“Grab the Signatures and Run”: Federal Unity Strategy in Canada from the Referendum to Patriation

Neal Carter
St. Bonaventure University

AND

Patrick James
University of Southern California

Whether as a traumatic event or great accomplishment, the legacy of the First Ministers’ Conference of 1981 lives on in Canadian politics. Constitutional negotiations among the prime minister and provincial premiers in 1981 produced the only “packaged” agreement since Confederation to achieve even the minimal support necessary to achieve ratification. The resulting Constitution Act of 1982, which included the Charter of Rights and Freedoms, remains in place and is the principal manifestation of intergovernmental bargaining from over two decades ago. This study reevaluates the strategic interaction and conflict processes that took place between Ottawa and the provinces in negotiations leading up to that fateful November 1981 conference. We apply the sociological framework for assessment of the dynamics of identity contention adopted from McAdam, Tarrow, and Tilly (2001) and find tentative support for its propositions. After an overview of the article’s agenda, we present an analytic framework for the study of conflict processes. Second, the background to the constitutional crisis of 1980-81 is summarized. Using the analytic framework, the third section focuses on the federal strategy in the crisis as suggested by minutes from cabinet meetings, and the fourth section examines key events of the First Ministers Conference of November 1981. Fifth, and finally, the contributions of the preceding sections are summed up and ideas are put forward for further research.

I remember it was quoted back to me later that Lévesque said, “Trudeau screwed me.” But the reality was that René Lévesque was a gambler. He had taken a huge gamble, and he had lost. After the fact, the nationalists invented myths about how he had been left out during a night of the long knives. But it was quite obvious at the time that Lévesque left himself out, first when he broke with the Gang of Eight, and then when he went back to his hotel in Hull for the night. I don’t know whether he and his delegation were celebrating, just sleeping on it, or regretting that they had broken the solidarity. But they obviously were not prowling the corridors or working the phones, looking to negotiate a compromise. Lévesque wasn’t trying to improve the constitution—he was a separatist. The other premiers finally realized what I had known all along, that it was a matter of two totally conflicting visions of Canada and Quebec fighting it out.

Overview: The Legacy of 1981

Whether as a traumatic event or great accomplishment, the legacy of the First Ministers’ Conference of 1981 lives on in Canadian politics. This major event in Canadian political history is relevant to nation-building projects in multinational states around the world. From the standpoint of international political sociology, the story told here can inform contemporary discussions of identity-based conflict regardless of location. Even Canada—an advanced industrialized state with very little history of violence—has struggled with the challenges posed by national identity formation.

Constitutional negotiations among the prime minister and provincial premiers in 1981 produced the only “packaged” agreement since Confederation to achieve even the minimal support necessary to achieve ratification. The resulting Constitution Act of 1982, which included the Charter of Rights and Freedoms, remains in place and is the principal manifestation of intergovernmental bargaining (Hiebert 2002). Subsequent efforts to revise the constitutional order produced the “mega-politics” associated with the failed Meech Lake and Charlottetown Accords, along with a sense that more of the same ultimately might do more harm than good (Russell 1993).

Canadians remain far from united on whether the outcome that produced the Constitution Act and Charter of Rights and Freedoms should be regarded as a good thing. Consider the contrast between the epigraph (from Canada’s prime minister at the time) and how many people in Quebec, some of whom are quoted directly a bit later, recall the events associated with patriation. Politics in Canada today are almost purely regional and confrontational, with both the Bloc Québécois and Reform/Alliance/Conservatives at various times having held status as the official opposition, and the Conservatives finally piecing together and maintaining a minority government after significant reorganization.1 The current run of minority governments since 2004 (relatively rare in “first-past-the-post” systems) attests to this regional tension. Furthermore, legitimate concerns can be expressed about the gradual accruing of power toward the executive within the Canadian political system (Kelly 2005). The appeal of regional and (whether intentional or not) politically disintegrative parties, at least to some degree, can be traced to the way in which the current constitutional status quo came into being—back to a controversial deal reached between Ottawa and the provinces, excluding Quebec, on the night of November 4–5, 1981.

This study reevaluates the strategic interaction and conflict processes that took place between Ottawa and the provinces in negotiations leading up to that fateful November 1981 conference. Learning more about how the governments represented provincial and national interests at that time may help in dealing with similar conflicts over regional and identity politics today in Canada and beyond. While executive federalism is now only a part of the evolving constitutional saga—accompanied by referenda involving the general public and pressure tactics by interest groups with widely disparate agendas—it remains central to the process and always comes into play before any given round will reach closure.

1The Bloc Québécois was founded in 1990 in protest against the failure to ratify an amendment that would have rectified Quebec’s condemnation of the Constitution Act. The Reform Party of Canada was started in 1986 as a result of Western alienation and resentment against federal politics. It transmuted into the Alliance Party in 2000 in a failed attempt to consolidate conservative opposition to the Liberals. After a 3-year struggle and a leadership change, the party merged with the Progressive Conservative Party to form the Conservative Party in 2003. Politics remains geographically divided. For example, in the 2006 elections, Alberta gave all 28 seats to the Conservatives, while in Quebec, the Bloc obtained 51 seats, the Liberals 13 seats, the Conservatives ten, and Others one. The Conservatives outstripped the Liberals 65 to 14 in the Western Provinces. While the distributions in other provinces are not as extreme, it is clear that there has been a trend toward regionalization in at least the results of elections.
This study also emerges out of a question of how we can better understand the process of conflict in ongoing intergroup negotiations. Many analyses of conflict, which rely on objective variables, tend to miss the dynamic, goal-oriented approach and therefore cannot capture the multiple feedbacks that occur in any interaction. In protracted interactions, multiple goals compete and identities are engaged in various ways. Studies of conflict escalation often include the need to consider such transformations as shifting issues, shifting participants, and changes in levels of hostility (Coleman 1957; Deutsch 1958; Fisher 1990; McEwen and Milburn 1993; Pruitt and Kim 2004). However, many models of conflict do not incorporate these factors in an explanatory framework. Furthermore, numerous conflicts involve both material and non-material demands. Links between “symbolic” and “material” goals often go unstudied. In our attempt to explain why the Federal Government behaved the way it did, we adapt an explanatory framework derived from McAdam et al. (2001).

Our research questions cluster into two groups. First, we face theoretical questions. Can we create an explanatory model that is useful in mapping the strategic choices and phases of a conflict? How can we best present the array of processes inherent in decision making about conflict? Conflict participants must consider these processes as they determine a course of action: can we use this framework to categorize decisions the participants make as they pursue their goals? The second group of research questions focuses on the actual case of constitutional patriation. What were members of Cabinet thinking? How did they understand the political dynamics of the time? How did their understandings affect their choices? In the current study, we present a framework for the study of identity-laden conflict and then use the patriation case as a plausibility study of the framework.

We first present our framework for the analysis of conflict processes. Second, we briefly summarize the background to the constitutional crisis of 1980–81. We apply the analytic framework in the third section to focus on the federal strategy in the crisis as suggested by minutes from cabinet meetings, and in the fourth section to review key events of the First Ministers Conference of November 1981. Fifth, the contributions of the preceding sections are summed up and ideas are put forward for further research.

**Conflict Processes and the Dynamics of Identity Contention**

McAdam et al. (2001) critique the classical social movement agenda, and that assessment informs this project on the political sociology of constitutional patriation in Canada. They argue that by focusing on issues such as social change, political opportunities, mobilization structures, frames, and repertoires of actions, the classical approach clarified many facets of contentious politics and stimulated much empirical work (e.g., see McCarthy and Zald 1973, 1987). However, McAdam et al. (2001) note that the research agenda has become structural and static, and that it tends to produce “snapshot” characterizations of contentious behavior, based largely on quantitative data. They argue that the most interesting points of contention are embedded in the unspecified arrows connecting the concepts listed above. They therefore advocate that we move to the question of how, rather than how much, these factors actually influence one another. They call for greater depth of investigation into causal processes to complement existing breadth of explanation.

We therefore should turn to the study of the dynamics of contention, rather than simply the conditions thereof. While structural concerns (e.g., social conditions, forms of organization, opportunities and constraints, state capacity) remain essential to explanation, we should study cognitive and relational mechanisms and processes, such as framing, brokerage, or mobilization. These mechanisms and processes become the building blocks of conflict analysis.
As per the critical assessment made earlier, the focus needs to shift on the dynamics of contention. For example, a conflict over language of local services in Belgium led to the constitutional delimitation of the linguistic boundary, which produced additional conflict and moved the country from a unitary to a federal structure. We must increase our general knowledge of conflict through recognition of how mechanisms and processes work in various instances of contention—in Canada and elsewhere. In undertaking this task, a useful tool is a diagrammatic approach (e.g., Figure 1) to understanding goals, motivations, and strategies of the actors at various phases of the conflict over identity.

Conflicts, especially over such issues as the ratification of a constitution, often include contention concerning the identity of the parties. Claims aimed at justifying political positions typically rely on characterizations and labels of groups (see Grove and Carter 1999; Carter 2006). McAdam et al. (2001) argue that identities depend largely on interaction among people and constantly are subject to redefinition and reshaping. Leaders attempt to link their portrayals of the meaning of group identity to claims about what should be done. Emphasis on social interaction rather than individual minds leads us to examine discourse and actions, rather than individuals’ self-perceived identities.

Extrapolating from these insights, Figure 1 presents a framework for mapping identity conflict. Conflict is intensely interactive and contains several feedback loops. In this model, competition is implicit in the notion that the events happening in one party’s group affect the opposing leader’s problem representation. Problem representation, or the way in which individuals perceive or portray the situation they are examining, influences the tactics used to meet their goals (Sylvan

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2Discussion beyond this point is adapted from the approach put forward by McAdam et al. (2001). Components from Figure 1 are designated from this point onward with italics. Since it is not possible to analyze perceptions directly, we are limited to studying representations, or portrayals, of issues.
and Voss 1998). Leaders present conflicting views of the current situation and what actions should be pursued. They may seek outside brokerage to put them in contact with potential allies, or may attempt directly to raise identity consciousness in their target group, or even move toward mobilization. Brokerage may affect the leaders’ problem representations, affect conscientization efforts, or influence mobilization attempts. Conscientization, the attempt to raise public awareness of an issue and to encourage members of the public to focus on a particular characteristic or identity, is often a precursor to mobilization of members of the public in pursuit of a common goal (Miall, Ramsbotham, and Woodhouse 1999). Effective conscientization and mobilization alters leaders’ problem representations. With sufficient mobilization, groups can pursue goals. These goals may focus primarily on identity and cultural demands or on demands for institutional changes. Identity demands may mark an internal struggle for definition of a group or assertions about the proper nature and characterization of the group and thus who should belong to it. Identity demands may produce an identity shift, in which meanings of group labels or the labels themselves are altered. That shift may then alter group leaders’ problem representations, and perhaps the leadership itself. Institutional demands for changes in the social or political structure often provoke confrontation or negotiation, that is, contention over institutions. This confrontation may produce an institutional shift that changes the conditions of coexistence, thereby altering the leaders’ problem representations and producing another cycle of opportunity for new conscientization. Institutional shifts may also create new ways of considering social identities, and thus may produce identity shifts (for an example of how this played out in Belgium, see Carter 2003).

This approach may help to unite the study of the dynamics of contention with game-theoretic approaches. Viewing these processes as occurring within a framework of “nested games” can help us develop sensitivity to the multiple considerations and competing objectives. While often applied to international relations to show the connection between international and domestic politics (see Panebianco 1988; Putnam 1988; Tsebelis 1990), the nested games approach can certainly be applied to federalism. This frame of reference does complicate issues somewhat, since federal leaders must vie for constituents throughout the country as they deal with provincial politicians, who are answerable to only a subset of the federal constituency. But in that sense this application of a game-theoretic approach is merely a step in the direction of greater accuracy.

In the study that follows, we see the federal government planning to address provincial governments and appealing directly to citizens or other constituency groups across the country. Federal leaders seek both direct constituent support for their policies and indirect support through constituent pressure on provincial politicians.

Furthermore, the dynamics of contention framework includes room for escalation, such as the tendency of conflict to expand to include new issues and new parties. In some cases the “symbolic” issues are relegated to a place of diminished importance, even when they shape the way that constituents conceive of their place within the country, and ultimately how they conceive of their own identity. Within the Canadian context, an example would be the issue of Sikh members of the Royal Canadian Mounted Police wearing turbans. Perhaps even more intense is the recent controversy over the wearing of headscarves by Muslim students in public schools of France. While these cases were apparently about symbolically representing personal commitments to beliefs systems, they quickly

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1While McAdam et al. (2001) use brokerage to denote only the linkage of two previously non-interacting groups, we extend that usage to include the search for potential allies on particular issues, even if they have previously cooperated in the past.
expanded into questions of inclusion verses exclusion and consequently to questions of access to various public goods.

Justifications for distribution of material benefits often rest on particular conceptions of the way in which identity establishes moral claims to these benefits. Challenges to prevalent identities are often attached to demands for changes in resource distribution. In the patriation case, it is apparent that the expanding scope of the conflict made it increasingly difficult for the Quebec government to press their concerns and for the federal government to limit the scope of the debate to what became labeled as the “people’s package.” In the study that follows, we indicate points at which these dynamics are apparent within the Federal Cabinet discourse.

While Figure 1 does not explicitly address territoriality, economic development or similar contextual features, this should not be considered an attempt to de-emphasize the importance of place (see Knight 1982; Agnew 1987; Kaplan 1994; Carty and Eagles 2005). These contextual features are embedded in the problem representations and conscientization efforts, as well as the demands. Note also that several linkages within the figure are synergistic, that is, bi-directional. Investigation of these features relies heavily on the case itself. With such qualifications in mind, the following six propositions about political identities and contentious politics from McAdam et al. (2001) are given a preliminary assessment through the single-case, plausibility probe that is carried out in the present study:

1. Participants will make visible and strong efforts to produce changes in identity.
2. Identity mobilization can be expected.
3. A new, emerging identity will elicit reactions in the context of existing identities.
4. The form, content and effectiveness of identity mobilization will have strong effects on collective action and its outcomes.
5. Changes in actors, identities, and forms of action will alter the political status quo.
6. Social interactions among the competing and challenging groups and the mass public will shape outcomes.

This list of propositions is much more complicated and controversial than it may at first appear. The series of assertions can bring together insights from the nationalism and identity literature as well as be applied to constitutional change (although McAdam et al. focused on contentious social movements).

Constitutional change is often linked to issues of identity, sometimes producing unintended consequences (see Joseph and Walker 1987; Kaplan 1994; Walker 2002). For example, in Belgium, a change in census data concerning language use after World War II sparked the creation of a linguistic boundary (including the relocation of some communes from one province to another) that created opportunities for new conflict, eventually requiring the country to transform from a unitary to a federal structure (see Delpérée 1989; Covell 1993; Carter 2003). Constitutional politics in Canada are especially difficult given the procedural difficulty of getting the mass public to accept elite agreements (Lustig 1994) and the sociopolitical issue of biculturalism, with the francophone community based primarily in the province of Quebec (see Latouche 1988; Leslie 1988; Riddell and Morton 1998).

Nationalism and identity have produced vast volumes of research without generating a unified understanding of either their definitions or how they actually affect politics. Smith (1995) indicates that much of the nationalism literature can be divided into the “geological” perspective that views nationalism as social facts—powerful social actors that could not be fragmented (see the likes of
Kedourie 1960; Deutsch 1966; Tilly 1975; Gellner 1983)—and the “gastronomic” school that perceives national identity as manipulatable and fluid (see Hobbsawm and Ranger 1983; Hobbsawm 1990). A better view, perhaps, would be to consider national identity and politics from an “archeological” perspective: examining how identity markers are used to reinterpret the past in light of current political and cultural needs and understandings. In a similar vein, Henderson (2007) notes that much of the literature on nationalism revolves around two key debates. First, scholars argue over whether the nation should be considered as a list of characteristics (see Geertz 1963) or as a shared, or “imagined,” community that is created by the members willing themselves into a group (see Anderson 1991). Second, researchers disagree about whether identity is simply a label or a process of becoming attached to a group. Connor (1994) also examined in great detail the multiple ambiguities of nationalism and identity politics. Researchers further disagree about the extent to which identity is linked with material interests.

While space prevents us from going into great detail about these debates, the current project uses McAdam et al.’s propositions in order to examine one conflict episode in which questions of identity and other interests were brought to the fore with a dramatic change in the Canadian constitution. It is important to examine how identity is used in the processes of this conflict. Given the complexity of this issue and the nature of the data available, we are unable to provide a complete picture of the way identity played out for all participants, but concentrate primarily on the discussion within the Federal Cabinet. We provide an analysis of the record of how the members of Cabinet debated these issues and strategized in order to see their preferred institutional change prevail.

The analytic framework’s emphasis is on social interaction rather than what occurs in individual minds. In that sense, this study supplements existing interpretations, which tend to focus more directly on Trudeau as the “mastermind” for constitutional change. An example of the Trudeau-centric tendencies in the literature, especially emanating from Quebec, is provided by Latouche (1983:97):

> English Canada never bothered to come to the negotiating table. If any negotiations ever took place, they were limited to an exchange of views between Pierre Trudeau and the premiers of the rest of Canada as to how far they would go along with his agenda and his way of doing things, including putting the Quebec separatists in place. And he won, in part by claiming that he was “negotiating” on behalf of Quebec. He was not, and nobody really believed he was. But the premiers liked so much what he was saying that they chose to bypass the Quebec political reality.

The process that ultimately led to the Constitution Act and Charter in 1982 is far more complex and requires a framework like the one we present in Figure 1 to encompass the many contingencies, conundrums, and controversies encountered along the way. Two qualifications, however, are essential before moving forward with the analysis.

First, none of the preceding discussion denies the central place of the late Prime Minister Trudeau in the extraordinary story leading up to the Charter of Rights and Freedoms. In fact, it is difficult to imagine the Charter happening at all without the force and persistence of his personality. Trudeau dominated constitutional matters in Canada at a macro level. His role in constitutional reform even has been described as coming from a “magnificent obsession” (Clarkson and McCall 1990). Trudeau’s status as a constitutional “prime mover” does not come through as clearly in the Cabinet minutes revealed here because of their

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4Consider also the summing up of federal strategy from Bergeron (1983:65): “misappropriation (in the legal sense) of the outcome of the referendum” and “brutal attack.”
obvious micro focus. Trudeau used the Cabinet as a forum for discussion of strategy and tactics in the unity fight, most notably as a sounding board for possible options. He set the agenda at the meetings, with Justice Minister Chrétien serving as his alter ego. Thus one qualification regarding the analysis that follows pertains to the unique role played by the Prime Minister as an individual at a given historical nexus—something that no social scientific framework can or should dismiss. However, given the focus on dynamics of identity contention as related to federal strategy, the analysis in this paper naturally goes beyond an examination of the unique inputs of the Prime Minister to the process that ensued.

Second, and reinforcing to the first point, is the evolving nature of the era in question as related to distribution of power in the federal government. A consensus exists that the Prime Minister’s Office (PMO) gathered power during the Trudeau years at the expense of both the Cabinet and Parliament in general (Savoie 1999; see also Kelly 2005 on continuation of that trend). In relying upon Cabinet minutes as evidence regarding federal strategy and tactics, it is important to be aware that the discussions in the room reflected prior stages of agenda setting that emanated from the PMO. This second qualification reinforces the first in that the deliberations of the Cabinet arguably reflected the prior agenda-setting influence of Trudeau even more than with prime ministers who preceded him.

In the case study that follows, we concentrate on the federal leaders’ strategies, analyzing federal cabinet documents and minutes. A full study of all 11 governments, plus interest groups, would be unworkable in a project this size. This study is distinguished by its use of a new primary source, federal cabinet minutes, in recounting the story of constitutional change that led to the passing of the one major constitutional package in Canada’s history since Confederation itself. The Government of Canada is required after 20 years to provide previously secret documents unless it can show proper grounds for continuing to keep them private. Thus the descriptive history in this paper is based primarily on previously unreleased materials from the federal cabinet—the forum within which the prime minister and other ministers debated and formulated their proposals.

Background to the Crisis of November 1981

It is difficult to set a starting point for the analysis of debate over patriation of the Canadian Constitution. In many ways the debate is as old as Canada itself. The meaning of Confederation, for example, remains a matter of controversy after decades of disagreement between those with central versus regional orientations, with the most frequent battle lines being drawn between Quebec and Ottawa. The ambiguous context of Canada’s origins created a long history of proposals that failed to achieve ratification but nevertheless constrained further attempts to reach constitutional agreements. To cite just one example, the

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5More than 500 pages of Cabinet minutes and other documents have been obtained from the Privy Council Office (PCO) of the Government of Canada and we are grateful to Ciúneas Boyle, Coordinator, Access to Information and Privacy, for assistance in obtaining the needed materials. Some material remains confidential and is stricken from the record as provided by the PCO. June 7, 2006 is the date of release for this material. Sections 13, 14, and 15 of the Access to Information Act of the Government of Canada, which pertain to information obtained in confidence, strategy and tactics of the Government of Canada as related to federal-provincial affairs and international affairs and defense, required the PCO to delete some material from the minutes and documents provided to us.

6Given this long tradition of conflict and also because we are examining the conflict while it already is in progress, little new brokerage should be expected. Different parties, however, may seek support from each other on various issues, and thus we extend brokerage to also include alliance building, with the latter as implicit within the former in Figure 1.
Quebec government withdrew its initial consent to the Victoria Charter of 1971—itself a response to the nationalism building within that province in the late 1960s—although the agreement met many of Quebec’s demands directly (Romanow, Whyte, and Leeson 1984). In Figure 1, this would make up part of the chain of institutional demands to contention over institutions, with failed institutional shift. The Victoria Charter satisfied several institutional demands described as essential by Quebec’s Premier Robert Bourassa: a constitutional veto, one-third of the Supreme Court judges reserved for Quebec, language rights and the ability of provinces to opt out of federal social legislation. Opposition within Quebec, criticizing Quebec’s lack of sole constitutional control over family allowances, forced Bourassa to rescind his support. This illustrates the multi-level, nested games characteristic of Canadian politics: the ability of a leader to implement federal-provincial agreements is constrained by his ability to convince his constituents that it is the best deal possible and that the agreement in question is better than none at all (see Burton 1962, 1985). Failed implementation of the Victoria agreement led to further negotiations during the 1970s, with an increasing sense of urgency as a result of rising nationalism within Quebec (LaPierre 1992).

The election of René Lévesque’s separatist Parti Québécois to a majority in Quebec’s National Assembly in 1976 marked a fundamental shift in Quebec politics. The institutional demand for sovereignty-association, extending the demands made by Bourassa’s Liberal government, involved an assertion of increased differentiation between the goals of Anglophone and Francophone Canadians. An identity shift occurred in Quebec, as the term “Québécois” began to replace “Canadien français” from the late 1960s onward (McRoberts 1997). This new demand built upon earlier mobilization during the Quiet Revolution of the 1960s. In response to these institutional demands, which had a synergistic relationship to identity demands in Quebec, Prime Minister Trudeau established the Pepin-Robarts Task Force on Canadian Unity. In 1979 the Task Force concluded, among other things, that Canada’s dual nature as a federation of territorial units and as a federation of two founding nations could be accommodated best with a system of provincial equality combined with asymmetrical federalism that recognized Quebec as a distinct society (Wallot 2002). Trudeau, however, rejected those suggestions because he favored different institutional demands, including a Canadian Charter of Rights and Freedoms. Bill C-60, a federal attempt at an institutional shift that failed to become law, included a new preamble and statement of goals in the constitution, a Charter of Rights and Freedoms, a House of Federation to replace the Senate, and modifications to the Supreme Court (Cairns 1991). These suggested institutional changes sparked a spate of other institutional demands from the provinces. British Columbia and Alberta released detailed reports, as did the Quebec Liberal Party. The Parti Québécois continued to advocate sovereignty-association in a build-up to the 1980 Quebec referendum (McRoberts 1997).

During the referendum campaign, federalist leaders countered the separatists with claims that a new constitutional arrangement would be best for Quebec. Prime Minister Trudeau promised constitutional revision: “We are staking our seats to have change” (LaPierre 1992). In the Cabinet meeting on May 1, 1980, Federal Attorney General and Justice Minister Jean Chrétien reported that the campaign was going well. Chrétien noted that the Anglophone premiers were

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The referendum question read as follows: “The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad—in other words, sovereignty—and at the same time to maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?”
stressing the importance of involvement with a post-referendum strategy of constitutional reform (Cabinet of Canadian Government 1980–1981). The country expected constitutional change regardless of the outcome of the referendum. In the case that the non side won the referendum, the federal government planned to seize the initiative, viewing federal intervention in the campaign as a decisive factor.

While the views of the premiers would be considered, the government had little hope of a general consensus. According to the minutes, “Several ministers observed that provincial premiers are essentially powerbrokers concerned with protecting their own interests and are not necessarily prepared to reach decisions which reflect the best interests of the Canadian public.” Federal priorities would include entrenching linguistic rights and redistributing wealth. On the latter point, the minutes reveal a general intention but do not refer to any specific mechanisms (Cabinet May 15, 1980).

The non side won the May 20, 1980 referendum, meaning Quebec would stay in Canada—at least for the foreseeable future. But the status quo clearly could not stand. Lévesque’s government, though weakened, continued to seek constitutional revision. The day after the referendum, Prime Minister Trudeau announced that he would pursue constitutional change. He indicated that the only non-negotiable issues were a strong central government within a federal system and the inclusion of a charter of rights and freedoms (Romanow et al. 1984). A new round of contention over institutions would start soon.

Between the Referendum and Patriation: Federal Strategy

Immediately after the referendum, Chrétien traveled to several provinces to discuss constitutional issues and engage in brokerage/alliance building related to Ottawa’s vision of Canada (Romanow et al. 1984). Trudeau criticized Newfoundland’s statement that the federal government was simply an agency of the provinces (identity demands), and told cabinet members to refrain from making public statements on constitutional reform until Chrétien had reported on the provincial positions (Cabinet May 22, 1980). Attempting to reconcile the intensifying effects of interconnected identity demands and institutional demands among aboriginals with Ottawa’s centralizing project, the government developed a position on aboriginal self-government within strict limits (Cabinet May 29, 1980). This early phase of negotiation clarified the leaders’ problem representations concerning the conflict and exemplified attempts to form coalitions. Cabinet committed to emphasizing conscientization efforts and coordinating their public statements.

A First Ministers’ Conference in early June produced a legion of institutional demands, but received a mixed reception. Several provinces supported requiring provinces to opt in before being subject to a Charter of Rights. Premiers called for the abolition of the Federal reservation and disallowance powers that permitted the Federal government to overturn provincial laws. Mobility rights were problematic in Newfoundland and Nova Scotia due to out-of-province oil-rig workers. All provinces committed to promote equal opportunity across Canada by supporting attempts to reduce economic disparities and provide essential services (Romanow et al. 1984). All participants expressed their institutional demands without attempting to reconcile the competing claims and diverse demands. This may have been the federal strategy—if provinces continued to espouse their own

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8Russell (2004:108–110; see also Cabinet May 15, 1980) draws attention to the pressure on Trudeau from within Quebec in particular to renew the constitution: “The one certain implication of Trudeau’s commitment was the immediate initiation of [a new] round of mega constitutional politics.”

9The federal government had long since abandoned its use of these powers, so the provincial demand can be seen more as an issue of form rather than substance.
interests, often at the expense of the others, one could argue that the lack of provincial consensus forced the federal government to proceed with patriation unilaterally. The federal government had promised, and the people of Quebec had demanded, constitutional change. They could use provincial disagreement to pursue their own interests.

Contention over institutions escalated, as illustrated by proposals from Ottawa on a potential amending formula and Senate reform. Contention over the amending formula had long prevented Canada from gaining independent control over its constitution. Chrétien outlined five options for the amending formula: (1) the Fulton-Favreau proposal would require unanimous consent for certain issues; (2) the Victoria Charter (which had been provisionally accepted by all provinces, but subsequently rejected by Quebec) would require regional consent of Quebec, Ontario, two Atlantic provinces, and two provinces totaling at least 50% of the population in the West; (3) the Victoria Charter could be used in conjunction with a referendum as an appeal procedure; (4) the Toronto Consensus would require unanimity for issues such as further changes in the amending formula or ownership of resources and consent of seven provinces with 85% of the population for other matters; or (5) the government could rely exclusively on referenda. On Senate reform, Chrétien noted that Bill C-60 had proposed a House of Federation with one-half of its members indirectly elected by provincial legislatures and one-half by the House of Commons. He observed that as an alternative, Senators could be appointed and removed by provincial governments with five equally represented regions (Atlantic, Quebec, Ontario, Prairies, Pacific), but had questions about actual distribution of seats, method of selection, powers of the reformed Senate, and linguistic issues (Chrétien 1980). These potential institutional shifts could greatly affect the distribution of power among the governments. Cabinet was attempting to establish its bargaining positions with a view to what the provinces might accept and the need to maintain federal dominance in the desired areas.10

By mid-June, Chrétien had submitted to Cabinet a memorandum addressing Federal negotiation strategy. He addressed the possibility of unilateral Federal patriation, whether such action should include only the “People's Package” (i.e., a Charter of Rights and an amending formula) or could be expanded, and whether unanimity or a special majority of provinces would be required to avoid unilateral action. Issues for negotiation included: recognition of the “duality of Canada” (mostly an identity issue); redistribution of economic, social and cultural powers; provincial influence in central institutions; and special institutional arrangements for Quebec arising from its identity claims (Cabinet June 16, 1980). As they discussed these possibilities, members of cabinet attempted to confirm their problem representation and to plan a conscientization strategy of public relations. Labeling Trudeau’s preferred option the “people's package” was clearly a conscientization effort to gain public sympathy and also to discount provincial institutional demands and identity demands as not addressing the people’s desires.

On June 27, 1980, Cabinet confronted identity and institutional demands. Key identity demands to be considered in any constitutional characterization of Canada would include Aboriginal peoples, linguistic duality, regionalism, and cultural diversity. The government position was that Quebec constituted a “distinct society within Canada” but “English Canada” did not exist as a distinct society. This position, which later would border on anathema to Trudeauite Liberals in the Meech Lake era, could be used to justify giving some special powers to Quebec but not other provinces. Cabinet noted that economic

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10The Cabinet did not necessarily want dominance in issues areas such as buslines and interprovincial transportation, even when it was constitutionally possible.
inequality and regional disparities required some form of equalization, but equalization was a source of resentment, and thus competing *institutional demands* would need negotiation. The ministers remarked that the time spent on the Constitution would produce a popular expectation (due to *conscientization*) that it would be changed; if not, the government would lose credibility. Considering the utility of *alliance building*, the Cabinet also discussed the possibility of bringing MPs from the NDP into the negotiation process on specific issues, especially on areas of concern in the West (Cabinet June 27, 1980). Since the Liberal Party had little support in the West, Cabinet worried that regional tensions could block their strategy. Bringing the NDP into negotiations might shore up their support in the West.

Over the summer, Chrétien and Saskatchewan Deputy Premier Roy Romanow traveled to Montreal, Toronto, and Vancouver for constitutional negotiations. (It is interesting to note that the Cabinet minutes do not mention anyone other than Chrétien in reference to the aforementioned trip.) Chrétien indicated that patriation was not negotiable, and the Federal government would act unilaterally if no agreement could be reached by mid-September. Chrétien stressed the connection between powers over the economy, resource ownership, and inter-provincial trade. He took a hard line on economic power issues, and obtained provincial consensus for incorporating economic union in the constitution. Chrétien noted that the key non-symbolic issues were resource ownership, inter-provincial trade, offshore resources, economic powers, and Senate reform. Cabinet had not expected the high level of interest in Senate reform and considered using it as a bargaining chip for some of the less popular federal goals. Trudeau reiterated that the “People’s Package” would proceed regardless of negotiation outcomes, and simply posed the questions of the timing and content of unilateral actions. The Cabinet decided to take a hard line on Senate reform and wait for August meetings to assess the chances of a “deal” on the constitution before pursuing unilateral action (Cabinet July 31, 1980).

On August 1, 1980, Chrétien sought the Cabinet’s opinion on the extent of negotiation flexibility in resources, trade, communication, and fisheries. He requested a statement of objectives regarding the constitutional package. Chrétien indicated that if the government were forced to pursue patriation alone, including an amending formula and a Charter of Rights, Canadians in general might feel that the government had not substantially met its obligation to change the constitution (Cabinet August 1, 1980). Canadians were expecting shifts in distribution of powers and changes that would address the concerns of Quebeckers and Westerners; in other words, they hoped for *institutional shifts* to reflect *identity demands* ranging from Western alienation to Quebec nationalism. The *conscientization* efforts had produced widespread support for change, and the previous federal promises had raised expectations that would be dangerous to disappoint.

Preparing for a First Ministers’ conference in early September, Cabinet indicated that its top priorities were the Constitution, energy, and the economy, and that the three were necessarily interconnected. Cabinet reiterated its desire to keep the “people’s package” of patriation of the constitution separate from negotiations about an exchange of powers and responsibilities. The government wanted to avoid being drawn into giving away powers in exchange for parts of the “people’s package.” Chrétien saw little hope of reaching a consensus. Manitoba was against the entrenchment of a Charter of Rights and Freedoms, and only three provinces were likely to offer any support for the idea. The Federal Government would prefer to have an agreed-upon amending formula, but no consensus had emerged (Cabinet September 5, 1980).

Frustrated by the unsuccessful First Ministers Conference of September 1980, Trudeau threatened to patriate the constitution unilaterally. Showing concern...
for conscientization, Trudeau criticized cabinet for leaks to the press on the Constitution and energy. He summarized the results of a Caucus the day before as follows:

...fifty percent wanted patriation and an amending formula with a Bill of Rights that bound both the Federal Government and provinces; the other half wanted patriation, an amending formula and a Bill of Rights with either an opting in or opting out provision for the provinces. [Trudeau] thus concluded that the minimum position on which there was full agreement was patriation with an amending formula and a Bill of Rights with an opting in procedure. (Cabinet September 18, 1980)

On September 30, Cabinet discussed a draft resolution on the Constitution. Of particular concern were the application of a Rights Charter to the provinces, inclusion of language of education in the Charter, specific details of the amending formula, entrenchment of equalization payments, and tactics parliament would employ to gain their objectives. Cabinet divided on the issue of language of education, which they saw as potentially in conflict with mobility rights and free choice. Cabinet decided that the federal government would allow the provinces two years to propose an alternative to the Victoria formula.\(^{11}\) If the provinces did produce an alternative amending formula, the Federal government would have two years to hold a referendum asking the people to choose between (1) the provincial alternative proposal and (2) either Victoria or an as yet unspecified federal proposal. The government left open the possibility of a Federal referendum, although there was internal debate over the issue. Cabinet agreed that any Senate reform would require unanimous consent of all legislatures (Cabinet September 30, 1980). The strategy during this period of institutional contention was to divide parties and establish a delaying tactic that would result in the preferred option being accepted by default.

On October 2, Trudeau had, to say the least, a very active day. Given that no consensus had been reached at the recent First Ministers Conference, Trudeau announced that the Government of Canada would bring the minimal revision to Westminster. The Prime Minister dispatched two cabinet members to London with a twofold agenda: (1) present the proposals for constitutional reform; and (2) communicate enactment of the Canadian resolutions by July of 1981 as a basic need (Marshall 1987:181; Russell 2004; Crowley 2005).

On that same day, Trudeau reported that he had talked to federal party leaders Joe Clark (Progressive Conservatives) and Ed Broadbent (New Democratic Party), as well as some premiers, and Chrétien had discussed the federal plans with provincial opposition leaders (an attempt at alliance building). Clark and Broadbent indicated they would support a non-divisive resolution, but Clark would oppose a unilateral federal attempt to patriate the constitution while Broadbent would oppose anything that might alienate the west. Attempting to reduce opposition to his plans, Trudeau recommended that the idea of a national referendum on patriating the Constitution be dropped and that the goal of economic equalization be reworded so as not to require payments (Cabinet October 2, 1980). In other words, intergovernmental brokerage/alliance politics continued apace.

On October 6, 1980 Trudeau submitted his unilateral resolution before Parliament, including an amending formula and provisions less favorable to provinces than had been previously discussed. This was an attempt to move institutional demands through to an institutional shift. However, as a result of federal alliance

\(^{11}\) The Victoria amending formula required, in addition to the consent of the federal government, the consent of Ontario, Quebec, any two Eastern provinces, and two Western provinces having at least 50 percent of the Western population” (Archer, Roger, Knopff, Heather, and Pal 2002:97).
building attempts, he had gained the support of only Ontario and New Brunswick. Indicating the danger of viewing any group as monolithic, Cabinet members expressed concern that Liberal MPs were not united behind the government’s position (Cabinet October 9, 1980). Thus, this resolution was actually an instance of contention over institutions even within the party. Cabinet sought to escalate the conflict and to increase pressure on the hold-outs to compromise, as well as to test the political waters over the reaction to the federal proposal.

On October 14, Alberta, British Columbia, Manitoba, Newfoundland and Quebec agreed to challenge the legality of Trudeau’s move, a clear instance of escalating contention over institutions. Court cases against Ottawa started in Quebec, Manitoba and Newfoundland. Contention revolved around the tradition requiring substantial provincial support for constitutional change and the uncertainty pertaining to the minimal requirements for constitutional amendment (Romanow et al. 1984). Provincial strategy in bringing the court cases included making specific, and disparate, arguments against the possibility of unilateral federal action, making specific claims about the identifying characteristics of Canada, appealing to the general population of Canada, and appealing to Westminster to block federal action. Since Canada did not have control over its own constitution, changes needed to be approved in London. The provincial actions thus mingled identity and institutional concerns.

The Cabinet meeting of October 16 addressed problems with the federal patriation campaign. Cabinet needed to emphasize conscientization efforts because it lacked ministers to discuss the constitution in the West. Cabinet members argued that the protection of minority language rights in the Charter was not understood and was weaker than Quebec’s Bill 101,12 there were requests for clarification of the use of referenda, and the Civil Liberties Union was ambivalent on letting courts decide “reasonable standards” under the Charter. The federal government was thus in disharmony with both institutional and identity demands of the provinces. Western and Quebec alienation from the federal government posed serious problems for federal conscientization efforts. Cabinet sought a good advertising campaign to counteract negative reactions to federal proposals (Cabinet October 16, 1980). Cabinet decided to spend the next month concentrating conscientization efforts on British Columbia, Alberta, and Newfoundland, stressing the interdependence of the Constitution, the budget, and the National Energy Program (Cabinet October 23, 1980, October 28, 1980, November 6, 1980).13 The problems were linked and sacrifices had to be made in order to strengthen Canada as a whole.

Debate moved to televised hearings of the Joint Committee on the Constitution of Canada. Most provinces decided to boycott these hearings (Cairns 1991). Attempting to help provinces block Trudeau’s plans, the Progressive Conservatives extended debate at the federal level. Both the federal Tories and the provinces opposed the Liberal government’s plan to bring about an identity shift in favor of a more centralized federation—one that would come at the expense of those who advocated alternative, regionally oriented visions of the future. Trudeau’s vision of a country bilingual at the federal level alienated westerners while doing little to address Quebec’s provincial concerns.

12The minutes of the October 16, 1980 Cabinet meeting indicate concern that “the issue of acquired rights with respect to language under Clause 25 was not clearly understood within the Quebec Caucus or the Senate and it would be desirable for the Deputy Minister of Justice to explain the concept to those two groups. It was also suggested that the federal proposal, because it does not go as far as Bill 101 does with respect to non-francophone Quebeers, could be criticized on the grounds that the federal proposal is less generous than what provinces already provide to their citizens.”

13The National Energy Program limited the price of petroleum products, and was viewed as westerners as a further indication of Central Canada (Ontario and Quebec) using their dominant position in the federal government to pursue their regional, rather than national, interests.
In November, federal conscientization efforts were considered effective in British Columbia, but not in Alberta. Cabinet decided to avoid business groups and focus on smaller towns (Cabinet November 20, 1980). As hearings continued, support for the federal strategy waned. Ottawa believed that the results of a Gallup poll showing a decline of support for patriation reflected opposition to the possibility of unilateral federal action. They therefore decided to change strategy. In December, Chrétien noted that the Progressive Conservatives had been opposed to everything the government had tried to do. Efforts at alliance building, which had produced some tentative agreements, had fallen through. The government also revised its views on amending formulae and the role of referenda (Cabinet December 11, 1980). December brought the Trudeau strategy into conflict with the Senate; Cabinet discussed the appropriate period of waiting—90 days versus 180 days—before the House could pass a second resolution after rejection by the Senate (Cabinet December 18, 1980). Choice of the latter option reflected a desire to soften resistance in the Senate to the overall process of constitutional change, that is, a tactical concession.

In January 1981, cabinet ministers were encouraged to highlight amendments to the Constitution in their conscientization attempts to shape public opinion. The cabinet also was told to reiterate that the government would not recognize any claim to sovereignty by Aboriginal groups, especially any attributes of statehood or anything that could affect land claims (Cabinet January 15, 1981).14 Newfoundland and Saskatchewan were seen as threats to federal proposals and therefore targeted for federal conscientization efforts (Cabinet January 22, 1981).

By February 1981, the alliance of premiers opposed to Trudeau’s centralizing plan grew to include Prince Edward Island, Nova Scotia and Saskatchewan; they became known as the “Gang of Eight.” (The “Gang” initially included Alberta, British Columbia, Newfoundland, Manitoba, and Quebec. Only Ontario and New Brunswick did not join.) The Gang of Eight developed their own constitutional proposal (institutional demands), aimed at the protection of provincial rights. Part of their April 16, 1981 agreement included the abandonment of Quebec’s traditional veto in exchange for concessions that included the ability to opt out of federal programs with financial compensation (Fournier 1983; Cairns 1991; McRoberts 1997). The actual negotiations of these meetings remain something of a mystery, but the overall position was swung in favor of provincialism by Quebec’s and Alberta’s views on the amending formula and Manitoba’s views on the Charter. The West, too, had a significant movement in favor of decentralization and regionalism, sparked by limited participation in the Trudeau government and opposition to Trudeau’s National Energy Program (Gibbins 1983; Uslaner 1989). Several Western provinces made institutional demands for Senate reform—or elimination (Cairns 1991). Quebec and the West sought to limit federal control of resources and the economy (Gibbins 1983; Hudon 1983). In addition, many members of the clergy also opposed the federal proposal, due largely to the inclusion of women’s rights that strengthened the pro-abortion position (Cabinet March 5, 1981). Cabinet faced a proliferation of issues and parties to the conflict. This escalation posed a serious problem for the federal government, which had staked its reputation on achieving constitutional reform.

The Trudeau Government decided to fund participation of national and territorial Aboriginal organizations in the constitutional process (Cabinet April 23, 1981). This represented an effort toward simultaneous alliance building and conscientization. They concentrated on establishing contingency plans to address possible outcomes of the Supreme Court cases regarding unilateral patriation of the

14This clarified the meaning of allusions to self-government within strict limits. While the federal government was willing to entertain notions of limited autonomy, they would not accept any claim of sovereignty and Aboriginals would remain under federal control.
constitution. By May, Cabinet noted that the press had been won over by the Charter (Cabinet May 7, 1981; May 14, 1981). They decided to focus their conscientization efforts on the importance of entrenching fundamental rights in the constitution, downplaying some of the more controversial division-of-powers issues. They continued to suffer criticism on the economy and the NEP (Cabinet June 4, 1981). Some Liberal Senators threatened to leave the caucus (Cabinet June 11, 1981). British Columbia blamed Trudeau for the slow movement on the constitution and for high hydro rates (Cabinet June 18, 1981). Opposition to the government was escalating on several fronts.

As the Supreme Court decision drew closer, Cabinet anticipated an unfavorable ruling, and prepared to try to co-opt some members of the Gang of Eight (Cabinet September 24, 1981). On September 28, 1981, the Supreme Court ruled (as a result of the three provincial cases that had produced contrary judgments) that unilateral patriation would be in adherenee with the law but contrary to a constitutional convention that required a substantial consensus among the provinces prior to action. While claiming victory for the part of the ruling that the proposed unilateral action was legal and therefore legitimate, the federal government recognized the difficulty it would have in gaining popular support for violating constitutional conventions. To gain more provincial support, Trudeau met with British Columbia’s premier Bennett, who indicated that the First Ministers would agree to meet in order to discuss the 16 April agreement that was reached by the “Gang of Eight.” This was a serious concession on the part of the federal government; Chrétien had initially dismissed that agreement as “sovereignty-association by installment” (Romanow et al. 1984). That agreement rejected the current version of the Charter of Rights and Freedoms, so the cabinet indicated they could rewrite the sections on language to reflect the premier’s agreement. The Supreme Court case also raised problems with the chances of getting British consent, and cabinet suggested a brokerage/alliance building move to seek NDP leader Broadbent’s help with the British Labour Party (BLP) that had threatened to harass the Thatcher government by delaying action on the Canadian constitution. The NDP would be asked to convince the BLP not to bring Canadian politics into British political squabbles.

On the home front, Premier Lyon’s opposition to the Charter made him vulnerable in upcoming elections in Manitoba. The opposition NDP in that province was divided over constitutional issues, which made the situation even more complicated. The federal conscientization efforts could focus on the benefits of having a Charter. Cabinet also decided to encourage Ontario to agree to official bilingualism and also decided to allow the option of opting out from certain Charter rights. While opting out from the protection of certain rights would nominally protect provincial discretion, it would be politically difficult for the provinces to revoke such protection. Cabinet decided that it might accept a provincial amending formula in exchange for entrenchment of the Charter (Cabinet October 13, 1981). Finally, the cabinet decided that outside Quebec, ministers should portray (problem representation and conscientization) all opposition to the Federal Government’s proposals as helping Quebec separatists, thereby linking institutional and identity demands. Cabinet recommitted to the Charter, although timing and substance could be negotiated (Cabinet October 15, 1981). This tactic appealed to identity demands outside of Quebec, which included a greater degree of interest among the general public in national unity, even at the expense of regional autonomy in some areas.

The First Ministers’ Conference of November 1981

We now move into the analysis of direct contention over institutions. As will be apparent, leaders involved in negotiation and confrontation are still thinking
about the other facets of contention (see Duffy and Frensley 1991). The First Ministers’ Conference was marked by shifting proposals, shifting alliances, and late-night deal making.

The Federal Government sought to strike a deal with seven or eight premiers and then seek patriation on the basis of that consensus (Cabinet November 3, 1981). Ottawa rejected the idea that it needed Quebec’s support, as long as it could convince several others to accept the plan. Diversity of demands and protracted debate would favor the federal government, as they could argue that larger consensus was impossible. Little progress occurred over the first two days of the First Ministers’ conference. Saskatchewan Premier Blakeney disliked the mobility provisions, Alberta Premier Lougheed refused the imposition of the Charter of Rights, and Quebec Premier Levesque fundamentally opposed the language provisions (Cabinet November 3, 1981). Trudeau had suggested a referendum procedure for ratification of amendments, but the premiers objected. The Western and Atlantic premiers argued a referendum would allow Quebec and Ontario to “gang up on them with a simple majority” (Cabinet November 3, 1981). They rejected Trudeau’s subsequent offer of establishing four regional referenda, since that still would violate provincial sovereignty and equality. Trudeau offered to accept a provincial amending formula rather than the Federal Government’s preferred formula, but there was no agreement on such a formula.

Five or six premiers seemed likely to accept a truncated version of the Charter. Shifting from his earlier position, Trudeau opposed the possibility of a Charter that would require provinces to opt in before they were subject to its provisions—it would be too easy for provinces to ignore it without facing substantial political heat. Trudeau was more willing to negotiate a Charter from which provinces had only two years to opt out. Cabinet also held open the possibility of holding a referendum on the Charter, despite provincial objections (Cabinet November 3, 1981). At this point, even sustained efforts toward alliance building had not produced success for Ottawa, and opposition among the Gang of Eight was unbroken. The heart of the debate focused on institutional issues related to the center of power. Premiers seemed fairly united for decentralization, although there was some question of relative powers of the provinces. The Federal Government remained staunchly in support of strong federal powers.

Then, on November 4, the Gang of Eight’s unity began to dissolve when Levesque indicated his readiness to hold a referendum in Quebec on the constitution (LaPierre 1992; McRoberts 1997). The federal strategy of proposing this option bore more fruit than expected. Other members of the Gang of Eight strictly opposed such an idea. Their response reflected a crucial rejection of Quebec’s threat to engage in mobilization via plebiscite. It appeared that negotiations would fail, but provincial and federal negotiators—primarily Federal Justice Minister Jean Chretien, Ontario Attorney-General Roy McMurty and Saskatchewan Attorney-General, Deputy Premier, and Minister of Intergovernmental Affairs Roy Romanow—reached an agreement during nighttime negotiations at which Quebec officials were absent (Romanow et al. 1984). The agreement produced a compromise that mitigated the objections most provinces had to the Charter (by including the “notwithstanding clause”), to increased federal incursions on provincial responsibilities (by enabling provinces to opt out), and to economic concerns (by limiting mobility rights and addressing resource issues).15

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15 Interesting but beyond the scope of the present study is the question of why the federal government had tried to resist inclusion of the Notwithstanding Clause. One salient possibility is that Ottawa disapproved of political opinions prevailing over judicial interpretations. Another is that the federal government did not want to see judges’ decisions being circumvented per se. Alternatively, they may have seen the clause as contradictory to the notion of inalienable rights. The point is moot for present purposes because Ottawa ultimately accepted the clause in order to achieve its most important goal: patriation.
Quebec’s interests, however, were not addressed in the negotiations. Quebec nationalists often refer to that meeting as “The night of the long knives.”\footnote{Ge´rard Bergeron (1983) instead labels this time as the “Day of Dupes,” referring to Richelieu’s 1630 maneuvers to stay in power, turning disgrace into success. His claim is that “Night of Long Knives” is an exaggerated and inappropriate comparison to the June 30, 1934 slaughter of those perceived as Hitler’s enemies. In his view, the constitutional negotiation looks more a case of snatching victory from the jaws of defeat, after people had given up hope and started looking for alternatives. Those involved saw the opportunity for consensus and did not consider the isolation of Quebec that might result as a major consideration.} The process of \textit{alliance building} finally produced a compromise among all provinces except Quebec. Quebec nationalists claimed that Quebec forfeited the Constitutional convention regarding special veto powers. As a result of the agreement, which included a complex amendment package, Quebec was to be treated constitutionally as a province like the others—a clear repudiation of the \textit{identity demands} that Confederation be considered a pact between two nations and that Quebec be viewed as the representative of one of those nations. Strictly limited, too, was the right to financial compensation for opting out. For the most part, Quebec’s long-standing \textit{institutional demands} remained unmet.

Mixed reactions ensued. Premier Peckford of Newfoundland and Premier Davis of Ontario expressed great satisfaction with the agreement. Trudeau, determined to patriate the constitution, exclaimed “We’d better grab the signatures and run before anyone changes his mind” (Banting and Simeon 1983). Lévèque, having left the meeting believing that no progress would be made, returned to find the deal already made and was forced to reject it. The split between federalist and nationalist Quebeckers widened and \textit{institutional contention} became even more intense.

Cabinet accepted the agreement as dated November 5, 1981, since changes could provide the opposition with extra opportunities to delay action. Cabinet was concerned that the agreement dropped aboriginal rights from the Charter and discussed the nervousness of the Quebec caucus caused by Levesque’s rejection of the deal (Cabinet November 6, 1981). Trudeau had disagreed vociferously with Lévesque throughout the negotiations, and people were tired of negotiation and looking for results. Nine out of ten provinces could be sold as significant consensus, and Quebec opposition could be portrayed as separatist sour grapes. Cabinet agreed to seek patriation based on the agreement.

Trudeau asserted that Quebec was governed by a separatist party that would lose its \textit{raison d’être} if it accepted the constitution, and that Trudeau and other Quebec Members of Parliament “spoke” for Quebec. The Prime Minister’s arguments prevailed; on April 17, 1982 the Queen signed the Constitution Act into law at a major ceremony in Ottawa. But constitutional contention would continue.

Many Quebeckers felt betrayed by the 1982 Constitution Act, regarded as an \textit{institutional shift} eliminating the province’s presumed co-equal status in a dualistic Canada (thereby producing an \textit{identity shift}). They claimed that Quebec had been denied recognition as a distinct society and lost its conventional power to veto constitutional amendments. The new amending formula for most issues—there were five different formulae for various situations—required ratification by any seven provinces with a total of 50% of the national population. An “opting out” clause entitled provinces partially to shield themselves from some amendments, with compensation for foregone funds for “education and other cultural matters.” The constitution entrenched a new Charter of Rights and Freedoms that enshrined individual liberties. This major innovation, however, had been attenuated by Trudeau’s other main concession, the “Notwithstanding Clause,” perhaps the most salient result of \textit{brokerage/alliance building} within the process. The Notwithstanding Clause enables the federal parliament or provincial legislatures to enact laws that are immune to Charter
review from the courts, provided that they include acknowledgment that the violation is intentional. Any such law then is valid for only five years unless renewed (see Malcolmson and Myers 1996). This clause would later prove incredibly divisive, disrupting momentum toward ratification of the Meech Lake Accord that included a Quebec signature on the constitution as the principal goal.

Quebec’s Parti Québécois government passed a resolution condemning the 1982 Constitution Act (Watts 1991). For the next 3 years, its legislature subsequently invoked the Notwithstanding Clause on a routine basis (Monahan 1991). The nature of leaders’ problem representation, however, continued to oscillate between preserving (PLQ) and enhancing (PQ) autonomy for Quebec City in relation to Ottawa.

Conclusions and Research Priorities

This study began with curiosity about constitutional negotiations prior to patriation, most notably the crucial breakthrough on one night of the First Ministers meeting in November 1981. That event, with its uncertain details and tendency to evoke selective memories, continues to influence Canadian politics today. The diagrammatic exposition of the dynamics of identity contention adapted from McAdam et al. (2001) provides a valuable means toward understanding the difficult and controversial process that led to patriation of the Canadian Constitution in 1982. Concepts such as brokerage, conscientization, mobilization, identity demands and shifts, and institutional demands and shifts help explain various aspects of the federal approach toward patriation. For example, Bill-C60 can be seen as a failed institutional shift. The institutional demands of the Victoria Charter became embedded into future negotiations over the constitution. Cabinet deliberations emphasized conscientization to promote an institutional shift and counteract contrary institutional demands from the provinces. The process leading up to the constitutional shift can be summed up as a contention over institutions. Finally, the leaders’ problem representations held firm in a strategic sense over many years, with tactical flexibility exhibited by both sides.

While the Cabinet minutes largely reinforced what was already known about the process, there are several useful insights gained from this study in light of the internal negotiations and arguments about institutional shifts. While Trudeau was dominant, he did shift positions and was forced to address the concerns of other members of the Cabinet. For example, Trudeau switched on the question of opting in or out of the Charter, and his early position on Quebec as a “Distinct Society” and the feasibility of unilateral patriation are likely to raise eyebrows.

Each of the six propositions about political identities from McAdam et al. (2001) finds support in the present study. First, participants in contentious politics over the Canadian constitution made visible and strong efforts to produce changes in identity—such as the Federal Government’s designation of a “People’s Package” and its labeling of any opposition as support for Quebec separatists—that would work to their advantage as the process of bargaining moved forward. Second, identity mobilization is clear to see, for example, in the behavior of both Ottawa and Quebec City as related to competing senses of national allegiance as well as mobilization of feminist and Aboriginal groups. Third, the “new” emerging Canadian identity reflected in the “People’s Package” elicited reactions in the context of existing identities; various forms of provincial opposition bear out this proposition. Fourth, the form, content, and effectiveness of identity mobilization strongly affected collective action and its outcomes; ultimately, the Federal Government was able to outduel most provincial governments in terms of support for a “made in Canada” constitution.
Fifth, changes in actors, identities, and forms of action altered “politics as usual” and produced a legacy of contention; most notably, battles continue over the meaning of the Charter (Cairns 2000; Flanagan 2000; Hiebert 2002). Sixth, and finally, social interactions involving Ottawa, provincial governments and the mass public shaped the contentious politics of constitutional crisis significantly, even allowing for the uniquely important input of the Prime Minister. While the preceding propositions have been widely argued in the nationalism literature, it is useful to see how these dynamics play out in a protracted contentious episode.

Two of the most interesting findings in this study are by-products of the research agenda rather than directly bearing upon the six propositions evaluated here. First, it is fascinating to consider how early the federal government considered a unilateral strategy. In light of the very long practice of obtaining provincial agreement, the rapid federal consideration of unilateralism borders on remarkable. Unilateral action seems to have been contemplated as a possible option all along, as opposed to a last, desperate effort intended to pressure the provinces into going along with some kind of deal. A second interesting finding concerns use of the phrase “Distinct Society” in federal deliberations regarding Quebec—and without negative connotations that emerged when Trudeau later attacked the idea. Both findings suggest a more nuanced and complex development of federal strategy and this bears indirectly (and favorably) on the sixth and final proposition.

This study suggests that a process such as that leading to the Constitution Act possesses a certain dynamic or momentum that can discourage anticipation of long-term effects. For example, the cabinet meetings do not reveal a sense of concern among federal leaders that, by signing these revolutionary documents without Quebec’s consent, lasting unrest could take hold in that province with deleterious consequences down the road. Did the momentum of reaching a majority agreement prevent such contemplations? Given the situation that obtains now in Quebec, with a weak federalist presence still haunted by (arguably) embellished memories of the “betrayal” of 1981, it is questionable whether the net effect of the Constitution Act and Charter is in the direction of greater national unity when viewed from a vantage point a quarter-century later.

One interesting aspect of the preceding summary of events is the “temporalizing of differences between people” that ensued (Hindess 2007:327). People in Quebec do not exhibit, as Hindess (2007:335) would describe it, a “radical distinction between the past and the present.” Instead, there is a sense of connection to the past in francophone Quebec that stems from the sense of betrayal over the constitution, along with other events that symbolize Anglophone dominance. Different levels of attachment to the past exhibited by the two founding peoples obstruct national unity. Similar situations may obtain in other societies as well.

This study, it should be admitted, is more of a plausibility probe than a true test of the framework from Figure 1. The approach from McAdam et al. (2001), in the adapted form that is applied here to constitutional politics, is fairly new and one case cannot establish high confidence in its future value. The approach has strengths and weaknesses. As an analytic framework for case studies, it provides a useful map of important interactions that affect conflict and identity. This framework has several feedback loops and phases of conflict may be nested within others, much like the Russian dolls. Thus, the framework can be used to examine large conflicts at a macro level, or particular conflict episodes in detail. The approach certainly increases the need to pay attention to context, rather than simply quantified relationships of specific variables. Further, it encourages us to see conflict as dynamic, generating new institutional and identity demands as it evolves.
The very flexibility and contextual sensibility of this approach may also be a key weakness. It becomes difficult to clearly define the scope and limits of the data, as well as the exact meaning and effect of particular mechanisms and tactics. It can be extremely complex to map and recount all the leaders’ interactions and strategies within a simple analytic framework. An examination of how each individual leader engaged in each step, along with all their interactions, would quickly overwhelm any researcher. Evaluation of the conflict’s development is thus subject to some degree on the information and understanding of the researcher. However, the analytic framework and documentary evidence give grounds for structured debate over the meanings and interpretations of various actions. In this study, we relied primarily on the Cabinet meeting minutes, but also supplemented that research with other memoirs, articles, and books written by those who were involved to bolster our own understandings and portrayals of the conflict. While we remain positive about this approach as a framework for analysis, it certainly does not produce findings that are subject to statistical significance claims. Furthermore, as yet, it has been convincingly applied to relatively few cases.

In addition, large-scale, cross-national testing would need to be preceded by presentation of criteria for its falsification. The present case, based on a newly tapped source of information about November 1981, that is, federal cabinet minutes, shows that many of the linkages displayed in Figure 1 operated at various points in the process of constitutional reform. But exactly how much evidence would amount to “enough” to accept this framework as valid? This is a question that must await further investigation.

One of the qualifications prior to the outset of the analysis should be restated at this point: It is unlikely that any other case to which the framework would be applied will include an actor as uniquely influential as Prime Minister Trudeau in the current context. For that reason, however, it may be that, if anything, future studies will produce even stronger findings vis-à-vis the hypotheses about social interactions.

Future research should seek a more formal presentation of the process described above, perhaps carried out in a game-theoretic model. It would be particularly useful to assess how respective strategies among participants in executive federalism reverberated in public responses and attitudes about proposed changes. A detailed account of assumptions, strategies and reactions to the dynamic forces of constitutional politics may facilitate further interesting insights that could change the way we understand how agendas are framed and disagreements are resolved. Through such research on strategic interaction, an even more rigorous understanding of the constitutional crisis over patriation could be obtained, with the likelihood of both academic and policy-related advances with lasting value.

References


