A MACDONALD-LAURIER INSTITUTE PUBLICATION

Michael Rupert Binnion

How the West wins

Alberta's legal pathway to greater power within Canada

September 2025

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Cover design: Renée Depocas (Photo: iStock)

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If Alberta hopes to achieve greater autonomy within Confederation, it will be won not through grievance or defiance but by lawful and responsible assertion of political will within Canada's existing constitutional framework. By framing autonomy as an exercise of responsible government – a core doctrine of Canada's constitutional tradition – the discourse will shift from political protest to institutional legitimacy.

This paper is not a manifesto, but a constitutional blueprint for a more sovereign Alberta within a strong and united Canada. Alberta has both the authority and the opportunity to lead Canada's next federal evolution. However, its future will not be granted – it must be governed into being through the lawful exercise of political will.

The current political climate – one that sees decision-making power largely monopolized by Central Canada – underscores the necessity for action. With demographic trends increasing the political weight of Western Canada (Alberta now exceeds five million in population), and escalating federal-provincial friction being amplified by media and public attention, moves to assert provincial rights are both timely and unavoidable.

Several provinces have joined lawsuits challenging federal laws and expressing concern over policies such as equalization, immigration, and taxation authority. Alberta and Saskatchewan have gone further, introducing sovereignty legislation to directly confront perceived federal overreach. This is a path blazed by Quebec for two generations.

Canada's constitutional evolution and judicial precedents offer a clear roadmap for Alberta, or any like-minded province, which seeks to lawfully pursue greater autonomy. Indeed, constitutional evolution, under the "Responsible Government Convention," is a well-established and enduring tradition in Canadian governance.

However, Supreme Court rulings and federal fiscal tools have shifted the balance of power to the federal government, in effect changing the Constitution without formal negotiation. These developments underscore why Alberta must act within its own powers to demonstrate capacity for responsible self-government.

The *Constitution Act, 1867*, entrenches provincial sovereignty by delineating the division of powers between federal and provincial governments. Sections 91 and 92 establish provincial sovereignty within their jurisdiction over health, education,

natural resources, and taxation. These entrenched rights provide a foundation for increased autonomy, demonstrating that responsible self-government is both lawful and institutionally feasible.

Alberta's path to greater sovereignty cannot just be aspirational – it must be actionable. Any proposals must be grounded in historical precedent, constitutional texts, Supreme Court rulings, and international law. Given this, Alberta can begin by:

- Exercising its authority over taxation, pensions, immigration, and policing, as demonstrated by Quebec.
- Building institutional capacity at the provincial level, before pursuing constitutional reform.
- Using demonstrated responsible governance to establish leverage in federal negotiations for greater autonomy.

As Alberta charts a path towards greater autonomy, it is vital to avoid hypotheticals and partisan rhetoric. It must embrace the tools of responsible government not as a protest, but as a principled assertion of its constitutional rights.

The province stands at a pivotal moment – armed with legal precedent, institutional capacity, and growing demographic influence. If Alberta leads with legitimacy, not defiance, it can reshape the country from within, forging a stronger, more balanced Canada where provincial sovereignty is not only respected, but revitalized. MLI

Si l'Alberta souhaite gagner *en autonomie au sein de la Confédération, elle doit affirmer sa volonté politique sans contestation ni défiance, de manière légale et responsable et dans le respect du cadre constitutionnel canadien actuel. En définissant l'autonomie en tant qu'exercice d'un gouvernement responsable – une doctrine clé de la tradition constitutionnelle canadienne – la rhétorique contestataire pourra se transformer en une approche basée sur la légitimité institutionnelle.*

Ce document n'est pas un manifeste, mais un modèle constitutionnel pour la souveraineté accrue de l'Alberta au sein d'un Canada uni et fort. L'Alberta dispose à la fois de l'autorité et de l'occasion de façonner la future fédération. Néanmoins, son avenir n'est pas acquis – pour se construire, il doit être assujetti à une volonté politique forte et respectueuse des lois.

Le climat politique actuel – qui voit le pouvoir décisionnel largement concentré au Canada central – illustre avec force la nécessité d'agir. Les revendications de l'Alberta à l'égard de ses droits se révèlent à la fois pertinentes et inéluctables, compte tenu de l'impact du poids démographique de l'Ouest canadien (plus de cinq millions d'habitants en Alberta) et des tensions croissantes – accentuées par l'attention des médias et du public – entre le palier fédéral et provincial.

Plusieurs provinces ont intenté des actions en justice contre certaines lois fédérales et ont exprimé leurs préoccupations en ce qui a trait à la péréquation, l'immigration et le pouvoir de taxation. En adoptant une loi sur la souveraineté, l'Alberta et la Saskatchewan ont franchi une étape supplémentaire pour s'opposer de manière directe à l'ingérence fédérale excessive perçue. À cet égard, le Québec ouvre la voie depuis deux générations.

L'évolution constitutionnelle du Canada, ainsi que les précédents judiciaires offrent à l'Alberta – et aux autres provinces partageant les mêmes idées – une feuille de route claire pour obtenir une autonomie accrue en toute légalité. En effet, l'évolution constitutionnelle est une tradition bien établie et inaltérable dans la gouvernance canadienne, conforme aux principes d'un gouvernement responsable.

Toutefois, les décisions de la Cour suprême et les instruments financiers fédéraux ont rééquilibré le pouvoir en faveur du gouvernement fédéral et effectivement modifié la Constitution sans négociation formelle. L'Alberta se doit donc d'agir en fonction de ses compétences propres afin de témoigner de sa capacité à s'autodéterminer de manière responsable.

La Loi constitutionnelle de 1867 *consacre la souveraineté des provinces en répartissant les compétences entre le gouvernement fédéral et les gouvernements provinciaux. Les articles 91 et 92 confirment la souveraineté des provinces en matière de santé, d'éducation, de ressources naturelles et de taxation. Ces droits enchâssés, fondement d'une autonomie accrue, prouvent que l'autodétermination responsable est légale et réalisable institutionnellement.*

Le chemin vers une souveraineté accrue pour l'Alberta doit se concrétiser – et ne pas seulement être une aspiration. Toute proposition doit se fonder sur les antécédents historiques, les textes constitutionnels, les décisions de la Cour suprême et le droit international. Dans cette perspective, l'Alberta peut commencer comme suit :

- *En exerçant son autorité en matière de taxation, de retraites, d'immigration et de maintien de l'ordre, comme le Québec.*
- *En consolidant ses capacités institutionnelles, et ce, avant la réforme constitutionnelle à venir.*
- *En pratiquant une gouvernance responsable pour tirer parti des négociations fédérales et acquérir plus d'autonomie.*

Il est crucial pour l'Alberta d'éviter les questions hypothétiques et la rhétorique partisane, alors qu'elle vise une plus grande autonomie. Elle doit adopter les instruments d'un gouvernement responsable, non pas par le biais de la contestation, mais en réaffirmant le principe de ses droits constitutionnels.

La province est à un tournant décisif, forte de ses antécédents juridiques, de ses compétences institutionnelles et de son influence démographique croissante. En adoptant une posture de légitimité plutôt que de défiance, l'Alberta peut transformer le pays de l'intérieur, contribuant ainsi à la création d'un Canada plus fort et plus équilibré, où la souveraineté provinciale est non seulement respectée, mais également revitalisée. **MLI**

Introduction

Responsible government is not a relic — it is the living constitutional convention that has driven many major constitutional transformations in Canada. From the *Canada Act, 1791* to the *Act of Union* in 1841, the *Constitution Act of 1867* to the *Statute of Westminster, 1931, 22 & 23 Geo. 5, c. 4 (UK)* from patriation in 1982 to the *Clarity Act* of 2000 (SC 2000, c.26, s.2), each step reflected the same principle: political legitimacy expressed through the democratic capacity to responsibly self-govern. Alberta's ambition for greater autonomy is not an exception to this legacy; it is a direct continuation of it.

Provinces possess not only the right to exercise authority over their existing jurisdictions, but also the right to pursue greater sovereignty through constitutional reform. These claims rest in part on the Canadian doctrine of responsible government (Reesor 1992), first articulated in the Durham Report of 1839: that political authority flows to democratically accountable, locally rooted institutions when the people demonstrate the capacity to govern themselves.

Canada's constitution affirms provincial jurisdiction over resources, health, education, and local governance. Yet recently Ottawa has often sought to centralize power, even if contrary to the convention of responsible government. Taxation, criminal law, and environmental statutes have become tools of federal intrusion. Supreme Court rulings, especially under the Peace, Order, and Good Government clause (*Constitution Act, 1867*, s. 91), have reinforced this drift. In many cases, Ottawa now does indirectly what it cannot do directly.

Alberta's claim to greater autonomy is not rupture but continuity. It flows directly from Canada's founding logic: legitimacy follows from responsible government, and sovereignty follows political will.

This brief builds on this principle of responsible government, reviewing historical and legal foundations for provincial autonomy and assessing

constitutional pathways for reform. A series of appendices reviews the history of sovereignty and title to First Nations lands; explores a new constitutional pathway and look at how federal powers under s. 91(24) of the *Constitution Act, 1867* can be transferred to Alberta under Section 43 (*Constitution Act, 1982*, ss 35, 38-49, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11); addresses the legal difference between being enclaved and landlocked in relation to Alberta's rights to free movement of goods; and examines Alberta's unique cultural development and how it reinforces the province's constitutional distinctiveness.

The historical precedent: Canada's evolutionary path

Canada's path to autonomy offers a powerful constitutional precedent for provinces looking to secede (Dodek and Cameron 2017, 45–60). Unlike many nations, Canada did not achieve independence through revolution, but through a process of legal and institutional evolution.

From the *Royal Proclamation* of 1763 to the *Clarity Act* of 2000, Canada has generally moved to extend greater self-governance to regions and peoples. The most obvious milestones in the devolution of power from the United Kingdom to Canada were the formation of Upper and Lower Canada in 1791 (*Constitutional Act*, 1791 (UK), 31 Geo III, c 31), the *BNA Act* in 1867, and the *Statute of Westminster* in 1931. Other milestones include the expansion of provincial jurisdiction, the recognition of Indigenous rights (which though distinct, illustrate Canada's broader accommodation of sub-national governance), and the establishment of a Charter-based legal order.

The creation of Alberta and Saskatchewan in 1905, the 1930 *Natural Resources Transfer Agreement*, the 1982 patriation of the Constitution, and the 1998 *Reference re Secession of Quebec* all reflect a Canadian constitutional tradition that enshrines the peaceful and deliberate extension of self-government. Appendix A provides a further outline of the historical development of the Canadian Constitution from 1763 to date.

Alberta's desire to consider how it might secede is therefore one of rightful participation in a well-established Canadian tradition of demonstrated and negotiated autonomy.

Legal foundations for provincial sovereignty

We do not assert that Alberta has yet demonstrated the full institutional capacity required for structural constitutional change. Rather, we outline how Alberta could go about building that capacity – through the lawful exercise of existing powers – as a necessary precondition to asserting any broader claims it might wish to advance under the convention of responsible government.

Sections 91 and 92 of the *Constitution Act*, *1867* grant provinces exclusive jurisdiction over:

- Health care (s. 92(7))
- Education (s. 93)
- Natural resources (s. 92A and the 1930 *Transfer Agreement*)
- Direct taxation (s.92(2))

In addition, section 94A permits provinces to withdraw from the Canada Pension Plan and administer their own programs. The West may also establish its own police force under section 92(14), and assert control over areas like environmental regulation, employment programs, and interprovincial trade through existing constitutional tools.

Section 95 establishes that the provincial and federal governments have joint jurisdiction over laws on immigration and agriculture. The federal government often oversteps these concurrent constitutional rights.

Other provinces already exercise such powers. Quebec collects its own taxes, runs its own pension plan, jointly controls immigration policy through a bilateral accord, and maintains its own provincial police. These are not exceptional powers – they are the constitutional options Alberta may take up at any time.

Importantly, these actions fall within the existing constitutional framework. While some of them may require administrative negotiation (e.g., withdrawal from the CPP under s. 94A), none require formal constitutional amendment. Where a constitutional amendment is necessary, such as the transfer of jurisdiction under Section 43, a clear pathway exists (see Appendix B).

They all represent opportunities for Alberta or other like-minded provinces to demonstrate that they have the capacity for responsible self-government, much as Quebec has already done. These actions are not merely

symbolic – each step builds legitimacy and negotiating leverage to justify the principle of responsible government.

The 1998 *Reference re Secession of Quebec* and the 2000 *Clarity Act* established that if a province poses a clear question about whether it should secede from the rest of Canada, and if it receives a clear majority, the federal government is legally obligated to negotiate that secession in good faith. Further, those acts confirmed that structural constitutional change is a foundational premise of the Canadian Constitution when it is being pursued by a clear democratic mandate. Appendix C discusses further the *Clarity* reference and the relation of principle, convention, and law, to what are inherently political acts legitimized by law versus a simple legal act.

While the 2000 *Clarity Act* did not define what a clear majority and clear question were, we can look to Newfoundland's 1949 entry into Confederation as a precedent. (Prior to joining Canada, Newfoundland had been a self-governing dominion under a Commission of Government – a temporary arrangement following its severe financial crisis in the 1930s. The Commission of Government consisted of seven members, appointed by the British government.)

On June 3, 1948, Newfoundlanders voted in a choice of one of three options:

- Responsible government (become an autonomous government) – 44.5 per cent chose this option.
- Confederation with Canada – 41.1 per cent chose this.
- Remain with the Commission of Government – 14.3 per cent chose this.

The Commission of Government determined that there was not a clear mandate. It scheduled a second referendum on July 22, 1948, and gave voters two options:

- Responsible government – 47.7 per cent chose this.
- Confederation with Canada – 52.3 per cent selected this option.

The British government decided that a 52.3 per cent majority was clear enough for Newfoundland to negotiate confederation with Canada. So, while not conclusive, the Newfoundland precedent indicates that a simple plurality is not sufficient to trigger a change to provincial status. Even though responsible government (autonomy) won the first referendum, it did not receive over 50

per cent of the votes cast. In addition, there was no regional breakdown of the vote, so the precedent of the Newfoundland referenda suggests that a province votes as one, not as multiple regions. The question in that referendum was "Are you in favour of joining the Dominion of Canada?", which indicates that clarity does not mean that the question must be detailed or comprehensive, but rather that it must be unambiguous and easy to understand.

The treaty agreements with First Nations relative to residual land title are an area not explicitly discussed in the *Clarity* reference ruling. Past precedent of the Hudson's Bay lands sale (see Appendix D), the *BNA Act*, the creation of provinces, the *Resource Transfer Act*, the *Statute of Westminster,* and the patriation of the Constitution in 1982 all allowed significant changes in sovereignty over Crown Lands while respecting First Nations' rights to treaty agreements. Given that First Nations' rights are explicitly affirmed by section 35 of the *Charter of Rights and Freedoms*, it seems clear that future changes in sovereignty also must continue to respect treaty agreements.

Constitutional change does not have to be all or nothing – there are many places where change can be limited or incremental. Change can also be accomplished through agreements with the federal government as Quebec has done in many areas, or by formal constitutional amendment. Some amendments can be accomplished bilaterally under section 43 of the *Constitution Act, 1982*.

Recent federal encroachments and judicial endorsements

Canada started as a confederation and over time has implicitly developed towards a federal model. There have been calls for centralization of powers in Canada, often justified by the need to address national standards or external commitments. For example, Prime Minister Pierre Trudeau argued for a strong federal hand to entrench the Charter of Rights and Freedoms in 1982. More recently, Prime Minister Justin Trudeau imposed a federal carbon pricing backstop on provinces, citing Canada's Paris climate commitments. Successive federal governments, from Chrétien to Martin, invoked the *Canada Health Act* to enforce national standards by threatening to withhold transfers. Even Prime

Minister Stephen Harper, known for his decentralizing instincts, attempted to centralize securities regulation on the grounds of economic efficiency – though the Supreme Court ultimately struck it down.

Ottawa has expanded its influence both through the courts in the form of judicial interpretation and by using federal powers assertively. The following are recent examples:

Greenhouse Gas Pollution Pricing Act Reference (2021 SCC 11)

Parliament passed the *Greenhouse Gas Pollution Pricing Act* in 2018. It required provinces and territories to implement carbon gas pricing systems. Following this enactment, Alberta, Saskatchewan, and Ontario challenged the constitutionality of the Act. The Supreme Court upheld the federal carbon pricing regime, with the majority of judges calling climate change a matter of national concern under the Peace, Order, and Good Government (POGG) clause (*Constitution Act*, *1867*, s. 91). This allowed Ottawa to legislate in areas traditionally considered provincial, such as energy and emissions. Justice Brown's dissent warned that the ruling effectively allows federal intrusion "into all areas of provincial jurisdiction" (*Greenhouse Gas Reference*, para. 456). Ironically, having asserted that there was an international climate emergency that required collective action on carbon pricing, the federal government went on quickly to apply consumer carbon taxes selectively, then ultimately abandoned them.

Impact Assessment Act (IAA)

The *Impact Assessment Act* (IAA), which replaced the *Canadian Environmental Assessment Act*, 2012, established federal authority to assess the impacts of major projects. The IAA enables the federal government to impose requirements or restrictions that may override provincial assessments. This is a clear encroachment on constitutionally protected authority of provincial jurisdiction over economic and natural resources.

While the Supreme Court of Canada in 2023 ruled that the IAA was partially unconstitutional, there are still many aspects provinces argue infringe on their rights.

The IAA exemplifies the need for a responsible government approach – using existing constitutional powers to assert provincial decision-making authority rather than relying solely on litigation or political protest.

Federal conditional transfers

Ottawa increasingly uses funding agreements to influence health, infrastructure, and education policy. These transfers often include federal conditions that limit provincial innovation and tie spending to federal priorities.

Together, these actions amount to de facto constitutional amendments – changes in the federal-provincial balance that has been achieved through judicial reinterpretation and fiscal pressure rather than formal constitutional negotiation.

They also suggest a path by which the provincial government can act unilaterally within Alberta in areas where the federal government claims jurisdiction. This opens both pragmatic and legal possibilities to stretch provincial jurisdiction, mirroring what the federal government has done.

Provincial efforts taken to achieve greater autonomy

Quebec, Alberta, and Saskatchewan have all taken action to gain more autonomy within Canada. Quebec historically led these efforts, asserting jurisdiction over language, culture, immigration, and taxation. The refusal to sign the *Constitution Act* in 1982 and the use of the notwithstanding clause (s.33) demonstrate Quebec's commitment to protecting its provincial powers. Alberta and Saskatchewan have increasingly followed Quebec's steps in asserting provincial autonomy.

Alberta

Alberta Sovereignty within a United Canada Act **(2022)**

- Authorizes Alberta to refuse enforcement of specific federal laws or policies deemed unconstitutional or harmful to provincial interests, framing such actions within Canada's constitutional order while signalling resistance to federal overreach.

Citizen Initiative Act

- Enables citizen-initiated referenda on issues of provincial jurisdiction, including constitutional reform and fiscal autonomy, providing a democratic mechanism for asserting provincial priorities.

Provincial Priorities Act, 2024 (formerly Bill 18)

- Requires provincial entities (e.g., public agencies, municipalities, school boards, and health organizations) to secure prior approval from the provincial government before entering into, amending, extending, or renewing agreements with the federal government.

Order in Council *(O.C. 31/2024) on the Impact Assessment Act*

- Challenges the constitutionality of the IAA, which impedes provincial legislative power.
- Follows the 2023 Supreme Court decision, as highlighted above, which found parts of the IAA unconstitutional.

Alberta Next Panel

- Reflects the principle of responsible government in practice – engaging citizens directly in shaping the province's future.

Proposed Constitutional Reforms

- Allow provinces to appoint their own King's Bench and Court of Appeal justices.
- Reforming the Supreme Court to include additional justices from Western Canada and introducing a requirement that all candidates have prior experience on a provincial court of appeal.
- Revising federal court eligibility by eliminating the Ottawa residency requirement to promote stronger Western Canadian representation.
- Either abolishing the Senate altogether or reforming it to fulfill its original purpose by mandating an elected body with equal provincial representation (Albert Next Panel 2025).

Such constitutional amendments are likely to achieve agreement across all provinces and territories.

Saskatchewan

Saskatchewan First Act (Bill 88, Introduced 2022)

- Clarifies provincial rights over natural resources and was used in 2023 to review federal clean-electricity regulations, asserting provincial jurisdiction over energy policy and challenging federal environmental mandates.

Provincial Revenue Agency Proposal (2022–23)

- Proposed a Saskatchewan revenue agency to collect corporate

income taxes, citing the need for fiscal independence and protection against federal economic intrusion.

Support for Alberta's legal challenge to the ***Impact Assessment Act*** (2024)

- Intervened in Alberta's constitutional challenge before the Alberta Court of Appeal, arguing that the federal Act continues to intrude on provincial jurisdiction despite legislative amendments.

From powers to practice: A legal framework for Western autonomy

Alberta and other like-minded provinces can take steps to immediately demonstrate their capacity to self-govern. They can pursue responsible government by taking up the full range of powers they already possess (Reesor 1992, 123–130). For instance, Alberta could act in the following areas:

Taxation and revenue

- Establish its own revenue agency (e.g., Alberta Revenue Agency) to collect personal and corporate income taxes.

Policing and justice

- Create the Royal Alberta Mounted Police, replacing the Ottawa-based administration of the RCMP but retaining the proud traditions of the mounted force that has been in effect since Colonel McLeod brought law and order to the West.

Pensions and social services

- Withdraw from the Canada Pension Plan (CPP) and establish a provincial pension plan under section 94A of the *Constitution Act, 1867* (e.g., Alberta Pension Plan).

Environment and trade

- Assert jurisdiction over environmental regulation, rejecting federal encroachment in this area;
- Enforce section 121 of the *Constitution Act, 1867* by challenging the interprovincial trade barriers that affect Alberta's exports or by taking retaliatory measures.

Immigration and labour

- Negotiate bilateral immigration accords as Quebec has done (*Canada–Quebec Accord Relating to Immigration*, 5 February 1991, Can–Que);
- Administer Employment Insurance provincially, using existing tools.

This strategy of Alberta taking up powers it already possesses is evolutionary, not revolutionary. It builds institutional capacity and draws on convention and legal precedent within the existing constitutional order. At the same time, such a move lays the groundwork for future negotiations from a position of demonstrated capacity to self-govern. Should Alberta seek even greater sovereignty, Appendix E sets out a potential roadmap for how this could be achieved.

While the *Clarity* reference established a duty for the federal government to negotiate with a province following a clear majority on a clear question, it did not define what constitutes "good faith" in practice. That duty is non-justiciable and unenforceable, meaning it exists as constitutional principle but not in law. As Ottawa demonstrated by its refusal to engage after Alberta's equalization referendum (Alberta 2021), the federal government may simply ignore its obligation, knowing the courts will not compel its compliance.

Any province wishing to exert its constitutional right to negotiate more sovereignty must do so with political leverage, not legal enforcement. Canada applied political pressure on the United Kingdom to cede powers of responsible government to Ottawa over time. Without doubt there were traditionalists at the time who resisted this. But London negotiated and made concessions where there was political pressure to do so.

It is an axiom of politics that power ultimately derives from three sources: population, force, or resources — in shorthand, from votes, guns, or money. In the Canadian context, the option of violence is neither legitimate nor viable, leaving political power to flow primarily from population and economic leverage. On the first count, Western Canada's demographic weight is growing: The West now elects more Members of Parliament than Quebec, though Ontario continues to dominate numerically. On the second count, Alberta's real strength lies in wealth creation, resources, and trade.

Alberta today is a net customer of both Ontario and Quebec, purchasing more from them than they do from us, while simultaneously providing vital energy supplies. Alberta is Ontario's second-largest customer after Michigan,

and a major customer for Quebec. Ontario's industrial economy depends on Alberta's oil and gas and while Quebec has the option of importing oil from international sources it has critical industries that rely on Western Canadian natural gas. In short, Alberta is a petro-power within Confederation, commanding resources that the central provinces rely upon.

The lesson is clear: if Alberta is to exercise its political will effectively, it must do so via the constitutional principle of responsible government and the rule of law, but also through a realistic appreciation of its political leverage. Alberta's history reflects this. Premier Peter Lougheed used trade pressure during the National Energy Program to bring Ottawa to the table, albeit with limited success. Premier Ralph Klein repeatedly invoked the threat of trade measures in federal negotiations, while Premier Rachel Notley legislated to restrict energy shipments when market access and constitutional issues were at stake. This lineage demonstrates a well-established precedent: Alberta has real power in a federation when it understands and asserts its control over resources and trade.

Thus, Alberta becomes stronger by acting within the rule of law while building a position of strength to negotiate from — not by waiting for the federal government to give it permission. It is self-evident that a clear referendum result is necessary, but not nearly sufficient, to successfully negotiate constitutional change. Indeed, demonstrating responsible self-government is arguably also a necessary but not sufficient pre-condition. Its multi-generational self-governance project puts Quebec in a stronger negotiating position with Ottawa than Alberta currently enjoys. Then Quebec Premier Jacques Parizeau had a negotiating strategy for post referendum success – "the Parizeau Plan" – that depended in large part on negotiating from the point of view of *fait accompli*.

The goal of this paper is not to provide a political risk assessment. Its purpose is to establish the constitutional and legal legitimacy of steps Alberta may take under the rule of law. Ensuring that Alberta is in a strong negotiating position is inherently interconnected with the Supreme Court ruling that there is a duty to negotiate. Given Canada's likely reluctance to negotiate, Alberta will need to consider the approach it will need to take to incentivize the federal government to negotiate reasonable terms. The political prudence of such steps – and whether Alberta should pursue them – remains a question for Alberta's elected leaders and its citizens.

Toward a model of asymmetrical federalism

Canada has long accepted asymmetry in its federation: rather than rejecting Confederation, an enhanced Alberta sovereignty echoes Canada's longstanding recognition of regional uniqueness. As precedent:

- Quebec operates under distinct legal, cultural, and policy frameworks (see Appendix F).
- Indigenous governments negotiate self-government agreements.
- Newfoundland and Labrador entered Confederation under unique terms in 1949 (*British North America Act (No. 2), 1949* (UK), 12, 13 & 14 Geo VI, c 22 (now the *Newfoundland Act*)).

Asymmetrical federalism is not inconsistent with the equality of the provinces (Pelletier 2005, 4). The Constitution allows for differentiation, and historically, differentiation has been the rule, not the exception.

Demands for more sovereignty are consistent with this tradition. A dominion within Confederation – retaining allegiance to the Crown, treaties, and Charter—would merely assert existing rights and seek formal recognition of structural autonomy. The principal change would not be *what* is governed or *how* it is governed but *who* is governing.

This model is legally valid, politically legitimate, and historically grounded. It does not require secession. It requires political will, demonstrated capacity for self-government, and leadership.

Conclusion

Alberta's path to greater sovereignty is not radical – it is literally responsible government for its citizens. It echoes Canada's own history of legal evolution, peaceful negotiation, and regional accommodation (Reesor 1992, 123–130).

The provinces already possess the legal tools to assert jurisdiction over key areas. They have the democratic and constitutional legitimacy to propose structural reform. And they have the historical precedent to demand a new balance within Confederation; it is an approach of not necessarily sovereignty but sovereignty if necessary.

For Alberta, the tools exist. The precedent is clear. The only missing ingredient is political will. MLI

About the author

Michael Rupert Binnion, FCA, is currently serving on the Alberta Next Panel, a forum exploring Alberta's future within the Canadian federation, including its constitutional and economic opportunities. He is the executive director and founder of Modern Miracle Network, a national advocacy group for Canadian resources. Additionally, he is the chair of Canada Strong and Free Network (CFSN), formerly known as the Manning Centre, and former chair of the Canadian Taxpayers Federation (CTF). Binnion is the CEO and founding shareholder of Questerre Energy (QEC), a publicly traded company that has been pioneering natural gas exploration for over two decades. In his role as CEO of QEC, he became involved in a major constitutional challenge in Quebec regarding de facto expropriation without compensation. This arose from a significant natural gas discovery in the province – a case with implications for both provincial jurisdiction and national energy policy.

Committed to social impact as well as business leadership, Binnion is the founder and chairman of the Sage Roots Foundation, dedicated to ending on-reserve poverty by integrating Indigenous knowledge, environmental stewardship, and entrepreneurship. A chartered accountant with a Bachelor of Commerce from the University of Alberta, he is internationally recognized for his expertise in shale gas development and is a frequent speaker at global energy and policy conferences. MLI

References

Alberta Next Panel. 2025. "Constitutional." Available at https://www.albertanextpanel.ca/ideas-for-discussions/constitutional.

Dodek, Adam, and Lorraine Cameron (eds.) 2017. *The Oxford Handbook of the Canadian Constitution.* Oxford University Press.

Durham [1839]. *Report on the Affairs of British North America* (Earl of Durham). London: HMSO, 1839, [Durham Report]. Available at https://archive.org/details/reportonaffairso00durh.

Hogg, Peter W. 2020. *Constitutional Law of Canada*, 5th ed. Carswell.

Pelletier, Benoît. 2005. *Asymmetrical Federalism: A Win-Win Formula!* Queen's University, Institute of Intergovernmental Relations. Available at https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/Pelletier2005english.pdf.

Pope Alexander VI. *Inter Caetera* (Papal Bull), May 4, 1493. Reprinted in Frances Gardiner Davenport (1917), *European Treaties of the Fifteenth Century* (Carnegie Institution of Washington).

Reesor, William F. 1992. *The Canadian Constitution in Historical Perspective.* University of Ottawa Press. Available at https://archive.org/details/canadianconstitu0000rees.

Legislation and case law

Act of Union, 1840 (UK), 3 & 4 Vict, c 35. Reprinted in RSC 1985, App II, No 4. Available at https://primarydocuments.ca/the-union-act-1840/.

Alberta Act, SC 1905, c 3. Available at https://primarydocuments.ca/alberta-act/.

Alberta, Provincial Referendum on Equalization Payments, October 18, 2021. Elections Alberta. Available at Referendum Results | Elections Alberta

British North America Act (No. 2), 1949 (UK), 12, 13 & 14 Geo VI, c 22 (now the *Newfoundland Act*). Reprinted in RSC 1985, App II, No 32. Available at https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/81.

Canada–Quebec Accord Relating to Immigration, February 5, 1991. Government of Canada. Reprinted in (1991) 125 *Canada Gazette I*. Available at https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial/quebec/canada-quebec-accord-relating-immigration-temporary-admission-aliens.html.

Charter Granted by His Majesty King Charles II to the Governor and Company of Adventurers of England Trading into Hudson's Bay, May 2, 1670. Reprinted in Adam Shortt and Arthur G. Doughty (eds.) 1918, *Documents Relating to the Constitutional History of Canada 1759–1791* (King's Printer). Available at https://archive.org/details/documentsrelatin01publuoft.

Clarity Act, SC 2000, c 26, s 2. Available at https://www.canlii.org/en/ca/laws/stat/sc-2000-c-26/latest/sc-2000-c-26.html.

Constitution Act, *1867* (UK), 30 & 31 Vict, c 3. Reprinted in RSC 1985, App II, No 5. Available at https://www.canlii.org/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html.

Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. Available at https://laws-lois.justice.gc.ca/eng/const/.

Constitutional Act, 1791 (UK), 31 Geo 3, c 31. Reprinted in RSC 1985, App II, No 3. Available at https://statutes.org.uk/site/the-statutes/eighteenth-century/1791-31-george-3-c-31-the-constitutional-act/.

Deed of Surrender of Rupert's Land and the North-Western Territory by the Hudson's Bay Company to Her Majesty, November 19, 1869. Reprinted in RSC 1985, App II, No 8. Available at https://justice.canada.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t34.html.

Guerin v. Canada, [1984] 2 SCR 335. Available at https://www.canlii.org/en/ca/scc/doc/1984/1984canlii25/1984canlii25.html.

Meech Lake Accord, Proposed Constitutional Resolution, April 30, 1987. Government of Canada. Available at https://www.canada.ca/en/intergovernmental-affairs/services/federation/1987-constitutional-accord.html.

Natural Resources Transfer Agreement, 1930, being a Schedule to the *Constitution Act*, 1930 (UK), 20–21 Geo V, c 26. Reprinted in RSC 1985, App II, No 26. Available at https://web2.gov.mb.ca/laws/statutes/ccsm/n030e.pdf.

Quebec Act, 1774 (UK), 14 Geo III, c 83. Reprinted in RSC 1985, App II, No 2. Available at https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/collections1/parliament-and-canada/quebec-act-1774/.

Quebec Referendum on Sovereignty, 30 October 1995. (Results published by Directeur général des élections du Québec). Available at https://www.electionsquebec.qc.ca.

Reference re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11. Available at https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18781/index.do.

Reference re Secession of Quebec, [1998] 2 SCR 217. Available at https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1643/index.do.

Royal Proclamation, 1763 (UK). Reprinted in RSC 1985, App II, No 1. Available at https://www.rcaanc-cirnac.gc.ca/eng/1370355181092/1607905122267.

Rupert's Land and North-Western Territory Order, (UK) June 23, 1870. Reprinted in RSC 1985, App II, No 9. Available at https://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t31.html.

Saskatchewan Act, SC 1905, c 42. Available at https://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t131.html.

Statute of Westminster, 1931 (UK), 22 Geo V, c 4. Reprinted in RSC 1985, App II, No 27. Available at https://www.justice.gc.ca/eng/rp-pr/csj-sjc/constitution/lawreg-loireg/p1t171.html.

Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 SCR 257. Available at https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14246/index.do.

United Nations Convention on the Law of the Sea, December 10, 1982, 1833 UNTS 3. (Entered into force November 16, 1994). Available at https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

APPENDIX A
Constitutional evolution and judicial amendments

Key constitutional milestones (1763–2000)

1. *1763 – Royal Proclamation*
   - Recognized Indigenous land rights and Crown sovereignty over former French territory.
   - Formed the foundation of the Aboriginal–Crown legal relationship.

2. *1774 – Quebec Act*
   - Restored French civil law and protected Catholic rights in Quebec.
   - Cemented Canada's foundation of legal and cultural pluralism.

3. *1791 – Constitutional Act*
   - Created Upper and Lower Canada, each with elected legislative assemblies.
   - Established early forms of local representative government.

4. *1840 – Act of Union17*
   - Merged Upper and Lower Canada into the Province of Canada.
   - Centralized governance but intensified political conflict.

5. *1867 – British North America Act (Constitution Act, 1867)*
   - Created the Dominion of Canada and formalized federalism.
   - Defined provincial versus federal powers under Sections 91 and 92.

6. *1905 – Alberta and Saskatchewan Acts*
   - Created Alberta and Saskatchewan as provinces.
   - Initially denied those provinces control over Crown lands and natural resources.

7. *1930 – Natural Resources Transfer Agreement*
   - Gave Alberta, Saskatchewan, and Manitoba control of Crown lands and resources, a control that had been long held by older provinces.
   - The agreement was a key milestone in Alberta's jurisdictional sovereignty.

8. *1931 – Statute of Westminster*
   - Granted Canada full legislative independence from the United Kingdom.

- No longer required British approval for laws (except constitutional amendments).

9. ***1982 – Constitution Act, 1982***
   - Patriated the Constitution; introduced the Charter of Rights and Freedoms.
   - Added amending formulas (Sections 38–49).
   - Recognized Aboriginal and treaty rights (Section 35).

10. ***1998 – Supreme Court Reference re Secession of Quebec***
    - Held that a province cannot unilaterally secede.
    - Declared that a clear majority on a clear question about separation requires good faith federal negotiation.

11. ***2000 – Clarity Act***
    - Codified the Court's ruling in *Reference re Secession of Quebec* into statute.
    - Gave Parliament the power to judge referendum clarity and require terms for secession or constitutional negotiation.

Supreme Court decisions as *de facto* constitutional amendments

Calder v. Attorney-General of British Columbia [1973]

- First Supreme Court recognition that Aboriginal title existed in Canadian law prior to Crown sovereignty.
- Confirmed Aboriginal title arises from historic occupation, not Crown grant or statute.
- Split decision on technical grounds meant no direct land declaration but set the stage for future cases.

Delgamuukw v. British Columbia [1997] (3 SCR 1010)

- Expanded on *Calder*, defining Aboriginal title as a right to the land itself, not just resource use.
- Affirmed Aboriginal title as a constitutionally protected right under s. 35 of the *Constitution Act, 1982*.
- Required governments to consult and possibly compensate Indigenous groups when infringing on title.

Reference re Greenhouse Gas Pollution Pricing Act (2021 SCC 11)

- Upheld federal carbon tax under the POGG clause ("national concern").
- Expanded federal reach into areas of provincial jurisdiction.
- Dissenting justices warned that it risks eroding federalism.

R. v. Comeau (2018 SCC 15)

- Interpreted Section 121 narrowly, allowing interprovincial trade barriers to stand.
- Preserved provincial power to regulate commerce, even if it impedes the free movement of goods.

Tsilhqot'in Nation v. British Columbia (2014 SCC 44)

- Recognized Aboriginal title to specific lands.
- Gave Indigenous groups the right to determine land use and potentially veto development.
- Imposed new obligations on provinces in resource planning.

These cases reshaped the practical boundaries of federalism, not through formal amendment, but through judicial reinterpretation, thereby creating a functional shift in the Constitution's balance of power.

APPENDIX B
Constitutional pathway: Transferring Section 91(24) to Alberta under Section 43

Section 91(24) of the *Constitution Act, 1867* assigns the federal government jurisdiction over "Indians, and lands reserved for the Indians." However, this federal authority has not prevented provincial involvement. Provinces already play a significant role in delivering services like health care and education to Indigenous communities, often in collaboration with Ottawa, demonstrating the viability of shared jurisdiction in practice (Hogg 2020, 15–25, 267–275).

First Nations may come to believe that a model of Indigenous self-government administered through Alberta, rather than Ottawa, could foster stronger "nation-to-nation" relationships rooted in local knowledge, regional accountability, and historical context. Far from diminishing the Crown's obligations, such a framework advances the honour of the Crown. It gives fuller effect to the letter and spirit of the treaties by facilitating service delivery and by ensuring that First Nations are meaningfully involved in decisions undertaken by those with the expertise and proximity necessary to serve affected communities. This framework would continue Canada's long tradition of constitutional evolution through responsible government and negotiated reform, not rupture.

The provinces also own the resources in their jurisdictions, which is a key point of contention in relations between the Crown and First Nations. Thus, the provinces are in a much better position than the federal government to directly address historical grievances around resource development.

Furthermore, Edmonton, for example, is home to one of Canada's largest urban Indigenous populations and sits within Treaty 6, 7, and 8 territories. It also hosts the Confederacy of Treaty Six First Nations and multiple Indigenous institutions (Confederacy of Treaty Six First Nations 2023).

Transferring legislative jurisdiction over Indigenous affairs from the federal government to Alberta could potentially be constitutionally accomplished through Section 43 of the *Constitution Act, 1982*, which permits amendments applicable to one or more, but not all, provinces. Canada has used this provision in the past for regional constitutional reforms (e.g., denominational education rights in Newfoundland and Quebec) and it offers a clear, lawful route for asymmetric federalism.

Under this model, Alberta would assume primary jurisdiction over matters currently governed by section 91(24), with Ottawa retaining only a residual fiduciary role consistent with the "honour of the Crown" doctrine and obligations recognized by the Supreme Court in *Guerin v. Canada*, *1984* (2 SCR 335).

If Alberta assumes jurisdiction over Indigenous affairs through a valid constitutional amendment under Section 43 of the *Constitution Act, 1982*, the duty of the Crown does not disappear, it transfers. The doctrine of the honour of the Crown is attached to the exercise of power, not to the federal level of government specifically. Alberta, as Crown-in-right-of-Alberta, would assume the corresponding fiduciary obligations.

The federal government would no longer administer day-to-day governance in Alberta but could retain responsibility for upholding treaty commitments, Section 35 rights (*Constitution Act 1982*), and acting as a safeguard where necessary. Importantly, Section 35 of the *Constitution Act*, *1982*, which recognizes and affirms the existing Aboriginal and treaty rights of Indigenous peoples, must remain fully respected. Any amendment to transfer jurisdiction from the federal government to Alberta must explicitly affirm that the transfer will not abrogate or derogate from existing Indigenous rights (s. 35).

To prevent duplication or confusion, the revised arrangement would clarify roles: for example, Alberta would be the lead jurisdiction on governance, service delivery, and negotiations, while Ottawa might step back but continue to provide national oversight, funding transfers, and representation in international Indigenous forums. In effect, Alberta would become the Crown-in-right-of-Alberta for the purposes of treaty implementation within its borders, which would bring treaty relationships closer to the people as envisioned in both the Durham Report and modern principles of subsidiarity.

The new arrangement need not weaken national commitments to reconciliation. In fact, it could strengthen them by grounding Indigenous governance in local institutions with better proximity, cultural alignment, and historical context, reflecting a mature federation and responsible government in action. Rather, it is an opportunity to align and reconcile provincial and First Nations aspirations of more autonomy and self-government.

APPENDIX C
Secession in Canadian constitutional and international law

Secession as a political act with constitutional legitimacy

In its landmark 1998 decision, *Reference re Secession of Quebec*, the Supreme Court of Canada held that Canadian constitutional authority rests on three foundational sources: law, principle, and convention. It found that no province has a unilateral legal right to secede; neither Canadian law nor international law provides a codified legal mechanism for secession within an existing democratic state (*Reference re Secession of Quebec*, [1998] 2 SCR 217, 149–154). There is no legal formula, no section of the Constitution, that permits a province to simply declare independence and exit Confederation by right.

However, the Court made an equally important point: while secession is not a legal right, it is a political act that carries constitutional legitimacy so long as it is grounded in democratic expression, carried out in good faith, and pursued through negotiation. The Court affirmed that under Canada's constitutional principles – particularly federalism, democracy, and the honour of the Crown – a province that votes to secede by a clear majority on a clear question gives rise to a political obligation for all parties to negotiate.

These conventions, while legally binding, are non-justiciable (i.e., they are not enforced by courts), but they affirm the legitimacy of political actions, such as negotiated withdrawal, within Canada's constitutional evolution. In other words, secession is not a legal act, but it is a legitimate political act provided it respects the underlying principles and conventions of Canada's constitutional order.

The Supreme Court concluded that law follows political legitimacy, not the other way around. Secession, if it is to occur, must be a political decision by the people of a province, validated by democratic mandate, and followed by constitutional negotiation. It is not a legal entitlement, but a legitimate political act grounded in Canada's foundational principles such as responsible government.

The Supreme Court ruling did not require that negotiations be fair, balanced, or mediated. In practice, negotiations – like those contemplated by the *Clarity* reference – are shaped by leverage and possession. Just as Quebec's 1995 referendum (*Quebec Referendum on Sovereignty*, October 30, 1995) laid

the foundation for de facto institutional control under the "Parizeau Plan," Alberta could pursue constitutional reform through the assertion of on-the-ground authority. Legitimacy, not symmetry, is the test for negotiations.

The legal gap and international recognition

The Supreme Court also examined the question of secession under international law. It found that international law does not grant a legal right for provinces or sub-state entities to unilaterally secede from a democratic state. The right to self-determination in international law is limited to specific circumstances such as colonial rule, foreign occupation, or situations where a people is denied meaningful internal self-determination (*Reference re Secession of Quebec*, [1998] 2 SCR 217, 112).

In the case of Quebec, and by extension any Canadian province, none of these conditions apply. Therefore, no right of unilateral secession exists under international law in Canada's case. However, the Court acknowledged that a province that unilaterally declared independence and gained international recognition could, in practice, achieve de facto sovereignty, even in the absence of a legal pathway.

This distinction between de jure (legal) and de facto (practical) sovereignty is crucial. The Court recognized that while Canada's Constitution does not permit unilateral secession, and while international law does not guarantee it, the political reality of recognized independence could override legal objections.

In sum, there is no legal roadmap for unilateral secession. But if a province secedes and is recognized internationally, it may still achieve statehood. Secession remains a political act with potential legal consequences that depends not on written law, but on legitimacy, recognition, and negotiated outcomes.

APPENDIX D
History of sovereignty and title for First Nations Lands

Pre-contact land use and the Hudson's Bay Charter

Before European contact, various Indigenous peoples inhabited the lands that now make up Western Canada. These populations lived in shifting patterns of habitation, often but not always based on seasonal migration and subsistence practices such as hunting and gathering. While they did not impose fixed territorial boundaries in the European legal sense, there were recognizable regions of use and occupation. These patterns were dynamic, and while groups asserted control over particular areas, the concept of exclusive and permanent land ownership as recognized in English common law did not apply.

This began to change in 1670, when King Charles II issued a Royal Charter (*Charter Granted by His Majesty King Charles II to the Governor and Company of Adventurers of England Trading into Hudson's Bay*, May 2, 1670) granting the Hudson's Bay Company (HBC) dominion over Rupert's Land (*Rupert's Land and North-Western Territory Order*, (UK) June 23, 1870) – an area encompassing the entire Hudson Bay watershed. The Crown empowered HBC not only to trade, but to govern, tax, defend, and administer justice. This was a form of corporate sovereignty, modelled in part after other colonial charter companies such as the Dutch East India Company.

The French challenged the British claim over Rupert's Land and refused to recognize it until the 1713 *Treaty of Utrecht*. The French continued to contest British claims to the interior of Western Canada until the *Treaty of Paris* in 1763.

The legal basis for the claim over Rupert's Land was in part the Doctrine of Discovery, derived from the 1493 Papal Bull *Inter Caetera* (Pope Alexander VI, *Inter Caetera* (Papal Bull), May 4, 1493), which authorized Christian monarchs to claim sovereignty over lands not occupied by Christians. However, international recognition and presence through military forts and trading posts was a key aspect of international law establishing British sovereignty over Rupert's Land.

Crown lands and the legal necessity of treaty

The *Royal Proclamation of 1763*, issued by King George III, declared that such lands "reserved for Indians" could not be settled or alienated without formal agreement:

> ... no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians ... but that, if at any time any of the said Indians should be inclined to dispose of the said lands, they shall be purchased only for Us, in Our name, at some public Meeting or Assembly of the said Indians ... (*Royal Proclamation, 1763*).

In other words, sovereignty resided with the Crown, but beneficial title remained with Indigenous peoples and could only be altered by treaty. These agreements were not needed to establish Crown sovereignty – which was assumed – but to change the pre-existing title held by Indigenous nations within that sovereignty. Simply put, the *Proclamation* did not "give" Indigenous peoples the land, it acknowledged they already had it.

For many decades, the Crown had the legal position that the *Royal Proclamation* was restricted to just those lands subject to the Treaty of Paris. This position was why treaties were not pursued in British Columbia – it only became a British colony after the Oregon Treaty of 1846 and thus was considered separate from the lands subject to the *Royal Proclamation of 1763*.

In *Calder v. Attorney-General of British Columbia* [1973] the Supreme Court of Canada ruled that Aboriginal title existed before the *Royal Proclamation*. Thus, ruling implicitly that the *Royal Proclamation* asserted sovereignty while recognizing the pre-existing title held by Indigenous peoples

In *Delgamuukw v. British Columbia*, [1997] (3 SCR 1010) the Supreme Court of Canada further explored Aboriginal title, building on the 1973 Calder case. The Court found that the principles of the *Royal Proclamation* were common law principles, applicable generally in Canada. The Court defined Aboriginal title as the exclusive right to the land, affirmed that it was a constitutionally protected right under section 35 of the *Constitution Act, 1982*, and required government consultation if infringing on this title.

This legal structure – Crown sovereignty, Indigenous beneficial title – meant that treaty agreements were a legal necessity on Crown lands. Had the lands in Western Canada merely been subject to right of discovery claims, as in much of South America, there would have been no legal need for treaties. In effect the treaty agreements inherently meant both parties recognized Crown sovereignty.

Constitutional amendments and continuity of treaty obligations

Subsequent constitutional amendments reaffirmed and preserved this structure. The underlying governance of Crown lands could be restructured without impairing the right to an agreement or requiring further Indigenous consent.

- In 1869–70, the Hudson's Bay Company sold Rupert's Land (*Rupert's Land and North-Western Territory Order*, (UK) 23 June 1870) to Canada. No consent was required from First Nations as their rights were unaffected. (Of interest, the issue of Métis land rights was not addressed in this agreement, which was a factor that led to the Riel resistance.)
- Canada pursued treaty agreements after the purchase of Rupert's Land, and treaties were signed with the Crown: Treaty 6 in 1876, Treaty 7 in 1877, and Treaty 8 in 1899.
- In 1905, the federal government created the provinces of Alberta (*Alberta Act*, SC 1905, c. 3) and Saskatchewan (*Saskatchewan Act*, SC 1905, c. 42) from the Northwest Territories (itself formerly part of Rupert's Land), which transferred jurisdiction over Crown lands to the new provincial governments. This partition required no new agreement from First Nations because the treaties remained in force, and their rights were unaffected.
- In 1930, the *Natural Resources Transfer Agreement* came into effect. It devolved control over Crown lands and natural resources from the federal to provincial governments. Once again, treaty obligations remained intact.
- In 1931, the *Statute of Westminster* was enacted. With it, Canada achieved full legislative independence from Britain. This had no effect on the status of Indigenous treaties, as they had already been internalized into Canadian constitutional law.
- In 1982, the *Constitution Act* came into effect. Section 35 explicitly confirms that "existing aboriginal and treaty rights" were to be recognized and affirmed under the new constitutional order. Importantly, section 35 elevated treaty agreements to constitutional status. This section was inserted specifically to ensure that no interpretation of patriation could be seen as abrogating Indigenous rights.

- With the 1998 *Secession Reference* and 2000 *Clarity Act* the Supreme Court of Canada affirmed that provinces could, in principle, negotiate secession from Canada, provided this was done in accordance with constitutional convention and principles such as democracy, federalism, and the honour of the Crown.

Alberta's position and treaty continuity

Alberta, having been constituted through a series of valid constitutional and statutory instruments all built on Crown sovereignty plus title acquired through treaty agreements, is fully embedded within this tradition. Every major constitutional transition – from the 1869 Rupert's Land transfer (*Deed of Surrender of Rupert's Land and the North-Western Territory by the Hudson's Bay Company to Her Majesty*, November 19, 1869) to the 2000 *Clarity Act* – has preserved Indigenous treaty agreements and residual title where applicable.

Should Alberta choose to pursue further constitutional autonomy, or even full secession under the framework articulated in the *Clarity* reference, this would not invalidate or diminish the treaties. As long as Alberta assumes responsibility for Section 91(24) relating to "Indians and lands reserved for Indians" (*Constitution Act*, *1867*) and undertakes to uphold the treaties, the legal obligations toward Indigenous nations remain continuous and unaffected.

In that sense, Alberta's greater sovereignty would parallel earlier transitions in governance: the creation of new provinces, the transfer of lands and resources, the patriation of the Constitution – all of which restructured the authority of the Crown or Parliament without requiring new treaties or Indigenous consent because the legal framework protecting Indigenous rights continued.

APPENDIX E

Alberta's status: From enclaved to landlocked

At present, Alberta is not legally landlocked under international law. It is enclaved – entirely surrounded by the sovereign territory of Canada, without direct control over an international border. All international access, including to the United States, must occur through ports of entry under the authority of the federal government of Canada. This status leaves Alberta without recourse under international law when its access to global markets is obstructed.

Under a model of expanded sovereignty, Alberta would acquire the characteristics of a landlocked state in international law: a territory without direct access to the sea, but with an independent international border. This distinction is material. The *United Nations Convention on the Law of the Sea* (UNCLOS) (December 10, 1982, 1833 UNTS 3) guarantees landlocked states the right of access to and from the sea for the purpose of trade and economic development. These rights are not currently available to Alberta in its status as an internal province subject to federal control.

Transitioning from an enclaved province to a landlocked entity would yield several consequences. While not currently actionable, these considerations would become relevant under future constitutional evolution:

1. Access to international rights

Alberta would gain standing under UNCLOS and other international trade frameworks as a landlocked jurisdiction entitled to unimpeded access to the sea. This includes the right to negotiate transit agreements and the ability to bring international legal claims in the event of obstruction.

2. Control of cross-border infrastructure

Alberta would acquire sovereign jurisdiction over transportation corridors – pipelines, highways, railways, and airspace – within its borders. This includes the right to authorize, deny, or impose conditions on transit across Alberta for goods moving to or from other provinces.

3. Reciprocal leverage

Alberta would gain the legal and practical ability to respond to obstruction by other jurisdictions. This includes selectively restricting or suspending the

movement of goods such as oil, gas, electricity, and refined fuels to provinces that deny reciprocal access to tidewater or infrastructure.

4. Strategic reconfiguration of Canadian trade

In the event that Alberta were to exercise sovereign control over its territory, British Columbia's geographic connection to the rest of Canada would become dependent on Alberta's transport corridors. This may precipitate the need for negotiated transit agreements, or in the alternative, renewed interest by British Columbia in constitutional autonomy or similar arrangements.

Alberta's current enclaved status limits its access to legal remedies and federal powers. A transition to landlocked sovereignty would create enforceable rights under international law, expand Alberta's jurisdictional reach, and rebalance the federal-provincial dynamic in favour of constitutional reciprocity.

APPENDIX F

On the question of distinctiveness, Quebec's cultural identity does not create a monopoly on asymmetrical federalism

Quebec's distinct identity is constitutionally recognized but not constitutionally exclusive

Quebec's cultural and legal distinctiveness is well established, grounded in its French civil law tradition, Francophone majority, and continuous post-European settlement since 1608. This distinctiveness is reflected in various legal accommodations, including its retention of civil law (*Constitution Act*, *1867*, s. 94), the 1991 *Canada–Quebec Accord Relating to Immigration* (February 5, 1991), and the recognition of its unique culture in constitutional discussions such as the Meech Lake Accord (April 30, 1987).

However, no provision in the *Constitution Act, 1867* or *1982* grants Quebec an exclusive claim to asymmetrical arrangements. The constitutional structure is designed to accommodate multiple forms of diversity: legal, cultural, geographic, economic, and political across all provinces.

As the Supreme Court noted: "Federalism recognizes the diversity of the component parts of Canada and accommodates the autonomy of provincial governments" (*Reference re Secession of Quebec*, [1998] 2 SCR 217, 57).

This accommodation is not limited to Quebec. Indigenous nations have distinct governance rights protected under section 35 of the *Constitution Act, 1982*. Newfoundland joined Confederation in 1949 (*British North America Act (No. 2), 1949* (UK)) under its own terms. Alberta did not become a province until 1905 (*Alberta Act*, SC 1905, c. 3) and was denied control over its own resources until 1930 (*Natural Resources Transfer Agreement*, 1930).

Alberta's distinctiveness is constitutional in nature though different in character

While Alberta's distinctiveness is not linguistic or legal in origin, it is no less constitutionally relevant. It is distinctive in several ways, specifically:

- *Historical recency*. Alberta is one of Canada's most recently settled provinces. European settlement only became significant after the arrival of the railroad in 1883.
- *Cultural formation*. Alberta's identity was shaped by homesteading, resource development, and a merit-based ethic rooted in risk-taking

and self-governance. Its political culture emphasizes democratic responsiveness – evident in legislation on referenda, recall, and balanced budgets. Where some provinces have a shared identity based on a shared history, Alberta has a shared identity based on a shared future.

- *Economic distinctiveness*. Alberta has been an outsized contributor to Confederation through its natural resources and fiscal transfers. Its economic model and tax burdens differ markedly from other provinces.
- *Geographic and constitutional marginalization.* Alberta was governed as part of Rupert's Land and only became a province after 1905. It was not granted control over its own resources until 1930, decades after other provinces won this right. This history is foundational to Alberta's jurisdictional claims today.

These features constitute a constitutionally meaningful distinctiveness, even if they differ in form from Quebec's.

The constitution recognizes diversity but does not rank it

Canada's constitutional framework does not create a hierarchy of provinces based on identity, heritage, or legal system. Provincial equality underpins the division of powers in sections 91 to 95 of the *Constitution Act, 1867*. All provinces have the same authority to negotiate bilateral accords, assert jurisdiction under section 92, and restructure responsibilities through section 43 constitutional amendments.

Any suggestion that only Quebec qualifies for asymmetrical powers is invoking a theory of cultural supremacy not found in constitutional law.

The federal structure is not static – it evolves in response to regional pressures, functional necessity, and political negotiation (Hogg 2020).

Conclusion

Quebec's distinctiveness is real, but not exclusive. The constitutional principles that accommodate Quebec's asymmetry – regional autonomy, negotiated federalism, and provincial self-determination – are universally available to all provinces. Alberta's claims rest not on mimicking Quebec, but on an equally valid expression of provincial distinctiveness arising from history, economic function, and political culture.

There is no monopoly on distinctiveness – it is a basis for lawful negotiation. Quebec is not an exception. It is a precedent. MLI

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MACDONALD-LAURIER INSTITUTE

15 MLI
TRUE NORTH
IN CANADIAN PUBLIC POLICY

323 Chapel Street, Suite 300,
Ottawa, Ontario K1N 7Z2
613-482-8327
info@macdonaldlaurier.ca

macdonaldlaurier.ca