

**LONG KNIVES, LONG MEMORIES AND “PEOPLES’ PACKAGES”:
THE FEDERAL STRATEGY FOR CONSTITUTIONAL PATRIATION AND
THE DYNAMICS OF IDENTITY CONTENTION**

Neal Carter
Department of Political Science
Box N, Saint Bonaventure University
St. Bonaventure, NY 14778
phone: 716-375-2270
fax: 716-375-7857
email: NCARTER@sbu.edu

Patrick James
School of International Relations
University of Southern California
3518 Trousdale Parkway
Los Angeles, CA
USA 90089-0043
email: patrickj@usc.edu

Abstract

Whether it is remembered as a traumatic event or great accomplishment, one thing that can be certain about the First Ministers’ Conference of 1981 is that its legacy 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, which unfolds in four sections, attempts to assess 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 respective governments represented provincial and national interests at that time may help in dealing with ongoing and similar conflicts today, that is, the difficult questions associated with regional and identity politics. After a brief overview, we review theorizing about conflict processes, with an emphasis on the dynamics of identity contention. Then the background to the constitutional crisis of 1980-81 is summarized. The next section focuses on the federal strategy in the crisis as indicated by minutes from cabinet meetings. Finally, the contributions of the preceding sections are summed up and ideas are put forward for further research.

Overview: The Legacy of 1981

Whether it is remembered as a traumatic event or great accomplishment, one thing that is certain about the First Ministers' Conference of 1981 is that its legacy 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 (Hiebert 2002: ix, 20). Canadians, however, remain far from united on whether this outcome should be regarded as a good thing. Politics in Canada today are almost purely regional and confrontational, with both Reform/Alliance/Conservatives and Bloc Québécois at various times having held status as the official opposition. The appeal of such parties, at least to some degree, can be traced to the way in which the current constitutional status quo came into being – all the way back to a controversial deal reached between Ottawa and the provinces, excluding Quebec, on the night of November 4-5, 1981.

This study attempts to assess 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 ongoing and similar conflicts today, that is, the difficult questions associated with regional and identity politics. 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.

This study unfolds in four additional sections. We first review theorizing about conflict processes, with an emphasis on the dynamics of identity contention. Second, the background to the constitutional crisis of 1980-81 is summarized. The third section focuses on the federal strategy in the crisis as indicated by minutes from cabinet meetings. Fourth, the key events of the First Ministers Conference of November 1981 are reviewed. Fifth, and finally, 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, Tarrow, and Tilly (2001) offer a prominent critique of the classical social movement agenda, for which they are in no small part responsible, and that assessment is quite relevant to the current project. This classical approach, by focusing on such issues as social change, political opportunities, mobilization structures, frames, and repertoires of actions, clarified many facets of social movements and stimulated much empirical work. However, McAdam et al. (2001) note that the research agenda has become a bit too structural and static, and that it tends to produce ‘snapshot’ characterizations of contentious behavior. They also note that many interesting points of contention are embedded in the unspecified arrows connecting the concepts listed above. McAdam et al. (2001) therefore advocate that we move to the question of *how*, rather than *how much*, these factors actually influence one another.

Perhaps we should turn to the study of the dynamics of contention, rather than simply the conditions thereof (McAdam et al. 2001). While structural concerns (e.g., social conditions, forms of organization, opportunities and constraints, state capacity) remain essential to explanation, we also should study cognitive and relational mechanisms and

processes. Mechanisms that reflect interpersonal relations are “a delimited class of events that alter relations among specified sets of elements in identical or closely similar ways over a variety of situations” (McAdam et al. 2001: 24). For example, “framing” refers to the way in which parties to the conflict represent grievances, events, and social conditions as they seek support. These and other mechanisms become the building blocks of conflict analysis, combining into processes, such as mobilization or state building, which are “regular sequences of such mechanisms that produce similar (generally more complex and contingent) transformations of those elements” (McAdam et al. 2001: 24). The task set before us is therefore to increase our general knowledge of conflict through recognition of how mechanisms and processes are produced in various instances of contention. In undertaking this task, a useful tool is a diagrammatic approach (e.g., Figure 1, which appears later) to understanding goals and motivations of the actors at various phases of the conflict over identity.

Constitutional politics may be seen in light of identity conflict. Constitutions often devote significant time to shaping institutions and defining who counts as a full-fledged member of the state. It therefore is useful to consider constitutional politics as being partly a matter of identity politics. McAdam et al. (2001) advance several propositions about political identities. It is worth quoting these directly:

1. participants in contentious politics constantly manipulate, strategize, modify, and reinterpret the identities of parties to their contention, including themselves.
2. in a wide variety of contentious politics mobilization of identities constitutes a major part of claim making.
3. while new identities emerge during contentious episodes, most individuals initially join the fray through interactive appeals to, and successful appropriation of, existing identities.

4. the form, content, and effectiveness of identity mobilization strongly affect both collective action and its outcomes.

5. creation, transformation, and extinction of actors, identities, and forms of action in the course of contention alter the array of actors, identities, and actions that appear in routine politics and further contention once the particular episode of contention has ended.

6. when it comes to explaining contentious politics, the crucial arena for causal mechanisms lies not in individual minds but in social interaction (McAdam et al. 2001: 56).

McAdam et al. (2001) thus seek to emphasize the fact 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, and thus the way in which identities are discussed and manipulated rather than individuals' identities.

McAdam et al. (2001) list opportunity spirals, identity shift, competition, and brokerage as the central mechanisms in identity-based contention.¹ *Opportunity spirals* represent the shifting, interrelated cost-benefit calculations made by various leaders during an ongoing episode of contention. Action on the part of one party will change the other's calculations. *Identity shift* involves a transformation of identification and affiliations on the part of those involved in the conflict. In the case study below, we use *identity shift* to indicate alterations in the emphasis placed on the various characteristics that are used to describe an identity as well as a shift in the use of identifying labels. *Competition* within one of the contending groups can change strategies, as leaders struggle for ascendancy within their group as well as success in contention with the out-group. *Brokerage* is "the linking of two or

¹ Discussion beyond this point is adapted from the approach put forward by McAdam et al. (2001). For example, the concept of the *opportunity spiral* is considered within the *dominant/challenging leaders' problem representation*, as opposed to being depicted separately, in Figure 1.

more previously unconnected social sites by a unit that mediates their relations with one another and/or with yet other sites” (McAdam et al. 2001: 26). The authors note that it is somewhat arbitrary as to whether these phenomena are viewed as mechanisms or processes, since it may simply be a continuum based on the complexity of explanation desired.

Opportunity spirals could be broken down into smaller units of action (see also, Kriesberg, 2003). The mechanism of *identity shift* might be sufficient for some explanations of conflict, but researchers may seek a greater understanding of an event and attempt to discover mechanisms embedded in the process of identity formation or identity shift.

[FIGURE 1 ABOUT HERE]

Extrapolating from these insights, Figure 1 presents a model for mapping identity conflict. This model indicates that such conflict is intensely interactive and contains a great number of feedback loops. In this model, *competition* is implicit in the notion that the events happening in one party’s group affect the opposing elite’s problem representation (i.e., their depiction of the situation).² Framing is reduced to the mechanisms of *problem representation*, *conscientization*, and *demands*. *Problem representation*, or the way in which individuals perceive or portray the situation they are examining, influences the tactics used to meet their goals (for information on problem representation, see Sylvan and Voss 1998).³ Dominant and challenging group 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 directly move toward *mobilization*. Brokerage may affect the leaders’ problem representations, affect *conscientization* efforts, or influence *mobilization* attempts.

² Components from Figure 1 are designated from this point onward with italics.

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, & Woodhouse, 1999).

Effective *conscientization* and *mobilization* will alter 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* can produce an *identity shift* that may then alter *group leaders' problem representations*, and perhaps the leadership itself. *Institutional demands* for changes in the social or political structure often lead to some sort of confrontation or negotiation among the leaders of the conflicting groups. This confrontation then may produce an *institutional shift* in which the conditions of coexistence change, thereby altering the leaders' problem representations and producing another cycle of opportunity for new *conscientization*.

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. 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, i.e., bi-directional. Investigation of these features relies heavily on the case itself.

³ Since it is not possible to analyze perceptions directly, we are limited to studying representations, or portrayals, of issues. Studies of problem representation are useful in examining the processes involved in decision-making.

In the case study that follows, we concentrate heavily on the dominant (federal) elite's strategies. This is necessary given that the source material we are analyzing is primarily from federal cabinet meeting minutes. Without equal access to comparable provincial records, we are forced to be temporarily satisfied with a fairly one-sided approach. However, it is likely that the provincial leaders were using similar tactics.

Background to the Crisis of November 1981

It is very 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 more than 13 unlucky decades of disagreement between those with central versus regional orientations, with the most frequent battle lines being drawn between Quebec and Ottawa (James, Abelson and Lusztig 2002).⁴ The shifting 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 Quebec government withdrew its initial consent to the Victoria Charter of 1971 – itself a response to the violent October crisis of 1970 – although the agreement met many of Quebec's demands directly. In Figure 1, this would make up part of the chain of *institutional demands* to *contention over institutions*, with failed *institutional change*. The Victoria Charter included several *institutional demands* described as essential by 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 with financial compensation. Opposition within Quebec, due partially to

⁴ Given 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, and thus we extend *brokerage* to also include *alliance building*.

Quebec's lack of sole constitutional control over family allowances, forced Bourassa to rescind his support. This failed implementation of the agreement led to further negotiations during the 1970s, with an increasing sense of urgency as a result of rising nationalism within Quebec (see LaPierre 1992).

The election of René Lévesque's separatist *Parti Québécois* to a majority in the 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. 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 Pépin-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. Trudeau, however, rejected those suggestions because he favored different *institutional demands*, including a Canadian Charter of Rights and Freedoms for which he was willing to consider increased provincial participation in federal institutions. Bill C-60, a federal attempt at an *institutional change* that failed to become law, covered 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, for example, released detailed reports, as did the

Quebec Liberal Party. The *Parti Québécois* continued to advocate sovereignty-association in a build-up to the referendum that it ultimately held in 1980 (McRoberts 1997).

During the referendum campaign, federalist leaders countered the separatists with claims that a new constitutional arrangement would be feasible and in the best interests of Quebec. Prime Minister Trudeau, back in office after a brief six-month hiatus, promised constitutional revision: “We are staking our seats to have change” (LaPierre 1992, 201). In the Cabinet meeting on 1 May 1980, Federal Attorney General and Justice Minister Jean Chrétien reported that the campaign was going well, thanks in part to intervention by Anglophone premiers. Chrétien noted that the Anglophone premiers were stressing the importance of involvement with a post-referendum strategy of constitutional reform (Minutes of Cabinet Meeting, 1 May 1980).⁵ The country was expecting some kind of 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. Since the provincial premiers were viewed essentially as “power brokers” concerned with protecting their own selfish interests rather than the general welfare

⁵ References to Cabinet minutes in this paper reflect their recent availability to the authors and scholars in general. 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. Since the federal government reached agreement on a constitutional reform package with the provinces (aside from Quebec) in November 1981 and went ahead at that point to patriate the constitution, we requested the documents used in this study at the first time of availability, that is, November 2001. (The more 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 Ciineas Boyle, Coordinator, Access to Information and Privacy, for assistance in obtaining the needed materials.) 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 formulated their proposals. Some material remains confidential and is stricken from the record as provided by the PCO. 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 defence, required the PCO to delete material from the minutes and documents provided to us.

of Canada, the cabinet privately believed it might be better to pursue patriation without provincial involvement. Federal priorities would include entrenching linguistic rights and redistributing wealth (Minutes of Cabinet Meeting, 15 May 1980). The *non* side won the 20 May 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, could and did continue to seek constitutional revision. A new round of *contention over institutions* would have to 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* as related to Ottawa's vision of Canada. In the 22 May Cabinet Meeting, Prime Minister Trudeau criticized Newfoundland's position that the federal government was simply an agency of the provinces, and told cabinet members to refrain from making public statements on constitutional reform until Chrétien had returned and given a report on the provincial positions (Minutes of Cabinet Meeting 22 May, 1980). The government quickly developed a position on aboriginal self-government within strict limits (Minutes of Cabinet Meeting 29 May 1980). This represented an effort to reconcile the intensifying effects of the interconnected *identity demands* and *institutional demands* among aboriginals with Ottawa's centralizing project.

A First Ministers' Conference in early June raised a number of issues, but received a mixed reception. On the question of a Charter of Rights, several provinces supported requiring provinces to opt in before being subject to the Charter, but the proposal of having a notwithstanding or overriding clause gained little support. The Premiers called for the abolition of the Federal reservation and disallowance powers. 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 in all provinces.

Contention over institutions had reached a high level at this point in Canada's political development, a point brought out by proposals from Ottawa on a potential amending formula and Senate reform. The amending formula had been a point of contention that had long prevented Canada from gaining independent control over its constitution. Chrétien mentioned 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 accepted, but then 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 the subject of 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).

By mid-June, Chrétien had submitted a memorandum entitled "Towards a New Canadian Constitution: Federal Positions on the Priority Items" to Cabinet addressing

Federal negotiation strategy. Significant questions raised in the memorandum 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 that negotiations were likely to involve included: recognition of the “duality of Canada;” redistribution of economic, social and cultural powers; provincial influence in central institutions; and special arrangements for Quebec (Minutes of Cabinet Meeting 16 June, 1980).

In the Cabinet meeting of 27 June 1980, the Cabinet indicated that its key considerations in the characteristics of Canadian Society would include Indigenous peoples, 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. Cabinet also noted that economic inequality and regional disparities required some form of equalization, but equalization was a source of resentment. The ministers indicated that the time spent on the Constitution would result in a popular expectation 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 (Minutes of Cabinet Meeting 27 June, 1980).

Over the summer, Chrétien traveled to Montreal, Toronto, and Vancouver for constitutional negotiations. Chrétien’s strategy was to separate the “people’s package” of a Charter of Rights and a formula for amending the constitution from a new division of powers between Federal and Provincial governments. Chrétien had indicated that patriation was not negotiable, and the Federal Government would act unilaterally if no agreement

could be reached by mid-September. In his negotiations, Chrétien found a connection between powers over the economy, resource ownership, and interprovincial trade. He took a hard line on economic power issues, and had obtained provincial consensus for incorporating economic union in the constitution. He noted that the key issues were resource ownership, interprovincial trade, offshore resources, power over the economy, 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 (Minutes of Cabinet Meeting 31 July 1980).

On 1 August 1980, Chrétien sought the Cabinet’s opinion on the extent of negotiation flexibility in resources, trade, communication, and fisheries. He also requested a statement of objectives regarding the constitutional package. Chrétien indicated that if the government was 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 (Minutes of Cabinet Meeting 1 August 1980). Many Canadians were expecting some key shifts in distribution of powers and changes that would address the concerns of Quebecers and Westerners; in other words, they hoped for *institutional shifts* to reflect *identity demands* ranging from Western alienation to Quebec nationalism.

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 also reiterated its desire to keep the “people’s package” of patriation of the constitution including an amending formula and Charter of Rights and Freedoms 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 indicated there was little hope in 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 amending formula, but no consensus had emerged (Minutes of Cabinet Meeting 5 September 1980).

Frustrated by the unsuccessful First Ministers Conference of September 1980, Trudeau threatened to patriate the constitution by the Federal Government acting unilaterally. Showing concern for *conscientization*, Trudeau criticized his cabinet for leaks to the press on the Constitution and energy. He reiterated his commitment to a minimum position of patriation of the constitution with an amending formula and a Bill of Rights with an opting in procedure, although Cabinet indicated that opting in was too weak. They preferred to make the provinces opt out of a Charter rather than to opt in (Minutes of Cabinet Meeting 18 September 1980). If the provinces continued to obstruct Constitutional reform, Trudeau intended to bring the minimal revision to the Privy Council. On 30 September, the Cabinet discussed a draft resolution on the Constitution. Of particular concern were the application of a Human Rights Charter to the provinces, inclusion of language of education in the Charter, specific formulation of the amending formula, entrenchment of equalization payments, and tactics parliament would employ to gain their objectives. The cabinet was divided on the issue of language of education, which they saw as potentially in conflict with mobility rights and free choice. The amending formula proposal

was that the federal government would allow the provinces two years to propose an alternative to the Victoria formula. If the provinces did produce an alternative, the Federal government would have two years to hold a referendum between Victoria or a Federal proposal and the provincial proposal. The government left open the possibility of a Federal referendum, although there was internal debate over the issue. The cabinet agreed that any Senate reform would require unanimous consent of all legislatures (Minutes of Cabinet Meeting 30 September 1980).

On October 2, Trudeau reported that he had talked to federal party leaders Clark and Broadbent, as well as some premiers, and Chrétien had discussed the federal plans with provincial opposition leaders. Clark and Broadbent indicated they would support a nondivisive resolution, but Clark stated he would oppose a unilateral federal attempt to patriate the constitution while Broadbent indicated he would oppose anything that might alienate the west. Trudeau recommended that the idea of recourse to a referendum be dropped and that the wording of the goal of economic equalization be reworded so as not to require payments (Minutes of Cabinet Meeting 2 October 1980). In other words, intergovernmental *brokerage/ alliance building* politics continued apace.

On 6 October 1980 Trudeau submitted his unilateral resolution before Parliament, including an amending formula and provisions less favorable to provinces than had been previously discussed. However, as a result of this process of *brokerage/ alliance building*, he had gained the support of only Ontario and New Brunswick. Furthermore, Cabinet members expressed concern that members of the Liberal Party were not united behind the government's position (Minutes of Cabinet Meeting 9 October, 1980).

On 14 October, 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. The cabinet meeting of 16 October addressed some of the problems with the federal campaign. Cabinet noted that the government lacked ministers to discuss the constitution in the West. Other issues of particular concern included the following: the protection of minority language rights in the Charter was not understood and was weaker than Quebec's Bill 101, there were requests for clarification of the use of referenda, and the Civil Liberties Union was mixed on letting courts decide "reasonable standards" under the charter. The cabinet also noted the need for a good advertising campaign to counteract negative reaction to federal proposals (Minutes of Cabinet Meeting 16 October 1980). This represented understanding of the need for further *conscientization*. The federal government spent the next month concentrating on getting the message to British Columbia, Alberta, and Newfoundland, stressing the interdependence of the Constitution, the budget, and the National Energy Policy, which was very unpopular in the West (Minutes of Cabinet Meeting 23 October 1980; 28 October 1980; 6 November 1980).

Debate moved to televised hearings of the Joint Committee on the Constitution of Canada. Most provinces, however, decided to boycott these hearings (Cairns 1991). In an attempt to help provinces block Trudeau's plans, the Progressive Conservatives extended debate at the federal level. The strong opposition of both the federal Tories and the provinces showed recognition that Trudeau wanted 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.

In November, the federal *conscientization* efforts were considered effective in British Columbia, but not in Alberta. The government decided to avoid business groups and go to smaller towns to sell their message (Minutes of Cabinet Meeting 20 November 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 mostly reflected a reaction against the possibility of unilateral federal action. In December, Chrétien noted that the Progressive Conservatives had been opposed to everything the government had tried to do. The government also revised its views on amending formulae and the role of referenda (Minutes of Cabinet Meeting 11 December 1980). December also brought the Trudeau strategy into conflict with the Senate, with Chrétien and Senator Perrault disagreeing about the Senate's attitude in the Cabinet meeting of 18 December.

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 Native groups, especially any attributes of statehood or anything that could affect land claims (Minutes of Cabinet Meeting 15 January 1981). Newfoundland and Saskatchewan were seen as threats to federal proposals and therefore targeted for federal *conscientization* efforts (Minutes of Cabinet Meeting 22 January 1981).

By February 1981, the alliance of premiers opposed to Trudeau's plan grew to include Prince Edward Island, Nova Scotia and Saskatchewan. They became known as the "Gang of Eight", who opposed Trudeau's centralizing proposals. The Gang of Eight developed their own constitutional proposal (*institutional demands*), aimed at the protection of provincial rights. Part of this April 16, 1981 agreement (reached just days after a *Parti Québécois* electoral victory) included the loss of Quebec's traditional veto in exchange for concessions that included an opting out clause with financial compensation (Cairns 1991; Fournier 1983; McRoberts 1997). The actual negotiations of these meetings remain something of a mystery, but it is fairly certain that 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 (Cairns 1983). The West, too, had a significant separatist movement, sparked by limited participation in the Trudeau government and opposition to Trudeau's National Energy Program (Gibbins 1983; Uslaner 1989; James 1993a, 1993b). 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 Constitutional proposal, due largely to the inclusion of women's rights that strengthened the pro-abortion position (Minutes of Cabinet Meeting 5 March 1981).

The government decided to provide funding to support participation of national and territorial Native organizations in the constitutional process (Minutes of Cabinet Meeting 23 April 1981). This represented an effort toward simultaneous *brokerage/alliance building* and *conscientization*. They also concentrated on establishing contingency plans to address possible outcomes of the Supreme Court cases regarding Trudeau's threatened unilateral patriation of the constitution. By May, the government felt that the press had been won over by the Charter, and advocated that ministers stress the benefits of entrenchment (Minutes of Cabinet Meeting 7 May 1981; 14 May 1981). They continued to be criticized on the economy and the NEP (Minutes of Cabinet Meeting 4 June 1981). Trouble also continued in the Senate, with some Liberal Senators threatening to leave the caucus (Minutes of Cabinet Meeting 11 June 1981). British Columbia added to the criticism of the federal government, blaming Trudeau for the slow movement on the constitution and for high hydro rates (Minutes of Cabinet Meeting 18 June 1981).

As the Supreme Court decision drew closer, the cabinet anticipated an unfavorable ruling, and prepared to try to co-opt some of the opposing premiers (Minutes of Cabinet

Meeting 24 September 1981). On September 28, 1981, the Supreme Court ruled (as a result of the three provincial cases that by then had produced contrary judgments) that a federal decision to patriate the constitution unilaterally would be in adherence with the law but contrary to constitutional convention. The constitutional weight of the custom of seeking substantial provincial support for constitutional amendments would weaken the legitimacy of any unilateral proposal. In an attempt to gain more provincial support, Trudeau met with BC premier Bennett, who indicated that he thought the First Ministers would agree to meet in order to discuss the 16 April agreement that was reached by the “Gang of Eight.” That agreement rejected 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 that had threatened to delay action to bother the Thatcher government.

On the home front, Premier Lyon’s opposition to the Charter made him vulnerable in upcoming elections in Manitoba. In addition, the opposition NDP in that province was divided over constitutional issues, which made the situation even more complicated. The federal cabinet also decided to encourage Ontario to agree to official bilingualism and also agreed that it should offer the option of opting out from certain Charter rights. The cabinet indicated that it might accept a provincial amending formula in exchange for entrenchment of the Charter (Minutes of Cabinet Meeting 13 October 1981). Finally, the cabinet further decided that, outside Québec, ministers should portray (*problem representation* and *conscientization*) all opposition to the Federal Government’s proposals as helping Québec separatists and noted that it would not give up the Charter, although timing and substance could be negotiated (Minutes of Cabinet Meeting 15 October 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 if at the expense of regional autonomy in at least some areas.

After several attempts at scheduling, Trudeau finally was able to get agreement for a First Ministers Conference in November 1981.

The First Ministers' Conference of November 1981

The Federal Government's strategy was to attempt to win over seven or eight premiers to a consensus and then seek patriation on the basis of that consensus. (Minutes of Cabinet Meeting 3 November 1981). During the First Ministers' conference, little progress occurred over the first two days. Saskatchewan Premier Blakeney disliked the mobility provisions, Alberta Premier Lougheed refused the imposition of the Charter of Rights, and Premier Levesque fundamentally opposed the language provisions (Minutes of Cabinet Meeting 3 November 1981). Trudeau had suggested a referendum procedure, but the premiers objected. The Western and Atlantic premiers opposed the referendum, since it would allow Quebec and Ontario to "gang up on them with a simple majority" (Minutes of Cabinet Meeting 3 November 1981). They also rejected Trudeau's offer of establishing four regional referenda, since that still would violate provincial sovereignty and equality. Trudeau also offered to put in a provincial amending formula rather than the Federal Government's preferred formula. The Cabinet also debated the Charter. Five or six premiers seemed likely to accept a truncated version of the Charter. Trudeau indicated he didn't like the possibility of a Charter that would require provinces to opt in before they were subject to its provisions. There was more room 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 (Minutes of Cabinet Meeting 3 November 1981). At this point, even sustained efforts toward *brokerage* had not produced success for Ottawa.

Then, on November 4, the Gang of Eight's unity began to dissolve when Lévesque indicated his readiness, if needed, to hold a referendum in Quebec on the constitution (LaPierre 1992; McRoberts 1997). 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 over patriating the constitution would fail, but provincial and federal negotiators – primarily Federal Justice Minister Jean Chrétien, Ontario Attorney-General Roy McMurty and Saskatchewan Attorney-General, Deputy Premier, and Minister of Intergovernmental Affairs Roy Romanow – reached an agreement during a night session at which Quebec officials were absent. Quebec nationalists often refer to that meeting as “The night of the long knives.”⁶ The process of *brokerage* finally had produced a compromise among all of the provinces aside from Quebec.

Quebec lost special veto powers as a result of the agreement, which included a complex amendment package. Instead, Quebec was to be treated constitutionally as a province like the others – a clear repudiation of the sustained idea in that province of Confederation as a pact between nations. Strictly limited, too, was the right to financial compensation for opting out. Although Trudeau gained his Charter of Rights and Freedoms, he had to accept the Notwithstanding Clause that allowed provinces to override the protections in the Charter under certain conditions. For the most part, Quebec's long-standing *institutional demands* remained unmet by the agreement.

⁶ Gérard 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

The Federal Government felt the need to accept the agreement as dated 5 November 1981, since changes could provide the opposition with extra opportunities to delay action. The Cabinet was concerned that the Accord dropped Aboriginal rights from the Charter, and discussed the nervousness of the Quebec caucus caused by Premier Levesque's refusal to accept the agreement (Minutes of Cabinet Meeting 6 November 1981).

Mixed reactions ensued. Premier Peckford of Newfoundland and Premier Davis of Ontario expressed great satisfaction with the agreement. Trudeau, determined to patriate the constitution, accepted the deal, saying "We'd better grab the signatures and run before anyone changes his mind" (Banting and Simeon 1983, 2). Lévesque, having left the meeting with the belief that no progress would be made, returned to find the deal made and probably felt forced to reject it. The split between federalist and nationalist Quebecers widened and *institutional contention* became even more intense.

Trudeau asserted that Quebec was governed by a separatist party that would lose its *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 games of constitutional negotiation would continue.

Many Quebecers felt betrayed by the 1982 Constitution Act, regarded as an *institutional shift* eliminating the province's presumed co-equal status in a dualistic Canada. 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 to

opportunity for consensus and did not consider the isolation of Quebec that might result as a major

shield themselves from 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 *brokerage/alliance building* within the process. The Clause enables a province to enact laws that violate the Charter, 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).

Quebec’s *Parti Québécois* government passed a resolution condemning the 1982 Constitution Act due especially to its lack of recognition for Quebec as a culturally distinct society and to disagreement over the Amending Formula (Watts 1991). Its legislature subsequently invoked the Notwithstanding Clause on a routine basis, thereby implicitly recognizing the Constitution Act’s authority. This practice ended when Robert Bourassa returned the PLQ to the provincial government in 1985 and ushered in a new phase of negotiation between Ottawa and Quebec (Monahan 1991). The nature of the *challenging group 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 the constitutional negotiations of November 1981, an event that continues to influence Canadian politics today. The diagrammatic exposition of the dynamics of identity contention from McAdam et al. (2001) provides a valuable means toward understanding the difficult and controversial process that led to

consideration.

patriation of the Canadian Constitution in 1982. Concepts such as brokerage, conscientizing, mobilization, identity demands and shifts, and institutional demands and shifts are valuable in explaining various aspects of the federal approach toward patriation along with actions by the provinces. For example, Bill-C60 represented more than just a bill – it can be conceived of as a failed *institutional shift*. The *institutional demands* of the Victoria Charter became embedded into future negotiations over the constitution. On more than one occasion, cabinet deliberations can be described as putting an emphasis on *conscientization* the public in an effort to achieve a *constitutional shift* and counteract contrary *constitutional demands* from the provinces, for example, as related to the controversy over inclusion of the Charter. The process leading up to the *constitutional shift* can be summed up as a *contention over institutions*. Finally, the *dominant and challenging group leaders' problem representation* held firm in a strategic sense over many years, with some tactical flexibility exhibited by both sides. In November 1981, for example, Trudeau accepted the Notwithstanding Clause, while provincial leaders appeared in shifting coalitions.

Each of the six propositions about political identities from McAdam et al. (2001) finds support in the present study. First, the participants in contentious politics over the Canadian constitution, referring most directly to the federal and provincial governments, made visible and strong efforts to produce changes in identity – such as the Federal Government's designation of a "People's Package" – 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. Third, the "new" emerging identity of 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, as

attempted by Ottawa and the provinces, had strong effects on collective action and its outcomes; ultimately, the Federal Government was able to outduel most provincial governments in terms of a support for a 'made in Canada' constitution. Fifth, changes in actors, identities and forms of action clearly altered 'politics as usual' and produced a legacy of further contention; most notably, battles continue over the meaning of the Charter to this very day, with aboriginal issues providing just one major example (Cairns 2000; Flanagan 2000; Hiebert 2002; James, Abelson and Lusztig 2002). Sixth, and finally, social interactions involving Ottawa, provincial governments and the mass public shaped the contentious politics of constitutional crisis more than what might have been in the minds of even the most important individuals.

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 new and one case cannot establish high confidence in its future value. 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, i.e., federal cabinet minutes, shows that many of the linkages displayed in Figure 1 operated at various points in the process of constitutional reform. But what exactly would amount to 'enough'? This is a question that must await further investigation.

Future research should seek a more formal presentation of the process described above, perhaps carried out in a game-theoretic model. 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.

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Figure 1: Dynamics of Identity Contention

