Abstract

Secession is federal failure and a phenomenon of identity politics. This thesis applies a theory of federal failure, as distilled from existing scholarship, to the relationship between Canadian federalism and Alberta. The theory posits that the successful conduct of federalism is constrained to avoid the initial phase of secession, “secessionist alienation”, defined as a constituency that can be mobilized in favour of secession within a specific federal territory. Secessionist alienation is composed of two (2) essential, interdependent elements: “secessionist capacity” and “secessionist will”. Secessionist capacity requires a separable territory within which its constituents share a territorial identity. Secessionist will is an intense fear of the federal union triggered by the emergence of the Federal Leviathan, central government oppression in the form of the appropriation of, or interference with, a federal territory’s authority in breach of the federal bargain that presents as an existential crisis for the territory’s identity.

The application of the theory to the relationship between Canadian federalism and Alberta reveals that Alberta possesses secessionist capacity as a consequence of Canadian federalism and that the factors that facilitate the emergence of the Federal Leviathan are routinely present in the relationship between Alberta and Canadian federalism. Accordingly, if the successful conduct of Canadian federalism is constrained to avoid secessionist alienation in Alberta, the central government must respect Alberta’s territorial identity, economic subnationalism, that presents as its intense commitment to Alberta’s ownership and control of its oil and gas resources.
Preface

This thesis is original, unpublished, independent work by the author, David D. Chesman.
# Table of Contents

Abstract........................................................................................................... ii

Preface............................................................................................................. iii

Table of Contents............................................................................................ iv

Acknowledgements.......................................................................................... vi

Dedication......................................................................................................... vii

1. Introduction................................................................................................... 1

2. Theory of Federal Failure............................................................................... 4
   2.1 Secessionist Alienation.............................................................................. 4
   2.2 Secessionist Capacity: Separable Territory and Territorial Identity........ 6
   2.3 Secessionist Will: Federal Leviathan....................................................... 8
   2.4 Facilitating Factors.................................................................................. 10
   2.5 Conclusion: A Distilled Theory............................................................... 11

3. Secessionist Capacity: Alberta Territory and Identity.................................. 13
   3.1 Territory.................................................................................................. 13
   3.2 Identity................................................................................................... 13
   3.3 Conclusion............................................................................................... 19

4. Facilitating Political Factors......................................................................... 21
   4.1 Institutional Capacity................................................................................ 22
      4.1.1 Electoral and Party Systems............................................................... 22
      4.1.2 Senate............................................................................................... 26
      4.1.3 Federal Identity................................................................................ 28
   4.2 Jurisdictional Authority............................................................................ 30
      4.2.1 Constitutional Ambiguity................................................................. 30
      4.2.2 Central Government Passivity......................................................... 31
4.3 Conclusion ................................................................................................................32

5. Secessionist Will ........................................................................................................34

5.1 NEP ..........................................................................................................................34

5.2 Contemporary Canadian Federalism and Alberta ..................................................37

5.3 Conclusion .................................................................................................................40

6. Canadian Federalism Constrained ............................................................................41

6.1 Constraint ..................................................................................................................41

6.2 Nationalizing Federalism: A Critique .................................................................42

6.3 Conclusion .................................................................................................................46

7. Conclusion ....................................................................................................................47

Bibliography ....................................................................................................................50
Acknowledgements

I am deeply grateful to my thesis supervisor, Professor Gerald Baier, for his support and guidance throughout. Any mistakes are mine alone. I also thank the University of British Columbia’s Department of Political Science and, in particular, Professors Max Cameron, Richard Johnston, Paul Quirk, and Allan Tupper for their continuing encouragement and support.
Dedication

I dedicate this thesis to my wife, Mary Anne Richter, with much love and gratitude for our extraordinary life together.

This thesis is also in loving memory of my mother, Thelma Duncan Chesman (née Ley), and in respectful memory of Professor W.J. Stankiewicz.
1. Introduction

Federalism is designed to accommodate the centrifugal and centripetal forces of territorial pluralism through national shared rule and federal territory self rule (Kavalski, 6; Preuss, 24). Canadian federalism incorporates two principal divisions. One is the cultural “two solitudes” that informs the relationship between Canadian federalism and Quebec. The other is the economic “fault line” of the federal, provincial contest for natural resource control (Janigan, xi) that informs the relationship between Canadian federalism and Alberta. Alberta’s relationship with fossil fuels has made it a province “pas comme les autres” (Smiley, 66) with a territorial identity characterized by economic subnationalism (Adria 168) that Gibbins describes “as an intense commitment to provincial control of energy resources” (1979:43; quoted in Barrie, 116).

Between 2006 and 2015 Canada’s Conservative federal governments, with substantial representation from Alberta and an Albertan Prime Minister, conducted “open federalism”, a variant of Canadian federalism wholly consistent with Alberta’s intense commitment to provincial natural resource control. The defeat of that government in 2015 in favour of a federal Liberal Party with a House of Commons majority based in Ontario, Quebec, and Atlantic Canada and marginal representation from Alberta invites a contemporary analysis of the resulting uncertainty that characterizes the relationship between Canadian federalism and Alberta.

There is a rich substantive scholarship concerning Alberta’s grievance-based political culture, “western alienation,” but limited scholarship concerning the relationship between Canadian federalism and Alberta from the perspective of federal failure or secession. In 1981 Gibbins concluded that the “preconditions” for secession had been satisfied in Western Canada without significant analysis of those preconditions or their relationship to Canadian federalism (Gibbins, 1981: 206). A decade later Melnyk, also without significant analysis, reached the contrary conclusion that “separation was a non-starter in the West” (303). A more recent analysis that is more partisan than scholarly offers the equivocal conclusion that Alberta secession is an unlikely possibility (Wagner).

This paper addresses the following puzzle: within the relationship between Alberta and Canadian federalism does Alberta possess the capacity to secede and, if so, is Canadian federalism responsible for that capacity and to what extent, if any, does that capacity constrain
the successful conduct of Canadian federalism?

The puzzle is addressed by an analysis of the contemporary relationship between Canadian federalism and Alberta pursuant to a theory of federal failure as distilled in this paper from the scholarship of both secession theory and federalism. The theory posits that the successful conduct of federalism is constrained to avoid the initial phase of secession, “secessionist alienation”, defined as a constituency that can be mobilized in favour of secession within a specific federal territory. Secessionist alienation is composed of two (2) essential, interdependent elements: “secessionist capacity” and “secessionist will”. Secessionist capacity requires a separable territory within which its constituents share a territorial identity. Secessionist will is an intense fear of the federal union triggered by the emergence of the Federal Leviathan, central government oppression in the form of the appropriation of, or interference with, a federal territory’s authority in breach of the federal bargain that presents as an existential crisis for the territory’s identity.

The analysis reveals that Alberta possesses “secessionist capacity” and that the two pre-conditions identified by the theory of federal failure as essential to a federal territory’s capacity to secede, a separable territory and a territorial identity, are symptomatic of the relationship between Canadian federalism and Alberta. It also reveals that Alberta’s capacity to secede is facilitated by Canada’s weakly integrative national institutions or “federalism deficit” (Simeon and Nugent, 61) and constitutional ambiguity as manifested in Canada’s weak or non-existent national or federal identity and central government passivity. Finally, it reveals that if Canadian federalism is constrained to avoid federal failure in Alberta, Alberta’s territorial identity, expressed as its intense commitment to provincial natural resource control, must be respected as a fundamental condition of the federal bargain. This means that the central government’s conduct of Canadian federalism must resist the propensity of central governments to become an oppressive “Leviathan” (Bednar, 276) and appropriate or interfere with Alberta’s territorial authority and identity.

This paper is organized as follows: Chapter 2 outlines the theory of federal failure; Chapter 3 analyzes the pre-conditions essential to secessionist capacity within the relationship between Canadian federalism and Alberta; Chapter 4 examines contemporary Canadian federalism
against those political factors identified by scholarship that facilitate, but are not essential to, secessionist alienation; Chapter 5 examines Canada’s 1980 National Energy Policy as a case study of secessionist will and, therefore, secessionist alienation in Alberta as triggered by Canada’s central government acting as a Federal Leviathan and also identifies those factors that facilitate secessionist will in the contemporary relationship between Canadian federalism and Alberta; Chapter 6 considers the constraint imposed upon Canadian federalism by Alberta’s secessionist capacity and presents a critique of nationalizing federalism; and Chapter 7 provides a general summary of this paper’s principal findings and some thoughts as to the future development of the theory of federal failure.
2. Theory of Federal Failure

This chapter presents a theory of federal failure distilled from the contemporary scholarship of secession and federalism. My principal point of departure to that scholarship is John Wood’s seminal 1981 article, “Secession: A Comparative Analytical Framework”, the first and most comprehensive conception to date of the secession phenomenon (Dion, 271; Pavkovic, 180).

2.1 Secessionist Alienation

“Secessionist alienation” is the political condition that is “necessary before the secession process can begin” (Wood, 112). It closely resembles “secessionist sentiment” (Anderson, 2006: 99) and “a popular desire for independence” (Sorens, 6), but is synonymous with “a constituency which can be mobilized for secession” (Pavkovic, 194). The existence of secessionist alienation does not predict secession but signals that “the potential for the disintegration of one polity and the integration of another is at hand” (Wood, 112, 122). The realization of that potential is dependent upon a variety of factors including the mobilization of a viable secessionist movement and the central regime’s response to that mobilization (Wood, 133).

The obvious existential imperative of federalism is to avoid secession. The common sense assumption of the theory of federal failure is that the successful conduct of federalism is constrained to avoid initiating secession or secessionist alienation in a federal territory.

Contemporary scholarship discloses a common sense consensus that there are two essential “determinants” (Ezgi, 4) of secessionist alienation: the capacity and the will to secede which are synonymously expressed as “capacity and preference” (Ezgi, 4-5); or “identity and interest” (Sorens, 6). Secessionist capacity and secessionist will are interdependent. From a theoretical perspective neither the capacity to secede absent the will to do so nor the will to secede absent the capacity to do so are consequential.

Wood identifies five factors or “preconditions” that facilitate or produce secessionist alienation: “geographical” (“the existence of a separable territory”); “social” (“group solidarity”); “economic”; “political”; and “psychological” (a real or perceived “threat to the group’s identity and security”) (110 – 122). Wood does not speak in terms of secessionist capacity or will but his preconditions may be categorized accordingly. A separable territory and a territorial identity,
synonymously referenced as a “group solidarity” (Wood, 116) or a “distinct community” (Bartkus, 14), are the essential elements of secessionist capacity. A real or perceived threat to a territory’s identity or security is an essential element of secessionist will (Wood 120; Dion, 271). Various other political and economic factors, while not essential to either, may facilitate secessionist capacity or secessionist will.

Secessionist alienation does not arise in an institutional vacuum (Tiryakin, 54). As Anderson notes, Wood’s secession framework and the subsequent mainstream theories of secession (Hechter, Dion, Bartkus) do not account for the institutional sources of secession (2006: 99). Such an omission is a theoretical deficiency: “…both grievance and the institutional environment in which the grievance is experienced are critical elements in the rise of secessionist sentiment” (Ibid.). A theory against which to assess the potential for secessionist alienation in a federal territory must correct for that deficiency and address the relationship between federalism and the essential and facilitating factors of secessionist alienation.

K.C. Wheare’s classic definition of federalism as a “method of dividing power so that the general and regional governments are each, within a sphere, coordinate and independent” conveys the essence of the institution: the federal host state and federal territorial governments are of equal standing with each sovereign within its own areas of jurisdiction (Bakvis et al., 4). Consistent with the foregoing, Dicey and Elazar famously characterize federalism as, respectively, “union not unity” and “shared rule plus self rule” (quoted in Anderson 2006:91).

Federalism is “underwritten by the simultaneity of centripetal [integrative] and centrifugal [disintegrative] forces” (Kavalski, 6) and “widely valued as an institutional design” to balance such forces (Preuss, 24). As such, federalism simultaneously incorporates the potential for stability and instability; integration and disintegration. As Riley says, “the very things which make federalism desirable and occasionally possible also make it unstable and occasionally perishable” (quoted in Kavalski, 6). Federalism is, therefore, “Janus-faced” in that it harbours the ability to perpetuate and exacerbate those disintegrative or centrifugal forces that it is designed to manage and accommodate (Behiels, 95). For this reason Ghai warns that federalism may serve as a “springboard to secession” and Leiff describes federal sub-units as “in a sense, states in embryo” (quoted in Anderson, 2006: 93 and 94).
2.2 Secessionist Capacity: Separable Territory and Territorial Identity

Secession requires a “separable territory” which contains the bulk of the potentially secessionist population (Wood, 112; Bartkus 11; Hechter 267; Sorens, 2-3). Federalism is “synonymous with territorial pluralism” (Preuss, 25). Its intra-state boundaries are generally those along which secession occurs or, as characterized by Buchanan, “the boundaries of the [secession] plebiscite” (Wood, 112-113; Buchanan, 56). A territory’s landlocked status does not prevent secessionist alienation. Following her exhaustive study of international secessions, Sorens concluded that sea access is only about one-third as important to the facilitation of secession as a territory’s distance from the rest of the country (98). The absence of a separable territory renders secession “unrealistic” (Wood 112-113). For example, the dispersal of the African American community across the United States deprives it of the secessionist capacity essential to secessionist alienation (Bartkus, 11; Ezgi, 15).

In 1981 Wood observed that secession is widely misunderstood as a uniquely ethno-political phenomenon: “conventional wisdom has it that secessionist alienation springs from cultural heterogeneity, which produces intense consciousness of identity” (114). Thirty-five years later little had changed: “most existing empirical work on secession has treated the phenomenon as merely a particularly intense form of ethnic conflict” (Sorens, 6). Secession is not, however, limited to ethnic politics. Neither the secession of America’s southern states nor Western Australia’s vote in favour of secession had their genesis in ethnicity (Wood 111; Brown, 2; Hechter, 270; Gourevitch, 305; Sharman, 2). The more recent secessions of Eritrea and Macedonia were also without a motivating ethnic dimension (Saideman et al, 633).

Wood’s observation that “not all secessionists have been ethnically distinct” (110) led to his breakthrough identification of secession as a phenomenon of territorial identity: an “essential precondition for secessionist alienation” is a “group solidarity” arising from shared ethnicity or “other shared interests” (116) with “an essential connection to [separable] territory” (111). It is now generally accepted that a territorially connected people bound by shared interests including, but not limited to, ethnicity is an essential feature of secessionist alienation. Saideman et. al. define “territorial identity” as “a bond based on a common residence within a particular region that is distinct from the core” (614). Ethnic homogeneity may provide that bond but where a potentially secessionist territory is ethnically heterogeneous “a salient territorial identity is
absolutely vital” to secessionist alienation (614). Bartkus identifies a “distinct community” as essential to a “secession crisis” and defines it as any “territorially concentrated community of people seeking to change its political situation” (14). From a rational choice perspective Hechter asserts that a territorial group capable of seeking secession must share common interests in matters of production, consumption or both (270-271).

Wood is unclear as to the genesis of territorial identity formation absent ethnic homogeneity. As secession usually occurs along territorial boundaries he speculates that Cox’s “movement networks”, groups of locations between which the movement of people is intense, “may account for secessionism where ethnicity is not a factor” (114). Subsequent scholarship, however, generally accepts the explanation of political identity formation advanced by Benedict Anderson’s theory of “imagined communities” and the related scholarship concerning nationalism (Bartkus, 15; Casterno, 47; Collier and Hoeffler, 2-3; Hechter, 248; Kavalski, 5; Saleh, 157-162). According to Anderson a nation is “an imagined political community” because its members will generally not know each other but “in the mind of each lives the image of their communion” (6) which is the recognition of their mutual obligations to each other (Bartkus, 15). To similar effect Hechter, citing Reed, and Pavkovic both assert that political identity formation requires that members of a territorial group recognize themselves as a group with common interests (Hechter 271; Pavkovic, 186).

As above, federalism is territorial pluralism. Territoriality inevitably influences political identity. Said says that political identity arises from its opposition to others – the included “us” versus the excluded “them” (Said, 43; cited in Saleh 159 and 162). Similarly, Smith defines a state as a “territorial entity” within which “the sense of inclusion and exclusion is vital to the definition of the community of citizens” (Smith, 135; quoted in Saleh 158). Territorial identity is often a “resistance identity” generated in response to the domination of a federal territory’s people, the included “us”, by extra-territorial actors, the excluded “them” or “others” (Casterno, 24). Common or shared territorial interests are often economic and facilitate economic subnationalism. For Hechter “commonality of interest” is greatest where a territory’s economy is “uniquely specialized in the production of particular goods” such as “ample mineral resources” (271). According to Casterno natural resources are a “building element” in the self-recognition of a national (or subnational) identity (281).
Mettler and Milstein posit a nexus between the “form taken by governing arrangements” (110) and the “formation of civic identities” (128). By its assignment of sovereign political authority to both central and territorial governments, federalism “implies questions of political identity” (Preuss, 48). The “self rule” of federalism provides federal territorial governments with the infrastructure and state fiscal resources to construct territorial identities and engage in nation building (Meadwell, 230; Behiels, 95; Guiberneau, 70-71) or “province-building” as the process is known within Canadian federalism (Black and Cairns, 43; Tupper, 204), creating as much opportunity to “perpetuate and intensify the very conflict it is designed to manage” (Simeon and Conway, 34) as to promote co-operation between territorial and central governments (Anderson, 2006: 91).

Fleiner distinguishes between “categorical” and “distributional” conflicts (33). Distributional conflicts generally concern the distribution of resources and may be resolved by rational discourse and accommodation. Categorical conflicts, on the other hand, are grounded in identity and not always or necessarily subject to rational discourse or accommodation. As Fleiner says: “One cannot change ... one’s identity in the same manner in which societies determine the level of social security” (33). This is the “dilemma of federalism”: inscribed differences which are reproduced through territorial identity formation and recognition (Kavalski, 6). It is a dilemma which becomes “tragic” when “irreconcilable differences” arise between state and territorial identities (Feeley and Rubin, 56-57 and 151).

2.3 Secessionist Will: Federal Leviathan

While the penultimate decision on secession engages both rational appraisal and emotion (Bartkus, 29 and 276; Dion, 271-272; Sorens, 85; Parent, 8; Pavkovic, 187-188), the secessionist will essential to secessionist alienation has its genesis in identity-based emotion. Such emotion manifests as “a need for security and self-preservation” (Wood, 120) or, synonymously, “a fear of the union” that is at a “high level” (Dion, 271) or “intense” (Vaubel, 5). The initiation of that need or fear in a federal state is identified by the scholarship of federalism below.

Federalism is designed to “pre-empt the origination of the passions” (Preuss, 25) and prevent federal disintegration by the accommodation of its constituent territories (Kavalski, 170). At its
core is the “federal bargain”, the distribution of political authority between central and territorial
governments (Anderson, 2007: 200). The jurisdictional elements of the “federal bargain” may
be both de jure and de facto. Federal authority is distributed de jure pursuant to a federal
constitution. It is distributed de facto by agreements and practices between the constituent
federal units. For example a central government may, without formal constitutional authority or
amendment, permit or promise enhanced territorial autonomy or generally adopt a territorially
friendly posture in the execution of its federal authority (Sorens, 737; Pavkovic, 240).

The success of the federal bargain is contingent upon mutual trust between the constituent
federal units (Anderson, 2006: 91; Bednar, 276; Bakvis et al, 258; Guibernau, 76; Tiryakin, 54)
which requires that the constituent federal units, including the central government, respect the
federal bargain. Jurisdictional ambiguity is, however, inherent in federal systems and
opportunism is inevitable (Bednar, 276-277). In the result, an inherent flaw in the federal design
is the propensity of central governments to become a “Leviathan” (Bednar, 276) and appropriate
or interfere with territorial authority in breach of the federal bargain and its essential bond of

A breach of the federal bargain by the central government that threatens the identity of a
territorial group is, from the perspective of the affected territory, oppression, a “negative
externality” (Vaubel, 5) or a “disturbance in the symbolic order” (Adria, 155) that is the
“unbearable tyranny of the state” which is secession’s “motivating force” and “moral
justification” (Bartkus, 11). At the territorial level such oppression presents as an existential
threat or a “crisis of survival” (Anderson; 2006: 99) capable of triggering “the dynamics of
federal collapse” (Kavalski, 170). As Watts notes in his comparative study of the world’s
federations, federal attempts at identity denial or suppression “have almost invariably led to
contention, secession or civil war” (121).

The severity of the crisis or the collapse may be exacerbated by relative deprivation (Wood, 116-
117), which is the shared frustration produced by the perceived discrepancy between a territorial
group’s “value expectations” or what life “should be” and its “value capabilities” or what life
“is” (Gurr, 13; quoted in Muller and Weede, 41 and Ubhenin, 533). An existential threat to a
territory’s identity caused by the Federal Leviathan’s oppressive compromise of federal
territorial self-rule may trigger relative deprivation. By reference to Quebec’s position within Canadian federalism Connor argues that compromised self-rule may explain ethno-national dissonance within multinational states (121-122). Consistent with the foregoing Muller and Weede, citing Gurr (86-91), hypothesize that the conditions that trigger relative deprivation “include discrimination based on the ascriptive characteristics of groups, inequality in the distribution of land or income, and the imposition of restrictions on political participation” (41), all of which may be the result of, or synonymous with, compromised self-rule.

2.4 Facilitating Factors

Certain economic and political factors may facilitate, but are not essential to, a federal territory’s secessionist capacity and/or secessionist will.

As above a federal territory’s shared economic interests facilitate the territorial identity essential to a secessionist capacity in the form of economic subnationalism. More specifically, natural resources are a “building element” in the self-recognition of a national (or subnational) identity (Casterno, 281). Wood recognizes that a natural resource windfall may facilitate secessionist will: “competition for control of a lucrative resource may provide the main economic precondition for succession” (118). To similar effect Parent concludes that economic gain is but a “partial buttress to succession, no more” (8). Shared economic interests and economic gain may, respectively, facilitate secessionist capacity and secessionist will but are not essential to either.

The absence of, or a decline in, the central regime’s legitimacy, defined as its integrative capacity, facilitates, but is not essential to, secessionist alienation (Wood, 110; Bednar, 119; Kavalski, 158). According to Wood political institutions, such as political parties within which interregional participation and bargaining may occur, are crucial to a central regime’s legitimacy (119). The salience of the central regime’s integrative capacity is particularly acute within federal states where disintegrative, centrifugal forces are inevitably present. Consistent with Wood, Kavalski concludes that the capacity for secession in federal states is positively correlated with weaknesses in the ability of federal arrangements to integrate the competing demands of the constituent federal units (167).

A federal identity is an “historical and moral construct, an aesthetic as much as an empirical
account of a nation’s historical emergence” (Fairfield, 103-104) and is the benchmark against which scholarship assesses a central regime’s legitimacy. Wood endorses Herz’s conclusion, that a central regime’s failure to engender a group or national identity is symptomatic of its decline or failure (118). Based upon his recent study of failed federal states Kavalski says that the failure of the central regime’s legitimacy in a federal state manifests as “identity failure” defined as the failure to accommodate the “other” by generating a new and complex identity that incorporates the varied and complex identities within a federal state (158 and 163). More specifically the “defunct federalisms” of Kavalski’s study reveal that failed federal states overemphasize homogenous identities “at the expense of complex and layered [federal] identities” (164). Federal identity failure is, then, the canary in the federal coal mine. It signals the absence of, or a dangerous decline in, the central regime’s integrative capacity. In this respect identity politics is again highlighted as the core issue of the secession phenomenon.

The transformation of the central government into an oppressive Federal Leviathan that threatens a federal territory’s identity by the appropriation of its territorial authority in breach of the federal bargain is facilitated by political infrastructure, political motivation, and political means. A central government that is accountable to a federal majority and effectively excludes a federal territory from the federation’s “shared rule” is conducive to the emergence of the Federal Leviathan. The construction of that infrastructure is facilitated by the same political factors that contribute to a weakly integrative central government. The often interdependent factors that motivate the Federal Leviathan to act oppressively in breach of the federal bargain include: a need, real or perceived, to pursue or impose a national identity; the opportunistic (or sincere) pursuit of the “national interest” (Di Giacomo, 2010a: 25; citing Rocher and Smith); the reversal of central government passivity in the form of territorially friendly federal policies (Sorens, 737) and/ or the promises of expanded territorial autonomy (Pavkovic, 240) A political means by which the Federal Leviathan may appropriate territorial authority is its exploitation of the constitutional ambiguity inherent in all federations (Bednar, 276-277).

2.5 Conclusion: A Distilled Theory

Federalism is designed to balance a federation’s centrifugal and centripetal forces by its federal bargain, the division of constitutional authority or jurisdiction between the self-rule of each federal territory and the shared-rule of its central government.
Secession is federal failure and begins with secessionist alienation, the existence of a constituency which can be mobilized for secession.

The two essential pre-determinants of secessionist alienation are secessionist capacity and secessionist will. Secessionist capacity is satisfied by the existence of a separable federal territory whose constituents share a territorial identity. Secessionist will is trigged by an existential threat to a federal territory’s identity caused by central government oppression. Such oppression is the consequence of the central government’s transformation into a Federal Leviathan that appropriates or interferes with a federal territory’s constitutional authority in breach of the federal bargain.

The obvious existential imperative of federalism is to avoid secession. It therefore follows that the successful conduct of federalism is constrained to avoid secessionist alienation within a constituent federal territory. The theory of federal failure provides a theoretical framework against which to identify both the presence of a secessionist capacity and those factors conducive to the emergence of the Federal Leviathan and, therefore, secessionist will within the relationship between a specific federal territory and federalism. Where such factors are present their specific identification informs the nature and extent of the constraint upon the conduct of federalism in that federal territory if secessionist alienation is to be avoided.
3. Secessionist Capacity: Alberta Territory and Identity

Secessionist capacity requires both separable territory and a territorial identity. Alberta is both a territorial space and a territorial identity; a “geographical entity” and “a state of mind” (Pitts, 150). Alberta’s territorial space and territorial identity are symptomatic of the relationship between Alberta and Canadian federalism.

3.1 Territory

The Province of Alberta is separable territory from both a de facto and de jure perspective. It is the product of 1905 federal legislation that carved it out of the North West Territories. That federal “drawing of the boundaries” (Smith, 2010; 20) established Alberta as the de facto territorial space characterized by Buchanan as the “boundaries of the [secession] plebiscite” (56).

The same territorial space has been subsequently codified by Canadian federalism as the de jure boundaries of the secession plebiscite pursuant to the Clarity Act (the “Act”), Parliament’s legislative response to the Supreme Court of Canada’s Secession Reference (the “Reference”). The Act confirms that secession is a provincial prerogative within Canadian federalism, requiring “a clear expression of the will of the population of a province on whether the province should cease to be a part of Canada and an independent state” (Act, Section 1(3)). As a Canadian province Alberta is, de jure, a separable territory within Canadian federalism.

3.2 Identity

Canadian scholarship traditionally recognizes the province as the primary incubator of political identity in Canada (Black and Cairns, 42; Schwartz, 324; Elkins and Simeon, xi). Provincial self-rule within Canadian federalism over key constitutional issues such as education and distinct, often competing, provincial economies promotes provincial identification in a process Black and Cairns term “province-building” (43; Tupper, 204). Consistent with the foregoing, those “few [federal] strokes” (Bakvis et al., 34) or “arbitrary [federal] lines drawn on a map” (Cameron, 2009: 310) that created Alberta in 1905, coupled with the assignment of constitutional authority to that territorial space, initiated Alberta’s territorial identity formation (Smith, 2010: 20; Bakvis et al, 34; Cameron, 2009: 310).

Alberta is not a community of ethnic or cultural homogeneity. It is “a state of mind” (Pitts, 150),
an “imagined community” that shares “a social understanding” (Wiseman, 240). That shared understanding is a “political ideology of discontent” with Canadian federalism that consists of “a set of interrelated beliefs” known as, “western alienation” (Gibbins, 1980: 169). Western alienation has two fundamental tenets, a commitment to provincial autonomy and a desire to participate in national affairs (Elton and Gibbins, 83). The Reform Party’s motto, “The West Wants In”, and Stephen Harper’s declaration that “The West is in” on the election of his first Conservative government in 2006 is consistent with the latter. As such, western alienation incorporates the complex fidelity to both the territorial self-rule and the host state shared-rule of the federal bargain that is symptomatic of federalism (Elkins and Simeon, 299; Kavalski, 5; Guiberneau. 71).

Nationalism is not the product of nations. Nationalism “invents nations where they do not exist” (Gellner, 69; quoted in Barrie, 113) and, like sub-nationalism, is the product of “discourses that draw boundaries between communities” (Barrie, 114). Alberta has engaged in the territorial identity construction of province-building enabled by the provincial self-rule of Canadian federalism but is “politically aberrant” (Smiley, 67) in that its territorial identity is almost exclusively the imagined construct of Alberta’s political elites (Ibid., 66-67; Smith, 2010: 21-22). Alberta’s imagined construct is the subnationalist paradigm of the Alberta “We” in political opposition to the excluded “Them” or “Other”, being Ottawa as the surrogate for an historically exploitive central Canada (Barrie, 117; Hiller, 1987: 49; quoted in Adria, 160). The Alberta subnationalist paradigm is manifested in Alberta’s commitment to provincial autonomy free from “external control” (Wesley, 12 and 67) or “federal influence” (Smiley, 67) and, more precisely, as Gibbins notes, its “intense commitment to provincial control of energy resources” (1979: 143; quoted in Barrie, 116).

The construction of the Alberta subnationalist paradigm has been facilitated by two specific circumstances in the relationship between Alberta and Canadian federalism: Alberta’s initial colonial status and its subsequent position on the fault line of contested natural resource control. Within those circumstances Alberta’s political elites have employed, language, education, and the “demonstration effect” to construct the Alberta subnationalist paradigm. In identity construction “language is exclusionary, marking off one community from others, creating an “Us” and a “Them” or an “Other” (Barrie, 114). Similarly, education can play a critical role in
shaping and transmitting a nation’s memories or myths to the young “in the construction of the imagined national or sub-national community” (von Heyking, 1128). The “demonstration effect” ascribes legitimacy to the state “by showing how the [nationalist or sub-nationalist] economic and political programme will function in practice” (Adria, 157).

Prior to 1905 the territorial space that is Alberta was part of the North West Territories, a Canadian colony in the service of the central Canadian objectives of Ottawa’s National Policy which was modelled on the imperial practice of British Home Rule (Janigan; Macpherson; Mallory; Morton; Thomas). The federal terms of Alberta’s acquisition of provincial status in 1905 were “discriminatory” in that Ottawa withheld from Alberta (and Saskatchewan) the constitutional ownership and control of provincial lands and resources possessed by every pre-existing province pursuant to section 92 of the then B.N.A. Act (Barrie, 116). Those discriminatory terms initiated Alberta’s grievance-based discontent with Canadian federalism. As early as 1911 Alberta MLA Bramley-Moore expressed that discontent by suggesting that Alberta “hoist the flag of independence which would ipso facto make the province owner of her own resources” (quoted in Bergman). By 1930 when Alberta achieved “its first and primordial objective” (Gibbins, 1992: 71), the acquisition of constitutional ownership and control of its lands and resources, Canadian federalism had established a colonial legacy in Alberta and a resulting provincial commitment to provincial rights conducive to the Alberta subnationalist paradigm.

The construction of the Alberta subnationalist paradigm gained momentum and focus during the Depression with Alberta Premier Aberhart’s routine description of Alberta in sovereign, autonomous terms such as “our people” and “bona fide citizens” (Wesley, 65). In response to Ottawa’s constitutional opposition to Alberta’s legislation to address the Depression, Aberhart characterized Ottawa and central Canadian financial interests as “the true enemies of the will of the people of Alberta” (quoted in Caldorala, 1979: 42; cited in Barrie, 118). In the result Ottawa’s opposition was seen in Alberta as “a battle between the province’s people and an oppressive federal government” (Wesley, 66) that was initiated by Ottawa to humiliate Alberta (Barrie, 116). Aberhart’s successor as Alberta’s premier, Ernest Manning, continued Alberta’s rhetorical emphasis on Alberta sovereignty and autonomy by references to Alberta’s “free and sovereign people” (quoted in Barrie, 116) and Alberta’s commitment to “the greatest possible
amount of self-governing autonomy” (quoted in Wesley, 82).

Consistent with such rhetoric the Alberta Government also developed a “made-in-Alberta” public school curriculum that “embodied a provincial identity” (von Heyking, 1132 and 1133) consistent with the Alberta subnationalist paradigm. For example, a 1937 grade 7 social studies textbook taught Alberta students that eastern Canadian “economic imperialism” had caused “a great deal of discontent throughout Alberta” and that eastern Canada “continues to control the [federal] government” (quoted in Ibid., 1134).

The discovery of oil at Leduc in 1947 transformed the Alberta economy into one characterized by the production of a specialized resource (Smiley, 67), a circumstance that scholarship identifies as central to the development of a territory’s “commonality of interest” (Hechter, 271) and a “building element in the self-recognition of a national identity” (Casterno, 281). Leduc also positioned Alberta at the centre of the federal, provincial contest for natural resource control that is a key “fault line” (Janigan, xii) within Canadian federalism, an economic position that scholarship recognizes as conducive to nationalist movements (Adria, 159). Following Leduc Alberta’s political leaders self-consciously constructed a provincial state and community defined by its oil and gas wealth (Cameron, 2009:310-311). In brief Alberta’s elites refined Alberta’s pre-existing subnationalist paradigm into an economic subnationalist paradigm based upon Alberta’s relationship with oil and gas that has made Alberta a province “pas comme les autres” (Smiley, 66).

The Alberta government has employed the “demonstration effect” in its construction of the Alberta economic subnationalist paradigm (Adria). In 1954 Alberta and a private Alberta company, Nova Corporation, combined to establish a natural gas transmission monopoly of the “we”, Alberta-based political and economic interests, to prevent a “monopsony”, the market control of an Alberta energy resource by the “them”, central Canadian purchasers (Ibid.). By 1979 Nova Corporation was the seventh largest Canadian corporation west of Ontario. Adria explains the role of public projects such as Nova Corporation to the construction of the Alberta subnationalist paradigm as follows: “The social identity to which Nova contributed was a [territorial] membership implied in the benefits ... of subnationalism and made visible in the demonstration effect of public projects such as Nova ...” (168).
The Alberta education curriculum also shifted its emphasis toward natural resources within the Alberta subnationalist paradigm. The 1981 curriculum, for example, emphasized Alberta’s unique position within Canadian federalism (von Heyking, 1140). Grade 10 students were asked: “To what extent are the competing forces of provincial autonomy and federal centralization of power compatible with national unity?” (quoted in von Heyking, 1141). Grade 4 students were asked: “What does Alberta do with the oil and gas she produces?” and “Are we willing to share our money with the poorer regions of Canada?” (quoted in von Heyking, 1142).

The shift of the Alberta subnationalist paradigm toward the economic subnationalism of provincial oil and gas ownership and control is reflected in the province-building of Peter Lougheed, Alberta’s Premier between 1971 and 1985. Tupper describes Lougheed as “Alberta’s most determined, innovative and successful province builder” (204) and “the principal architect of modern Alberta” (227). As Premier he vowed to “never be part of any form of capitulation to Ottawa on the resource question (quoted in Hustak, 173; cited in Barrie, 122). On the occasion of Alberta’s 75th anniversary as a province in 1980, he reminded Alberta of its struggle with Ottawa for natural resource control within Canadian federalism in subnationalist terms: “For our first twenty-five years the people of the province, our forefathers, fought and struggled to get away from this almost territorial status” (quoted in Pratt, 164). Lougheed characterized Ottawa’s subsequent appropriation of Alberta’s oil and gas resources in 1980 pursuant to the NEP, as follows: “... the Ottawa Government has...simply walked into our home and occupied the living room ... I don’t think we can turn our backs on the pioneers and forefathers who fought to have the resource ownership rights for the people of Alberta.” (quoted in Pratt, 164). At the time Pratt described Lougheed’s rhetoric as “Alberta nationalism” and “a national myth in the making” (164 and 166).

Consistent with Alberta’s territorial identity, economic subnationalism expressed as an intense commitment to provincial ownership and control of its natural resources, Lougheed sought to enhance the protection of that identity within the federal bargain through de jure constitutional reforms. Such efforts accelerated following the “ultimate federal intrusion” (Meekison, 256), Ottawa’s 1980 National Energy Program (“NEP”), as part of what Lusztig references as the Alberta-led western “mega-constitutional orientation” which concerned “the identity and fundamental principles of the body politic” (Russell, 75; quoted in Lusztig, 1995: 38).
Some of the enhanced de jure constitutional protections that Alberta sought were achieved by the inclusion of section 92A in the *Constitution Act* 1982 which “clarified and strengthened the areas of exclusive provincial ... jurisdiction over non-renewable natural resources ...” (Meekison, 256). More specifically, pursuant to section 92A the provinces have control of provincial natural resource development; access to the indirect taxation of natural resources; and the authority to influence the trade and marketing of their natural resources within Canada (Cairns et. al., 272-3).

The continued vitality of Alberta’s subnationalist paradigm is personified by Canada’s Prime Minister between 2006 and 2015, Stephen Harper. Harper attaches considerable importance to his Alberta identity (Jeffrey, 2015: 198) and is, as Gibbins observes, animated by “the alienated spirit of the west, ever suspicious of the potential excesses of federal power” (quoted in Wells, 358). His is the most significant elite voice in Alberta identity construction subsequent to Lougheed.

Prior to becoming Prime Minister Harper had, consistent with the Alberta subnationalist paradigm, clearly identified the central government as a threat to Alberta’s territorial identity. According to Harper, Albertans, like Quebec nationalists, “care about their local identity and the culture that nourishes it, and see the federal government as a threat to their way of life” (quoted in Johnson, 264; cited in Cody, 350). In his subsequent “An Open Letter to Raph Klein” published in the National Post on January 24, 2001 (“Firewall Letter”) Harper, then President of the National Citizens Coalition, and others described the central government’s hostility to Alberta’s territorial identity in a manner consistent with the Alberta subnationalist paradigm: “It is imperative to take the initiative to build firewalls around Alberta to limit the extent to which an aggressive and hostile federal government can encroach upon provincial jurisdiction.” (National Post, January 24, 2001). The “initiative” to which Harper referred was constitutional: “Intelligent use of these [provincial constitutional] powers will help Alberta build a prosperous future despite a misguided and increasingly hostile government in Ottawa” (Ibid.).

As Prime Minister Harper’s reaction to then federal Liberal Party leader Dion’s 2008 proposed “Green Shift” carbon tax on high carbon emission industries such as Alberta’s oil and gas industry was consistent with Alberta’s economic subnationalism: “It is like the National Energy Program in the sense that the National Energy Program was designed to screw the west and
really damage the energy sector – and this will do those things” (quoted in Martin, 150).

The constitutional protection of the nexus between Alberta’s provincial constitutional jurisdiction and its territorial identity from an aggressive and hostile central government found subsequent, de facto expression in the Harper Conservative Governments’ conduct of “open federalism.” Open federalism is characterized by a commitment to provincial autonomy which Harper characterizes as “what federalism is all about” (quoted in Johnson, 377). It is defined as “a decentralized vision of federalism that strictly interprets the division of jurisdiction to allow for provincial autonomy in areas that are perceived to be within provincial jurisdiction” (Bakvis and Skogstad, 364). The extent of open federalism’s fidelity to provincial autonomy is illustrated by Harper’s assertion that its successful conduct would limit the central government’s jurisdiction to defence, foreign policy and economic union (Macdonald, 2007; cited in Jeffrey, 2010:120).

Open federalism represented “the first time in Canadian history [that] a national party [and central government]…embraced a provincial rights agenda” (Stevens, 2008; see also Jeffrey, 2010:109). According to some commentators the Harper Conservative Governments’ commitment to certain aspects of open federalism “clearly eroded as time passed” (Fox, 16) but its fundamental “commitment to allowing every province to chart its own course remained” (Ibid., 19). Importantly, it respected Alberta’s economic subnationalism as manifested by its intense commitment to Alberta’s constitutional ownership and control of provincial natural resources within Canadian federalism. Stated another way, open federalism integrated Alberta’s territorial identity by its embrace of provincial autonomy. The defeat of the Harper Government in 2015 introduced uncertainty into the relationship between Canadian federalism and Alberta.

3.3 Conclusion

As a consequence of Canadian federalism Alberta has the separable territory and the territorial identity essential to secessionist capacity. Alberta as separable territory is the de facto and de jure product of Canadian federalism. Alberta’s territorial identity is economic subnationalism expressed as Alberta’s intense commitment to provincial ownership and control of its oil and gas resources. It is the product of province-building, a recognized characteristic of Canadian federalism, by Alberta’s political elites. There is an obvious and necessary nexus between
Alberta’s economic subnationalism and its constitutional jurisdiction or authority. Alberta’s political elites have sought to protect Alberta’s economic subnationalism through both de jure and de facto constitutional initiatives. Lougheed secured a de jure enhancement of Alberta’s ownership and control of its natural resources in section 92A of the Constitution Act, 1982. Subsequently, Ottawa’s commitment to provincial autonomy pursuant to Harper’s open federalism provided de facto constitutional protection to Alberta’s economic subnationalism.
4. Facilitating Political Factors

In this chapter I address the political factors identified by the theory of federal failure that facilitate, but are not essential to, secessionist capacity and secessionist will.

A federation’s general secessionist capacity is facilitated by a central government whose legitimacy, or integrative capacity, is compromised by the inadequate participation of its federal territories in the shared rule of federalism and/or constitutional ambiguity. Stated another way, the greater the central government’s institutional capacity and jurisdictional authority to govern, the greater its legitimacy and federal integrative capacity. A central government that possesses and exercises the institutional capacity and jurisdictional authority to govern “brings itself closer to the people and gains more visibility” (Leclair, 377; quoted in Di Giacomo and Flumian, 7) and has the integrative capacity to balance the disintegrative forces inherent in federalism. Central government passivity by which the central government does not possess the institutional capacity or jurisdictional authority to govern or, possessing same, declines to exercise them has the opposite, disintegrative effect.

Secessionist will in a federal territory is triggered by an existential threat to its territorial identity by the Federal Leviathan, being central government oppression in the form of the appropriation of territorial jurisdiction or authority in breach of the federal bargain. The emergence of the Federal Leviathan is facilitated by the availability of a compatible political infrastructure; a political motivation; and the political means to appropriate territorial authority. A political infrastructure compatible with the emergence of the Federal Leviathan is a central government that is accountable to a federal majority that effectively excludes a federal territory. The political motivation of the Federal Leviathan is the imposition of a sense of nationhood and/or the reversal of central government passivity (Di Giacomo, 2010 a:25; citing Rocher and Smith; Sorens, 737). The political means by which the Federal Leviathan exercises its oppression is the exploitation of constitutional ambiguity inherent in all federations (Bednar, 276; Anderson, 2007: 200).
4.1 Institutional Capacity

Canada’s Westminster model of parliamentary government includes the popularly elected House of Commons and the Canadian Senate which is comprised of Senators appointed by the federal executive on the basis of a regional formula. The Westminster model concentrates power in the federal executive (Simeon and Conway, 365; Bickerton, 258) which is generally derived from, and wholly accountable to, a House of Commons majority. The integration of a federal territory or province within the shared rule of Canadian federalism is therefore, contingent upon the election of representatives from that province to the House of Commons majority and the efficacy of the Canadian Senate as a forum for provincial representation. Canada’s electoral and party systems and Senate are, therefore, the institutional focus of this chapter.

4.1.1 Electoral and Party Systems

Canada’s electoral and party systems are interdependent. The former influences the nature and structure of the latter (Cameron, 2001: 124) and, specifically, the parties’ conduct of electoral politics. Alone or in combination both systems impact the integrative capacity of Canada’s central regime.

The electoral system creates citizen “winners” and “losers” in provinces. “Winners” are those citizens who support the governing party and “losers” are those citizens who support parties other than the governing party. “Winners” have greater trust in the federal regime than “losers” (Norris, 1991: 229-230; cited in Peach, 2007: 25-26) because a citizen’s support for a political regime is contingent upon his or her perception of “being effectively represented” (Cutler and Hooper, 262). The more Members of Parliament that a given province contributes to the House of Commons majority to which the federal executive is accountable, the greater that province’s federal integration and federal trust.

From the theoretical perspective the most compelling characteristic of Canada’s “first past the post” electoral system is its acknowledged exaggeration of a political party’s electoral success or failure in a given province. More specifically, party representation in the House of Commons on a province by province basis presents an exaggerated picture of provincial party support when compared to the corresponding provincial vote percentages (Simeon, 1977: 298; Bakvis and Tanguay, 101). Such exaggerated results alienate provinces that are underrepresented in
Parliamentary party caucuses from those parties “creating a self-perpetuating cycle of regionalized party politics” (Bickerton, 259).

My calculations based on the Alberta federal election results in the 8 federal elections since 1993, as recorded by Electors’ Canada at www.elections.ca, illustrate the distortion of party preferences resulting from Canada’s electoral system. From 1993 to 2015 inclusive the federal Liberals’ popular vote in Alberta ranged from a high of 25.1% in 1993 which translated into but 4 or 15% of the then available 26 Alberta federal seats to a low of 9.3% in 2011 which translated into none of the then available 28 Alberta federal seats. During the same period the electoral results in Alberta of the federal Conservative Party or its Reform, Canadian Alliance, or Progressive Conservative predecessors remained dominant and relatively stable. Their popular vote ranged from a low of 59.5% in 2015 which translated into 28 or 87.5% of the available 32 Alberta federal seats to a high of 66.8% in 2011 which translated into 27 or 96.4% of the then available 28 Alberta federal seats.

The federal party system facilitates federal integration by “attaining cross-regional [provincial] and national support” at the federal level (Simeon and Conway, 363). That support is achieved by the conduct of “brokerage politics” by which a “brokerage party” adopts “a nation building mission” in “the national interest” that “aims to reconcile, or at least accommodate, the full range of different [federal] perspectives and interests” (Carty, 14-15). Consistent with Riker and the traditional scholarship of federalism, Canadian scholarship considers large, national brokerage parties to be “the sinews of a healthy federalism” (Smith, 1985: 1) that play “a crucial nation-building role” (Bakvis and Tanguay, 96).

The antithesis of integrative brokerage politics, and the most pernicious consequence of the electoral system’s exaggerated provincial results, is disintegrative “sectional politics” pursuant to which federal parties adopt campaign strategies that “write-off” provinces where the electoral system exaggerates the likelihood of failure (Cairns, 1968: 75). Such provincial write-offs are effected by the allocation of a party’s available resources away from provinces where it has an exaggerated likelihood of failure toward territories where it has an exaggerated likelihood of success (Bakvis and Tanguay, 101). The exclusion of any province pursuant to sectional politics is disintegrative and “the politics of instability” (Cairns, 1968: 75).
The conduct of sectional politics disqualifies a political party from brokerage party status. Carty says that the federal Conservative Party is not a true “brokerage party” by reason of its adoption of sectional politics in respect of Quebec, the genesis of which was its 1954 “Churchill Memo” recommending that the Party not allocate electoral resources to Quebec, which resulted in the Conservatives’ subsequent incapacity to “act as a political bridge” between Canada’s English and French linguistic communities (18).

Given its consistent, exaggerated electoral failure in Alberta it is not surprising to observe the adoption of disintegrative sectional politics by the federal Liberal Party in Alberta. The federal Liberals’ own version of the Conservatives’ “Churchill Memo” is former federal Liberal Cabinet Minister MacEachern’s 1966 admission that, following the party’s 1958 defeat, the federal Liberals concentrated on Ontario and Quebec with the Canadian West becoming an “after-thought” (quoted in Martin, 5). A compelling example of the federal Liberals’ conduct of sectional politics contrary to Alberta’s identity interests and federal integration is its 1980 federal election campaign strategy that exploited the economic differences between Ontario and Alberta in favour of Ontario. In Ontario, federal Liberal leader Trudeau said: “We have to use [Alberta’s] energy as a tool of our industrial strategy, not as a bludgeon to destroy the competitiveness of this particular province [Ontario] ...” (quoted in Simpson, 350-351).

More recently the federal Liberals’ conduct of sectional politics has taken the form of “Alberta baiting” (Johnson, 283). During the 2000 federal election campaign then federal Liberal Prime Minister Chretien offered: “I like to do politics with people from the East. Joe Clark and Stockwell Day are from Alberta. They are a different type. I’m joking. I’m serious.” (quoted in Johnson, 283). In 2010 current federal Liberal Prime Minister Justin Trudeau as an Opposition Member of Parliament from Quebec echoed Chretien’s apparent, disintegrative disdain for the involvement of Alberta in the shared rule of Canada’s central government: “Canada isn’t doing well right now because it’s Alberta who controls our community and socio-democratic agenda. It doesn’t work” (quoted in Berthiaume). When asked if Canada is better served when those from Quebec rather than Alberta hold power in Ottawa, Trudeau’s disintegrative response was unequivocal: “I’m a Liberal so of course I believe that” (Ibid.).

The federal Liberals’ embrace of sectional politics does not aim to reconcile or accommodate
Alberta’s territorial identity within Canadian federalism or position the federal Liberal Party as a political bridge between Alberta and the balance of the federation. Such conduct rebuts Carty’s assertion that the federal Liberal Party “but only the Liberal Party” has operated in Canada as a true brokerage party (19). The better characterization of the federal Liberal Party subsequent to 1958 is as a pan-Canadian party with a nationalizing or “centralizing” impulse (Bakvis and Tanguay, 101) that is often other than synonymous with the federal integration of Alberta’s territorial identity.

The exaggerated territorial results of Canada’s electoral system promotes sectional politics and, in the result, a federal party system without true brokerage parties with the capacity to facilitate federal integration by attaining cross-regional [territorial] and national support at the federal level. Further, the lack of national integration between federal and provincial levels of parties with the same label “reduces the capacity of the party system to secure political stability through intra-party accommodation of diverse regional interests, a role performed by party systems in most other federations” (Bickerton, 259). Put plainly, “Canada’s regional-based federal parties no longer have the ability and/or desire to defend and promote a strong central government ... which can counterbalance effectively both the natural and very powerful political centrifugal forces within the federation” (Behiels, 100). Further, “is is very likely unrealistic to expect the party system in its current configuration to start doing some of the ‘heavy lifting’ in keeping the Canadian federation intact and functioning” (Bakvis and Tanguay, 113).

The exaggerated party successes and failures compelled by Canada’s electoral system in combination with the absence of federal brokerage parties renders Alberta’s integration in the shared rule of Canadian federalism hostage to federal Conservative Party success. In Alberta a federal Conservative Party victory creates more “winners” and, therefore, greater federal integration and trust while a federal Liberal Party victory creates more “losers” and, therefore, reduced federal integration and trust. The creation of such “winners” and “losers” also fuels Alberta’s subnationalist paradigm of the included Alberta “We” in opposition to the oppressive excluded “Other”, being Ottawa as central Canadian surrogate.

The foregoing is illustrated by the “Firewall Letter”, which appeared in the National Post following the 2000 election of a federal Liberal government with a majority based in Ontario and
Quebec and but two MPs from Alberta under the same Prime Minister Chretien who had previously expressed his disintegrative “joking” but “serious” preference for doing politics “with people from the East”. The Firewall Letter bluntly expressed Alberta’s reduced federal integration and trust resulting from the 2000 campaign in a manner wholly consistent with Alberta’s subnationalist paradigm: “It is imperative ... [that Alberta] take the initiative to build firewalls around Alberta to limit the extent to which an aggressive and hostile federal government can encroach upon legitimate provincial jurisdiction”.

Consistent with the foregoing analysis and based on the Canadian Election Studies’ 2004, 2006, and 2008 surveys, the Canada West Foundation reported in 2010 that discontent with the central government declined dramatically from 51.3% in 2004 under a minority Liberal government with marginal representation from Alberta to 23.5% in 2008 under a minority Conservative government with overwhelming representation and a Prime Minister from Alberta (Berdahl, 3-4). According to Berdahl the 2004 survey results “likely reflected not only upon the six month tenure of Paul Martin’s Liberal government but also on their perceptions of their province’s treatment under Jean Chretien’s government between 1993 and 2003” (5) and the 2008 results “would have reflected on their province’s treatment during the two years [2006-2008] of Stephen Harper’s minority Conservative government” (5).

Consistent with the foregoing, Alberta’s discontent with the central government has grown subsequent to the 2015 election of a federal Liberal government with a majority based in central Canada and marginal representation from Alberta. According to an Angus Reid poll conducted between September 6 and 12, 2016: 36% of Albertans consider Alberta to be “treated fairly by the national government”; 86% of Albertans believe that Alberta “contributes more to the country than it gets back”; and 45% of Albertans believe that Alberta “is respected by the rest of the country” (Fletcher). Based on those poll results Angus Reid’s executive director contends that Canada’s “two solitudes have” really shifted westward ... [and] is [now] between Alberta and the rest of Canada” (Ibid.).

4.1.2 Senate

An institutional vehicle to ensure territorial participation within the central government that is commonly employed by federations with legislatures responsive to a federal majority is a second
legislature or territorial house composed of territorial representatives with a mandate to both hold the central government in check and advance the interests of their federal territories within the federation’s shared rule. The United States’ Senate exemplifies the foregoing. Its composition, the equal representation of each state irrespective of size, resulted from the small states’ territorial imperative to “protect their interests against a [national or federal] majority in the national legislature [House of Representatives]” (Lusztig, 1995: 41; Stewart, 101-126). Consistent with the foregoing its mandate is to act as a legislative check on the popularly elected House of Representatives pursuant to “the mutual veto-authority principle” (Lusztig, 1995: 40) by which each legislature possesses a veto over the other’s legislation. The genesis of that principle was the same fear of the tyranny of the majority that inspired America’s separation of powers. As Jefferson said in Federalist 48: “All the powers of government ... result to the legislative body ... [which] is precisely the definition of despotic government ... one hundred and seventy-three despots [the then House of Representatives] would surely be as oppressive as one” (quoted in Lusztig, 1995: 40, footnote 25).

From a theoretical perspective, the genius of the United States’ Senate is its engagement of the territoriality of American federalism to both check the potential tyranny of the majority inherent in the popularly elected House of Representatives and, in the process, facilitate federal integration through intrastate federalism. The Senate’s equal, elected state representation “ensures that the interests of the small states are well protected within Washington” (Malcolmson and Myers, 72) such that the American central government is not “hopelessly stacked against them” (Braid and Sharpe, 307). In the result the Senate is the United States’ “principal institution of intrastate federalism” (Lusztig, 1995: 41) and has facilitated the successful integration of America’s federal territories (states) within American federalism where: “federal power [has] increased; state power [has] withered” (Bercuson, 7; see also Watts, 22).

The genesis and federal consequence of Canada’s Senate is fundamentally different from its United States counterpart. Rather than fearing the tyranny of the legislative majority inherent in a popularly elected legislature Canada’s Westminster model of responsible government embraces the majoritarian principle of legislative supremacy. As such it is incompatible with a second legislature mandated to hold the popularly elected House of Commons in check (Burns, 150; Lusztig, 1995: 42; Malcolmson and Myers, 72). As MacDonald bluntly stated in 1865, the
Canadian Senate “will never set itself in opposition against the deliberate and understood wishes of the people” (quoted in Lusztig, 1995: 42). Accordingly, and while its enumerated constitutional powers suggest otherwise (Behiels, 59), “the Canadian Senate was founded almost exclusively on the principle of legislative review” (Lusztig, 1995: 42). By the mid-twentieth century the Senate’s strictly deliberative role had crystallized into the constitutional convention that the Senate “must not oppose a bill that has the support of the House of Commons” (Malcolmson and Myers, 130).

The Canadian Senate is generally dismissed an “irrelevance” (Savoie, 212) and “perhaps the greatest failure of Canadian institutions” (Stevenson, 35) that “imposes the full burden” of provincial representation “within the national legislature on the ill-suited House of Commons” (Bickerton, 258). Contemporary Senate reform initiatives, such as the Triple E Senate, were effectively terminated by the Supreme Court of Canada’s 2014 decision in the Senate Reference, 2014 SCC 32 that an elected Senate would require a constitutional amendment. According to then Prime Minister Harper that decision took Senate reform “off the table” so that Canada remains “stuck with the status quo” (quoted in Press and Kennedy). The status quo is a Canadian Senate that does not provide or facilitate effective provincial representation within Canada’s central government and the shared rule of Canadian federalism (Bakvis and Skogstad, 4) In the result Canadian federalism has “no meaningful provincial representation at the centre” (Courchene, 23) and is, therefore, “essentially incomplete” (Bakvis et al., 6) or, synonymously, characterized by a “federalism deficit” (Simeon and Nugent, 61) which is “a fundamental reason for the weakening of federal authority and legitimacy” (Ibid., 62 citing Kent, 2003: 5) and, therefore, disintegrative.

### 4.1.3 Federal Identity

A federal identity is an imagined federal community’s shared understanding of, *inter alia*, the federal bargain. The central regime’s construction of a new and complex federal identity from a federation’s territorial identities is fundamental to federal integration (Kavalski, 158 and 163) and the benchmark against which scholarship assesses federal efficacy. Federal identity failure is the canary in the federal coal mine as it signals the absence of, or a dangerous decline in, the central regime’s legitimacy and integrative capacity (Wood, 118).
Canada’s lack of a federal identity has preoccupied and alarmed scholars and journalists for decades. Meisel noted its absence in 1968 and thirty years later Thomas identified “the lack of an overarching agreement on national identity and community” as “one of our most problematic questions” (Thomas, 70; quoted in Di Giacomo, 2010a:86). Contemporary scholars and others describe Canada as “an empty vessel” (Cohen, 157; quoted in Cody, 353) “devoid of national myths or agreed upon narratives” (Fairfield, 104) with an identity “as elusive as the Sasquatch or Ogopogo” (Cohen, 3; quoted in Ferguson et al, 29) the search for which is “the pursuit of a mirage” (Wiseman, 263) leaving the dream of Canadian unity “all but lost” (Brock, 158). Consistent with the foregoing current Canadian Prime Minister Justin Trudeau declared after his government’s October, 2015 election: “There is no core identity, no mainstream in Canada” (Todd). A Canadian federal identity is so elusive that some scholars, with apparent sincerity, assert the political oxymoron that Canada’s “social cohesion” is “the comparative looseness of its national culture and social structures” (Ferguson et al, 30). In the absence of a Canadian federal identity it is unsurprising to note that Canadian are “often without a deep understanding of what the actual operation of the federation means for national goals ...” (Bakvis et. al., 249).

The absence of a Canadian federal identity is generally attributed to the persistent territoriality of Canadian federalism. Fairfield says that “Canada’s regional narrative and identities tend to reverberate more deeply than national ones” (104). According to Wiseman Canada’s territorial complexity prevents the construction or emergence of a “singular Canadian identity” (264). Somewhat paradoxically others have found unity in Canada’s “shared [territorial] grievances” (Wente; quoted in Cody, 356). Consistent with the foregoing, territoriality impacts Canadians’ understanding of the Canadian federal bargain. For example, “greater or lesser support for regional or provincial autonomy” will be found among Canadians depending upon their respective provinces (Bakvis et al., 248).

The incorrect implication of such scholarship is that, but for territoriality, Canada’s central government would have successfully constructed a federal identity. Territorial pluralism is, however, federalism’s rationale (Kennett; cited in Peach, 50). Absent territorial pluralism federalism is unnecessary, an institutional solution in search of a problem. Absent territoriality Canada would lack the territorial identities upon which to construct a federal identity. While the territorial identities of Canadian federalism necessarily complicate the construction of a
Canadian federal identity they are, at the same time, the essential ingredients of Canada’s as yet unrealized federal identity.

An example of failed federal identity construction illustrates the foregoing. Canada’s “official history” is an historical narrative restricted to Canada’s original French, English divide or “two solitudes” that conveys a “powerful and daunting” exclusionary message that “only one difference in Canada counts – the one between the French and English” (Braid and Sharpe, 308). Official bilingualism “represented a state [central government] – led redefinition of national identity” (Banting, 2012: 270) consistent with the “official history”. It fails as a federal identity because it incorporates but one aspect of the complex political reality that Canada is a “double federation” (Smith, 2010: 22, footnote 6) of both the original French, English divide and the various provincial identities. One of the provincial identities that the “official history” fails to incorporate into a successful overarching federal identity is the Alberta identity which adds to the French, English divide another important identity difference, that between the Alberta “We” and the Ottawa (as central Canadian surrogate) “Other” at the fault line of contested natural resources control within Canadian federalism. As such the central regime’s redefinition of a federal identity consistent with the “official history” creates “an attenuated conception of the common good” (Fairfield, 104) by the same overemphasis of homogenous identities “at the expense of complex and layered [federal] identities” (Kavalski, 104) that characterizes failed federal states.

4.2 Jurisdictional Authority

A central government’s authority to integrate its federation is subject to both the federation’s assignment of constitutional jurisdiction to either the shared rule of its central government or the self-rule of its territorial governments and the central government’s exercise, or not, of that jurisdictional assignment. The jurisdictional factors addressed in this chapter are the constitutional ambiguity and central government passivity that characterize Canadian federalism.

4.2.1 Constitutional Ambiguity

Constitutional ambiguity or uncertainty as to the nature of the Canadian federal bargain “was the midwife of Canada’s birth [and] remains central to the Canadian politics of today” (Lazar, 4; quoted in Bakvis and Skogstad, 258). It is generally agreed that the founders of Canadian federalism intended that Canada have a dominant central government with “a more or less
imperial relationship with the provinces” (Bakvis et al., 249) that would effect their vision of a centralized nation and “integrate the diverse colonies over time” (Ibid.; Di Giacomo, 18-22). Their vision was, however, compromised at the outset by, inter alia, their failure to declare Canadian sovereignty which defaulted the interpretation of Canadian federalism to the “imaginatively constructed [constitutional] interpretations” (Behiels, 83) and “provincialist bias” (Di Giacomo, 36) of Britain’s Judicial Committee of the Privy Council (“JCPC”). The JCPC’s decisions privileged provincialization and defined the path of Canadian federalism “clearly away from federal assertiveness” (Di Giacomo, 37) leaving “Canadian decision makers at the federal level confused and conflicted, to this day, over which vision of the country to take seriously” (Ibid., 26). Further, on many significant issues the constitution is “ambivalent and silent” (Bakvis et al., 248; citing Simeon and Robinson, Ch.3) and without the “bright line divisions between the national and sub-unit jurisdiction” (Baier, 2012:80) of more traditional federations.

4.2.2 Central Government Passivity

The federalism deficit and constitutional ambiguity of Canadian federalism respectively compromise the central government’s institutional capacity and jurisdictional authority to integrate the federation. Both conditions complicate Canadian federalism’s search for what Simeon and Nugent reference as “the right balance between ‘self rule’ and ‘shared rule’” (63) in that they privilege provincialization or territoriality and facilitate federal passivity which is the central government’s inability or unwillingness to assert itself in the interest of federal integration.

The Harper Conservative government’s commitment to provincial autonomy pursuant to “open federalism” represented the zenith of central government passivity. As Friendly and White conclude: “Harper’s open federalism…means not just a return to watertight compartments in terms of federal/provincial jurisdictional responsibilities [provincial autonomy] but also little action on the federal government’s part, and shrinkage in the overall activity of the state’ (192). According to its advocates, the passivity of open federalism “wasn’t very exciting but was enormously successful” as it generated “fewer major federal-provincial disputes than at any time since Louis St. Laurent was prime minister” (Ibbitson, 273).

The critics of open federalism argue, consistent with the nexus between the “form taken by
governing arrangements” and the “formation of civic identities” identified by Mettler and Millstein, that the commitment to provincial autonomy and the resulting central government passivity of open federalism invite increased provincialization and decreased national identification. Jeffrey endorses Coyne’s view that “open federalism” implicates “destructive sectionalism” and “the ebbing attachment of its [Canada’s] citizens to the ‘idea’ of Canada, which is now becoming an association of princely states, duchies and caliphates run by regional pashas” (Coyne; quoted in Jeffrey, 2010:132). To similar effect Di Giacomo and Flumian say that “national solidarity” suffers when “the federal government…sacrifices citizens concerns on the altar of intergovernmental peace or of provincial autonomy” (14).

4.3 Conclusion

The institutional capacity of Canada’s central government and the allocation of jurisdictional authority within Canadian federalism facilitate both secessionist capacity and secessionist will.

From an institutional perspective Canada’s federalism deficit facilitates secessionist capacity because it deprives the central government of the institutional capacity to conduct integrative, intrastate federalism (Behiels 97-98; Simeon and Nugent; 61). In the result it effectively compels the default of Canadian federalism to interstate federalism where it is conducted “between [federal and provincial] governments rather than within an intrastate [national] body such as a senate” (Bakvis and Skogstad, 4). Interstate federalism is disintegrated because it privileges provincialization or territoriality and is “inherently competitive and adversarial” (Simeon and Nugent, 68). Further, Canada’s interstate federalism is an “extreme version” pursuant to which the provinces are “powerful subnational governments” (Bickerton, 259) whose interests are advanced by provincial premiers “even to the point where, on several occasions, they have become the effective opposition of the day” (Courchene, 23) within what Cairns references as “a peculiar Canadian version of the American separation of powers” (724). In short, Canada’s federalism deficit privileges the centrifugal, disintegrative forces of provincialization and, in the process, facilitates secessionist capacity.

Importantly Canadian federalism’s institutional (in)capacity also facilitates the emergence of the Federal Leviathan, and, therefore, secessionist will. Canada’s federalism deficit deprives Canadian federalism of a consistent, effective check upon the potential emergence of the Federal
Leviathan inherent in the legislative supremacy that is fundamental to Canada’s majoritarian Westminster model. Further, the pernicious consequence of Canada’s electoral and party systems is their routine delivery of the political infrastructure compatible with the emergence of the Federal Leviathan: central governments accountable to House of Commons majorities exclusive of effective representation from Alberta.

The political motivation for the emergence of the Federal Leviathan and, therefore, secessionist will is facilitated by the absence of a federal identity and central government passivity resulting from the institutional and jurisdictional limitations of Canadian federalism. As above, the political motivation for the emergence of the Federal Leviathan is the pursuit of the “national interest” (Di Giacomo, 2010a: 25) in the absence of a federal identity and/or the reversal of federal passivity in the form of territorially friendly policies (Sorens, 737) such as, for example, open federalism.

The political means for the emergence of the Federal Leviathan and, therefore secessionist will, is found in or provided by Canada’s constitutional ambiguity. As above, the exploitation of constitutional ambiguity is the political means by which the Federal Leviathan appropriates territorial authority in breach of the federal bargain (Bednar, 276-277).
5. Secessionist Will

As a consequence of Canadian federalism Alberta possesses the secessionist capacity that is an essential element of secessionist alienation. The emergence of secessionist alienation in Alberta, therefore, requires secessionist will, an intense fear of the federal union caused by the emergence of the Federal Leviathan in the form of central government oppression that presents as an existential threat to Alberta’s territorial identity, economic subnationalism.

This chapter is in two parts. In the first part I identify the political factors that facilitated the emergence of the Federal Leviathan in the form of Ottawa’s 1980 NEP that briefly triggered secessionist will and, therefore, secessionist alienation in Alberta. In the second part I identify the existence of those same political factors in the contemporary relationship between Canadian federalism and Alberta.

5.1 NEP

In the short term the NEP was, from the Alberta perspective, an existential threat to Alberta’s territorial identity resulting from an oppressive central Canadian-based central government’s appropriation of Alberta’s ownership and control of its natural resources in breach of the federal bargain. In the long term the NEP “stokes the myth of Alberta mistreatment [within Canadian federalism]” (Pitts, 162) the memory of which shows “no signs of fading any time soon” (Plamondon, 279) and informs both contemporary Alberta province-building and open federalism.

The dramatic escalation in the world oil price from $2.50 to about $40 per barrel between 1972 and 1981 created a real income gain for Canada’s oil producers, principally Alberta, and a real income loss for Canada’s manufacturing sector, principally based in population and federal seat rich Ontario (Owram, 358; Norrie, 82; Smiley, 68). Such a territorial shift in economic power posed “a challenge to Canadian federalism” (Norrie, 81) by dramatically exposing the fault line of contested natural resource control within Canadian federalism. The introduction of the NEP with the federal budget on October 27, 1980 terminated Canadian federalism’s decade-long practice of addressing the oil price issue through interstate federalism and unilaterally set Canada oil prices below world market prices which meant that “Canadian consumers would receive a large share of the potential economic rent in the form of subsidized consumption”
Norrie, 37) and provided financial incentives “to redirect oil and gas exploration away from Alberta and towards federally owned lands” (Stevenson, 2012: 30). Its purpose was to increase federal control over, and federal revenue from, Alberta’s natural resources while delivering a subsidized Canadian oil price to the consuming provinces, including Ontario (Owram, 407).

By reason of its colonial past; the discriminatory federal terms by which it became a province; and its struggle to overcome that discrimination by its acquisition of the constitutional ownership and control of its natural resources, provincial natural resource ownership and control was, by 1980, a “matter of faith” and “of symbolic importance” in Alberta (Doern, 396). The NEP represented a disturbance of that faith and symbolic order “that rational considerations will never explain” (Adria, 160). Alberta Energy Minister Leitch referred to the NEP as “a massive and discriminatory attack on Alberta” and Alberta Premier Lougheed characterized it as “an outright attempt to take over the resources of this province” (quoted in James, 36). In other words, in theoretical terms and from the Alberta perspective, the NEP represented the emergence of the Federal Leviathan that was a “negative externality” (Vaubel, 5) or, synonymously, a “disturbance in the symbolic order” (Adria, 155) that is the “unbearable tyranny of the state” (Bartkus, 11). It was a “crisis of survival” (Anderson, 2006: 59), an existential threat to Alberta’s territorial identity, economic subnationalism.

Consistent with the theory of federal failure the emergence of the Federal Leviathan in the form of the NEP triggered secessionist will and, therefore, secessionist alienation, a constituency that can be mobilized in favour of secession, in Alberta. Examples of such mobilization include an Edmonton Journal poll taken the week following the NEP’s announcement that showed 23% support in Alberta for independence and the growth of one Alberta-based secessionist organization, Western Canada Federation, from its inception in early 1980 to its claim of 20,000 members by year’s end (McKinsey, 211-212). While support for secession waned quickly subsequent to 1980 it is worth noting that in 1982 an Alberta secessionist was elected in a rural by-election to the Alberta legislature (Hiller, 42).

The political infrastructure for the emergence of the Federal Leviathan in the form of the NEP had its genesis in the 1980 federal election. The 1980 electoral math identified Ontario as the “swing province” (Owram, 406). In the 1979 federal election the Conservative Party had won all
of Alberta’s federal seats and 23 of Ontario’s 95 federal seats. The federal Liberal Party had not won a single federal seat in Alberta since 1968. In short, the federal Liberal Party had nothing to lose in Alberta and a national election to win in Ontario. The subsequent 1980 federal election engaged the disintegrative properties of Canadian federalism’s electoral and party systems and exposed its federalism deficit.

The energy issue was significant to the 1980 federal election outcome (Uslaner, 495-513; James, 35). The Conservative Party campaigned in favour of provincial natural resource control (Uslaner, 503) while the Liberal Party conducted sectional politics, taking the position that Alberta’s natural resources ought to facilitate Ontario’s manufacturing economy. The Liberal Party won no seats in Alberta (or British Columbia or Saskatchewan) on its way to a central Canadian-based majority government. The 1980 federal election results reinforced Alberta’s disintegrative belief that “central Canada is where ... [federal] elections are won and lost” (Bercuson, 6) and deprived the federal Liberal majority government of representation from, and resulting legitimacy in, Alberta (Owram, 406). In brief, Canada’s electoral and party systems and federalism deficit combined in 1980 to establish the political infrastructure conducive to the emergence of the Federal Leviathan: a central government accountable to a federal majority without representation from Alberta.

The political motivation for the emergence of the Federal Leviathan in the form of the NEP was the provincialization of Canadian federalism. Then Prime Minister Trudeau referenced such provincialization as “a slippage of Canada towards ... ten quasi-autonomous states” (quoted in Owram, 403). The federal Liberal majority government was committed to reverse such “slippage” by increased “federal visibility” (Doern, 221) and central government aggression. To that end it embraced a nationalizing federalism to “re-establish the identity of Canadians with national institutions by facilitating more direct contact of individuals with Ottawa rather than through provincial governments” (Ibid.) and thereby “reduce provincial power and impose a sense of nationhood on Canada” (Owram, 402). Central to the federal government’s conduct of nationalizing federalism was its assertion of federal control over natural resources (Ibid.) which effectively became a “surrogate” for the larger issue of “the very nature of Canada” (403) or “the very nature of Canadian nationality” (Uslaner, 500).
The political means for the emergence of the Federal Leviathan in the form of the NEP was constitutional ambiguity which the central government exploited in its defence of the constitutionality of the NEP. While the NEP was obviously “a blatant [federal] effort to seize control over a sector of the economy over which the provinces had presumed constitutional jurisdiction” (James, 35), the federal government asserted that the NEP was in the “national interest” and, therefore, *intra vires* the federal government pursuant to its constitutional jurisdiction to regulate interprovincial and international trade (Owram, 397).

The NEP was intended to increase federal visibility and foster nationhood. In Alberta the federal visibility that it revealed was the exploitative, disintegrative face of the central government as Federal Leviathan and, consistent with the theory of federal failure, that face triggered secessionist will and, therefore, secessionist alienation in Alberta as evidenced by the brief mobilization of a secessionist movement.

### 5.2 Contemporary Canadian Federalism and Alberta

In “The Curse of Alberta” Gibbins imagines a future Alberta on the eve of a provincial vote on secession following the defeat of a federal government sympathetic to Alberta by an Ontario and Quebec-based federal government that imposes a series of “draconian” carbon taxes “to address global warming” that redirect Alberta’s “energy wealth” to Ottawa (Gibbins, 2008: 71). The taxes are deemed to be in “the national interest” and, therefore, *intra vires* the federal government’s constitutional jurisdiction pursuant to peace, order and good government (72). During the currency of open federalism, during which Alberta exercised a “veto-state role” with respect to federal climate change policy (Winfield and Macdonald, 256), Gibbins’ imagined future was a provocative but implausible fiction. Contemporary circumstances now make his imagined future, or something like it, plausible. More specifically the political infrastructure, motivation and means for the emergence of the Federal Leviathan are characteristics of the contemporary relationship between Canadian federalism and Alberta.

Similar to the electoral circumstances that led to both the NEP and Gibbins’ imagined future, 2015 saw the defeat of a Conservative federal government, with substantial representation from Alberta and a commitment to provincial rights pursuant to open federalism, by the federal Liberal Party with a majority government based in Ontario, Quebec, and Atlantic Canada and
marginal representation from Alberta. My calculation based on the 2015 election results as recorded by Elections Canada at www.elections.ca is that the current House of Commons majority to which the federal Liberal government is accountable is made up of 182 seats of which 151 are from Ontario, Quebec and Atlantic Canada with but 5 from Alberta. In short, the House of Commons majority to which the current federal Liberal government is accountable does not require or depend upon representation from Alberta. The political infrastructure compatible with the emergence of the Federal Leviathan is, therefore, currently in place.

The political motivation for the emergence of the Federal Leviathan within contemporary Canadian federalism is found in the advocacy for the reversal of the “destructive sectionalism [provincialization]” and “ebbing attachment” to Canada (Coyne) that the central government passivity of open federalism is perceived to represent. Advocates for that reversal say that “it is time to bring Ottawa back in” (Di Giacomo and Flumian, 2) and “no longer govern as though antagonizing Alberta ... was the thing to be most avoided” (Di Giacomo, 2010 b: 258). These advocates assert that to bring itself “back in” Ottawa must conduct “nationalizing federalism” (Di Giacomo and Flumian, 4; citing Rocher and Smith). Nationalizing federalism is a variant of Canadian federalism at the opposite end of the spectrum from open federalism. It is characterized by federal assertiveness and closely associated with the “centralizing” (Bakvis and Tanguay, 101) impulse of the federal Liberal Party that now governs Canada with a secure House of Commons majority exclusive of effective representation from Alberta.

Nationalizing federalism presents as benign. Its express, commendable purpose is the integration of the Canadian federation or, synonymously, its “unification” (Di Giacomo and Flumian, 20) or “unity” (Flumian, 174). It is, however, Janus-faced in that its prescription for federal “unification” is the other than benign imposition of a centralized federation by the central government.

The advocates of nationalizing federalism assert that the central government “must ... create a positive attachment to Canada” (Di Giacomo and Flumian, 7) but has failed to do so (Ibid. 13; Flumian, 210). In the pursuit of that “positive attachment to Canada” nationalizing federalism asserts that the central government must be “the dominant government actor” (Di Giacomo and Flumian, 4) with the “right (and obligation) to determine the national interest” (5) which only it,
through Parliament, can “will” or “express” (Di Giacomo 2010b: 257). To establish a positive attachment to Canada and federal unification nationalizing federalism privileges the central government’s pursuit of its own determination or conception of the national interest, without express or apparent limitation, even where that pursuit encroaches upon provincial jurisdiction (Di Giacomo and Flumian, 7); antagonizes Alberta (Ibid.); and/or sacrifices “intergovernmental peace” (14).

Just as the 1980 federal Liberal government employed natural resource control as a surrogate for its primary motivating issue of “the very nature of Canada” (Owram, 403), the current federal Liberal government also has a surrogate issue available to it by which to pursue a nationalizing or centralizing federalism: climate change policy. Canadian federalism has, to date, failed federal environmental policy and, more specifically, climate change policy (Bakvis et al, 213-217; Weisbust; Winfield and Macdonald). The climate change issue engages the “contradictory interests” inherent in competing provincial economies, particularly Alberta’s fossil fuel extraction economy and Ontario’s manufacturing-based economy, that “have made formulating coherent national strategies extremely challenging” (Winfield and Macdonald, 242). Winfield and Macdonald argue that the federal government must display “a willingness to act unilaterally in the face of resistance from some provinces” (257) to facilitate successful federal-provincial negotiations in this area. In the absence of successful negotiations, however, climate change policy will remain a vacuum that some argue can be filled only by the federal government” (Bakvis et al, 259) who “will have to act alone, using federal law and other policy instruments” (Winfield and Macdonald, 257) that may include an application to the courts to “award it permanent jurisdiction in that [greenhouse gas emissions] area” (Bakvis et al, 259).

The federal Liberal Party has demonstrated a propensity to unilaterally adopt and act upon climate change initiatives contrary to Alberta’s interests. Former federal Liberal Prime Minister Chretien agreed to consult with the provinces prior to ratifying the Kyoto Accord and it was generally understood that Canada would not ratify Kyoto if it would cause economic damage to the provinces (Simpson et al, 2007; 61; quoted in Bakvis et al., 214; Kukucha, 147). In November, 2002 a federal industry department study predicted that Kyoto would cause “massive job losses that will affect Alberta in particular” and a poll found that 44% of Albertans would consider options, including secession, if Kyoto was ratified (Stock). The following month, and
without first consulting the provinces as agreed, Chretien used his House of Commons majority to compel Parliament’s ratification of Kyoto (Kukucha, 148; Winfield and Macdonald, 243; Bakvis et al., 214-215). Chretien’s unilateral ratification of Kyoto was “a significant departure from ... co-operative federalism” (Kukucha, 148) and expressed Chretien’s “strong federalist [centralist] sentiment” (Delacourt, A8; quoted in Kukucha, 148). Harrison saw it as a “triumph” for Chretien “over electoral and intergovernmental politics” (Harrison, 2007; 340; quoted in Kukucha, 148) Chretien’s centralizing triumph was other than a triumph in Alberta where the Alberta government responded with its own climate change legislation below Kyoto “to forestall federal regulation of Alberta CHG sources” (Winfield and Macdonald, 244-245). The subsequent Harper Conservative federal governments abandoned Kyoto’s targets in 2006 and formally withdrew from Kyoto in 2011.

The political means for the emergence of the Federal Leviathan is present in the constitutional ambiguity surrounding the central government’s constitutional authority to enact climate change legislation adverse to Alberta’s ownership and control of its natural resources. Citing both Hogg and Chalifour, Winfield and Macdonald contend that there is a strong legal consensus that Ottawa “has the constitutional authority to regulate [greenhouse gas emissions] under CEPA [the Canadian Environmental Protection Act] … [and] to levy a carbon tax…” (249). To similar effect Weibust, citing Hogg and the decisions of the Supreme Court of Canada in R.V. Crown Zellerbach and R.V. Hydro-Quebec, asserts that Ottawa may legislate in respect of greenhouse gas emissions pursuant to peace, order and good government and/or its criminal law jurisdiction (236-237).

5.3 Conclusion

As the NEP case study illustrates, the existence of those factors that facilitate the emergence of the Federal Leviathan within the contemporary relationship between Canadian federalism and Alberta are fertile ground for the conduct of nationalizing federalism by the new federal Liberal government to reverse central government passivity and the perception of the accelerated provincialization of Canadian federalism pursuant to open federalism. While it is not inevitable that the new Liberal Government will pursue nationalizing federalism, it is a variant of Canadian federalism that is useful to any analysis of the constraint imposed upon Canadian federalism by Alberta’s secessionist capacity.
6. Canadian Federalism Constrained

Canadian federalism is not static and its centrifugal and centripetal forces have produced “remarkably different federal systems at different points in our history” (Malcolmson and Myers, 64). Its nature is susceptible to expedited and dramatic change. For example, the idea of federal and provincial governments as equal partners within Canadian federalism, which became federal orthodoxy under open federalism during the 2006-2015 Harper Conservative governments, was dismissed as recently as 1982 as “an unprecedented betrayal of the national interest” (Stevenson, 1982: preface; quoted in Hueglin, 290). Put plainly, there can be “no meaningful guarantee that future federal governments will act with restraint” or “refrain from federal unilateralism” (Peach, 98). As discussed above, the political infrastructure, motivation, and means that facilitated the emergence of the federal Leviathan in the form of the NEP are recurring characteristics of Canadian federalism. Where, as now, such characteristics exist the potential for federal unilateralism in the form of the Federal Leviathan is plausible.

This chapter is in two parts. In the first part, I consider the constraint imposed upon the conduct of Canadian federalism by Alberta’s secessionist capacity. In the second part, I offer a brief critique of nationalizing federalism based on the above application of the theory of federal failure to the contemporary relationship between Canadian federalism and Alberta.

6.1 Constraint

The application of the theory of federal failure to the relationship between Canadian federalism and Alberta reveals that Alberta possesses the separable territory and territorial identity essential to a secessionist capacity. Accordingly, if Canadian federalism is to avoid secessionist alienation in Alberta its conduct must be such as to avoid the triggering of secessionist will. In theoretical terms this means that Ottawa must not become a Federal Leviathan that represents an existential threat to Alberta’s territorial identity, economic subnationalism. In practical terms, this means that Ottawa must recognize and respect that Alberta’s territorial identity, economic subnationalism, expressed as an intense commitment to provincial ownership and control of Alberta’s oil and gas resources and its territorial authority pursuant to the federal bargain are effectively synonymous such that the central government’s appropriation or interference with that territorial authority necessarily represents an existential threat to Alberta’s territorial
identity. Such respect and recognition precludes central government unilateralism and necessarily defaults to interstate federalism.

Such constraint does not mean that Canada’s central government cannot be visible or that it must decline to exercise its constitutional authority in deference to Alberta’s ownership and control of provincial oil and gas resources. It does mean that central government visibility ought to be integrative and, therefore, designed to avoid the risk of secessionist will and, therefore, secessionist alienation in Alberta. Accordingly, central government actions that implicate Alberta’s territorial authority and identity must engage Alberta and, therefore, default to interstate federalism. Such constraint is important in a federation such as Canada where the legitimacy or integrative capacity of its central government is seriously compromised by its federalism deficit and constitutional ambiguity. It is particularly important now, following a decade during which the central government respected Alberta’s economic subnationalism by its embrace of provincial autonomy pursuant to open federalism, as any contemporary existential threat to Alberta’s territorial identity may be exacerbated by relative deprivation. Stated another way, any such existential threat may be exacerbated by a shared frustration in Alberta between what life should be (and was under open federalism), central government respect for Alberta’s economic subnationalism, and what life is or has become, central government oppression that threatens the survival of Alberta’s territorial identity.

A current, apparently successful example of central government constraint, consistent with the foregoing, is the very recent climate change framework agreement between Ottawa and, inter alia, Alberta pursuant to which Alberta will implement national carbon emissions standards pursuant to a “made-in-Alberta” strategy, the “Climate Leadership Plan” (Alberta Government).

6.2 Nationalizing Federalism: A Critique

The above conclusion is obviously contrary to nationalizing federalism and its core assertion that central government visibility in the form of federal encroachment upon provincial jurisdiction in the national interest, as defined by Parliament, without express or apparent limitation, is necessary to Canadian unification. The application of the theory of federal failure to the relationship between Canadian federalism and Alberta exposes the central flaws of nationalizing federalism to be its failure to acknowledge or address territorial identity; Canada’s federalism
deficit, or the true purpose of Canadian federalism.

By its failure to acknowledge territorial identity except, perhaps, as an impediment to Canadian unification, nationalizing federalism fails to acknowledge that the unilateral encroachment upon Alberta’s ownership and control of its oil and gas resources by a central government that effectively excludes representation from Alberta is an encroachment in the majority interest that is, from an identity perspective, disintegrative in two respects. First, such encroachment is consistent with, and reinforces, the disintegrative subnationalist paradigm at the core of Alberta’s territorial identity: the Alberta “We” in opposition to the “Other” being Ottawa as the surrogate for an exploitative federal majority. Second, such encroachment makes visible the disintegrative face of the Federal Leviathan that is capable of triggering the secessionist will necessary to secessionist alienation or federal failure in Alberta.

Nationalizing federalism advocates take umbrage at Rocher and Smith’s criticism of Ottawa’s appropriation of the power to define the national interest (2003a:3-10) and assertion that Ottawa cannot “speak for provincial interests” (2003b:24; Di Giacomo, 2010a: 24-25). By its failure to acknowledge or address Canada’s federalism deficit, however, nationalizing federalism contends that a problem’s cause can be its solution. Specifically, and as above, by reason of Canada’s federalism deficit, Canada’s central government is weakly integrative and a cause of the mischief, central government passivity and provincialization, that nationalizing federalism seeks to remedy with central government aggression in the pursuit of Canadian unity. Plainly put, a central government that is only weakly integrative cannot, absent institutional change, be an effective instrument of federal unity. Consistent with the foregoing Behiels, a critic of open federalism who, citing Dunn, sees it as an “outmoded, rigid conception of federalism” (99), recognizes the central government’s institutional inadequacy. Rather than advocate that the central government assert a majority interest adverse to provincial interests, Behiels advocates that “Canada’s central institutions…need to be reformed to ensure the full participation of a wide range of minorities in national…politics” (98).

Further, by its failure to acknowledge Canada’s federalism deficit, nationalizing federalism dangerously conflates the majority interest to which the central government is accountable with the national interest upon which nationalizing federalism relies to justify central government
encroachments upon provincial jurisdiction. Just as a federation’s national identity necessarily incorporates all of its disparate territorial identifies, a federation’s “national interest” necessarily incorporates and accommodates all of its disparate territorial interests. A central government accountable to a federal majority exclusive of effective representation from a specific federal territory may legitimately locate and act upon the majority interest to which it is accountable. It cannot legitimately locate and act upon the national interest.

The NEP case study illustrates the foregoing. Ottawa invoked “the national interest” in defence of the NEP (Norrie, 88). The complete exclusion of Alberta representation from the House of Commons majority to which that central government was accountable is a graphic example of Canada’s federalism deficit pursuant to which that central government had the capacity to act upon the majority interest to which it was accountable but not a truly national interest inclusive of Alberta’s interests. Bluntly, the NEP was the product of a central government that was “effectively regional [central Canadian]” (Owram, 407) in the pursuit of “its own [central Canadian] conception of the national interest” (Norrie, 88).

The disconnect between the majority interest and Alberta is revealed by Ottawa and Alberta’s contradictory understanding of the federal conflict over natural resources. Applying Fleiner’s analysis, Ottawa saw the conflict as distributional or as then Prime Minister Trudeau characterized it: “the sharing of big bucks” (quoted in Vancouver Sun, November 3, 1980, A5). In response to that distributional conflict Ottawa’s NEP produced a redistributive, zero sum resolution: “a significant loss of revenue and control for oil-producing western provinces and a net benefit for consuming provinces, mainly in eastern Canada [the majority] (Bakvis et. al., 65). In Alberta, however, the same conflict directly implicated Alberta’s territorial identity, economic subnationalism, and was, therefore, categorical. As a positive response to a distributional conflict in the majority, central Canadian interest and an adverse response to a categorical identity-based conflict from the Alberta perspective, the NEP could not plausibly be characterized as in the national interest.

Consistent with nationalizing federalism the NEP was Ottawa’s attempt to increase its visibility and impose a sense of nationalism in the national interest by its encroachment upon provincial jurisdiction. The central government face revealed to Alberta by the NEP was, however, the
disintegrative face of the Federal Leviathan: an oppressive central government that appropriated Alberta’s territorial authority in breach of the federal bargain. As such the NEP represented an existential threat to Alberta’s territorial identity, economic subnationalism, expressed as an intense commitment to Alberta’s ownership and control of its oil and gas resources. Consistent with the theory of federal failure the Federal Leviathan, expressed as the NEP, triggered secessionist will and, therefore, secessionist alienation in Alberta.

By its identification of unity or unification as the goal or purpose of Canadian federalism that justifies the invocation of the majority interest as the national interest contrary to provincial authority, nationalizing federalism is in conflict with Canadian federalism as defined by the Supreme Court of Canada. In the *Secession Reference*, the Court’s most fulsome and authoritative commentary on Canadian federalism to date, the Court observes that “Canadians have never accepted that ours is a system of simple majority rule” (paragraph 76) and concluded that “it would be a grave mistake to equate legitimacy with majority rule alone to the exclusion of other constitutional values” (paragraph 67). Paramount among those other constitutional values is the principle of Canadian federalism which is the Court’s guiding “lodestar” (paragraph 56) and “the dominant principle of constitutional law” (paragraph 57). Contrary to nationalizing federalism, the Court expressly rejects unification or unity as the principle or purpose of Canadian federalism, citing with approval the JCPC decision in *Re the Initiative and Referendum Act [1919] A.C. 535* for the proposition that the purpose of Canadian federalism is “not to weld the provinces into one, nor to subordinate provincial governments to a central authority” (paragraph 58) and, consistent with the foregoing, identifies the principle of Canadian federalism to be “the autonomy of provincial governments…” (paragraph 58). The Court’s identification of provincial autonomy and express rejection of unification has substantive significance. A federalism predicated upon unification legitimizes the central government’s encroachment upon provincial jurisdiction and sees the accommodation of provincial interests by the central government as “a death by a thousand cuts” (Giacomo and Flumian, 14). A federalism predicated upon provincial autonomy considers “the fabric of a nation” to be “the threads of a thousand acts of accommodation” (*Secession Reference*, paragraph 96).

Consistent with the foregoing analysis are the abject failures of nationalizing federalism since World War II. Tarnow notes, for example, that the post World War II centralism of Canadian
federalism did not result in national integration but, rather, a disintegrative shift of citizens toward “the local, regional and provincial identities around them” (quoted in Elkins and Simeon, 280). Similarly, the central government’s attempts in the late 1990’s to re-assert its visibility among Canadians by encroaching upon provincial jurisdiction led Brock to conclude that the “real danger [to ‘federal comity’] arises when jurisdiction is not respected and the federal government begins to encroach on provincial jurisdiction” (155).

6.3 Conclusion

Canadian federalism routinely produces the political infrastructure, motivation, and means that facilitate the emergence of the Federal Leviathan. By its advocacy for central government encroachment upon provincial jurisdiction in the pursuit of Canadian unity pursuant to a national interest defined solely by Parliament, nationalizing federalism is, effectively, a summons to the emergence of the Federal Leviathan that fails to take into account Alberta’s territorial identity; Canada’s federalism deficit; and the true purpose of Canadian federalism.

Within the relationship between Canadian federalism and Alberta the emergence of the Federal Leviathan, in the form of Ottawa’s appropriation or interference with Alberta’s natural resource ownership and control, is disintegrative rather than unifying. It represents an existential threat to Alberta’s territorial identity, economic subnationalism, that reinforces Alberta’s disintegrative subnationalist paradigm of Ottawa as the “Other”, a federal majority surrogate and risks the initiation of the secessionist will necessary to secessionist alienation in Alberta.

On the other hand, a federalism that is constrained to recognize, respect, and accommodate Alberta’s territorial identity is integrative. Bluntly, an Ottawa that conducts such a federalism is neither the disintegrative “Other” to the Alberta “We” of the Alberta subnationalist paradigm, nor the existential threat to Alberta’s identity that is the Federal Leviathan. Importantly, such an Ottawa would mitigate, rather than exacerbate, the disintegrative subnationalist paradigm upon which Alberta’s territorial identity is founded. The irony is that such an Ottawa is more integrative and conducive to Canadian unity or unification than the disintegrative Ottawa of nationalizing federalism.
7. Conclusion

The relationship between Canadian federalism and secession, especially outside of the Quebec context, is not well understood. The theory of federal failure advanced in this paper provides a framework by which to analyze and better understand the relationship between federalism and secession in a federal territory. The theory posits that federalism ought to be conducted to avoid the initial phase of secession which is secessionist alienation, a constituency that may be mobilized for secession in a federal territory. Secessionist alienation is composed of two essential elements, secessionist capacity and secessionist will.

The application of the theory to the relationship between Canadian federalism and Alberta reveals that, as a direct consequence of Canadian federalism, Alberta possesses secessionist capacity, a separable territory within which its constituents share a territorial identity. Federal legislation created the territorial space that is Alberta and subsequently invested it with the right to secede. In the result Alberta is a separable territory from both a de facto and de jure perspective. The creation of Alberta's territorial identity was initiated by Canadian federalism's allocation of constitutional authority to the territorial space that is Alberta and was subsequently developed by province-building, a phenomenon of Canadian federalism, at the behest of Alberta's political elites. Alberta's resulting territorial identity is economic subnationalism expressed as an intense commitment to Alberta's ownership and control of its oil and gas resources.

Secessionist will is an intense fear of the federal union resulting from an existential threat to a federal territory's identity by the emergence of the Federal Leviathan, central government oppression in the form of its appropriation or interference with territorial authority in breach of the federal bargain. As the NEP case study and the contemporary relationship between Canadian federalism and Alberta illustrate Canada's federalism deficit and electoral and party systems routinely combine to deliver the political infrastructure conducive to the Federal Leviathan: a central government accountable to a federal majority that effectively excludes representation from Alberta. The absence of a national identity and central government passivity resulting from the constitutional ambiguity and deficit of Canadian federalism provide the political motivation for the emergence of the Federal Leviathan. The same constitutional ambiguity provides the means by which the Federal Leviathan executes its oppression.
The identification of Alberta's secessionist capacity and the plausibility of the contemporary emergence of the Federal Leviathan by the application of the theory of federal failure to the relationship between Canadian federalism and Alberta is significant. It compels the conclusion that the successful conduct of Canadian federalism requires that the central government resist becoming a Federal Leviathan and forbear from the unilateral appropriation or interference with Alberta's territorial identity expressed as its intense commitment to its ownership and control of its oil and gas resources. It also exposes the advocacy in favour of central government encroachments on provincial jurisdiction pursuant to nationalizing federalism as, effectively, a disintegrative summons to the Federal Leviathan.

The utility of the theory of federal failure is its identification of those factors essential and conducive to the initiation of the secession process, secessionist alienation, and its general applicability to a specific federal relationship. Its viability is demonstrated by its application to the relationship between Canadian federalism and Alberta above. Its application to the relationship between Canadian federalism and other provinces may well expand and deepen our general understanding of the complexities of Canadian federalism.

As other than a research tool of general application the theory has obvious limitations. For example, it does not acknowledge or differentiate between species of territorial identity. In the result certain questions for future research and analysis arise. Specifically: are subnationalist identities the only territorial identities capable of enabling secessionist capacity? If not, what other species of territorial identity might enable a federal territory’s secessionist capacity? A related question arising is: to what extent does the dual loyalty to territory and nation that is endemic to federalism mitigate secessionist will in the face of the Federal Leviathan?

To similar effect the theory does not specify the level or degree of central government oppression necessary to trigger secessionist will in a federal territory nor does it specify the level or degree of existential threat necessary to secessionist will in a federal territory. Further, it does not address the relationship, if any, between the degree of oppression and the degree of threat. Is there, for example, a degree of central government oppression below which an existential threat
to a federal territory’s identity will not occur? If so, what is it and why does it fail to induce an existential threat?

Finally, the theory is designed to identify the existence of factors essential or conducive to secessionist alienation in a federal territory or explain its emergence. It expressly cannot predict secessionist alienation. The ability to predict secessionist alienation in advance of its occurrence might reasonably be characterized as the “holy grail” of secession theory and would be an invaluable addition to the scholarship of federalism and aid to the successful conduct of federalism. It begs the perhaps fanciful question: with further applications and refinement might the theory of federal failure develop a capacity to reliably predict secessionist alienation?
Bibliography

Jurisprudence


Legislation


References


