vote in support of Texit would be individually guilty of treason. This, however, completely ignores the constitutional definition of treason.

Such a vote is not levying war against the United States unless one considers casting a ballot as an act of war. Nor is it adhering to or giving aid and comfort to an enemy of the United States. If so, who would that enemy be? An enemy of the United States is someone who has been declared as such by the United States Congress, generally through a formal declaration of war. In this instance, North Korea might perhaps flt the bill, since the Korean War was never formally concluded.

According to Carlton F.W. Larson, a professor of law at the University of California at Davis, "Certain nonstate actors can also count as enemies, and terrorist groups such as al-Qaeda and the Islamic State probably flt the definition."

Adhering to the enemy would mean that voting for Texit was, in fact, joining North Korea or the Islamic State. Giving aid and comfort would mean that voting for Texit was, in fact, providing concrete and material support to the same. Neither of these applies.

Is TEXT the same as overthrowing the government?

There is a federal statute in Title 18 of the U.S. Code that outlaws attempts to do that very thing. In its entirety, it reads:

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination



of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

The operative words in the statute are "force or violence" and, given that a Texit, initiated by a legal process, ratified by a vote of the people of Texas, and secured by a declaration of the reclamation of the right of self-determination, is neither force nor violence, Texit is not the same as overthrowing the government.

It is this reason that TEXIT must follow a legal, peaceful, political process.

Is Texas too integrated with the United States to TEXIT?

It is true that Texas is highly integrated with the United States. However,



these political and economic ties are not so tight or intricately interwoven that it would be impossible to untangle them. In many instances, it would not be necessary to untangle them at all. There is no part of the relationship between Texas and the rest of the United States that could not be accomplished by utilizing existing State-level institutions and agencies, executing bilateral agreements between Texas and the United States, or by Texas signing onto multilateral international agreements that are already in place.

Is the issue trade? Countries, including the United States, trade with one another every hour of every day and have done so for all of recorded human history. The free trade agreements that the United States already has in place for 20 other countries around the world treat trade with them as though they were one of the States of the Union. Yet, no one would argue that any of those countries are inseparable members of the federal Union. Texas could execute a free trade agreement with the United States and adopt the United States tariff schedule with the World Trade Organization for external trade, and no one would even notice the difference.

Is the issue currency? If Texas needed or wanted to, it could adopt the U.S. dollar as its official currency in an informal currency union like many other countries have done. We don't need permission to do it. However, if Texas were so inclined and the United States were amenable, we could enter into an official currency union with the United States. Scotland proposed a similar move for itself and the United Kingdom ahead of its independence vote. This would be similar to the formal currency union that exists throughout the European Union.

Is the issue banking? Foreign banks are allowed to operate in the United States at this very moment with no trouble. That includes large



retail banks like Compass and HSBC. In fact, more banks in Texas are State-chartered and State-regulated than those who are federally chartered and regulated.

Is the issue federal pension benefits? People live outside of the United States and collect their federal pensions, including Social Security, every month. The Social Security Administration has an entire section on its website and publishes numerous informational documents on this subject. Through totalization agreements with other countries, U.S. citizens work outside the United States and continue to pay into the United States Social Security system and vice versa.

Is the issue travel? Cars, planes, trucks, and trains move between the United States and other countries every day. Over 1 million people per day legally cross the border between the United States and Mexico for work or travel using only a "Border Crossing Card." No passport needed. This is essentially no different than traveling between Texas and Oklahoma, Louisiana, or New Mexico.

Perhaps the concerns are more about having the money to continue certain functions of government. Not a problem. Simple arithmetic proves the ability of an independent Texas to fund a government at the same level that Texans are currently accustomed to if that's what Texans want.

Texans currently pay, in all, federal and state taxes of \$336 billion per year. This represents the total amount of revenue readily available to an independent Texas without increasing the financial burden on Texans one single cent. From that amount, subtract the amount spent by both the federal government and state government in Texas. \$228 billion is the total amount of expenditures required to maintain every program, every job (both civilian and military), every department, every facility (including military



bases) and fulfill every function (including current federal contract spending to Texas companies) provided by the federal and state governments.

This level of government revenue would rank Texas 12th in the world for government revenue collected.

Somehow, since 1945, 140 new, formerly dependent countries have been able to "make it" as independent, self-governing nation-states. The unspoken assertion is that, to be able to do anything that Texas would have to do as an independent nation, it must be a part of the United States. The implication is that Texas, and Texans, aren't as good, as smart, or as capable as other nations.

This requires them to ignore the truth about how Texas stacks up against other self-governing countries in the world. In every category in which nation-states are traditionally compared, Texas overperforms.

- Texas has the 10th largest economy in the world.
- Texas ranks 40th in the world in size.
- Texas ranks 47th in the world in population.
- Texas ranks 40th in the world in the size of its labor force.
- Texas is a net global exporter, ranking 22nd in the world and leading all other States in the United States.
- 93 percent of Texas exports are manufactured exports.
- Texas is the 12th largest technology exporter in the world.
- Texas ranks 19th in the world in the size of its active farms and ranches.
- Texas is the largest energy producer in the United States, accounting for more than half of the entire United States energy production and one-quarter of the refining capacity with over 26 petroleum refineries.
- Texas has the 7th largest coal reserves.
- Texas is the 6th largest producer of wind energy in the world.
- Texas has its own power grid.



These statistics, while impressive, don't tell the whole story. Texas not only does well in spite of the federal government, Texas is already structurally capable of doing everything that is traditionally done by a national government. In Texas, you will also find a state-level analog for every single cabinet-level federal department.

Texas even has its own military. The Texas Military Department is composed of the three branches of the military in the State of Texas. These branches are the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard. All three branches are administered by the state adjutant general, an appointee of the governor of Texas, and fall under the command of the Texas governor. The State Guard, which is exclusively under the command of the governor, is divided into six army regiments, two air wings, three maritime regiments, and three medical battalions. The Texas Army National Guard consists of the 36th Infantry Division, 71st Troop Command, and the 176th Engineering Brigade. The Texas Air National Guard consists of the 149th Fighter Wing, 147th Attack Wing, and the 136th Airlift Wing.

Contrary to the opinion of some, Texas' attachment to the federal system is not a special case. There was no union in recent history with more power aggregated into a central government than the Soviet Union. Within an even tighter integration and under extreme economic stress, its constituent republics were able to extract themselves and become fully functioning nation-states. If the United States has truly become more centrally controlled than the Soviet Union, then it is no longer the United States. It has become the United State and no longer represents the vision of its founders.

If those who believe that separation is too difficult are to be believed, and



today it is too complicated, tomorrow it will be more so and the day after harder still. If this argument is true, then Texas is destined to fall ever deeper into the depths of the federal system until Texas is only a distant memory that exists in a history book.

It is a false argument and one that strikes counter to everything Texans have historically believed about themselves. It runs contrary to the reputation gained by Texans around the world. It is the same argument made by "helicopter parents" for why their children should still live at home well into their thirties . And it's the excuse used by socially stunted adults, well into their thirties, as to why they still live with mommy and daddy.

Ultimately, Texans bristle at the suggestion that we simply aren't good enough to govern ourselves. We reject the idea that independence can't be done as we remember the old adage that, "If you want something done, tell a Texan that it can't be done."

The real question is this: Given all our natural advantages, if Texas can't make it as an independent nation, then who can?