

Canada: The State of the Federation 1993

Edited by
Ronald L. Watts and
Douglas M. Brown

Institute of
Intergovernmental
Relations

Institut des
relations
intergouvernementales




Canadian Cataloguing in Publication Data

III Immediate Issues

- 153 7. Aboriginal Policy and Politics:
The Charlottetown Accord and Beyond
J. Anthony Long and Katherine Beaty Chiste

161 8. Q. v. J. - Issues in Federal-Provincial

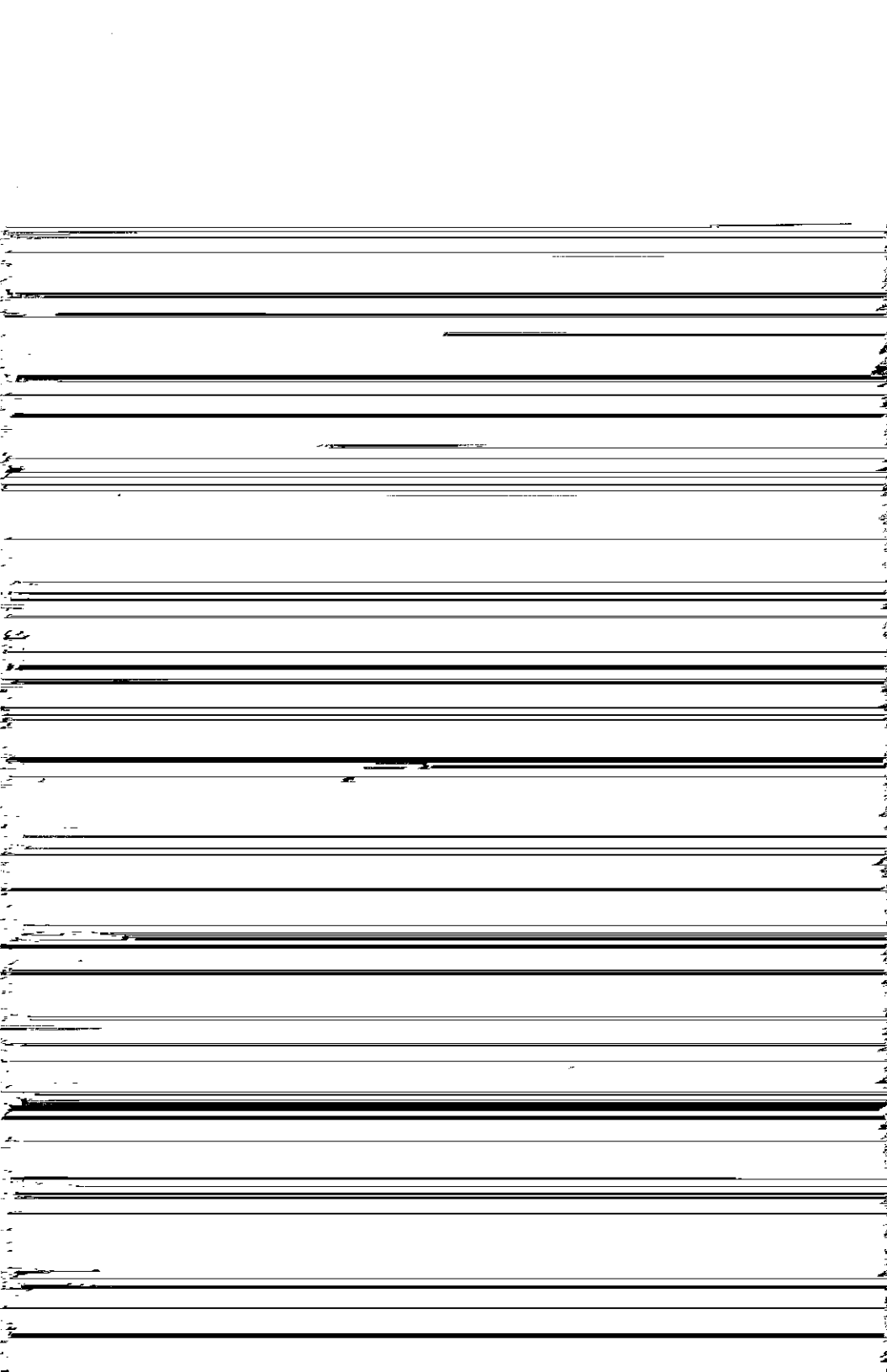


Fiscal Relations
Paul A.R. Hobson

- 193 9. The NAFTA, the Side-Deals, and Canadian Federalism:
Constitutional Reform by Other Means?
J. Robinson
-

IV Chronology

- 231 10. Chronology of Events 1992-93
Anne Poels



*Douglas Purvis, Head of the Department of Economics and Director of the John
Deutsch Institute for the Study of Economic Policy at Queen's University and
a member of the A.D.I.C. Council*

1971-1972 as a Post-Doctoral Fellow at the Institute of Labor and Industrial

Relations, University of Michigan and the Department of Political Science at
Northwestern University

1967-1968 as Professor, Department of Political Science, McMaster

University.

Director of the Institute of Intergovernmental Relations



I

Introduction

participation. The resulting Charlottetown Accord represented the best efforts

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[REDACTED] I find it hard to believe that you through the course in that volume

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unrevised federal

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Despite the apparent Canada-wide referendum consensus for rejecting the
[redacted] the contradictory motivations of different groups for

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however, by the locked Transit

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On 11 April 1968, the following communication was received on no more

preferred strategy. Considerable progress could be made by means of ordinary legislative and administrative action and by intergovernmental agreements on rebalancing the roles and fiscal relations.

...the media and public critics attacked the Charlottetown agreement as

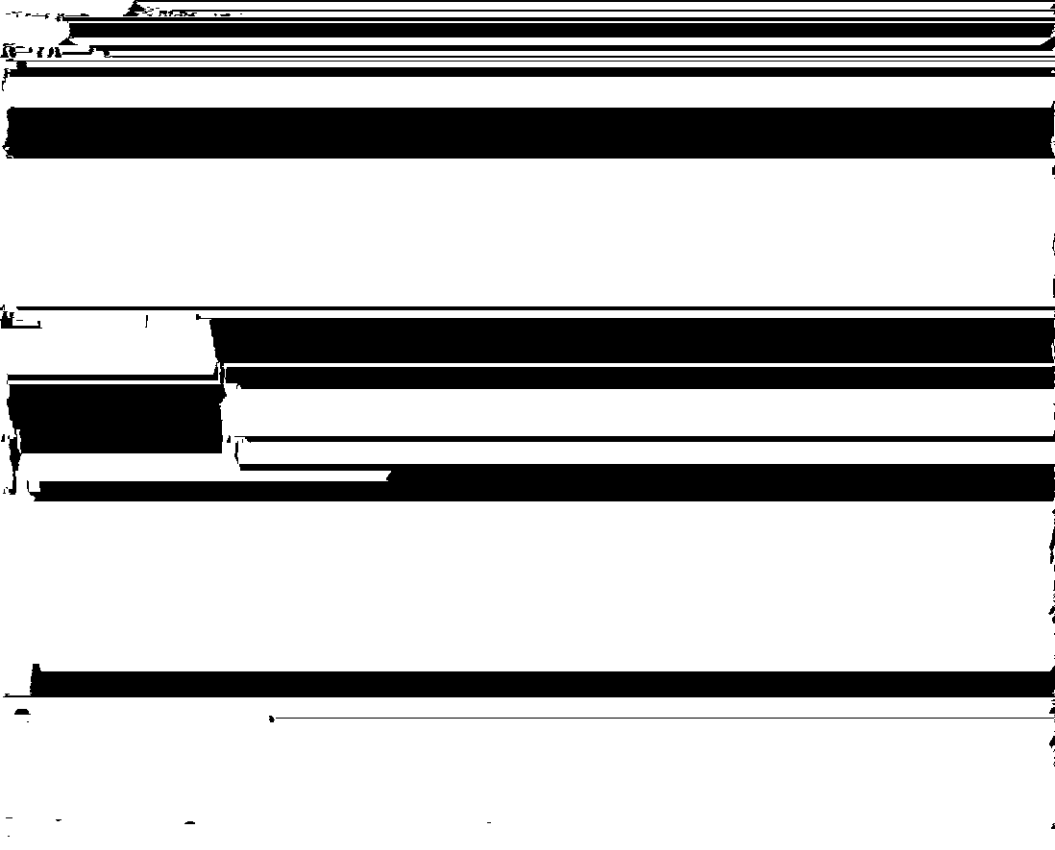
... simply the product of politicians.

federal-provincial fiscal arrangements scheduled for completion by April 1994.

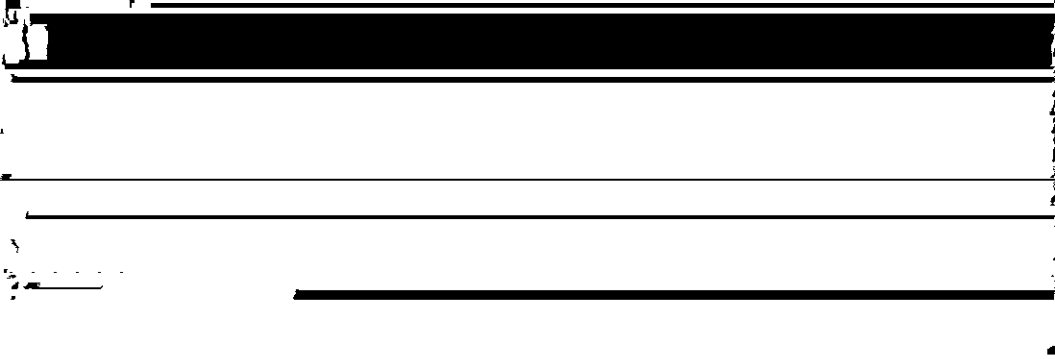
become unavoidable. The referendum result, therefore, is a

Furthermore, because of the contradictory positions of the different groups that supported a "No" vote in the referendum, the political leaders have been

would indeed be seriously diminished. An examination of the disintegration of



has been the demise of national parties and the rise of predominantly regional political parties operating within their federal institutions. Such situations have



generally led to the failure to moderate regional cleavages and to a cumulative

... retirement the coming 12 months will be needed also at ...

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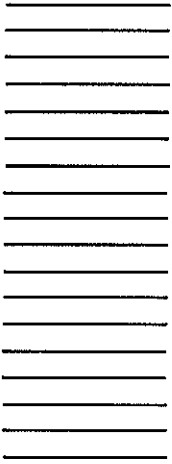
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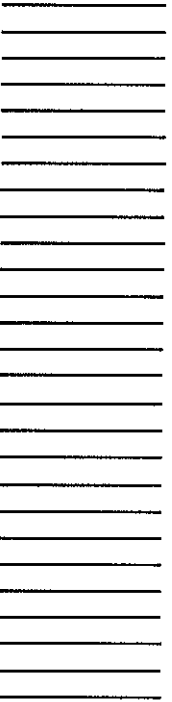
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II

Constitutional Debate and the Referendum



*Richard Johnston, André Blais,
Elisabeth Gidengil and Neil Nevitte*

Ce chapitre analyse le déroulement de la campagne référendaire ainsi que le soutien

merits serious consideration.

The referendum raises a more general question about the very possibility of direct democracy. An abiding theme in the empirical study of politics is whether "public opinion" as such even exists, whether voters can make meaningful and interpretable choices on anything, much less on a document as formidably complex as the Charlottetown Accord.¹ There is, moreover, the question of

the five-day moving average "Yes" share, centred on the indicated day.³ The

Table 2.1: The "Yes" Share Outside Quebec, by Region

<i>Week</i>	<i>B.C.</i>	<i>Prairies</i>	<i>Ontario</i>	<i>Atlantic</i>
24-27 Sept.	41 (26)	60 (34)	62 (37)	59* (62)
28 Sept. - 4 Oct.	44 (55)	59 (105)	63 (88)	
5-11 Oct.	31 (45)	41 (82)	44 (126)	48 (37)
12-18 Oct.	40 (49)	49 (83)	51 (111)	63 (47)
19-25 Oct.	39 (47)	32 (98)	38 (146)	61 (60)

*This number covers the entire period 24 Sept. - 4 Oct.

42 percent. In the Atlantic provinces, the "Yes" held its 60:40 margin; in the west, the margin was 40:60; and in Ontario the outcome was essentially 50:50.⁷

The following basic patterns have emerged:

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- Senate reform, allegedly the key element for westerners, received only

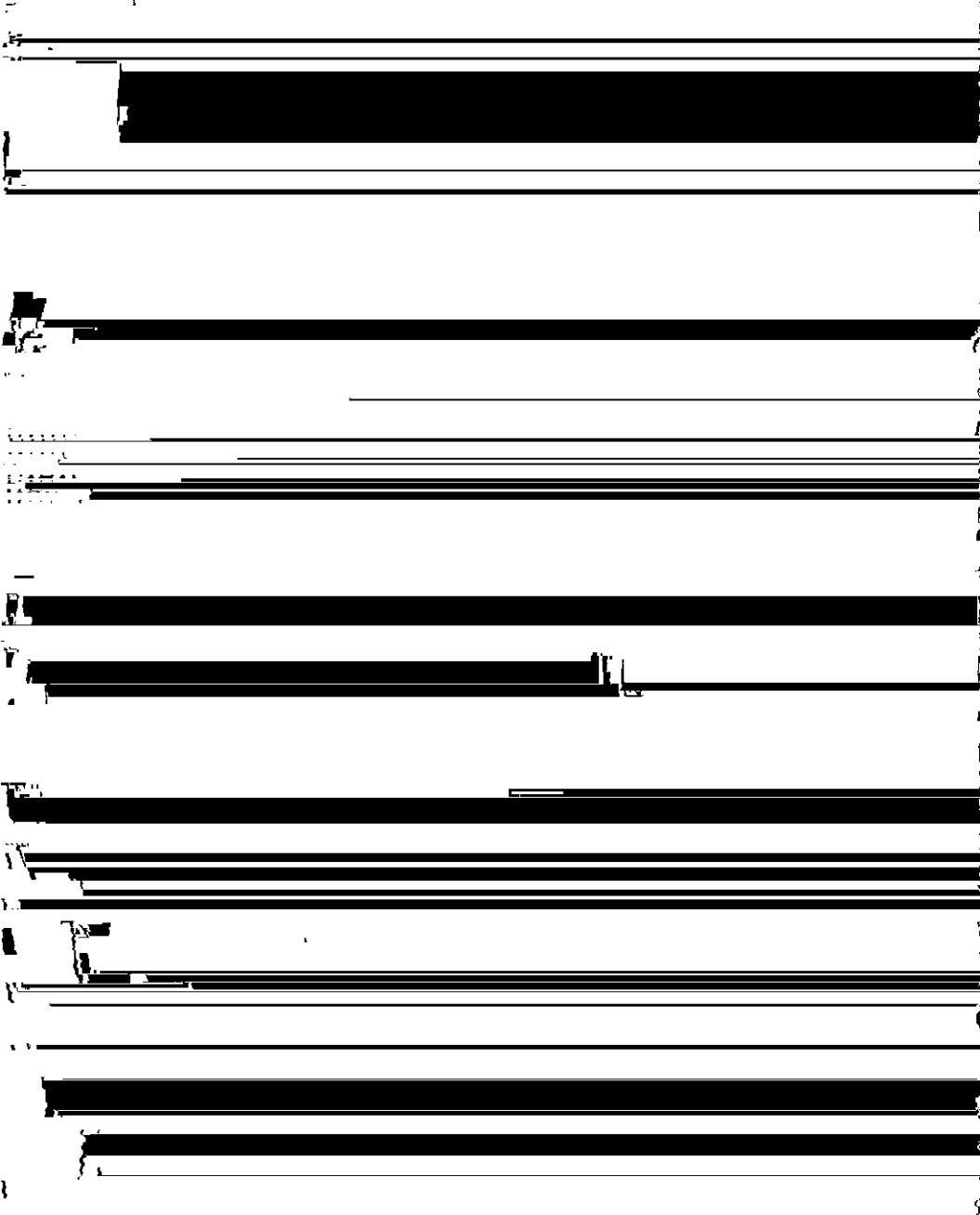
... than the existing body. The plurality preference was

for outright abolition of the chamber.

- On recognizing Quebec as a distinct society, opinion was modestly

Figure 2.3: Support for Elements by Region

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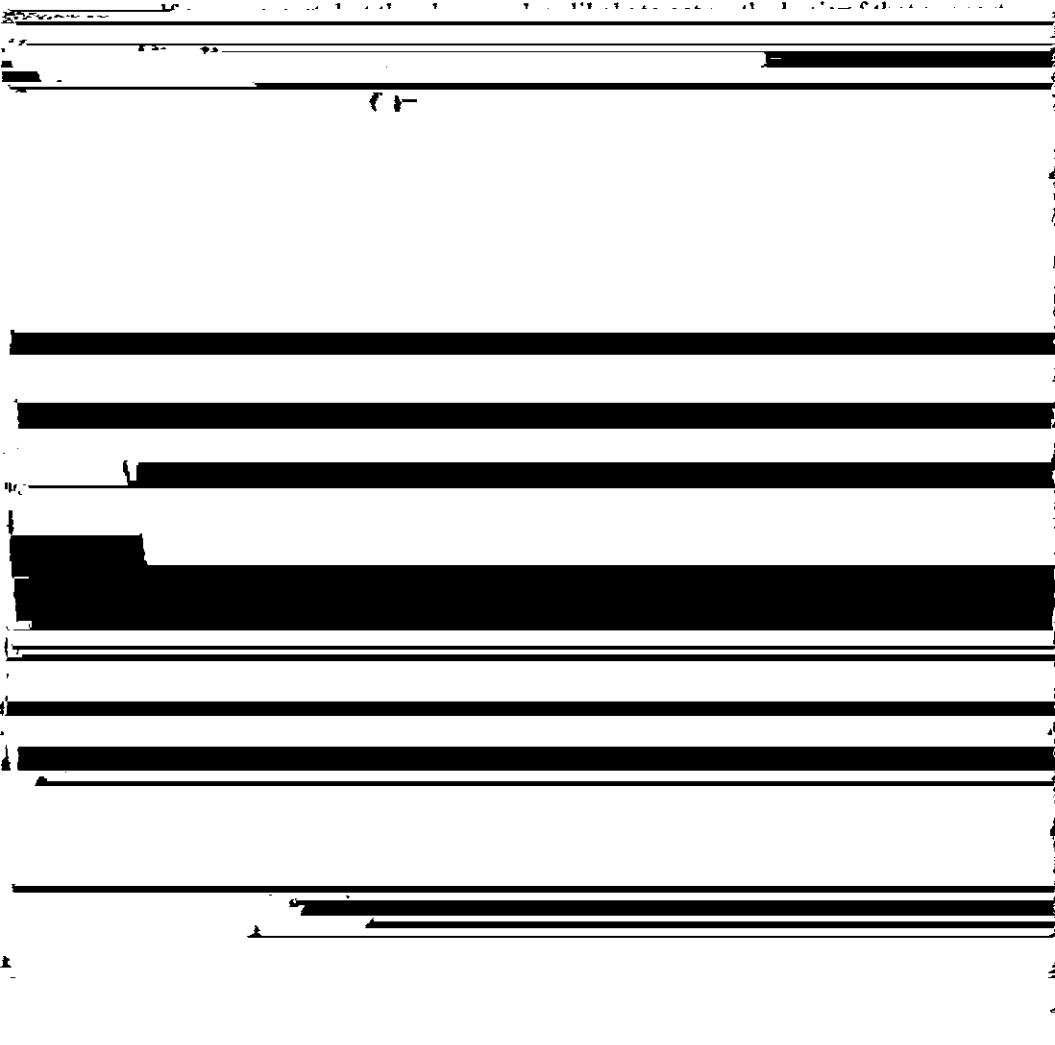


opposition, that should not matter; one thing is enough.


And it is good that the Club's work has been successful. In

thoughts are overwhelmingly negative. Polls about the Senate were driven by

At the same time, the factor with the greatest positive potential, aboriginal self-government, got decoupled from the vote, at least in the vital middle of the campaign. Voters did not become less supportive of the principle of aboriginal



Comment on the 1995 Canadian General Election: The Decline of the



Second, proponents felt impelled to move beyond the arguments about the contents of the Accord. What might move someone who liked nothing of substance in the Accord to consider voting for it anyway?

- Most central was the argument that, for all its flaws, the Charlottetown

dynamics.

THE SOURCES OF DYNAMICS

Outside Quebec, three turning points presented themselves for explanation.

accommodation with Quebec the benefit of the doubt. At least it would seem

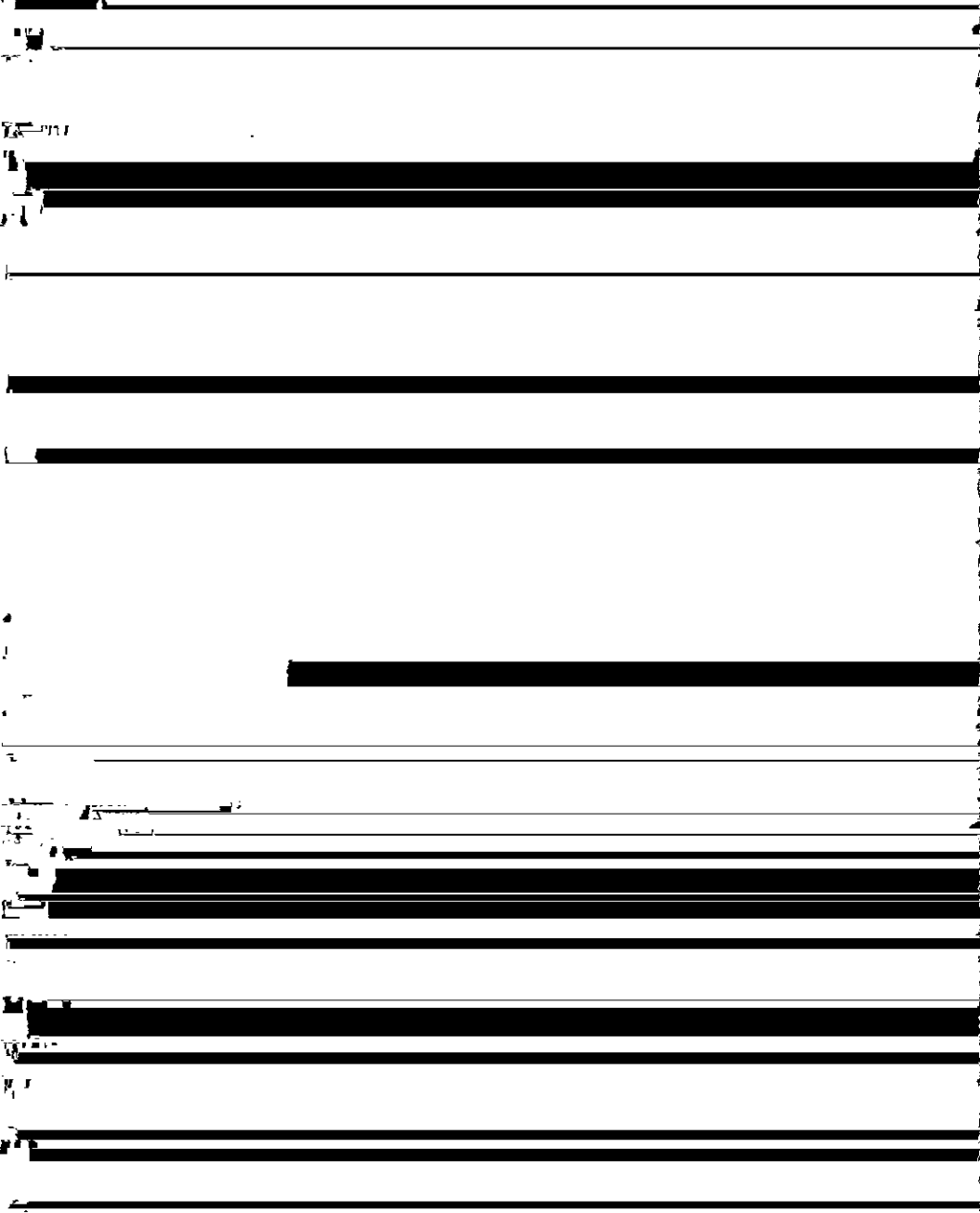
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dramatically:

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OTHER FEATURES OF THE VOTE OUTSIDE QUEBEC

Pierre Trudeau was not the only key player. Feelings about Brian Mulroney were also caught up in the vote: the more a voter liked him the more likely he or she was to vote "Yes." Few voters liked him: our respondents typically rated him far below the Accord's other



predictive power of leader ratings was cut. Neither the vote on the Accord nor the processing of judgements about politicians and their stances were completely detached from the ongoing party struggle in the background.

All other intervenors paled by comparison with members of the Accord coalition and with Pierre Trudeau. Some, such as the women's movement and the business community, had a modest impact in the first few weeks. Curiously, awareness of opposition by the women's movement had a greater effect for men than for women; the impact was *not* a backlash. And women were not summarily more likely to vote "No" than men. The union movement had a modest effect

In our sample, 80 percent of non-francophones voted "Yes." If anything this underestimated the "Yes" share; we suspect that the real share was closer to 85 percent.²¹ On the other, sovereigntist side, 89 percent voted "No." Although there was a substantial margin on this side, more striking was the unanimity

non-sovereignists thought the clause went far enough. At the same time, the Senate proposals were also...

[The remainder of the page is heavily redacted with thick black bars.]

“Yes” collapse began, the most divisive issues were the 25-percent seat guar-

it may signal that the 1990s have so discredited political elites that consensus

The Referendum on the Charlottetown Accord (Montreal: McGill-Queen's University Press, forthcoming).

legal text. Although the official release date was Tuesday, 13 October, the effective release date was the Saturday before, the 10th: the government of Quebec made the legal text available as the Bourassa-Parizeau debate was looming and Parizeau




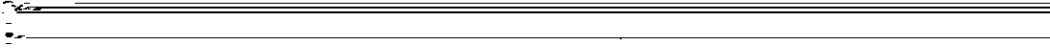






TABLE 1

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September 1001 Its mission of public consultation

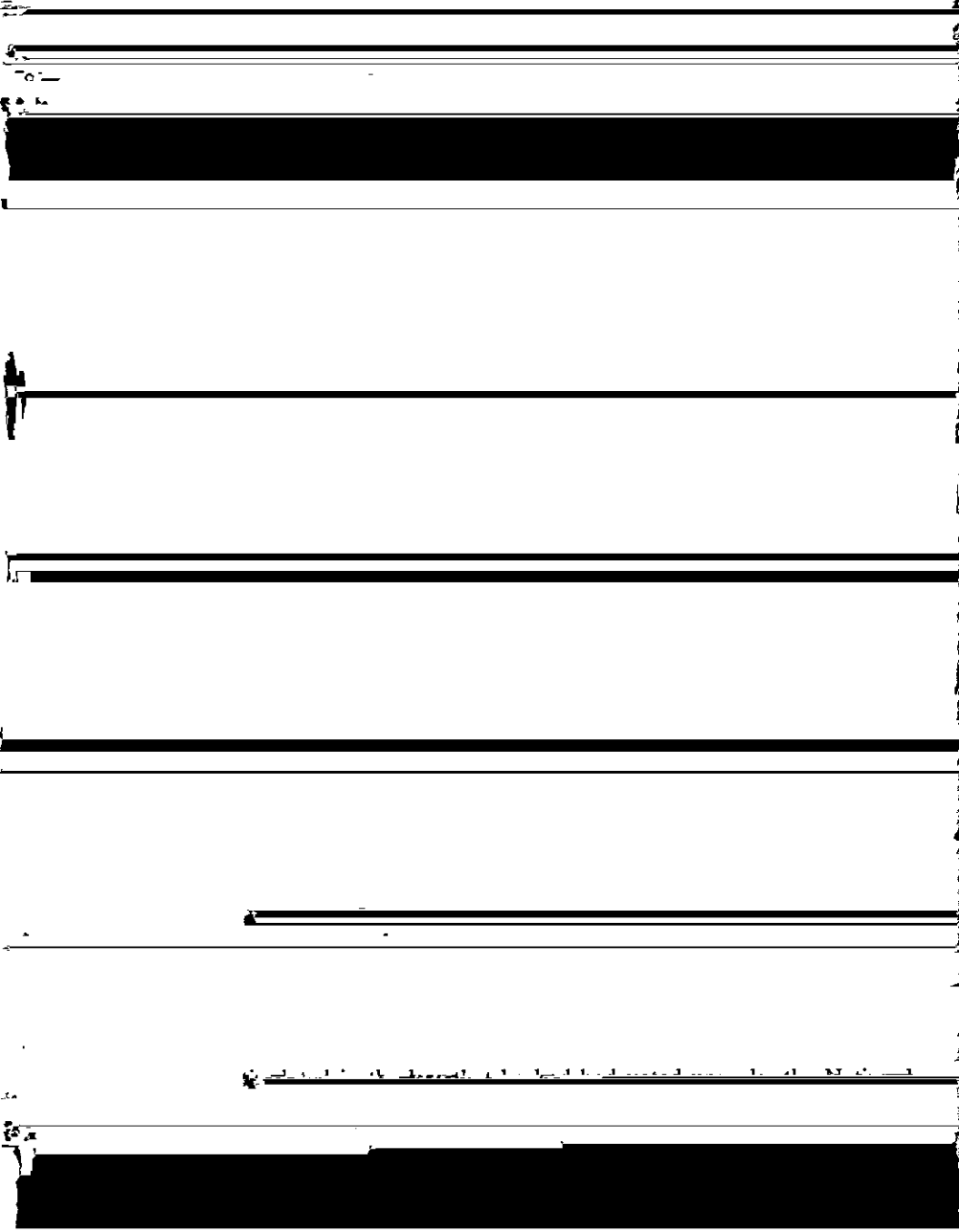
Committee and its numerous constitutional conferences and so forth. One

fact remains: the centre of gravity for the negotiations had moved.

ARDUOUS AND LABORIOUS NEGOTIATIONS

Following the March 1992 report of the Beaudoin-Dobbie Committee,⁴ the provincial governments, the major players in the constitutional revision process with respect to the amending formulas, were called upon to participate in a process of negotiation . . . in order to define . . .

interview given to the newspaper *Le Monde*, he declared on 19 April 1992 his



which would lead to the establishment of a third order of government. Finally, the amending formula would be modified.

It may be useful at this stage to examine the

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In this context notions such as culture, language, and tradition are only

AN EQUAL SENATE

The institution that would have undergone the most significant change was

[REDACTED]

for a period of five years maximum, but with the possibility of renewal. This

First, let us consider training and upgrading of the labour force (a. 28). The

What is surprising about these constitutional arrangements is that the language used does not correspond to the usual sense extracted from the words. As

... feeling of resistance towards

... and the creation of a third order of government. Just

If we put the political conversation...

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(a. 41), to leave — should the case arise — the judiciary to define the jurisdictions of these governments and their territory (a. 41, 42).

To satisfy the claims of Quebec, it seems to me that the concessions required would not be so significant: the nation is more a territorial society than a kinship

According to this account, it is not possible to

[The remainder of the page is obscured by heavy horizontal black bars, rendering the text illegible.]

Do these conditions — partially or totally joined together — announce a horizon that is politically blocked or the opening to a dynamic new alternative?

It is difficult to say. For those who would leave the current circle, it is

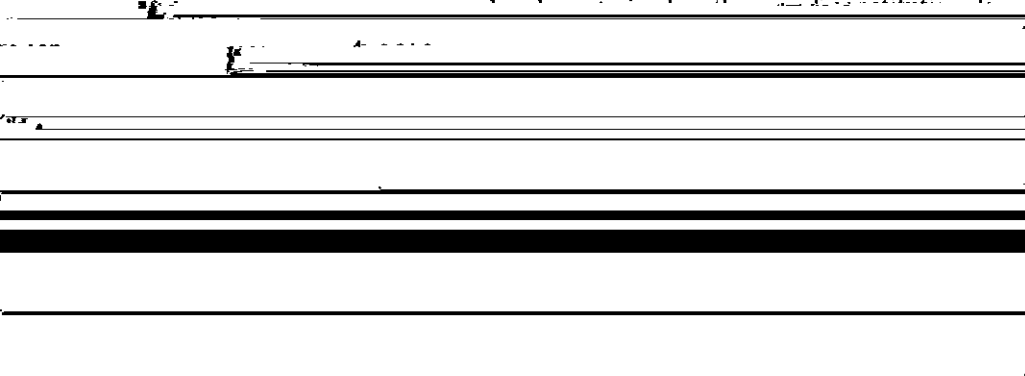
Let There Be Light

Le 26 octobre 1902 les Canadiens

of amendment other than by formal amendment to the constitution? The answer



The first part of this paper explores some of the methods governments have at their disposal to bring about constitutional revision. These are ordinary legislation, convention and reference to the courts.



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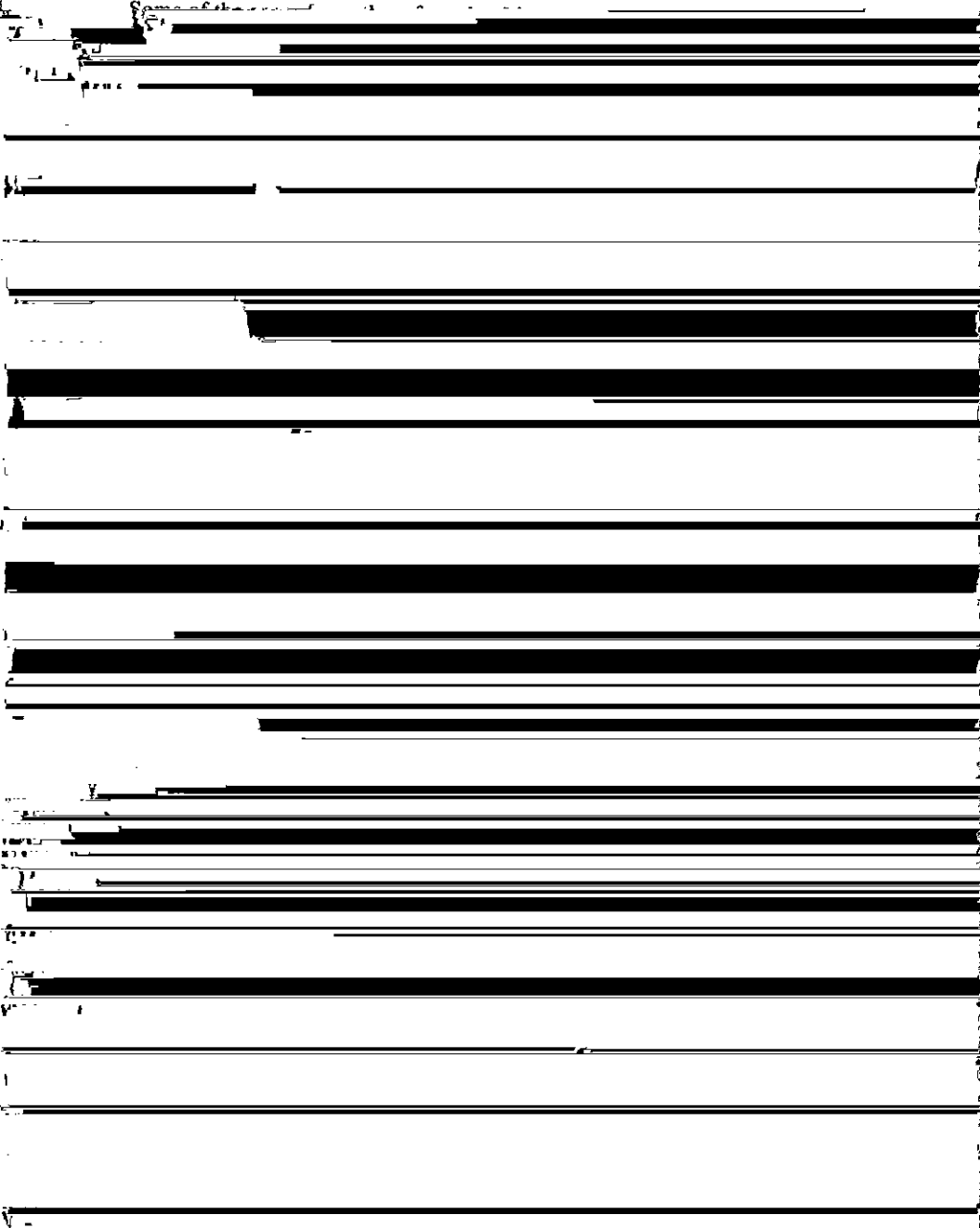
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1993," "Ground lost since death of accord, Mercredi says."⁹ Nor should one ignore the Rt. Hon. Joe Clark's warning:



importance, the emotions aroused as we have attempted formal amendments

There are four basic ways that constitutional frontiers can be shifted: formal constitutional amendment, convention, statute and judicial interpretation. Let

will be thought necessary or pursued through these processes, so rather than
develop a new list of subjects for consideration I have tried to use matters that

Although electoral reform was not central to the recent constitutional discussions, the topic has generated considerable interest. It

Since there is an element of risk associated with references, it is likely that this

Just as there are examples of instances where cases have been referred to the

courts, there are examples of situations where provinces decided it was not in
their interests to take the matter to court. Two non-challenges that come to mind

INTERPROVINCIAL TRADE BARRIERS

The ~~6-yr~~ government added the subject of interprovincial trade barriers to

in 1990. At that time, governments were unable to

see a much greater prospect for success

[REDACTED]

[The page contains several lines of text that have been completely redacted with thick black bars.]

of education."⁴⁵ There is a growing belief in Canada that federal involvement in setting national standards

These prosecutive notes should be sound. First, after the CAP experience

thought will have to be given to a means of protecting intergovernmental agreements. Second, the issue of transparency needs to be addressed. After their experiences with constitutional reform, the public will expect to be kept informed and most likely involved in influencing decisions related to reaching

THE AMENDING FORMULA: PROSPECTS FOR MORE MODEST USE

Canadians' experience with the amending formula of 1982 is relatively limited.

A part of the amending formula that needs greater scrutiny is section 43, which applies to amendments affecting some but not all provinces. In 1987 it was used to amend the provisions of Newfoundland's 1949 terms of union with respect to denominational schools. More recently, it has been used to

... public opinion was made fairly clear during

In his book, *Charter versus Federalism: The Dilemma of Constitutional*

happen next? We would negotiate — but what would we talk about? The PQ

A number of scholars are giving serious attention to _____

... and ... willingness on the part of the public to press for the

[REDACTED]

7. Rhéal Séguin "Onkooosk" (1988)

27. See "Governments agree on comprehensive negotiations to reduce internal trade

_____ "Beer Release, Industry, Science and Technology Canada, Montreal, 18

March 1993.

28. Stephanie Nolen, "Ontario considers retaliating," *The Globe and Mail*, 7 July 1993, p. A3A and "Beer war brewing between provinces," *The Globe and Mail*.

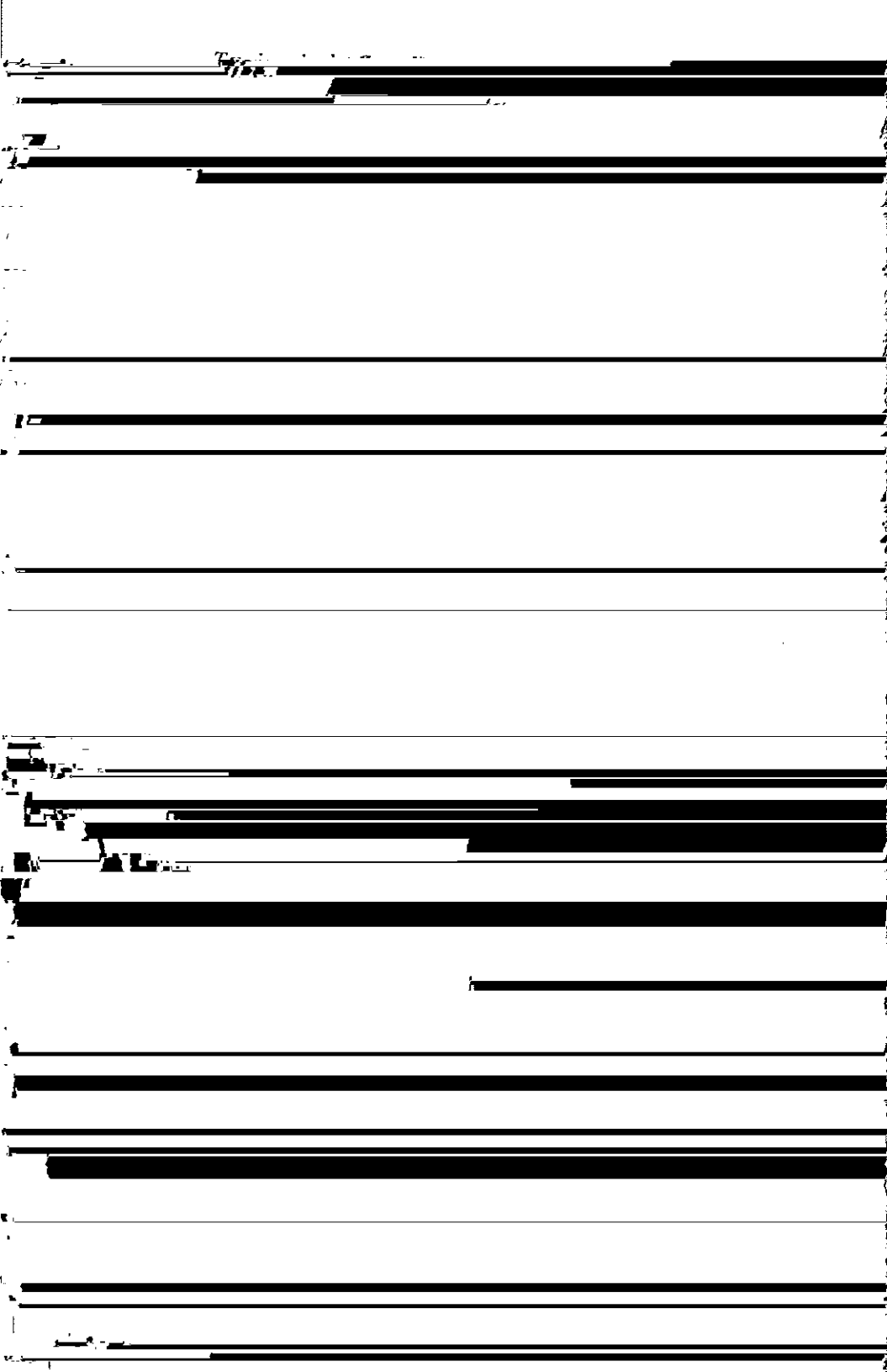
24 July 1993, p. B3.

29. "U.S. agrees to dumping trade barriers," *The Globe and Mail*, 9 June 1993

48. References are to various sections of the Code of Ethics.

due to failure of both the Meech Lake and Charlottetown Accords, many

political observers believe that executive federalism has lost its value as an



consultative referendums or plebiscites and have applied them at the ratification stage of the Charlottetown Accord has important implications for future constitutional proposals. It suggests that the formal procedure for legislative ratification

be superseded by a new constitutional convention involving referendums similar to the formal ratification procedure and practice in Australia.⁵

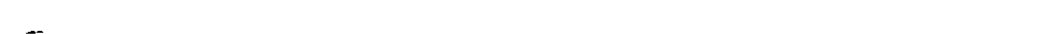
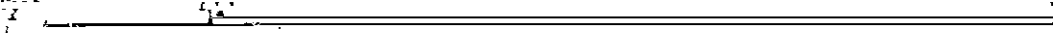
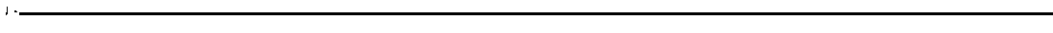
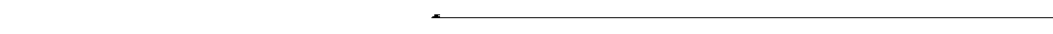
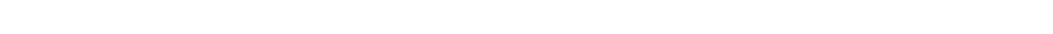
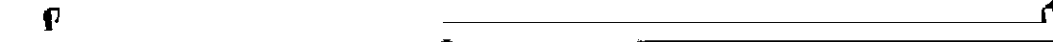
In short, in Canada today, as well as elsewhere (e.g., the European Commu-

surprising, therefore, according to the critics, that organized interest group opposition directed both to the content and process of Meech Lake constitution-making eventually turned a substantial majority of the Canadian public against the Accord and ultimately managed to defeat it.

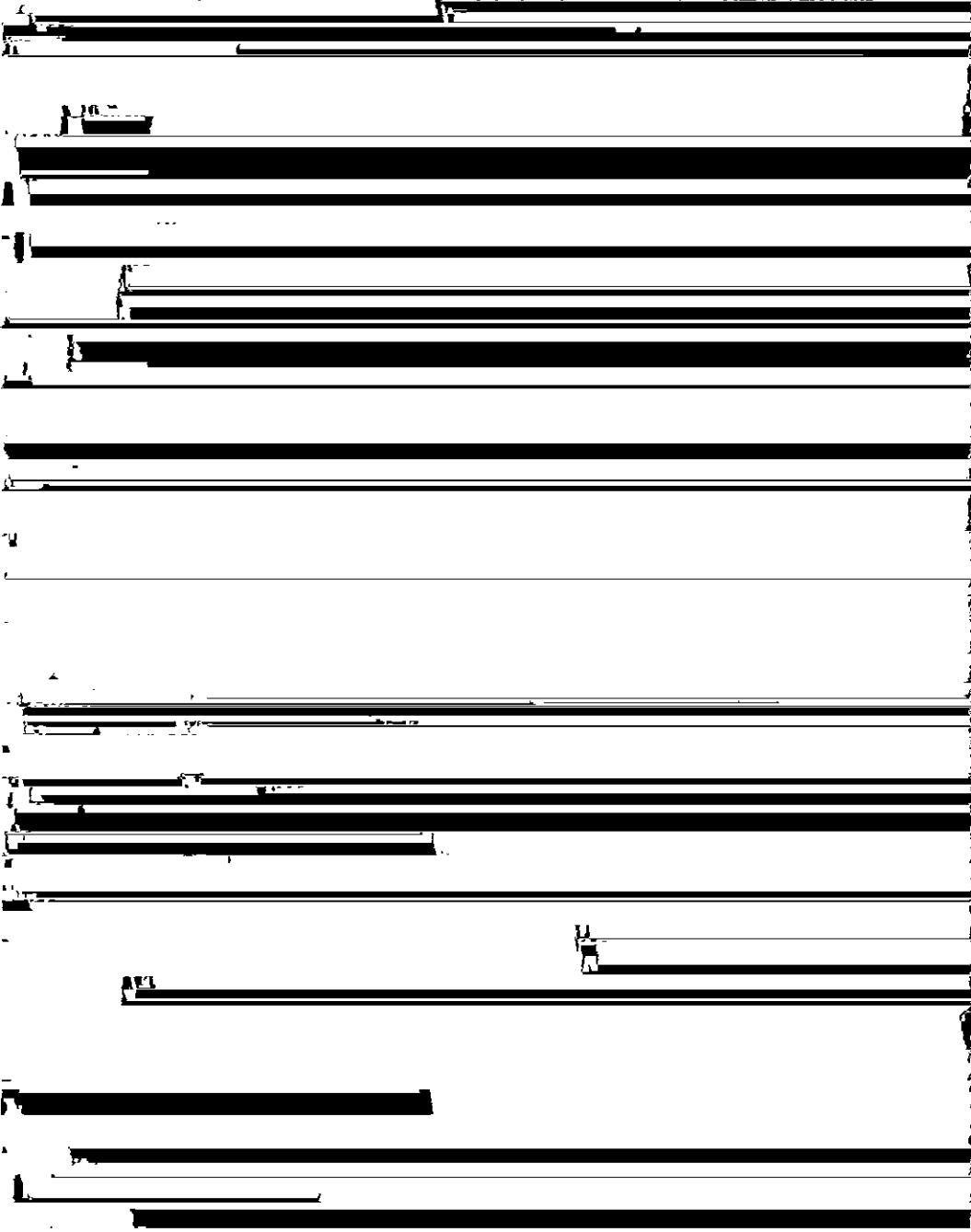
From the high-profile and broadly consultative Canada round between 1990



P



Canada closely resembles that of heads of national governments in international relations; he appropriately called this process "federal-provincial diplo-



activities surrounding the common objectives of negotiating external relations

112

the English-speaking provinces, and therefore was eventually defeated.

The Charlottetown Accord negotiated in the summer of 1992 was probably

7. Second, the Court's rationale is flawed because they tend to force the

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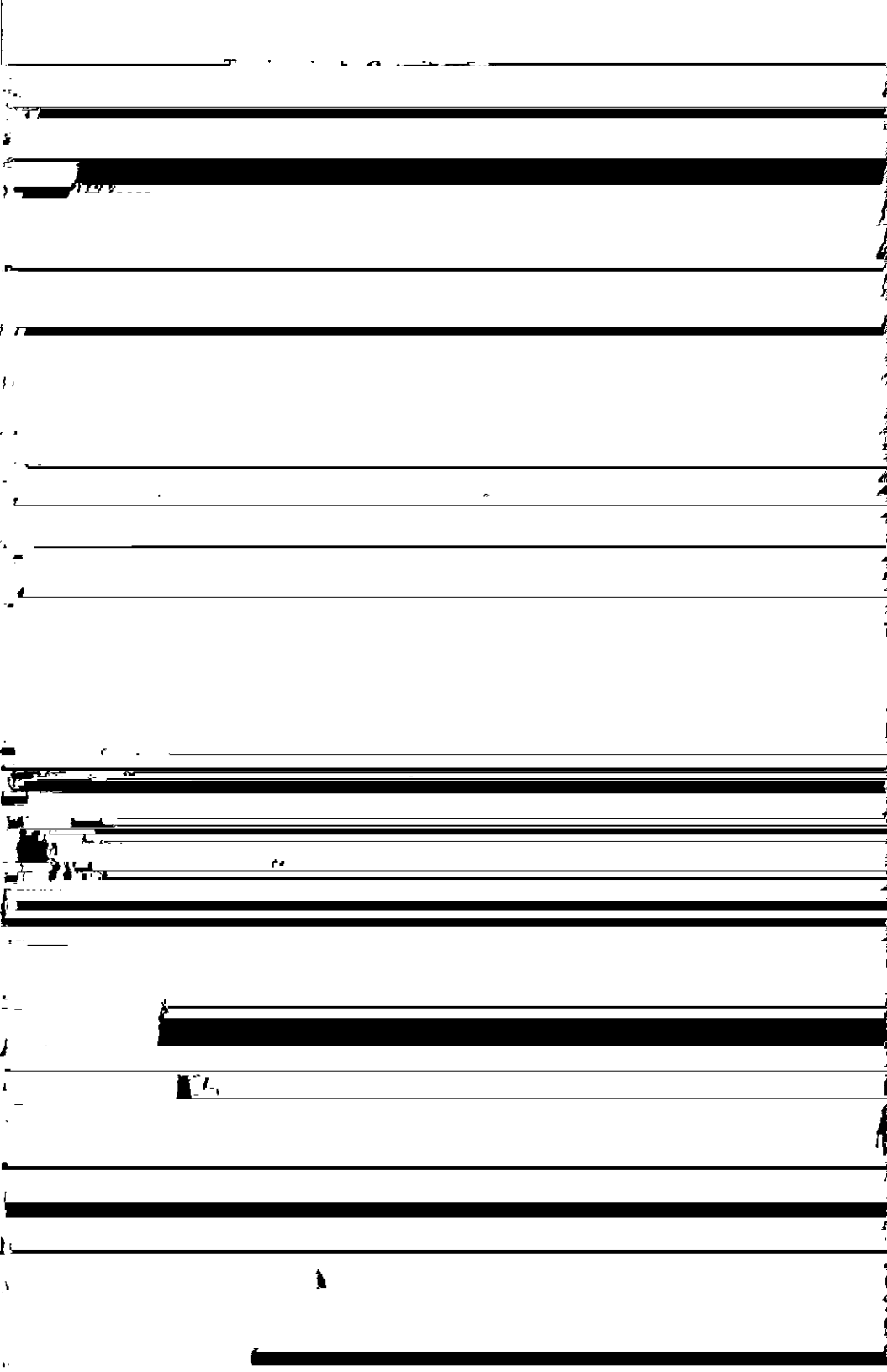
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government on the issue. Given the direct democratic nature of the



polar types "issue-oriented" and "institutionalized" interest groups (or more

precisely, they are portrayed as developmentally different types, ranging from "issue-oriented" to "fledgling" to "mature" to "institutionalized" groups). These are differentiated primarily by such factors as organizational features (e.g., formal membership, level and target of communication

involving the promotion of their group interests, (iv) unlike the two other types

...reactive? What has been the case for the "federalist" ...

[The remainder of the page is almost entirely obscured by heavy black redaction bars.]

in such a package. The role of the two other types of groups, the “public interest” and “special interest” groups, appears to have been a marginal one in these negotiations.

However, the later actions of politicians in the patriation negotiations involving inclusion or exclusion of minority group and equality rights in the Charter

Because they have conflicting normative rationales and because empirically

[REDACTED]

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Source: [REDACTED]

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have exploited such feelings of "loss aversion" to influence voters in three

Meach Lake and Chelattatay ...

Asst. Prof. of Economics, University of North Carolina at Chapel Hill

in the preparation and revision of this paper.

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Association of Canadian Studies in Australia and New Zealand, Wellington, New Zealand, 16 December 1992; and Brooks Jaffey, *Speeches*, p. 16 ff.

CONFIDENTIAL - For the use of the Director, M. Bureau (ed.) Canada, The

State of the Federation 1991 (Kingston: Institute of Intergovernmental Relations, 1991), p. 80.

- 31. Gordon Smith, "The Functional Properties of the Referendum," *European Journal*

43. See A. Paul Pross, *Pressure Group Behaviour in Canadian Politics* (Toronto: McGraw-Hill, 1975); Pross, *Group Politics and Public Policy* (Toronto: Oxford University Press, 1986).
44. Brodie and Nevitte, "Evaluating the Citizen's Constitution Theory," esp. pp. 235-239.
45. Alan Cairns, *Disruptions: Constitutional Struggles From the Charter to Meech Lake*, ed. Douglas Williams (Toronto: McClelland & Stewart, 1991), chap. 4.
46. *Ibid.*, pp. 15-16.

servants, and will be more qualitative than quantitative in methodology and research. For some preliminary discussion of this study, see Walter J. D'Amico

INTRODUCTION

... of Canadian constitution making the role of the federal

Cabinet attracts little or no attention, and for good reason. Since the 1960s the

case of the CCOT might also be

Smiley and Watts have argued: "No matter how much a federal system allows for the expression of regional differences through autonomous state or provincial governments, the federal solution is bound to disintegrate without some

all persons

influence.¹⁴ With respect to the CCCU, the question becomes whether it is not the federal ministers, special interests or the general public, but non-elected

September of 1991. Nonetheless, it is important to review briefly the events that

[REDACTED]

[The page contains approximately 15 lines of text that have been completely redacted with thick black bars.]

appointments and the constitutional amending formula, which would require unanimity, into a separate package.

The creation of the COUNCIL ON GOVERNMENTAL REFORMS

[REDACTED]

John Tait, Deputy Minister of Justice. Marv Dawson, Associate Deputy Minister

8,

Figure 1: Members of the Cabinet Committee on Canadian Unity (CCCU)

<i>Member</i>	<i>Province</i>	<i>Portfolio</i>
The Rt. Hon. Joe Clark	Alberta	Constitutional Affairs, President of Privy Council
The Hon. John Crosbie	Newfoundland	Fisheries & Oceans, Minister for Marine and Coastal Affairs

Agency (ACOA)

Deputy Prime Minister Finance

by both departmental civil servants and their own political staff. This was not the case here. There was little or no advance briefing material given to the ministers beforehand and all material discussed _____

Figure 6.2: Meetings of the Cabinet Committee on Canadian Unity Held Outside Ottawa

<i>Date</i>	<i>Location</i>
25-26 June 1991	Niagara-on-the-Lake, Ontario
3-4 July 1991	Quebec City, Quebec
9-10 July 1991*	Meech Lake, Quebec
1-2 August 1991	Charlottetown, P.E.I.
14-16 August 1991	Iqaluit, N.W.T.
	Yellowknife, N.W.T.
	Victoria, British Columbia

the more vocal elements in the caucus. The ... 16 ... 51

would be revisited later. This was especially true with regard to central institu-

tion and the distinctness of Quebec, about which the Quebec ministers felt

objective of economic union and the

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... On Senate reform a plurality of Canadians favoured not an equal and

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committee 38 r

constitutional proposals. Within the steering committee he had the opportunity

to participate in the process.

~~A Greater Church 1944: from 10-12 September differences still remained~~

111

mitigating the need to enter each other's territory.

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...and to a... of... and Cabinet as a whole had reverted to its

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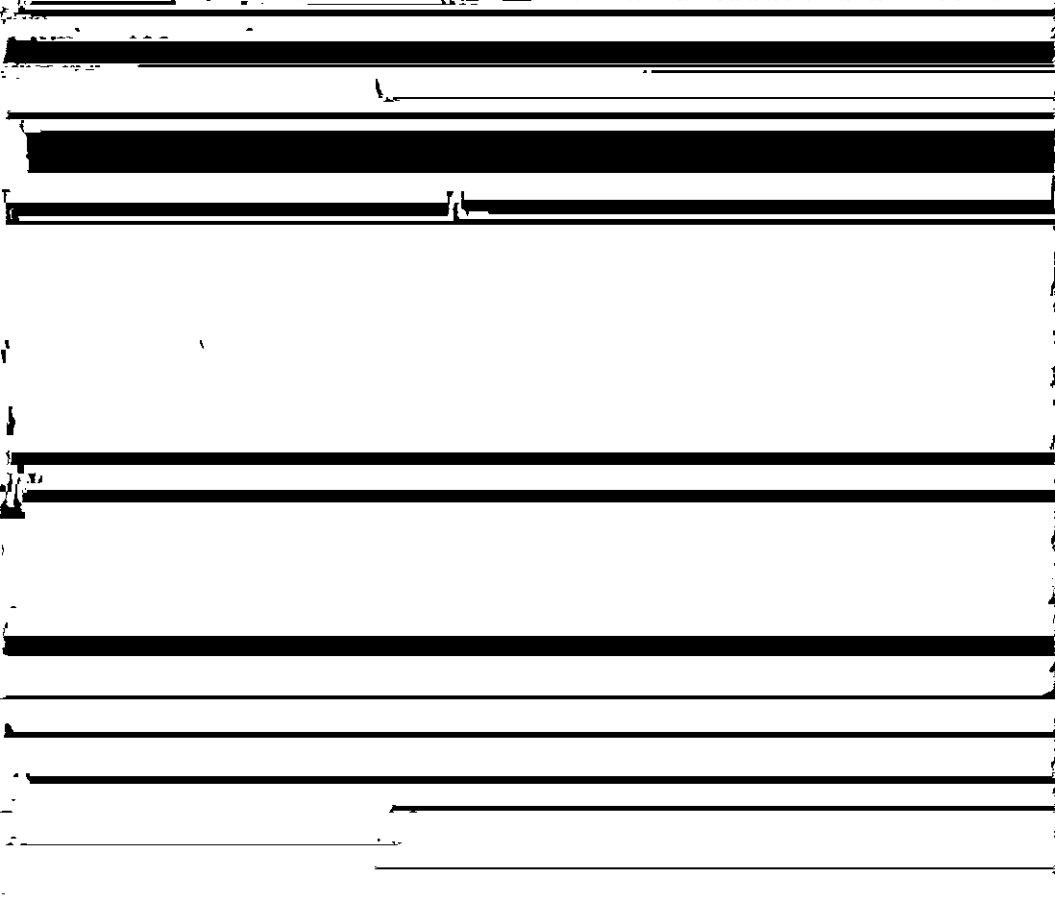
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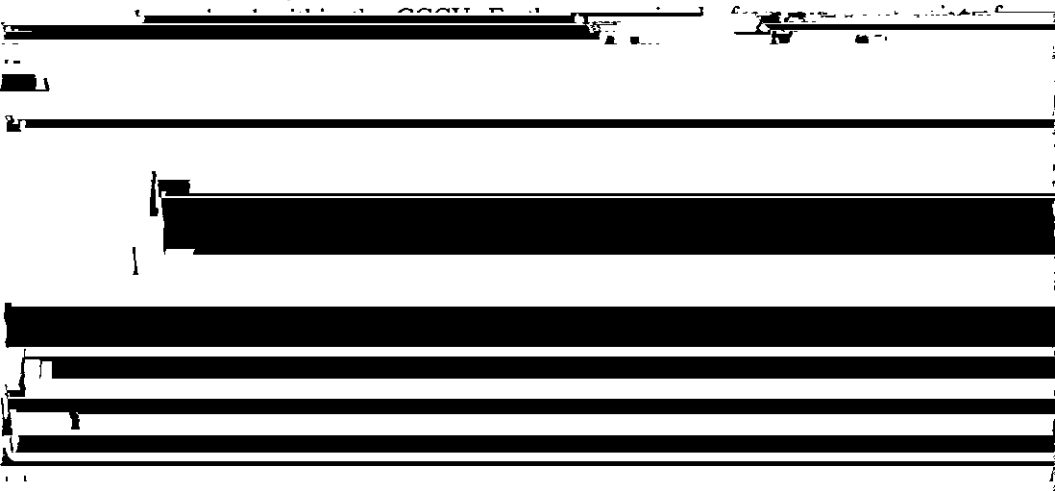
[REDACTED]

To better understand what transpired and to draw lessons it is best to return to

should be stressed that the influence of officials, and the steering committee in



be unfair to say that at times ministers simply invited officials to fill a vacuum



government's initial bargaining position. Yet there needed to be enough in the

... ..

[The page contains multiple lines of text that are almost entirely obscured by heavy black redaction bars. Only a few faint characters and lines are visible.]

NOTES

interviews with a number of officials in the Federal Provincial Relations Office (FPRO),

_____ as _____ the first author. These did not include
