



A LIVING TREE

THE LEGACY OF 1982
IN CANADA'S POLITICAL EVOLUTION

SASKATCHEWAN INSTITUTE OF PUBLIC POLICY

Competing Constitutional Paradigms: Trudeau versus the Premiers, 1968-1982

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The *Constitution Act, 1982* with its *Charter of Rights and Freedoms*, achieved following a prolonged period of mega-constitutional negotiations, culminated in the transformation of Canadian constitutionalism. At the heart of this transformation were three elements. First, patriation of the *British North America Act, 1867* was achieved thereby ushering in the final stage in the Canadianization of Canada's Constitution. Overcoming constitutional colonialism had been a long, arduous, and at times unhelpful evolutionary process. Henceforth, Canada and Canadians would operate constitutionally as a fully sovereign nation-state. This was crucial in the context of the Québécois secessionist movement which has held sway since the mid 1960s.

Second, the *Constitution Act, 1982* confirmed in spades the federal nature of the Canadian Constitution. The general 7/50 amending formula, based on the principle of the equality of the provinces, ran counter to the two-nations and regional theories of Confederation and firmly established the constitutional equality of the provinces. Furthermore, section 92A strengthened provincial control over non-renewable natural resources thereby reaffirming yet again the federalist paradigm of the Canadian Constitution. Both of these principles were at the heart of the long term demands of the Western premiers led by Premier Lougheed of Alberta. Lougheed, in many ways, took on a political – constitutional role similar to that of Oliver Mowat who had lead the successful struggle for the constitutional recognition of the provinces as co-equal sovereign entities within areas of provincial jurisdiction.

The premiers were confronted with a competing constitutional paradigm. This third and highly transformative element in the *Constitution Act, 1982*, was the Canadian *Charter of Rights and Freedoms*. Trudeau's 'piece de resistance,' dubbed the 'People's Package,' added a long overdue citizens dimension to a democratized Canadian constitutionalism. One often overlooked element in this 'People's Package' is the clause on equalization which entrenched the established arrangements in fiscal federalism which enable Ottawa to use its taxing and spending powers to achieve national levels in the delivery of public services under the jurisdiction of the provincial governments. Thanks to both of these transformative constitutional measures, Canadians finally became a fully independent sovereign people.

This paper will analyze how and to what effect these competing constitutional paradigms were negotiated by Trudeau and the Premiers. For over a decade, the Premiers thwarted Trudeau's attempts to add a new, highly transformative paradigm to Canadian constitutionalism. How did Trudeau manage to overcome the premiers' staunch opposition to this constitutional 'revolution' following his re-election in 1980? What are some of the strengths and weaknesses of these entrenched competing constitutional paradigms which are at the heart of the *Constitution Act, 1982*.