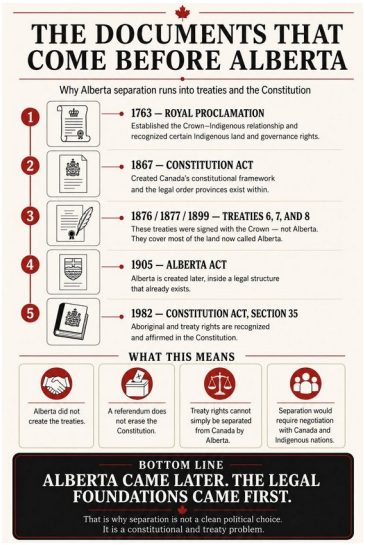
Documents Before, Documents After

The Alberta secession question deserves substance, not closure by timeline memes.

An anonymous online graphic uses a chronological column of five documents to argue that Alberta separation is "not a clean political choice" but a constitutional and treaty problem. It is a branch of the we-were-here-first argument. The graphic is well-designed. Its claims are cartoonish, but they deserve serious engagement to be dismissed. They deserve correction. The legal record it mentions is real. So is the right of Albertans to fulfill their aspirations and debate their political future.

This brief offers what the graphic omits: the cession clauses inside the treaties, the Supreme Court ruling on secession, and the constitutional amendments that have already reshaped the framework the graphic treats as immovable. The purpose here is to widen the debate, not to narrow it; to open up spaces for debate, not to close them.



The infographic under review.

THE CLAIMS

The graphic arranges five legitimate sets of documents in chronological order, then concludes that Alberta arrived last and cannot rearrange the earlier ones. The bottom line, in the graphic's words: "Alberta came later. The legal foundations came first." Four panels under "What This Means" add that Alberta did not create the treaties, that a referendum does not erase the Constitution, that treaty rights cannot simply be separated from Canada by Alberta, and that separation would require negotiation with Canada and Indigenous nations. Most of these statements are misleading, intending to cast a cloud of illegitimacy on Alberta's democratic voice.

The claim about negotiation is correct. The framing around it is not.

WHERE THE FACTS STAND

1. Royal Proclamation, 1763

The Proclamation established Crown-Indigenous treaty-making principles in territories Britain acquired after the Seven Years War. Its application to Rupert's Land, which Canada acquired from the Hudson's Bay Company in 1870, is not a given. It is genuinely contested in the scholarly literature. Three justices in Calder (1973) held the Proclamation did not extend to British Columbia. The Proclamation is not entrenched in the Constitution of Canada. Section 25 of the Charter references it as a source of rights not to be abrogated, which is a real but limited status. Treating it as the constitutional foundation of modern Alberta may overstate its legal force.

2. Constitution Act, 1867

The Act did create the federation that Alberta later joined. It contains no provision making the federation permanent. It does not prohibit secession. The Constitution is silent on the subject, a point the Supreme Court made explicit in 1998. Naming the Act in a meme that argues against secession does not establish that the Act answers the question. It does not.

3. Treaties 6, 7, and 8 (1876, 1877, 1899)

Here, the graphic omits the operative clause. Treaty 6 provides that the Cree signatories "do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges, whatsoever, to the lands" within the described territory. Treaties 7 and 8 use materially identical language. What the signatory nations reserved were specific rights: hunting, fishing, and trapping on unoccupied Crown lands, annuities, reserves, and some agricultural and educational provisions. Those reserved rights are real, protected, and enforceable. They do not confer territorial sovereignty over the surrendered land as many mistakenly suggest. The treaty counterparty is the Crown, an entity that exists in multiple jurisdictional capacities. A successor Crown in right of an independent Alberta could plausibly inherit those obligations, perhaps upon negotiations. Some later Indigenous oral history disputes the

cession interpretation, and that disagreement deserves engagement on its own terms, but it is not Gospel. The legal text of the treaties says what it says. Ignoring it is disingenuous.

4. Alberta Act, 1905

The Act created Alberta inside Confederation. Section 21 of the Alberta Act retained federal control of Alberta's natural resources, leaving the new province on unequal footing with the central and eastern provinces. The 1930 Natural Resources Transfer Agreement, entrenched constitutionally by the Constitution Act, 1930, finally returned land and resource jurisdiction to Alberta. Alberta scholar Tom Flanagan has called the NRTA "Alberta's Real Constitution." Two consequences follow. The framework the graphic presents as unchangeable has been substantially amended within living memory. And the 1930 amendment expanded Alberta's authority within the same territory the graphic uses to argue that authority is constrained and unchanging. The timeline ends in 1982 and skips 1930. It also ignores everything that came after. The omissions carry inconvenient weight.

> **FROM THE 1930 CONSTITUTION ACT**
>
> *"it is desirable that the Province should be placed in a position of equality with the other Provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905."*
>
> — Constitution Act, 1930.

5. Constitution Act, 1982, Section 35

Section 35(1) reads: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." The Supreme Court has built a justification-and-consultation framework around the section, beginning with Sparrow (1990) and continuing through Delgamuukw (1997), Haida Nation (2004), and Tsilhqot'in (2014). The framework protects specific rights against unjustified infringement. It does not lock the federal structure in place in perpetuity; it is not an Oracle. In Ktunaxa Nation v. British Columbia (2017), the Court confirmed that "the duty to consult does not provide Indigenous groups with a veto right." Section 35 guarantees a legitimate process, not a specific outcome.

WHAT THE SUPREME COURT ACTUALLY SAID

The controlling Canadian authority on provincial secession is the SCC Reference re Secession of Quebec (1998), unmentioned in the graphic. The Court ruled unanimously that a unilateral declaration of independence (UDI) would be unconstitutional. It also ruled that a referendum producing a clear majority on a clear question would impose a constitutional obligation on the federal government and the other provinces to negotiate in good faith. The Court identified four constitutional principles bearing on the question: federalism, democracy, constitutionalism and the rule of law, and respect for minorities. Indigenous interests, including treaty rights, would be among the matters addressed in negotiation. It is understandable that some do not want Alberta to secede, but the process is legitimate and constitutional. The negotiation is binding. Though the infographic wants to frame things as a problem with treaties and the constitution, the substance is political. The Clarity Act (2000) gives the framework statutory expression. The graphic's bottom line reduces this to a closed door. The Supreme Court did not close the door. It pointed to the door, described the doorway, and laid out the procedure for walking through it. A path with conditions is still a path.

WHAT THIS MEANS FOR DEBATE

The graphic's strongest claim is that separation requires negotiation. That claim is correct. Every major constitutional change in Canadian history has required negotiation. Unilateral impositions are not part of the established democratic tradition of Canada. Patriation in 1982 required negotiation, even though Ottawa wanted to impose it, and Quebec did not sign. The 1930 NRTA, the 1949 union with Newfoundland, and the 1999 creation of Nunavut all required negotiation. The Victoria Charter (1971), Meech Lake (1987), and Charlottetown (1992) each required negotiation; each failed for political reasons, not because the doorway was sealed. Difficulty is not impossibility, and difficulty is not illegitimacy. The weakest claim is that the documents in the column close the question. They do not. They define the procedural terrain. Albertans deserve the actual map, not a meme or a stylized timeline. The case against separation can be made on policy and prudential grounds. That is the discussion Albertans ought to be having. Shutting down debate is not a Canadian value.

> **THE FRAMEWORK HAS ALWAYS MOVED**
>
> *Selected changes to the constitutional order since 1867.*
>
> **1870** Manitoba Act; Rupert's Land transferred to Canada.
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> **1905** Alberta and Saskatchewan Acts create the prairie provinces.
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> **1930** Constitution Act, 1930 transfers natural resources to AB, SK, MB.
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> **1949** Newfoundland joins Confederation; Privy Council appeals abolished.
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> **1971** Victoria Charter negotiated. Not ratified.
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> **1982** Patriation. Charter and Section 35 added. Quebec did not sign.
>
> **1987** Meech Lake Accord negotiated. Failed ratification by 1990.
>
> **1992** Charlottetown Accord defeated by national referendum.