

## **The Centre Cannot Hold: Pierre Trudeau, the War Measures Act, and the Nature of Prime Ministerial Power**

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**Abstract:** The notion that the Prime Minister of Canada has become an autocracy is common in popular discourse. Some, such as Savoie, suggest that Pierre Trudeau marked the beginnings of this trend. Bakvis, and to a lesser extent Aucoin, hold alternate views of Prime Ministerial power in which Trudeau represents continuity rather than change. This paper draws on archival research and interviews with former cabinet ministers to explore the nature of Prime Ministerial power at a pivotal moment in Trudeau's first term: The invocation of the *War Measures Act* in October of 1970. The analysis finds that Trudeau was far less autocratic than is generally believed, that the empirical foundations of Savoie's argument may need re-examining, and that federalism is a significant constraint on the exercise of Prime Ministerial power.

The extent and nature of the power of the Prime Minister is a topic of perennial discussion in Canadian politics (Matheson, 1976; Schindeler, cited in Hockin, 1977; Aucoin, 1986; Savoie, 1999a; Savoie, 1999b; Bakvis, 2001), particularly in popular discourse, where the tropes of the Prime Minister as autocrat or Canada as “elected dictatorship” have enjoyed enduring popularity (Hockin, 1977; Bakvis, 2001; Savoie, 2008: 49). Unsurprisingly, the academy has produced more nuanced understandings of the nature of Prime Ministerial power - but even here there is hardly consensus. Savoie’s work (1999a; 1999b; 2008) portrays a Prime Minister who effectively personifies executive power at the expense of cabinet, while Bakvis (2001) holds that while Prime Ministers have always had more power than the notion of ‘first among equals’ implies, the idea of Prime Minister as autocrat exaggerates the power of the office. Aucoin (1986), meanwhile, suggests that the organizational machinery through which Prime Ministers wield their power reflects their individual styles of management and approaches to politics, rather than the other way around. The significance of Pierre Elliot Trudeau’s ascendancy to the office of Prime Minister in 1968 is a point of contention between these three images of Prime Ministerial power. Trudeau, depending on one’s

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perspective, was either the architect of Prime Ministerial autocracy, or merely another powerful Prime Minister in a series of powerful Prime Ministers.

That Trudeau made significant changes to the central machinery of government in the early years of his stint as Prime Minister is widely acknowledged (Matheson, 1976: 87-98, 236-237; Hockin, 1977: 2; Radwanski, 1978: 145-147; Aucoin, 1986: 9; Savoie, 1999a: 9; Savoie, 1999b: 695). What is less clear is the practical effect that these changes have had on the power of the Prime Minister. This paper proposes to examine how the “machine that Pierre built” (Radwanski, 1978: 145) functioned in practice during a crucial decision early in the Trudeau years, specifically the decision to invoke the *War Measures Act* in October 1970. What does this decision tell us about the nature of Prime Ministerial power in Canada, and about the three images of Prime Ministerial power developed by Aucoin, Savoie, and Bakvis? This paper draws on archival records and interviews with former members of Trudeau’s cabinet and Prime Ministers’ Office to analyze this landmark decision. This analysis reveals that the power of the Prime Minister is more constrained than is commonly thought, particularly by the nature of federalism. It also shows that cabinet played a much greater role in the decision than is generally believed for the Trudeau years. If Canada is governed from the centre (Savoie, 1999a), then, in the events of October 1970, the centre could not hold.

### **Three Images of Prime Ministerial Power**

There is considerable agreement between Savoie and Bakvis, and to a lesser extent Aucoin, on the visible features of Prime Ministerial power. All three works take as a starting point the premise that Canadian parliamentary democracy is executive-centric; in other words, that power is located more in cabinet than in parliament (Matheson, 1976: 1, 79; Hockin, 1977: 4; Franks, 1987: 6, 11). Savoie and Bakvis concur on the significance of the powers of appointment that accrue to the Prime Minister, and all three scholars agree that Trudeau made significant changes to the central machinery of government – and even that the intended goal of these changes was to rationalize governance (Aucoin, 1986: 8; Savoie, 1999b). Where their perspectives diverge is in the interpretation of the practical effects that these visible features of Prime Ministerial power have had on cabinet governance, and on the impacts of federalism and federal-provincial relations on the exercise of this power.

Savoie’s interpretation of Prime Ministerial power has two elements. The first is, as he puts it, that “Cabinet has joined Parliament as an institution being bypassed” (1999b: 635). The second is that Pierre Trudeau is the architect of this sea change in Canadian governance (1999a; 1999b). The result is that cabinet has been relegated to a mere ‘focus group’ for the Prime Minister (Savoie, 1999a: 3); this, combined with the tradition that the Prime Minister draws the consensus of cabinet (Malcolmson and Myers, 2005: 114), creates a situation where the Canadian Prime Minister can in principle exercise quasi-presidential power without the checks and balances of a presidential system of government (Savoie, 1999a: 105).

Bakvis (2001), on the other hand, echoes the earlier work of Matheson (1976) in asserting that the Prime Minister of Canada is neither ‘first among equals’ nor an autocrat. From

this perspective, Trudeau is neither more nor less powerful than any other Prime Minister, and his changes to the machinery of government are not as significant as Savoie's account suggests. Aucoin's (1986) analysis of those changes provides an alternative explanation, namely that the personal leadership and political styles of individual Prime Ministers shapes the organization and functioning of the central apparatus in Ottawa, rather than being themselves shaped by a structural imperative arising from the centralized legacy of Trudeau.

The first key point of difference between Savoie, Bakvis and Aucoin is thus differing views of the practical relationship between Prime Minister and cabinet, and the significance (or insignificance) of Trudeau's changes to the central machinery that supports that relationship. Because there is consensus on the visible features of Prime Ministerial power - specifically that the Prime Minister does wield far-reaching powers of appointment, and that Trudeau did make significant and visible changes to the central apparatus of government - the analytical task of this paper is to investigate the less-visible impacts of those features: Did Trudeau's changes fundamentally change how cabinet made decisions - from 'first among equals' to focus group?

A reading of Savoie and of Bakvis' work, also, reveals a second interesting area of investigation - that of the role that federal-provincial relations play in both driving power into the hands of the Prime Minister, and constraining the exercise of that power.

Savoie's (1999b) analysis of the causes of the centralization of power in Canada includes a discussion of how an increasing importance of federal-provincial relations - combined with the convention that provincial Premiers relate to the Prime Minister as equals, as at First Ministers' meetings - has conspired to put more and more policy issues into the Prime Minister's hands. The central conclusion of Bakvis' (2001) treatment of the subject of Prime Ministerial power, on the other hand, is that federalism is the most significant check on the Prime Minister's freedom of action. This is because so many policy spheres require some level of cooperation or at least coordination with provincial governments, a point that is also taken up by Franks (1987: 7, 13) under the rubric of "executive federalism" - the notion that a major role of the Prime Minister is to navigate federal-provincial relationships, and that these two levels of government are increasingly inter-related. Federalism, and the dynamics of federal-provincial relations that it creates, thus occupies a curious dual role that is equally worth investigating.

In short, then, there are two areas that this paper's analysis of the *War Measures Act* decision will try to illuminate. The first is the precise workings of the three-way relationship between the Prime Minister, the central agencies of government, and cabinet. Were the changes that Trudeau made a significant break from the past, and did they lay the foundations of Prime Ministerial autocracy - or did they simply reflect Trudeau's style of management, and leave him no more able to steer the course of the nation than his predecessors? The second area for investigation is the relationship between the Prime Minister and the framework of federalism; this is particularly of interest in the case of the *War Measures Act*, where national unity and the relationship between the federal government and the province of Quebec were at the very heart of the issue.

## Research Design

Two things are necessary to explore the less-visible nature of Prime Ministerial power, and its interplay with federalism: The first is access to primary sources that reveal the workings Trudeau's machinery and give empirical context to existing secondary sources. The second is a discrete, identifiable decision around which to build an analysis. Vis-à-vis the former requirement, this paper draws on hundreds of pages of archival material from cabinet, the PMO, and Trudeau's personal papers, supplemented by interviews with two former cabinet ministers and with Marc Lalonde, Trudeau's Principal Secretary in the PMO from 1968 to 1972, and a cabinet minister thereafter until 1978 (Lalonde, 2009). These primary sources complement existing secondary sources - not only the works cited above, but also Radwanski's *Trudeau* (1978) (an oft-cited journalistic account) and Trudeau's own *Mémoires politiques* (1993). Although journalism and autobiographies must be treated carefully, both Radwanski and Trudeau prove to be remarkably consistent with the primary source material.

Regarding the latter requirement, the decision to invoke the *War Measures Act* is a useful case study for three reasons: First, it occurred shortly after Trudeau's changes to the central machinery of government. This makes it a snapshot of the power dynamics of cabinet and the PMO at precisely the time that Savoie (1999a; 1999b) regards as pivotal in terms of the centralization of power in the hands of the Prime Minister. Second, it is an especially intrusive federal decision - one that deeply affected the lives of individual Canadians. Consequently, it is a case where concerns about the allegedly autocratic powers of a Prime Minister should resonate most strongly. Finally, in the minds of many Canadians the federal government's response to the October Crisis was *Trudeau's* response, epitomized by his pithy riposte to a journalist's question of how far he would go: "Just watch me" (Saywell, 1971: 73).

## Still Watching: Trudeau and the October Crisis

How did Pierre Trudeau - a committed liberal who had spent years prior to 1970 fighting for the principles of individual rights and liberty against overbearing state authority (Aucoin, 1986), and who later enshrined these principles in the Charter of Rights and Freedoms - come to invoke draconian legislation that severely curtailed civil rights nation-wide? Though there is no small disagreement as to the motives of the decision (with Trudeau hailed by some as a hard-line hero of confederation, and by others as a police-state federalist) (Munroe, 2009), the broad outlines of the case are relatively well known and need only be briefly summed up here.

On October 5<sup>th</sup>, 1970, gunmen abducted British diplomat James Cross from his home in Montreal. Hours later, the first of several communiqués from the *Libération* cell of the *Front de Libération du Québec* (FLQ) was delivered to a Montreal radio station with a list of ransom demands. Five days later, after a flurry of communiqués and press conferences, Quebec provincial cabinet minister Pierre Laporte was abducted by another FLQ cell. Meanwhile, the atmosphere in Montreal grew more tense by the day: Student walkouts, protest demonstrations, rumours of a provisional government waiting in the wings, and countless bomb threats and FLQ communiqués (now believed to be hoaxes) contributed to a belief in the halls of power in Montreal, Quebec City and Ottawa that

revolution was in the offing. The accuracy of this belief has been hotly contested ever since, but it is clear that the information available to decision-makers at the time pointed towards impending widespread violence (Munroe, 2009).

On October 12<sup>th</sup>, the Canadian Forces were deployed around Parliament and other government buildings in Ottawa; on October 15<sup>th</sup> they were deployed across the province of Quebec to supplement over-extended police forces. Finally, in the early hours of October 16<sup>th</sup>, the *War Measures Act* was invoked by order-in-council in Ottawa, and emergency regulations issued which gave police the authority to detain without charge any suspected members of the FLQ. This the police did with great alacrity, in pre-dawn raids that had detained 154 people by the time Trudeau announced the measures in the House of Commons that morning (Notes for Remarks by the Prime Minister, October 16, 1970). Ultimately, almost 500 people were detained under the *War Measures Act* (Fournier, 1998). The following day, October 17<sup>th</sup>, Pierre Laporte was executed by his abductors (Saywell, 1971: 101).

History generally regards the invocation of the *War Measures Act* and the death of Pierre Laporte as the breaking point of the October Crisis, even though James Cross was not released until early December of that year. There is also a tendency to collapse together the different facets of the Crisis - the military deployments, police detentions, and the *War Measures Act* itself - when these were, in fact, distinct from one another. The military deployments were carried out under the authority of the *National Defence Act*, and both took place prior to the invocation of the *War Measures Act* and ensuing police raids. Members of the Canadian Forces were deployed to free up police officers from guard and patrol duties so that they could focus on locating the hostages and, later, locating and arresting people identified for detention; soldiers did not themselves take part in the detention process beyond providing manpower to cordon off areas where police were searching (Fournier, 1998: 335; Maloney, 2000: 80-81). This distinction is particularly apparent in the federal cabinet conclusions, where the decision to deploy troops to Quebec is mentioned only in passing, and as practically automatic (Cabinet conclusions, no. 60-70).

If the military aspect of the government's response was relatively straightforward, the police detentions themselves and the *War Measures Act* were quite the opposite. These two aspects of the Crisis much more closely linked to each other than to the military deployment, but are nonetheless not one and the same: Cabinet conclusions from the period, as well as other sources, suggest that the necessity of intensified police activities was never questioned by ministers and the objective of large-scale raids was never explicitly articulated (Munroe, 2009: 294). The *War Measures Act* simply gave legal authority to the extraordinary police actions that were considered necessary. The *War Measures Act*, however, was not the only option considered by the government, and the process that eventually culminated in its invocation at 04:00 on October 16<sup>th</sup>, 1970, offers an opportunity to explore the dynamics at play between Trudeau and the PMO, Trudeau and his cabinet, and Trudeau and federalism.

### ***Trudeau and the PMO***

Savoie's account of the importance of the 'centre' of government (1999a), and his argument that decision-making actually occurs within a small coterie of unelected advisors and select cabinet ministers who surround the Prime Minister, suggests that the architects of the government's decision to invoke the *War Measures Act* should be found in the PMO rather than the cabinet room. An exhaustive search of the Prime Minister's Office records at Library and Archives Canada, however, reveals that this is not the case. Although the PMO did set up a Strategic Operations Centre (SOC) on October 22<sup>nd</sup> to coordinate the ongoing government response to the FLQ situation (Munroe, 2009: 291), this was fully a week after the decision to invoke the *War Measures Act* had been taken - and, though the creation of the SOC was an initiative of the Prime Minister, its task was largely to coordinate the execution of a strategy approved by cabinet (Cabinet conclusions, no. 63-70). From October 5<sup>th</sup> to October 10<sup>th</sup>, the bureaucratic nexus of events was within the Department of External Affairs, just as responsibility lay not with the Prime Minister but with Mitchell Sharp, Secretary of State for External Affairs (Memorandum for the Minister: Federal Response to FLQ Demands, October 6, 1970; Memorandum for the Minister: Protection of Diplomatic Personnel and Property, October 8, 1970). Indeed, A.E. Ritchie - Sharp's deputy - was giving polite direction to the Privy Council Office, rather than the other way around (Memorandum for Mr. R. G. Robertson: The FLQ Kidnapping, October 8, 1970).

The silence of key PMO staffers such as Marc Lalonde (principal secretary) and Jim Davey (program secretary) is surprising given the currency and *prima facie* plausibility of Savoie's (1999b; 2008) court government thesis. Naturally, archival documents do not give insight into casual conversations and impromptu meetings in the PMO. Davey's first written record pertaining to the Crisis speaks for itself, however: "I have not been involved in the discussions relating to the handling of the Quebec kidnappings situation. For that reason, I am not necessarily aware of all the information and factors that have been taken into account in arriving at various decisions" (Memorandum to the Prime Ministre Re: Quebec Kidnapping, October 14, 1970). Davey, who became the driving force behind the Strategic Operations Centre the following week, wrote those words on October 14<sup>th</sup> - by which time the process that ultimately led to the *War Measures Act* was already well under way. The Clerk of the Privy Council, Gordon Robertson, played a slightly larger role - drafting a potential statement for the House of Commons on October 6<sup>th</sup> (Cabinet conclusions, no. 57-70) and later suggesting a possible legislative option to the Prime Minister (Memorandum for the Prime Minister: Special legal action, October 14, 1970). As we shall see, however, neither of these proved decisive.

### ***Trudeau and Cabinet***

Contrary to Savoie's account (1999a; 1999b) and the notion of Prime Ministerial autocracy more generally, cabinet and cabinet committees were the venue for discussion and decision during the pivotal ten days of the Crisis. Furthermore, individual Ministers contributed heavily to cabinet discussions about the government's response - notably Mitchell Sharp, then Secretary of State for External Affairs, who was clearly the lead minister for the first phase of the Crisis. The significance that Trudeau accorded to the deliberations of cabinet is evident from the fact that two of the main decisions in this

period went against his stated preferences; this is a far cry from the image of cabinet as ‘focus group’ that Savoie invokes (1999a: 3).

The expectations of court government (Savoie, 1999b) would lead us to expect a Prime Minister to meet with key staff more often, and cabinet less often, during a time of crisis or in the lead-up to a major decision. An analysis of Trudeau’s calendar and the cabinet schedule between October 5<sup>th</sup> and 15<sup>th</sup> reveals the opposite, however: Trudeau held full cabinet and cabinet committee meetings with *increasing frequency*, and met with his staff with *decreasing frequency*, as the October Crisis intensified - the opposite of what one would expect if cabinet and ministers are actually superfluous. From October 5<sup>th</sup> to October 9<sup>th</sup>, the first week after Cross’ abduction, Trudeau spent almost eight hours with staff compared to 4-and-a-half with cabinet. Between the 12<sup>th</sup> and 15<sup>th</sup> of October, however, he spent barely over an hour meeting with staff, and almost twelve hours meeting with cabinet (Daily Agenda, 1970; Events on the Weekend Re the FLQ, October 13, 1970; PCO: Cabinet conclusions, no. 59-70). Recalling the events almost forty years later, Marc Lalonde observed that the cabinet security committee typically met only once a month; during the Crisis, however, either that committee or the full cabinet was meeting almost daily (2009). Taken together, these findings suggest that Savoie and others quite correctly describe the power that the Prime Minister has over the scheduling and agenda of cabinet - but also that, at least in this instance, that power was exercised to *increase* the contributions of cabinet rather than to circumvent it.

Savoie’s (1999a: 71; 1999b) assertion that Prime Ministers can, and therefore do, seize responsibility for crucial matters is somewhat more supported by the historical record - but this too is ambiguous. PMO records show that the Cross kidnapping was initially considered to be within the purview of External Affairs, and thus Mitchell Sharp held effective responsibility for the government’s response. This is particularly interesting in light of the fact that Trudeau’s PMO staffers took a dim view of Sharp’s abilities as a cabinet minister. Jim Davey had actually recommended that Trudeau drop him from cabinet only a few months earlier - a recommendation that Trudeau not only ignored, but pointedly disagreed with (Memorandum to the Prime Minister Re: Ministerial Performance, March 18, 1970). Sharp remained in cabinet, and Trudeau evidently felt comfortable letting him take the lead on a sensitive issue in the first week of October 1970. Only later, after the kidnapping of Pierre Laporte, did Trudeau take a more active role.

The first discussions of the kidnapping in cabinet occurred during a previously-scheduled meeting of the committee on priorities and planning on the morning of October 6<sup>th</sup>; though Trudeau chaired the meeting, Sharp took a clear lead in summarizing the situation and - in marked contrast to the norms of cabinet - drew a provisional consensus of the discussion at the close of the meeting (Cabinet committee on priorities and planning, no. 33-70). The issue was revisited that afternoon, in a meeting of the full cabinet. Sharp again lead the discussion, which centered around two possible statements by the government to be made that evening: One prepared by Sharp, and another prepared by Clerk of the Privy Council (as noted above.) Though one might infer that the Clerk’s

proposal was closer to Trudeau's preferences, cabinet ultimately decided in favour of Sharp's approach (Cabinet conclusions, no. 57-70).

Sharp continued to lead both the federal response and discussions with the Government of Quebec up until the evening of October 10<sup>th</sup>, when Pierre Laporte was kidnapped. The PMO's chronology of events over the Thanksgiving weekend of October 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> indicates that on the 10<sup>th</sup>, Sharp was holding discussions with Quebec's Minister of Justice, Jérôme Choquette (Events on the Weekend Re the FLQ, October 13, 1970). The following day, the same document notes: "Continuous exchanges and discussions with Quebec including several conversations between Prime Minister and [Premier] Bourassa". In the following week, Trudeau took a much more active role within cabinet - but in a way that underscores the importance he assigned to its deliberations.

Again, contrary to Savoie's (1999a) account - in which it is argued that Trudeau marked the end of 'first among equals' as a paradigm of cabinet governance - the story of the *War Measures Act* and the October Crisis in general is one of a Prime Minister who clearly valued what his cabinet had to say, even when it ran counter to his own views. This is first evident with regards to the publication of the FLQ manifesto (one of the *Libération* cell's original demands.) On October 7<sup>th</sup>, with Mitchell Sharp still very much leading the way, a full session of cabinet discussed the publication or broadcast of the manifesto (Cabinet conclusions, no. 58-70). Both Sharp and Gérard Pelletier felt that publishing the manifesto would help buy time for the police to locate Cross and also mollify his abductors; neither felt that the public would take the obviously "extreme" language of the text too seriously (Cabinet conclusions, no. 58-70: 4). Trudeau, on the other hand, felt it beneath the government to publish the manifesto. Later that afternoon, the cabinet decided that the publication of the manifesto should definitely be a government decision, rather than being left to the discretion of the CBC (Cabinet conclusions, no. 58-70). In spite of Trudeau's distaste for it, the manifesto was read on Radio Canada on the evening of October 8<sup>th</sup> (Saywell, 1971: 46) - a decision that both Lalonde and Trudeau himself attribute to Sharp (Trudeau, 1993: 122; Lalonde, 2009).

The deliberative and cabinet-oriented nature of decision-making during the October Crisis is most evident in the way that the decision to invoke the *War Measures Act* was ultimately taken between October 11<sup>th</sup> and 15<sup>th</sup> - the crux of this analysis. The possibility of using the *War Measures Act* to confer exceptional powers on the police was first raised in discussions with Premier Bourassa on October 11<sup>th</sup> (Events on the Weekend Re the FLQ, October 13, 1970; Trudeau, 1993: 124), but as of October 14<sup>th</sup> Trudeau and his cabinet were still weighing the relative merits of the *Act* compared to some form of special legislation that would be narrower in scope (Memorandum for the Cabinet Committee on Security and Intelligence, October 14, 1970). A memorandum to cabinet prepared by John Turner, then the Minister of Justice, on the afternoon of the 14<sup>th</sup> of October outlined the advantages and drawbacks of three legislative possibilities: The first option was to declare an insurrection and invoke the *War Measures Act*; the second, to table special legislation to confer more limited exceptional powers for the police, and the third, to amend the *War Measures Act* so that it could be invoked for more limited causes than insurrection, whether real or apprehended (Memorandum to Cabinet: Legislative

Action respecting F. L. Q., October 14, 1970). The Clerk of the Privy Council, Gordon Robertson, also raised this third option simultaneously in a memo to the Prime Minister that afternoon (Memorandum for the Prime Minister: Special legal action, October 14, 1970). By the evening of the 14<sup>th</sup> of October, however, no choice between these options had been made.

October 15<sup>th</sup> proved to be the pivotal day of the Crisis. The cabinet met morning and afternoon, and the committee on security and intelligence met well into the night (Daily Agenda, 1970; Cabinet conclusions, nos. 60-70 and 60-71), grappling with the events and debating the options facing the government. That exceptional powers were needed for the police in order to avert a “civil war” was taken as read; debate revolved in large part around which of the three legislative options the government could legitimately pursue to enable such extraordinary actions (Cabinet conclusions, no. 61-70: 3). This discussion is particularly revealing of Trudeau’s relationship with his cabinet: At the outset, Trudeau spoke only of amending the Criminal Code or tabling special legislation - *despite having had the option of the War Measures Act put before him in committee the previous evening*. It is Mitchell Sharp who raises the possibility of invoking the *Act*, though he spoke for the cabinet when he described it as their least desirable option (Cabinet conclusions, no. 60-70). By the close of the morning meeting, however, Trudeau’s opinion had begun to shift, and by the end of the afternoon the conclusions describe Trudeau as saying that “all these discussions led him to believe that it was necessary to move that night and to proclaim the War Measures Act” (Cabinet conclusions, no. 61-70: 5). It is clear from the tenor of the discussions that day that Trudeau - who was, like many of his ministers, reluctant to invoke the *Act* - was convinced by the deliberations of cabinet, rather than the other way around.

In summary, then, the cabinet records show Trudeau to have been much more akin to the archetype of ‘first among equals’ than is generally believed. Cabinet met more often in the days before the crucial decision under study, not less; furthermore, those meetings were much more deliberative than the ‘focus group’ Savoie describes. Trudeau’s structural changes had tightened the operation of cabinet considerably when compared to the Pearson era, but former cabinet ministers recall cabinet as an open forum where all ministers’ views were welcomed (Lalonde, 2009; Participant 3591, 2010). Although Trudeau took a very active role in the second week of the Crisis, as Savoie’s work would predict, the fact that he did not do so at the outset - leaving the government’s response in the hands of Mitchell Sharp despite the concerns of his PMO staff - suggests that individual ministers wielded considerable influence.

The deliberations of cabinet during the October Crisis do not tell the full story of the invocation of the *War Measures Act*, however: The most paradoxical aspect of the case is that Trudeau’s government invoked the *Act* in spite of their better judgment - and the reason for this is to be found not in Ottawa, but in Quebec City.

### ***Trudeau and Federalism***

As explained previously, a second significant question about the nature of Prime Ministerial power concerns the curious role of federal-provincial relations. Savoie

(1999b) describes this as a factor that drives power into the hands of the Prime Minister, whereas Bakvis (2001) persuasively argues that federalism is actually the most significant constraint on the exercise of that same power. It transpires that the decision to invoke the *War Measures Act* sheds light onto this dual role - and suggests that while both accounts have merit, it is Bakvis' portrayal of federalism as constraint that is most salient.

As early as April 1968, most likely in the days immediately before Trudeau's entry into the Prime Minister's Office, a series of hand-sketched organizational charts for the Privy Council Office show a variety of possible formulas for creating a distinct body to handle federal/provincial relations within PCO (Untitled sketches, *circa* April 1968). Though not in Trudeau's own hand, the fact that these were later filed in his personal papers, and feature marginalia in his characteristic (and inscrutable) script, underscores the importance that the incoming Prime Minister and his immediate staff placed on this issue. Two years later, following the tumultuous Quebec provincial elections in early 1970, the same preoccupation with coordinating federal/provincial affairs is visible. Marginalia on a copy of a memorandum to cabinet on the issue of national unity, dated May 4<sup>th</sup> and found in Gordon Robertson's files, suggest that a centralized secretariat should be set up within the Privy Council Office for this "priority program" (Draft Memorandum to the Cabinet: The Quebec Situation and National Unity, May 4, 1970: 5). Cabinet subsequently adopted this proposal in a meeting on May 7<sup>th</sup> (Cabinet conclusions, no. 29-70). Taken together, these findings support Savoie's (1999b) argument that there was a long-standing desire to centralize and control federal-provincial relations - although a formal secretariat for federal-provincial affairs was not actually created within PCO until 1975 (Savoie, 1999b: 638).

As has been mentioned above, the federal response to the events in Montreal of October 1970 involved significant coordination with the Government of Quebec from the outset. Mitchell Sharp made clear on the morning of October 6<sup>th</sup> that this would be an integral part of the federal government's approach (PCO: Cabinet committee on priorities and planning, no. 33-70); as the PMO chronology shows, Sharp was in close communication with Choquette up until the evening of October 10<sup>th</sup> (Events on the Weekend Re the FLQ, October 13, 1970). This is echoed by both Lalonde and by a former cabinet minister (Lalonde, 2009; Participant 3591, 2010). With the abduction of Pierre Laporte, this coordination merely intensified: Trudeau and Premier Bourassa became the points of contact, and various sources describe a process of intense and almost daily backchannel discussions during which the need for exceptional powers, and the possibility of using the *War Measures Act* to enact such powers, were first raised (Events on the Weekend Re the FLQ, October 13, 1970; Munroe, 2009: 296).

The full significance of the need to coordinate federal actions with those of Premier Bourassa's government becomes apparent when reviewing the cabinet conclusions from October 15<sup>th</sup>. Several ministers voiced frustration at having to delay the federal government's response to the situation in order to accommodate Bourassa, who wanted to legislate an end to a specialist doctor's strike, and then adjourn the Quebec National Assembly, before any federal action was taken. John Turner, for example, complained

that this had effectively caused the federal government to be “immobilized by the F.L.Q.” (Cabinet conclusions, no. 60-70: 6). The cabinet felt it vital that Bourassa be supported, rather than undercut, by their actions; they clearly articulated a belief that the continued existence of constitutional government in Quebec depended on it (Cabinet conclusions, nos. 60-70 and 61-70). It is because of this that the timing of the police raids, and of federal legislation to enable them, became dependent on the timing of Bourassa’s closure of the National Assembly; this timing in turn dictated which of legislative options were viable for the Trudeau government.

Trudeau spent a significant amount of time on October 15<sup>th</sup> meeting with opposition leaders to keep them abreast of the government’s legislative plans (Daily Agenda, 1970). At the beginning of that afternoon’s meeting of cabinet, he reported that all opposition leaders supported special legislation and the *War Measures Act* if necessary - indicating that even as late as 14:30 on October 15<sup>th</sup>, limited special legislation was still seen as a possibility (Cabinet conclusions, no. 61-70). However, the Prime Minister had also become aware (likely in conversations with Premier Bourassa) that the Quebec National Assembly would likely not have finished its business before 01:00 that night, and that the police forces in Quebec felt it necessary to act overnight rather than the next day (Cabinet conclusions, no. 61-70: 4). Opposition leaders were amenable to extending the sitting of the House of Commons, but a motion to this effect would have to be tabled before 22:00 that night. This limited the Trudeau government’s options: If Bourassa managed to complete his legislative business before 21:55, the government would be able to table special legislation in the House. Otherwise, the police raids could either take place that night under the authority of the Criminal Code with special legislation tabled the following day (a course which the Minister of Justice suggested could be problematic), or to invoke the *War Measures Act* that night and go to the House for support afterwards (Cabinet conclusion, no. 61-70.) In the end, Premier Bourassa did not manage to pass his legislation until 01:00, after a marathon sitting of the National Assembly. As a result, the combined necessities of acting during the night of October 15<sup>th</sup>, and not acting before Bourassa was ready, boxed the Trudeau cabinet into taking their least preferred option: To declare a state of apprehended insurrection, invoke the *War Measures Act* by order-in-council overnight, and issue emergency regulations authorizing the police to detain any suspected members of the FLQ.

The logic of federalism - particularly the dynamics at play between Ottawa and Quebec City described above - was determinant of the federal government’s choice of legislative instrument to deal with the Crisis, though not necessarily of their choice to authorize some kind of exceptional powers for police (Munroe, 2009). Trudeau’s own account (1993: 128), the PMO files, and the cabinet records clearly indicate that the decision to invoke the *War Measures Act* in 1970 was not made exclusively in Ottawa, regardless of the more conjectural question of whether or not it *could* have been. The fact that the invocation of the *War Measures Act* was in effect a consequence of the Prime Minister’s need to coordinate his actions with those of a provincial counterpart lends much support to Bakvis’ (2001) account of federalism as a source of constraint on Prime Ministerial power.

## Conclusion

What does the decision to invoke the *War Measures Act* tell us about the nature of Prime Ministerial power, and what does it say about the different images of this power put forward by Savoie, Bakvis, and Aucoin? On the first point, the main theme that emerges from the analysis is that of the limits of power. It is undeniably true that Prime Minister Trudeau had many levers of power at his disposal in October 1970, but despite this fact he found himself adopting a policy that was far from his preferred one. Simply because Prime Ministers exercise sweeping powers on paper does not necessarily mean that they are able to employ them in practice. If anything, the power of the Prime Minister has irregular boundaries that only loosely correspond to those of the parliamentary precinct and to the division of jurisdiction fixed in sections 91-95 of the Constitution (Malcolmson and Myers, 2005: 225-227). Regardless of whether or not the latter division of power has ever been clear-cut (Franks, 1987: 14), this analysis bears out Bakvis' (2001) argument that federalism is a powerful constraint on the power of the Prime Minister even when constitutional boundaries are not explicitly invoked.

Meanwhile, cabinet was clearly very influential in the decision to invoke the *War Measures Act*. Despite many accusations (both at the time and in subsequent years) that the unelected staffers of the PMO held greater weight in Ottawa than cabinet ministers (Radwanski, 1978; Savoie, 1999b; Lalonde, 2009), the events of October 1970 suggest precisely the opposite. If Canada is indeed ruled from the centre by court government today (Savoie, 1999b; 1999a; 2008), it was not in 1970. This is significant, because Savoie's argument about court government turns on the premise of a past 'golden age' that has been superceded by a problematic present (2008: 44, 70-71). Inasmuch as Savoie identifies Trudeau as the turning point between these two eras, then the findings of this paper undermine his argument. Naturally, Savoie's analysis - which spans thirty years and, in its more recent formulation, two countries - can hardly be discredited by a single case study such as this; furthermore, to suppose that Savoie's argument implies an immediate and dramatic change on the very first day of Trudeau's leadership is to make a straw man of a much more nuanced work. Nonetheless, the findings here do suggest that Savoie's oft-repeated refrain of "since Trudeau" (and variations thereof) is on shaky empirical ground (1999a: 74, 86, 99.).

If anything, this paper finds that Matheson (1976) and Bakvis (2001) hold the more accurate view in that they emphasize the continuities of Prime Ministerial power both before Trudeau and since. In addition, there is considerable support for Aucoin's (1986) finding that personal style is largely determinant of the organization and functioning of central government. As Matheson wrote in 1976 (232): "...the primacy of the Prime Minister in the Canadian political system is not a recent development; the Prime Minister of Canada has been far more than first among equals almost continuously since 1867." In 1970 at least, Trudeau was more than first among equals, but considerably less than the progenitor of autocratic Prime Ministerial rule.

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