

## **Disorganized Labour: Canadian Unions and the *Constitution Act***

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Numéro 36, 2007

Democracy, Rule of Law and Human Rights. Canada 25 Years after the *Charter of Rights and Freedoms*  
La démocratie, l'État de droit et les droits de la personne. Le Canada, 25 ans après la *Charte des droits et libertés*

URI : <https://id.erudit.org/iderudit/040780ar>

DOI : <https://doi.org/10.7202/040780ar>

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Éditeur(s)

Conseil international d'études canadiennes

ISSN

1180-3991 (imprimé)

1923-5291 (numérique)

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Citer cet article

Savage, L. (2007). Disorganized Labour: Canadian Unions and the *Constitution Act*. *International Journal of Canadian Studies / Revue internationale d'études canadiennes*, (36), 145–159. <https://doi.org/10.7202/040780ar>

Résumé de l'article

Cet article porte sur les débats intervenus au sein du mouvement ouvrier canadien au moment de la réforme constitutionnelle qui a eu lieu au début des années 80. En particulier, l'auteur soutient que les divisions politiques à l'intérieur du mouvement syndical et du Nouveau Parti démocratique (NPD) ont convaincu les dirigeants du Congrès du travail du Canada (CTC) de s'exclure du processus de rapatriement de la Constitution. Plusieurs universitaires ont soutenu que le CTC n'était pas au courant des questions constitutionnelles ou s'en désintéressait. Cependant, selon des sources de premier plan, ces explications sont insuffisantes. Même s'il est exact de dire que le CTC n'a pas participé activement au processus menant à la réforme constitutionnelle, il ne faut confondre inaction et désintérêt. Le Congrès a pris la décision politique stratégique de s'exclure du débat sur le rapatriement afin d'éviter une lutte interne entre ses alliés au NPD et sa filiale, la Fédération des travailleurs et travailleuses du Québec.

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## *Disorganized Labour: Canadian Unions and the Constitution Act*

### **Abstract**

*This article focuses on the Canadian labour movement's experience with constitutional reform in the early 1980s. Specifically, it argues that political divisions within the labour movement and the New Democratic Party (NDP) convinced the leadership of the Canadian Labour Congress (CLC) to exclude itself from the process of patriating the Constitution. Several scholars have previously argued that the CLC was either unaware of or genuinely disinterested in constitutional issues. However, primary sources strongly indicate that these explanations are simply insufficient. Although it is accurate to suggest that the CLC was not an active participant in the process of constitutional reform, inactivity should not be confused with disinterest. The Congress made a strategic political decision to exclude itself from the patriation debate in order to avoid an internal battle between its allies in the NDP and its affiliate, the Québec Federation of Labour.*

### **Résumé**

*Cet article porte sur les débats intervenus au sein du mouvement ouvrier canadien au moment de la réforme constitutionnelle qui a eu lieu au début des années 80. En particulier, l'auteur soutient que les divisions politiques à l'intérieur du mouvement syndical et du Nouveau Parti démocratique (NPD) ont convaincu les dirigeants du Congrès du travail du Canada (CTC) de s'exclure du processus de rapatriement de la Constitution. Plusieurs universitaires ont soutenu que le CTC n'était pas au courant des questions constitutionnelles ou s'en désintéressait. Cependant, selon des sources de premier plan, ces explications sont insuffisantes. Même s'il est exact de dire que le CTC n'a pas participé activement au processus menant à la réforme constitutionnelle, il ne faut confondre inaction et désintérêt. Le Congrès a pris la décision politique stratégique de s'exclure du débat sur le rapatriement afin d'éviter une lutte interne entre ses alliés au NPD et sa filiale, la Fédération des travailleurs et travailleuses du Québec.*

The 1980–81 Special Joint Committee on the Canadian Constitution heard submissions from over one thousand individuals and groups concerned about patriation and the proposed *Charter of Rights and Freedoms* (Sheppard and Valpy 1982, 137). Women's organizations, civil liberties associations, Aboriginal organizations, ethno-cultural groups, and the business lobby all made their presence felt; the committee even heard from a group of British Columbians who wanted the right to use hallucinogenic

mushrooms entrenched in the Constitution (Sheppard and Valpy 1982, 137). Surprisingly, the Canadian Labour Congress (CLC), the largest and most influential central labour body in Canada, chose not to make a formal oral presentation to the committee.

Despite recent declines in union density, organized labour has remained an important social and political force in Canada. That said, it is impossible to speak of a pan-Canadian labour movement. Canada's regional character and linguistic duality have created one of the most substantial divisions within the labour movement. Indeed Canada is home to two distinct labour movements: one in English Canada and one in Québec. The vast majority of unions outside of Québec are affiliated to the confederally organized CLC. However, Québec unions have gravitated in different directions, affiliating themselves to a host of independent unions and a number of different labour centrals including the CLC-affiliated Québec Federation of Labour (FTQ),<sup>1</sup> the *Confédération des syndicats nationaux* (CSN) and the *Centrale des syndicats du Québec* (CSQ). The Québec labour movement is distinct because of its provincial focus, its collective identity and its shared history and language. The province's labour movement is also unique because of the multiple competitive trade union federations that exist in the province (Lipsig-Mummé 1995, 209).

The *de facto* existence of two distinct labour movements in Canada has meant that political struggles that have typified national politics are also in evidence in labour politics. At stake at both levels are issues of power, identity, and citizenship, which overlap and often conflict with one another. The fact that so many political conflicts resolve themselves into constitutional struggles stands as stark testimony to the abiding fractures in the Canadian polity. Constitutional discord is not something that plays out only among formal actors of the state system. The political dynamic that underlies Canada's constitutional travails, as well as the effects of official constitutional discourse, reverberate throughout civil society. The labour movement provides an example of the pervasiveness of this dynamic and discourse. Ralph Güntzel's PhD Dissertation, "In Quest of Emotional Gratification and Cognitive Consonance: Organized Labour and Québec Separatist Nationalism, 1960–1980" (Güntzel 1997) describes in rich detail the evolving relationship between the CLC and the FTQ from the Quiet Revolution to the 1980 referendum, arguing that the Québec labour movement sought both greater autonomy and recognition from its counterpart in English Canada, gradually adopting a sovereigntist political outlook.

This article begins where Güntzel's study left off by examining the period between the 1980 referendum on Québec sovereignty and the introduction of the *Constitution Act* in 1982 with a view to analyzing the CLC and FTQ positions on patriation of the Constitution. The article argues that the Congress adopted a neutral position on the Constitution in order to

avoid a confrontation with the *péquistes* FTQ who opposed patriation. The paper also argues that the CLC's non-involvement in the process of patriating the Constitution was influenced by its desire not to exacerbate the internal dissension that already existed within the social democratic New Democratic Party (NDP) over the issue. The second half of the article is devoted to critiquing previously held assumptions about organized labour's decision not to participate in the process of patriating the Constitution and proposes that the CLC's decision to adopt a neutral position represented a significant episode in the evolving relationship between the Congress and the FTQ.

### **The Aftermath of the 1980 Referendum**

After the victory of the federalist forces in the 1980 Québec referendum on sovereignty-association, federal Justice Minister Jean Chrétien was dispatched to the provincial capitals to test the waters for a new round of constitutional reform. His efforts resulted in the establishment of the 1980–81 Special Joint Committee on the Constitution. The committee's task was to gather public input regarding patriation of the Constitution with a proposed *Charter of Rights and Freedoms*. Before the committee began hearing submissions, the CLC did take the time to write a letter in support of Aboriginal rights (CLC 1980b), but that is as far as the Congress would go.

In Québec, the FTQ, in a December 1980 memorandum to the provincial government wrote:

*Nous sommes en conséquence profondément indignés de la forme et contenu de la démarche de M. Pierre Elliot Trudeau. Nous regrettons d'ailleurs vivement qu'un parti social-démocrate comme le NPD s'enligne sur des positions centralisatrices et étroitement économistes cautionnant ainsi un procédé aussi antidémocratique que cette entreprise de repatriement unilatéral de la Constitution canadienne. (FTQ 1980, 2)*

The Federation followed up in February 1981 with a detailed brief to the Québec government criticizing the content of Trudeau's proposed constitutional package. The FTQ argued that unilateral patriation of the Constitution was unnecessary, undemocratic, and part of a strategy to increase the power of Ontario and the federal government at the expense of Québec. The Federation also argued that the proposed *Charter of Rights and Freedoms* threatened the rights of workers and that the proposed amending formula was unacceptable because it did not give a veto to Québec (FTQ 1981). In terms of labour organizations in English Canada, only the BC Federation of Labour bothered to submit a written brief to the committee that addressed the immediate concerns of the union movement. Its brief complained about the exclusion of social and economic rights from the proposed *Charter of Rights*:

Nowhere does one find reference to a general right to employment, the right to the enjoyment of just and favourable conditions of work, the right to form trade unions, the right to social security, the right to protection of the family, the right to an adequate standard of living, the right to the enjoyment of the highest attainable standard of physical and mental health, or a general right to education. It is our opinion that the failure of the *Charter* to make provision for this category of rights is its single most important shortcoming (BCFL 1981, 10).

Organized labour's absence from the Special Joint Committee's hearings was odd considering that Canadian unions had historically shown interest in the country's constitutional affairs. About a dozen labour organizations had participated in the Molgat-McGuigan Committee on constitutional reform that sat from 1970–1972. Local 444 of the United Auto Workers led the way by calling on the government to guarantee every Canadian the right to a job (UAW Local 444 1970, 8). At the CLC's 1978 convention, over a dozen labour organizations submitted resolutions on Canada's constitutional question. The FTQ, the Canadian Union of Public Employees (CUPE), and the Saskatchewan Federation of Labour (SFL) all submitted resolutions in favour of the principle of self-determination for Québec, while the International Woodworkers of America submitted a resolution calling for national unity (CLC 1978). Eleven resolutions calling for patriation of a new constitution or constitutional reform were submitted by various union locals representing the United Autoworkers union (UAW), the United Steel Workers of America (USWA), the Fishermen's Union, the United Electrical, Radio and Machine Workers of America (UE), the Canadian Brotherhood of Rail and Transport Workers (CBRT), and the United Brotherhood of Carpenters and Joiners of America (CLC 1978). In 1979, a large number of labour organizations in Canada were making their views known to the Task Force on Canadian unity. The Manitoba Federation of Labour, the Labour Council of Metropolitan Toronto, the USWA, the CSD, the Alberta Federation of Labour, and the Nova Scotia Federation of Labour, in their submissions to the Task Force, all stressed the economic dimension of constitutional instability. The Labour Council of Metropolitan Toronto, for example, argued that "the primary source of the present crisis... is the failure of successive federal governments to meet the economic, social and cultural needs of Canadians" (Canada 1979, 186). It was therefore odd that organized labour in English Canada ignored Prime Minister Trudeau's assertion that patriation would result in a new constitution, a renewed federalism, and a new *Charter of Rights and Freedoms*. Such bold pronouncements ought to have signalled to organized labour that the constitutional talks of the early 1980s deserved unprecedented attention.

Why then did Canadians witness such disinterest on behalf of organized labour in English Canada? The labour movement certainly did not "fall

asleep at the switch” as some observers have suggested (Union lawyers, as cited in Mandel 1994, 261). On the contrary, the CLC was certainly attentive to the tension between Québec and the Rest of Canada (ROC) over constitutional issues (as evidenced by the internal struggle within the Congress) and acutely aware that the *Charter* could potentially pose a serious threat to the union movement. At a September 1980 CLC Executive Council meeting, Pat Kerwin, head of the CLC Political Action department, reported that “the *Charter of Rights* may come up in the next few months which could inevitably threaten collective bargaining rights” (CLC 1980a). The Canadian labour movement’s decision to stay away from the constitutional battles on Parliament Hill in the early 1980s, it will be argued, was entirely political and based on a strategy of self-preservation. In order to understand the reasons behind organized labour’s policy of non-involvement, one must first reconsider the political relationship between the CLC, the FTQ, and the NDP.

Although the CLC helped co-found the NDP in 1961, the Congress has never been able to deliver votes to the party in any significant way. Despite the CLC’s million dollar campaign contributions, the federal NDP has never been considered a serious contender for office. That said, the party has definitely had a lasting influence in Canadian politics, as evidenced by its ability to push successfully for social reform, especially as the power broker in a minority parliament.

Much of the NDP’s electoral difficulties are owed to the party’s dismal record in Québec. The sheer size and strength of the province of Québec unquestionably makes it a key component of the Canadian political system and the NDP is never likely to govern federally without the support of Québec’s working class. The province’s influential trade union movement, which has identified itself with the nationalist cause since the late 1960s, has posed a serious problem for the NDP. Constitutional questions have always been the NDP’s achilles heel in Québec (McLeod 1994, 66). How do New Democrats balance a belief in strong central government and national social programs with the sovereigntist and devolutionary demands of Québec’s labour movement? The debate over patriation and the *Charter of Rights and Freedoms* did not offer any new answers.

It could certainly be argued that the advent of a *Charter of Rights and Freedoms* provided organized labour’s elected representatives in Parliament with an ideal opportunity to push for workers’ rights as part of an overall constitutional package. After all it is widely accepted that the NDP was in a position to win certain concessions from the government in exchange for the party’s support (Sheppard and Valpy 1982, 114). Unfortunately for those concerned about entrenching labour rights in the Constitution, union rights were not a priority for the federal NDP. Only NDP MP Svend Robinson took up labour’s cause by moving a modest

amendment to section 2(d) of the *Charter*, which would have explicitly protected the right to bargain collectively. The amendment was defeated.

It is important to note that constitutionally entrenched collective rights for workers were not of primary importance to any social democratic leader in Canada. After the new Constitution was proclaimed in 1982, British Columbia NDP leader Dave Barrett confessed, "The Constitution on a scale of ten was never more than one and a half to me. The whole debate was a gross waste of time" (Sheppard and Valpy 1982, 219). The Ontario and Alberta sections of the NDP both made long, detailed presentations to the Special Joint Committee on the Constitution that dealt with a myriad of different issues, but both neglected to mention the absence of specifically categorized labour rights in the *Charter*. Garth Stevenson, the Alberta NDP's constitutional advisor, explained that the party supported "the principle of entrenching human rights in the Constitution" (Canada 1981, 110). Stevenson went on to express the view that,

Of course, we support very strongly, in addition to the ordinary catalogue of individual human rights, two particular categories of collective rights which, in effect, as Mr. Notley [Alberta NDP Leader] pointed out, are inherent in the whole course of our country's history, the right of our Aboriginal peoples and the equal rights of the two official languages right across Canada. We feel very strongly that those rights must be protected as well (Canada 1981, 110).

Although the Alberta NDP opposed extending *Charter* rights to corporations, it was silent on the prospect of entrenching constitutional collective rights for labour. This oversight would have normally prompted organized labour to act, but instead, Canadian unions remained silent.

In essence, the CLC's neutrality was triangulated between its political loyalties to the federal NDP, its close political connection to powerful provincial sections of the party, and the practical need to retain the allegiance of the FTQ. When Prime Minister Trudeau announced in October 1980 that his government was prepared to move forward with unilateral patriation of the Constitution without provincial consent, federal NDP leader Ed Broadbent gave his cautious approval, but demanded the inclusion of rights for women, the disabled, and Aboriginal peoples as a condition of his party's support (Steed 1989, 249). Content with the government's commitment to consider appropriate amendments, Broadbent enthusiastically endorsed Trudeau's plan to patriate the Constitution unilaterally. Although patriation of the Constitution was a longstanding policy of the NDP and its forerunner the CCF, Broadbent's lack of consultation within the party raised the ire of NDP provincial sections in Western Canada, where Trudeau was *persona non grata*. To complicate matters, Saskatchewan Premier Allan Blakeney, the only NDP premier in Canada at the time, opposed entrenching a *Charter of Rights* in

the Constitution because he felt it would shift power away from democratically elected legislators to unaccountable, potentially right-wing, judges (Campbell 1984, 31). The difference of opinion between Broadbent and Blakeney caused a major rift in the federal caucus and nearly ripped the NDP apart in the early 1980s (Steed 1989, 242). Alberta NDP leader Grant Notley sided with Blakeney arguing that provincial agreement was necessary in order for patriation to take place. The two Western NDP leaders were no doubt concerned about maintaining provincial control over resource revenues as well. From within Broadbent's own caucus, a group of four Saskatchewan MPs (Nystrom, de Jong, Anguish, and Hovdebo) publicly broke ranks with their leader and sided with Blakeney instead. Saskatchewan MP, Les Benjamin, who supported Broadbent, described the political tension as follows: "I was as popular as a skunk at a garden party in my own province. Close friends told me they'd never again put my sign on their lawn; they said I was a traitor to Saskatchewan. It was traumatic..." (Steed 1989, 250).

In Québec, *Parti Québécois* (PQ) Premier René Lévesque vigorously opposed the *Charter* and the patriated Constitution because of his belief that it did not recognize collective rights for Québec. Labour organizations in Québec, to varying degrees, were allied with the sovereigntist PQ. For its part, the FTQ had officially endorsed the PQ in the 1976 election and worked closely with Lévesque's government during its first term. The Québec government, along with the governments of Manitoba and Newfoundland, challenged the federal government's authority to proceed with unilateral patriation. Amid the legal deliberations on the constitutionality of unilateral patriation, Lévesque's position was eventually endorsed by the opposition Québec Liberals, who joined the PQ in condemning unilateral patriation of the Constitution (Denis et Denis 1992, 131). The Québec government's position was also endorsed by the FTQ, the CSN, and the *Centrale de l'enseignement du Québec* (CEQ). The Québec labour movement's opposition to the patriation process was so intense that the trade union centrals actually toyed with the idea of appealing to the British Trade Union Congress for support in preventing a new constitution from being adopted in London. The FTQ did eventually join a group known as *Solidarité-Québec*, which gathered 700,000 signatures on a petition calling on Queen Elizabeth II to protect Québec from unilateral patriation of the Constitution (Denis et Denis 1992, 131).

Caught in the middle of this constitutional struggle was the CLC. The Congress did not adopt any sort of position on the *Charter*. According to CLC Executive Council minutes dated September 5, 1980, "President McDermott explained that he was of the view that we should not get involved in the 'circus' now completed, especially because the nature of our organization would not lend itself to us having a consensus even within our Council" (CLC 1980a). After a brief discussion, it was generally agreed that the Congress should "stay out of the issue of the Constitutional Talks as



much as possible at this time" (CLC 1980a). These two statements are important because they shed light on the CLC's structure, which weakens the cohesiveness of the Congress based on internal cleavages relating to region and language.

Specifically in terms of patriation, the CLC was worried by the fact that the NDP was internally divided over the issue and that patriation was threatening to hurt the party electorally. It is also clear that the Congress understood that organized labour in Québec was very much opposed to Trudeau's package of constitutional reform. The FTQ's growing strength within the CLC, as evidenced by the special powers<sup>2</sup> it was granted as a provincial affiliate in 1974, guaranteed that the Federation's position could not be ignored. Furthermore, the CLC president was in an awkward political position personally given his unpopularity in Québec at the time. McDermott's failure to back the Canadian Union of Postal Workers (CUPW) President Jean-Claude Parrot when he encouraged his members to defy a federal back-to-work order during the 1978 postal strike enraged rank-and-file union activists, especially in Québec. Prior to being confronted with the issue of patriation of the Constitution, McDermott had barely survived a spring CLC convention in 1980 where the FTQ, Québec locals of CUPE, and the CUPW roundly condemned McDermott for the Parrot incident. These same unions mused openly about finding a replacement for McDermott as CLC president (Canadian Press 1980, 4). Since Broadbent, Blakeney, and the FTQ were adamant about their respective constitutional positions, McDermott decided to duck the issue entirely with the help of his friend,<sup>3</sup> FTQ President Louis Laberge, who was able to successfully pressure CLC executive members to stay away completely from constitutional affairs.

Analysis of CLC minutes confirms that the Congress was forced to make a very important strategic decision over patriation and the *Charter of Rights and Freedoms*. The CLC had several options, but the most practical intervention would have been to demand that the federal NDP make the collective rights of workers a condition of support for constitutional patriation. This option would have unquestionably created a bitter conflict between the FTQ, the CLC, and the NDP. The FTQ would have been angered by the fact that the CLC had entered into the *Charter* debate, thus lending credibility to the patriation process. Moreover, the NDP would potentially have been troubled by the CLC's insistence on creating a new condition for the party's support of Trudeau's constitutional package. A public split between the NDP, the CLC, and the FTQ was certainly not in the interest of the Canadian labour movement.

The CLC's September 1980 decision to stay out of the constitutional debate did encounter some internal opposition. At the December 1980 Executive Council meeting, Alberta Federation of Labour President Harry Kostiuk appealed "for support in making representation to the federal

government on the question of the patriated Constitution and the entrenchment of the workers' rights in that Constitution" (CLC 1980b). Kostiuk was immediately supported by British Columbia Federation of Labour President Jim Kinnaird and Dick Martin, President of the Manitoba Federation of Labour: "It was expressed by Brother Martin that in Western Canada there is tremendous pressure being applied by the affiliates to say something about workers' rights, and he would rather see the Congress say something as a body, by reversing the decision made at the last meeting" (CLC 1980b).

McDermott clearly did not want to reopen the issue: "If Brother Laberge were here he would be speaking very strongly in disagreement of voicing our opinion" (CLC 1980b). The CLC president was supported by his colleague Bob White, "who felt we have no choice at this time but to reaffirm our position or we will be opening serious wounds we thought had been solved long ago" (CLC 1980b). McDermott's view prevailed and the original position of the September 1980 meeting was upheld.

In early 1981, the highest courts in Québec and Manitoba upheld the position of the federal government. However, Newfoundland's Court of Appeal ruled that unilateral patriation of the Constitution would constitute a violation of constitutional convention. These contradictory rulings prompted the prime minister to refer the matter to the Supreme Court of Canada.

While the Supreme Court deliberated, the internal battle within the NDP raged on. In an effort to bring both sides of the party back together, David Lewis and Tommy Douglas met with Blakeney and Broadbent and senior NDP staffers in Hull, Québec shortly before Lewis' death in May 1981. The meeting was a dismal failure. NDP federal secretary, Robin Sears, described the meeting as "the most personal, vituperative, unpleasant, unnerving, disillusioning, disheartening, experience I have ever endured in my political life" (Smith 1992, 220). Douglas and Lewis, who sided with Broadbent, were worried that the dispute over patriation would cause irreparable harm to the party.

The same fears existed in the CLC. One senior CLC official admitted to Judy Steed of the *Globe and Mail* that "many labour staffers were against Ed" (Steed 1989, 253). The unidentified high-ranking union official went on to say that:

Trudeau gave nothing on collective rights, which are political rights and should be dealt with in Parliament by elected people, not appointed judges—but under Trudeau's package, power was being shifted to the courts, there was nothing about the right to a job... So there was more off-the-record support for Blakeney's position in the executive council of the CLC. But the CLC didn't want to start a public war with Ed (Steed 1989, 253).

However, internal dissent within the CLC continued to mount. McDermott and Blakeney met in March 1981. According to Robert Sheppard and Michael Valpy, "the strongest message [Blakeney] received from Dennis McDermott was that the CLC president wished the Constitution issue would go away so that the politicians could talk about unemployment, inflation, and patriation—as he put it—of the economy" (1982, 132). McDermott opened the March 9, 1981 CLC Executive Committee meeting by expressing his concern over "the continued harassment of Ed Broadbent by the Saskatchewan people with respect to the Constitution" (CLC 1981a). The CLC president's message was clear: "Quit attacking the federal Party; they made a political deal and they cannot now walk away from it" (CLC 1981a). Later that month, at the CLC Executive Council meeting, Nadine Hunt of the Saskatchewan Federation of Labour (SFL) further frustrated McDermott by urging the CLC to adopt a similar resolution on the Constitution to the one adopted previously by the SFL executive. The resolution stated:

That the SFL, with respect to the Constitution, campaign for the following:

- a) Abolition of the Senate or at least abolishing their veto power
- b) Amending formula which recognizes population and regional areas of Canada
- c) The *Charter of Rights* does not infringe on trade union rights such as compulsory membership in legitimate trade unions, compulsory check-off, and the right of workers to organize into the union of their choice.
- d) On other rights, the Constitution should provide an override clause which would give elected legislators, federal or provincial, the ultimate authority to amend/or implement legislation (CLC 1981b).

It is interesting to note that three of the SFL's four proposals were eventually adopted by the federal government. Nevertheless, the CLC president rejected Hunt's resolution by stating that the CLC Council had previously agreed to take a neutral position. The CLC president went on to express his disappointment over the fact that the SFL wanted to enter into the constitutional debate. McDermott "appealed to Sister Hunt to exercise restraint" (CLC 1981b). Hunt's retort that the CLC was "doing a disservice to the workers of this country" (CLC 1981b) did not sway the head of the CLC. The minutes report that "President McDermott said that whether our remaining quiet turns out to be right or wrong, it was a decision made by this Council" (CLC 1981b). In the end, delegates to the NDP's 1981 policy convention voted roughly 2-1 in favour of Broadbent's position.

In September 1981, the Supreme Court of Canada ruled in split decisions that although the federal government did have the authority to patriate the Constitution unilaterally, in doing so, it would be violating a constitutional convention requiring substantive provincial consent. The Supreme Court's decision in the *Patriation Reference* prompted a new round of constitutional consultation between Ottawa and the provinces. In November 1981, the federal government succeeded in gaining the support it needed from the provinces, but excluded Québec. During the "Night of the Long Knives," Chrétien and the nine premiers from English Canada hammered out a final agreement while Lévesque was sleeping. The agreement included a notwithstanding clause to allay the worries of people like Allan Blakeney who feared judicial supremacy under the new *Charter of Rights and Freedoms*. Upon learning that the other premiers had accepted Trudeau's patriation scheme, Lévesque claimed that Québec would neither sign, nor recognize the new Constitution.

### **Disorganized Labour: Alternate Explanations**

Left-leaning critics of the *Charter of Rights and Freedoms* have taken numerous different perspectives on the issue of organized labour and patriation of the Constitution. Michael Mandel has argued that labour's non-involvement in the patriation process stemmed from its belief that the *Charter* was of no consequence to Canadian unions (Mandel 1994, 259–62). Mandel's conclusion is partially supported by comments made by legal scholar Joseph Weiler. Weiler contends that:

The union movement's refusal to attend the Special Committee hearings was not intended to be seen as a boycott or protest against the process of constitutional reform or the entrenchment of human rights in the Canadian Constitution. Rather, the leadership of the Canadian Labour Congress (CLC) decided that the unemployment rate at the time was so high that the unions could not use their limited resources to appear in front of another panel of politicians who were talking about the arcane issues of constitutional reform and human rights (1986, 213).

Weiler's analysis, which was presented in 1985, is an excellent representation of the CLC spin that emerged after legal scholars first began hinting that organized labour had "missed the boat" or "fallen asleep at the switch" when it came to the *Charter*.

Although Weiler's analysis omitted important information (he fails to address the tension between the FTQ and the CLC or the internal dissent that existed within the NDP), it did superficially reflect the labour movement's desire to see the government deal with concrete economic problems rather than abstract constitutional issues. However, his analysis does not come close to a full explanation of the CLC's motives. The CLC's decision not to participate in the process of patriating the Constitution was

significant for several reasons. Most importantly, the Congress allowed its preference for a strong centralized federal state to be overshadowed by the FTQ's opposition to patriation. In other words, the tables had turned in the relationship between the CLC and the FTQ. For the first time, a provincial federation of labour was giving marching orders to the CLC. The CLC's self-imposed censorship on the issue of patriation and the *Charter of Rights and Freedoms* left it out of step with its allies in the social movements and arguably did a disservice to the Canadian labour movement outside of Québec.

Admittedly, some members of the Congress were genuinely more concerned with inflation and unemployment than they were about the constitutional struggle on Parliament Hill. It should therefore come as no surprise that the CLC executive so easily acquiesced to Laberge and the FTQ. Labour leaders from English Canada figured that the stakes were not high enough to merit a severe sovereigntist headache. In general, dissident unions and provincial federations of labour (with the exception of British Columbia) lined up behind the CLC's position as an act of solidarity.

On April 17, 1982, Queen Elizabeth II proclaimed Canada's new Constitution Act. A few months later, the Supreme Court of Canada ruled that Québec did not have a veto over constitutional amendments. In the aftermath of the Supreme Court decision, the FTQ, the CSN, and the CEQ joined the *Société Saint Jean-Baptiste* and released a joint statement asserting "cette Constitution... n'est pas, ne peu pas être et ne sera jamais la nôtre" (1982).

## **Conclusion**

This article has focused on the CLC's experience with constitutional reform in the early 1980s. The first half of the article was devoted to explaining why the Canadian Labour Congress excluded itself from the process of patriating the Constitution. Primary sources strongly suggest that the both the CLC and the NDP were internally divided over the issue of patriation. Whereas CLC executive members argued over strategy and how best to deal with party union relations, the NDP was internally divided over both the substance and the process of constitutional reform. The Saskatchewan NDP, in particular, argued that the unilateral patriation of the Constitution with a *Charter of Rights and Freedoms* violated provincial rights and would give too much power to unelected and unaccountable judges. On the other side, federal NDP leader Ed Broadbent and the party's establishment argued that support for patriation of the Constitution was a long-standing party policy and that the *Charter of Rights* would protect the interests of minorities. In the end, Broadbent's position prevailed and Premier Blakeney eventually agreed to a modified patriation scheme. The CLC's position on patriation was shaped by its allies in both the NDP and FTQ. In the eyes of many English Canadian labour leaders, the FTQ's strong

opposition to Trudeau's constitutional vision was offset by NDP leader Ed Broadbent's enthusiastic support for a strong *Charter of Rights and Freedoms*. Reluctant to offend its political allies in either camp, the CLC officially decided to remain a neutral observer as the debate over patriation and the *Charter* unfolded.

The second part of this article was devoted to critiquing alternate explanations for the CLC's silence on patriation. Several scholars have argued that the CLC was either unaware or genuinely disinterested in constitutional issues and therefore did not play an important role in the patriation debate. However, primary sources strongly indicate that these explanations are simply insufficient. Although it is accurate to suggest that the CLC was not an active participant in the process of constitutional reform, inactivity should not be confused with disinterest. The Congress made a strategic political decision to exclude itself from the patriation debate to avoid an internal battle between its political allies in the NDP and its labour allies in the FTQ.

Patriation of the Constitution with the *Charter of Rights and Freedoms*, in many ways, represented the triumph of liberalism in Canada. As Reg Whitaker has correctly noted, "that the *Charter* should reflect an image of liberal rather than social democracy is not particularly surprising given the structure of Canadian society, and the philosophical make-up of the governing party" (Whitaker 1992, 223). Of course, Whitaker recognized that the role of the Left had traditionally been to challenge the limits of liberal democracy. However, in assessing the NDP and CLC approaches to patriation, he has correctly noted that, even among left-wing activists, "democracy in Canada seems well defined by liberal limits" (Whitaker 1992, 224). The NDP's limited approach to the patriation debate, evidenced by its failure to argue the merits of, let alone demand, the inclusion of social and labour rights into the new Constitution, demonstrated the party's own political limitations.

For its part, the CLC's hands-off approach to patriation, in many ways, vindicated the NDP's weak position on constitutional reform. By refusing to apply any sort of pressure on the NDP to make labour rights a condition of the party's support for constitutional patriation, the CLC arguably abdicated its responsibility as an organization representing the interests of workers. Rather than participate in the constitutional debate, the CLC simply wanted it to disappear. Although the Constitution was patriated with a *Charter of Rights and Freedoms* in 1982, Québec's exclusion from the new Constitution ensured that Canada's constitutional question had not yet been answered. For organized labour, the adoption of a new Constitution represented one more episode in the divergent relationship between the CLC and the FTQ, ushering in a decade of constitutional paralysis in the Congress.

## Notes

1. In 1993, the CLC and FTQ attempted to transcend their own constitutional crisis by developing a sovereignty-association partnership agreement that essentially gave the Federation the status of an autonomous union in Québec, while maintaining its membership in the CLC.
2. At the CLC's 1974 convention, the FTQ won jurisdiction over union education and organizing in Québec, jurisdiction over local and regional labour councils, and the transfer of both human and financial resources from the CLC to the FTQ equal to the amount that Québec trade unionists contributed to the CLC.
3. Laberge and McDermott had known each other since 1964 when Laberge was hired as the UAW's organizing director for Québec.

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