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## Resistance in Canada's Federal System and the Struggle for Political Stability, Equality, and Social Justice: The Battle for Control of Newfoundland's Offshore Oil, 1960-1985

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# **RESISTANCE IN CANADA'S FEDERAL SYSTEM AND THE STRUGGLE FOR POLITICAL STABILITY, EQUALITY, AND SOCIAL JUSTICE: THE BATTLE FOR CONTROL OF NEWFOUNDLAND'S OFFSHORE OIL, 1960-1985**

## **Abstract**

The conundrum for all political systems has been to ensure fairness and equity to all political communities regardless of place while maintaining social cohesion and national unity. How national governments have sought to accommodate the goals and aspirations of various subnational groups within a country has been one of the pressing concerns of federalist states. The failure to do so had created periods of resistance in Canada. This paper examines Newfoundland and Labrador's fight with Ottawa for control over offshore oil and gas from the 1960s to the 1980s. This paper shows that the province believed it was not only articulating and championing its own limited interests but also engaging in a process to solve larger problems facing the nation. Federal leaders, such as prime minister Pierre Trudeau, believe that only they can protect the national community; they had to resist attempts by provincial premiers to strengthen their economies. Yet no resolution to the offshore dispute was possible until the election of a new prime minister who realized that sometimes the existing constitution does not meet the specific objectives of all provincial political communities. The resistance of provinces could only be addressed by finding political accommodation among the political elites.

## **Résumé**

Assurer la justice à toutes les communautés politiques indépendamment du lieu, tout en maintenant la cohésion sociale et l'unité nationale, a été l'enjeu majeur pour de nombreux systèmes politiques. Les gouvernements nationaux ont cherché à adapter

les objectifs et les aspirations des différents groupes infranationaux dans leur pays ; au Canada, l'échec d'une telle entreprise est associé à des périodes de résistance. Cet article examine le combat de Terre-Neuve-et-Labrador avec Ottawa pour le contrôle des ressources pétrolières et gazières, des années 1960 aux années 1980. Ensuite, l'article montre que la province a estimé qu'il était important non seulement d'articuler et de défendre ses propres intérêts limités, mais aussi de s'engager dans un processus destiné à résoudre des problèmes plus importants auxquels était confronté le pays. Les dirigeants fédéraux, comme le Premier ministre Pierre Trudeau, croient qu'eux seuls peuvent protéger la communauté nationale ; ils doivent ainsi résister aux tentatives des Premiers ministres provinciaux visant à renforcer leur économie. Pourtant, aucune solution n'a pu être trouvée jusqu'à l'élection d'un nouveau Premier ministre qui a réalisé que, parfois, la constitution existante ne répondait pas aux objectifs spécifiques de toutes les communautés politiques provinciales, et que la résistance des provinces ne pouvait être traitée qu'en trouvant un compromis politique entre les élites politiques.

When the Dominion of Canada was created in 1867, it had to reconcile the necessity of creating a nationally integrated economic union amid the fears in the four British North American colonies of surrendering control of their local affairs to a distant national government. This was especially true in French-speaking and predominantly Catholic Canada East (later Quebec), but the Maritime colonies, too, were worried about surrendering to Ottawa too much control over local matters. So concerned were Prince Edward Island (PEI) and Newfoundland that they simply refused to join in 1867 although PEI changed its mind a few years later and entered the union. Newfoundland remained outside Confederation until 1949. The politicians involved in the 1864-1867 negotiations showed that they were relatively proficient in the art of statecraft; they forged a national economy, split jurisdiction between local and national governments, and struck a balance between unity and diversity while providing a grand design for social cohesion in the new nation. They succeeded in uniting the scattered colonies of British North America, divided by geography, language, ethnic origin, and religion because they crafted a constitution based on the federal principle that shared responsibility between competing provincial and national interests.

Those involved in creating Canada clearly hoped to build a national political community through a federal constitution that made space for and accepted the legitimacy of the various communities that comprised the nation in 1867 or were added later. Richard Simeon, one of Canada's pre-eminent federalist scholars once noted that "federalism is not an end in itself" ("Criteria" 131-32). Rather, it must be evaluated on its functional effectiveness, that is, its ability to "enhance or frustrate the capacity of

government institutions to generate effective policy and respond to citizen needs" (Leclair 411-14). The federal principle embodied in the constitution was designed to unite an array of communities and allow all citizens and provinces to prosper. Canada's variant of federalism was constructed, first, to provide balance between unity and diversity in a large geographical space and, second, to share responsibility between competing provincial and national interests while creating a national economy for, first, four—and later ten—provinces with clear boundaries separating one from another. Federalism became the instrument for obtaining political consent for the new nation.

Equity across space and boundaries was an important aspect of Canada's federal system from the beginning, but since 1867 the conundrum has not been about the maintenance of federal principles but about how to ensure fairness and equity to all political communities within the country while, at the same time, maintaining social cohesion and national unity in the face of immense geographical space and the commitment to provincial boundaries. States have too often restricted full membership to all its communities, privileging some while exploiting others, and Canada has been no exception to that practise. There are myriad instances of resistance in Canada to the failure to provide social and economic justice for all its citizens, including those from Indigenous peoples struggling against the long history of colonization,<sup>1</sup> from labour groups against corporate greed and better working conditions,<sup>2</sup> from social groups worried about increasing globalization and neoliberal government agendas,<sup>3</sup> from various groups decrying the persistence of racism in Canada (Fleras), and from groups attempting to resist Canada's involvement in military conflicts (Campbell, Dawson, and Gidney).

How national governments have sought to accommodate the goals and aspirations of various subnational groups have been one of the pressing concerns of all federalist states. Scholars have used different models to explain how a nation with different and diverse political communities approaches questions of equity and fairness. One model, known as intrastate or institutional federalism, recognizes the capacity of national governments to incorporate the interests and territorial particularisms of the provinces in the national decision-making process. Intrastate federalism is weak in Canada largely because of the ineffectiveness of the Senate and other parliamentary

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<sup>1</sup> See Harris, *Making Native Space*; and *Resettlement*; Deur et al.; LaRocque; Combet and Toussaint; Belanger and Lackenbauer; Griffith; Lavell-Harvard and Corbiere Lavell.

<sup>2</sup> See Heron; Strikwerda; Stonebanks; and Clement.

<sup>3</sup> See Chang et al.; Terry; Pedersen; Eaton; Isitt and Moroz; Burke, Moores, and Shields; Armstrong and Armstrong; Fuller, Fuller, and Cohen; Camfield.

institutions. As a result, interstate or executive federalism, has often become the dominant paradigm for dealing with questions of equity and fairness in Canada.<sup>4</sup> This model of federalism has successfully resulted in negotiated solutions to many problems between the federal and provincial governments in the Canadian federation. However, when interstate federalism fails to accommodate and transact the nation's business satisfactorily to both levels of government, relations become embittered between province and national government. Resistance is often the outcome. Provincial leaders then believe that their federal counterparts are either out of touch with provincial and regional sensibilities and interests, or are concerned only with majoritarian interests (Bryden; D. E. Smith). In such instances, provinces believe they have to mount a resistance that forcefully champions their own interests and perhaps solves larger problems facing the federation. Federal leaders, of course, believe they must resist the initiatives of their provincial counterparts to protect the national community from political and economic splintering.

Such resistance has often also been evident within the Canadian federal system. Canada has had its share of federal-provincial dysfunctionality, most notably in the period immediately after Confederation when some provincial premiers, notably Ontario's Oliver Mowat, resisted Prime Minister John A. Macdonald's determination to increase the power of national government at the expense of the provincial ones, as well as in the 1930s when premiers sought a great share of national revenue, or in the various constitutional battles in the 1980s and early 1990s, particularly between Ottawa and Quebec, and in the disputes over energy in the 1980s when western premiers resisted Prime Minister Pierre Trudeau's plan to create a national energy policy.<sup>5</sup> For much of Canada's early history, the courts resolved jurisdictional conflict between governments and even though those decisions invariably angered one order of government, they settled matters between provincial and federal governments who then got on with the business of governing. The maintenance of federalism—and Canada itself—more recently rarely depended on the judiciary or the principles of federalism but on political agreement between the constituent parts that make up the country.<sup>6</sup> Although at the heart of Canadian federalism remains the question of jurisdiction and which order of

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<sup>4</sup> See Simeon, *Federal-Provincial Diplomacy*; Black and Cairns; Cairns; Young, Faucher, and Blais; Brock; Bakvis; Bakvis, Baier, and Brown.

<sup>5</sup> See Simeon, *Federal-Provincial Diplomacy*; Black and Cairns; Cairns; Young, Faucher, and Blais; Brock; Inwood, Johns, and O'Reilly; Bakvis, Baier, and Brown; Breton 93.

<sup>6</sup> For a discussion of culture in recent Newfoundland history, see Bannister; Overton; and Tomblin, *Ottawa*.

government has which power, the federal principle has failed to manage moments of resistance in Canada.

This paper argues that federal principles and constitutionalism are not effective at dealing with resistance within the federal system and finding accommodation and political stability between the two constituent groups in Canada—provinces and nation. The maintenance of federalism is predicated on compromise among political actors across space and boundaries. Political conflict is managed best when political actors often ignore the principles of federalism and constitutionalism and take the steps necessary to address poverty, powerlessness, and historic grievance, often the main factors leading to moments of resistance within the political system. Resistance and political instability in the federation is addressed only when political leaders reach across space and boundaries to take steps to ensure a measure of equality, justice, and prosperity throughout the Canadian federation. This point is amply demonstrated by examining the dispute between Newfoundland and Ottawa over control of the offshore from 1950s to 1985. How Canada dealt with sites of resistance depends more on politicians than on the courts and federal principles.

## **EARLY CONTROVERSY OVER OFFSHORE MINERAL RESOURCES**

The history of oil and gas in Canada has been one of struggle for control between federal and provincial governments (Clancy). Outside recognized provincial boundaries, the federal government maintained that it controlled large sections of land, such as the three northern territories, all national parks, 2,600 First Nations Reserves, and the offshore submarine lands within the two hundred-mile limit. These areas are known as Canada Lands but with the discovery of potentially huge reserves of oil and gas in the Atlantic Ocean off Canada's east coast in the 1950s and 1960s, the provinces insisted that those areas were within provincial boundaries and did not fall within the jurisdiction of the federal government. The provinces first claimed the offshore, but Ottawa soon dismissed their claims. The Atlantic Provinces, the economic laggards in the Canadian federation for most of the twentieth century, believed that if they had ownership of the resource it would go some distance to resolving the regional economic and social imbalances within Confederation ("Legal Case"; Shaw). Ottawa's response was to refer the matter to the courts and let them decide.<sup>7</sup> It chose British Columbia on the west coast as the test

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<sup>7</sup> See Laing; Reference Re: Offshore Mineral Rights; and Pearson.

case, believing that what the Court ruled on one ocean would apply to the others. The Supreme Court ruled in Ottawa's favour, but Atlantic Canada refused to accept that the decision applied to it. Newfoundland insisted that Canada would have no claim to the continental shelf on the east coast if it had not joined Confederation in 1949.<sup>8</sup>

When Pierre E. Trudeau became prime minister in 1968, he dismissed all provincial claims on the east coast to the offshore. Trudeau saw the regional claims as an attempt to exact "special preferential entitlement," something he vehemently opposed. Federal dominance in offshore energy would help national unity; second, all revenue would be shared equally between Ottawa and all ten provinces. Sharing was "both important and equitable" in a national community and it would strengthen social cohesion and national unity (*Halifax Chronicle Herald*).<sup>9</sup> To the eastern provinces such a unilateral pronouncement was federal arrogance at its worse, and they categorically rejected it. Atlantic Canada had to be the main beneficiary of oil and gas development in the region, and it had to control the pace and nature of its development; it had no interest in sharing the new revenue with the other, wealthier provinces.<sup>10</sup>

## NEWFOUNDLAND REJECTS OTTAWA'S POSITION

When Frank Moores became premier of Newfoundland and Labrador in January 1972, he was part of a new generation of Newfoundland politicians engaged in province-building in the same way that premiers of other provinces such as René Lévesque, Allan Blakeney, and Peter Lougheed were. None of those provincial premiers had national political aspiration as was the case earlier in the history of Canada. This was a period of province-building. In Newfoundland's case, it is believed that the province's long history of underdevelopment and poor economic performance stemmed from a succession of unscrupulous developers who had pillaged the province's resources often with the consent of the province. Control of Newfoundland's natural resources would no more be surrendered to outsiders (Tomblin, "Newfoundland" 89-108). Moores insisted that only the provincial

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<sup>8</sup> See Reference Re: Offshore Mineral Rights. See also Swan; and Martin.

<sup>9</sup> See Cabinet Conclusions, November 5 and 21, 1968; and Trudeau's letter to L. J. Robichaud, Premier of New Brunswick, November 29, 1968, in *Arbitration* (50). Similar letters were sent to the other premiers. Trudeau's comments are reported in *Halifax Chronicle Herald* 3 Dec. 1968.

<sup>10</sup> See Donald Smith; and Smallwood.

government could solve the province's social and economic problems and provide a better social and economic future for everyone.

Moore made it clear that he would accept nothing less than full provincial jurisdiction over the offshore oil and gas development (*Arbitration* 59-61). In September 1973, just days before the first energy crisis spawned by war in the Middle East, Moore outlined his demands to Trudeau: an equal voice in management and development; actual day-to-day administration in St. John's; Newfoundland laws to govern the offshore during exploration and development as if the activity had taken place within the province. Revenues would be split ninety percent to the province and ten percent to the federal government (Govt. of Newfoundland and Labrador, "Proposal").

Ottawa wondered what in the world was going on in Newfoundland. An internal memo prepared for Trudeau noted that Newfoundland now approached Ottawa with more self-assurance than the "so-called sheikdom of Alberta." It was taking "Ontario-like" positions on issues. An indignant Trudeau told the federal Cabinet to dismiss Moore's proposal as "unacceptable": it "could not be used as a basis for future discussion" ("State of Federal-Provincial Relations"). An advisory role in the management of the development of the offshore oil resources might be possible and perhaps Ottawa might even allow as much as seventy-five percent of the revenues to accrue to the Atlantic Province to be shared among them, but he would never surrender control of the offshore to the provinces. The offshore development was essentially federal because of its "national character," he insisted ("Note"). Ottawa could never reduce Canada's dependency on foreign supplies and regulate prices for Canadians if it allowed the provinces to have control.

Moore feared that Ottawa had become so consumed with supply after the OPEC embargo in 1973 that it would rush the development of offshore Atlantic reserves without considering the disruption such development might have in Newfoundland, a predominantly rural province. Development would bring serious social and economic dislocation, especially, if it were rapid and uncontrolled. Only the provincial state could monitor the oil companies and provide the oversight needed to protect the province and its people.<sup>11</sup> It was more about control of development than capturing resource rents, and Moore even raised the spectre of separation—perhaps the most threatening instrument of political resistance in a federal state—as a way to push Newfoundland's case for control of the offshore ("Moore").

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<sup>11</sup> See Cabinet Conclusions, December 20, 1973; Trudeau's letter to Moore, January 25, 1974; and "Memo for the Prime Minister," December 10, 1973.



## PECKFORD INTENSIFIES RESISTANCE RHETORIC

After serving as Energy Minister, A. Brian Peckford became premier of Newfoundland and Labrador on March 26, 1979, following the resignation of Moores. Peckford was a modern-day Oliver Mowat who believed in provincial rights and the equality of the provinces (Romney). His was the poorest province economically in Canada and its dependence on Ottawa, he believed, could only be reversed if it were to “generate real wealth within the province,” and that could only be achieved if Newfoundland had the same degree of control over its resources as other provinces (Peckford, *Some Day* 154-56). The offshore was Newfoundland’s last chance at becoming a viable society. The province agreed: in his first provincial election Peckford won a convincing victory—thirty-three of fifty-two seats and more than fifty percent of the popular vote.

With the election of Progressive Conservative Joe Clark as Canadian prime minister earlier, in May 1979, Newfoundland’s demands were to be accommodated. Clark saw Canada as a community of communities and promised to treat offshore resources the same as those on land. Although Clark, who led a minority government, insisted that Canada had sovereign rights over the offshore, he abandoned Trudeau’s insistence on federal control of development.<sup>12</sup> The jubilation over Clark’s promise in Newfoundland was not to last, however. Clark’s government was defeated in a confidence motion in the House of Commons and on February 18, 1980, Trudeau was returned to power. He likened Clark to a cringing headwaiter at the beck and call of the premiers (Bothwell 162). The offshore was a mere subterfuge contrived by ambitious provincial premiers to usurp the powers of the central government, he charged, and he had no intention of honouring Clark’s promise to Newfoundland. Doing so would be one step towards destroying Canada. Trudeau returned as prime minister, believing that his nation-building plan had been unfairly and prematurely cut short and he had one last chance to construct a strong national community for Canada.

## PECKFORD RESISTS TRUDEAU’S PLAN FOR CANADA

Trudeau and Peckford were similar. Zealous politicians both, they were driven by burning commitment, passion, and a sense of history. One might argue that as a younger Trudeau had confronted the *Grande Noirceur* in Quebec during the reign of Duplessis, Peckford saw himself fighting similar demons in

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<sup>12</sup> See Peckford (a letter to Clark, August 23, 1979); and Clark.

Newfoundland. He, too, was determined to slay the dragons—both real and imagined—that had denied his province its rightful prosperity and to assert control over the province's resources to make Newfoundland and Labrador an economic and social equal with the wealthier provinces in Canada. A strong province with control over the development of all natural resources, including offshore gas and oil, was necessary to achieve his objectives.

After waging a bitter and destructive crusade against insular nationalists in Quebec and the West, Trudeau was determined that never again would Canada be held hostage by a greedy province or an upstart regional nationalist. In October 1980, he introduced a controversial National Energy Program (NEP) which suggested that energy was too important to leave to the provinces. The goal was the further Canadianization of the oil industry. It rested on three assumptions: one, security of supply and Canadian independence from the world oil markets; two, the opportunity for all Canadians to participate in and benefit from the energy sector; and three, fairness, both in pricing and revenue-sharing (Doern and Toner). The NEP increased the federal role on all Canada Lands. For Canada, to achieve for national oil security it would have to control the Hibernia oil-fields off Newfoundland and Labrador.

Peckford resisted Trudeau's view of Canadian federalism that made the National Energy Program possible. He argued that Canadian federalism should make possible "a delicate weaving of regional cultures and strengths into a vibrant national fabric. The strength of Canada is the strength of its parts." Peckford believed "the central government has only that life and that authority delegated to it by the 10 provinces. It has no right to grow independently, either by legalistic evolution or by the use of its spending powers" ("No Match for the Master"). Rather than sundering the national community as Trudeau insisted Peckford and his like-minded premiers were doing, he saw decentralization as strengthening Canada and giving the provinces the ability to pursue social justice while improving the level of social services in the have-not provinces (Peckford, *Some Day* 154).

Peckford thought that his vision of Canada could be achieved during the process of constitutional renewal that Trudeau had promised during the Quebec referendum on sovereignty-association in 1980. It was expected not only in Quebec but among most of the premiers that Trudeau would consider some form of decentralization in recognition of the special character of Quebec after it rejected sovereignty-association in a provincial referendum. They were mightily mistaken. Trudeau saw the premiers as Harry Potter saw the dementors: Trudeau asked in the 1980 throne speech, "Will Canada still exist as a country at the end of this decade, or will we give in to the siren song of regional isolationism?" (Byers 21). Trudeau dismissed the premiers as coming from the "school of blackmail of which Quebec was the founder and

the top-ranking graduate” and believed that if their resistance prevailed, Canada would cease to exist as a national community (Graham 27).

On offshore resources, Trudeau agreed that provinces should reap the major benefits from offshore development and promised coastal provinces one hundred percent of offshore royalties and fees until they became “have” provinces (those that were above a fiscal threshold representing a national average and not eligible for equalization transfers from the federal government) and reached an agreed upon per capita income. When that happened, the provincial share of the revenue would decrease progressively. Ottawa refused to move on federal taxes, such as the corporation income tax and federal sales taxes, or on Petro-Canada’s mandated share of offshore development. Ottawa also insisted that the national interest had to prevail in any conflict with the provinces; it would retain ultimate control. In early October 1980, Trudeau told Canadians in a national televised address that the premiers’ demands, including those on the offshore, threatened to destroy the national project called Canada. He was unwilling, he said, in an obvious shot at Peckford and some of the more recalcitrant premiers, “to bargain freedom against fish, fundamental rights against oil, [and] the independence of our country against long-distance telephone rates” (Graham 87-88). He vowed to proceed unilaterally, but the courts eventually forced him to negotiate with the premiers (Govt. of Newfoundland and Labrador, “Province”). A constitutional package was negotiated but without Quebec and without any resolution on offshore oil and gas ownership (Graham; Leeson).

## **RESISTANCE TO TRUDEAU’S VISION OF THE NATIONAL COMMUNITY**

Negotiations continued over ownership of the offshore, and Trudeau and Peckford were at each other throats as federal-provincial relations in the early 1980s reached perhaps their lowest point since Confederation. Trudeau saw Peckford’s resistance not only as a fundamental challenge to the power of the national government but a desire to transform Canadian federalism. The level of distrust and animosity in the Canadian federation can be illustrated in a couple of examples as Trudeau attempted to deal with Peckford’s resistance to his plan for Canada. One incident occurred over the attempt by offshore workers to unionize. The Seafarers’ International Union (SIU) applied to the Canadian Labour Relations Board for certification and when its claim was rejected because it fell outside of Board’s jurisdiction, the union appeal to the Federal Court.

What should have been simply a determination of labour law quickly became a constitutional crisis when Trudeau intervened and asked the Federal Court to expand its judgement to rule on the whole question of jurisdiction over the offshore.<sup>13</sup> Peckford was furious. The Federal Court had no jurisdiction over matters assigned to the provinces; it could arbitrate only within the federal domain. Trudeau's request to the court was a clever maneuver to keep the offshore question out of the Newfoundland courts because Federal Court decisions could be appealed to the Supreme Court of Canada. Peckford ceased talks with Ottawa, and on February 18, 1982, asked the Newfoundland Court of Appeal to adjudicate the issue of ownership.<sup>14</sup> Newfoundland wanted to keep the matter out of the Supreme Court of Canada because it believed that the Supreme Court was too close to Trudeau to get a fair hearing there.<sup>15</sup> Peckford also called an election to win support for his continued resistance to Trudeau. "What I need now is a clear mandate which will show Ottawa that you do support my administration and the stand we are taking."<sup>16</sup> Support for his resisting Ottawa was overwhelming. On April 6, 1982, he won forty-four of the fifty-two seats and sixty-one percent of the popular vote.<sup>17</sup>

A second illustration that federal-provincial relations had reached their nadir is that Trudeau and the federal government took every opportunity available to taunt Peckford. No federal minister could resist carping on Peckford and reminding Newfoundlanders of the implications on their intransigence. Even Trudeau chirped in when he could, telling an audience in

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<sup>13</sup> See *Globe and Mail* 11 Feb. 1982; and *Seafarers' International Union of Can. v. Crosbie Offshore Services Ltd.*, [1982] 2 F.C. 855, 135 D.L.R. (3d) 485, 82 C.L.L.C. 14, 180 (C.A.). Leave to appeal to S.C.C. refused (1981), 135 D.L.R. (3d) 485.

<sup>14</sup> See *Reference Re Mineral and Other Natural Resources of the Continental Shelf* (1983), 145 D.L.R. (3d) 9, 41 Nfld & P.E.I.R. 271 (Nfld. C.A.).

<sup>15</sup> For a recent book which has also questioned the Supreme Court's relationship with the federal government during this period, see Bastien. Bastien contends that Supreme Court Chief Justice Bora Laskin revealed confidential information to Canadian and British officials during deliberations on the repatriation of the constitutional case in 1981.

<sup>16</sup> Quoted in *Globe and Mail* 16 Mar. 1982.

<sup>17</sup> See Trudeau's speech given to the Liberal Party of Newfoundland and Labrador's Fund Raising Dinner, St. John's, May 5, 1981. William Rompkey, Newfoundland's representative in Trudeau's Cabinet after the 1980 election made this point to Peckford. See Rompkey's letter to Peckford from May 12, 1981. Rompkey confirmed Trudeau's position when he wrote Peckford: "It seems to me that if we are to hold together as a Country, and if we are to have self-sufficiency in energy by 1990, then we must proceed all across the Country on the basis of sharing and co-operation."

Charlottetown, for instance, that two of the drilling rigs scheduled to drill off Newfoundland in 1982 had been reassigned to Nova Scotia. Despite Trudeau's intellectual defence of a centralized federation, he, too, was a practitioner of base personal politics. Ottawa regarded Peckford with the "kind of disdain usually reserved for yipping mongrels," the *Globe and Mail* reported. Trudeau and his cabinet seethed with anger at Peckford's dogged resistance. They could never forgive him for his comment during the 1980-1981 constitutional talks that the federal government was an agent of the provinces or that he was more sympathetic to René Lévesque's ideal of Canada than of Trudeau's.<sup>18</sup> Trudeau had nothing but contempt for Peckford's resistance, and that prompted him to ignore many of the protocols associated with Canadian federalism. Breaking with most judicial traditions, he appealed directly to the Supreme Court of Canada to decide on jurisdiction of the offshore even while the matter was still in the Newfoundland court. Rarely had a federal government ignored the provincial court to adjudicate first on a matter of such importance, but Trudeau insisted that Hibernia oil was too important to Canada to risk further delay. Peckford declared a provincial day of mourning and asked people to wear black armbands in united solidarity with his resistance to federal arrogance.

Intergovernmental relations continued to deteriorate. As Ottawa sought retribution, the relationship between Newfoundland and Ottawa became dysfunctional and punitive. Despite increasing concerns about energy security, for instance, Ottawa refused to provide any support for Newfoundland's development of the Lower Churchill hydro-electric project in Labrador; federal-provincial agreements negotiated by officials went unsigned for months waiting ministerial signature; the Newfoundland dockyard was the only one in eastern Canada that refused funding for upgrade; and when the deep-sea fishery went into a tailspin in the early 1980s, Ottawa initially helped only those regions of the province that were represented federally by the Liberal Party.<sup>19</sup>

Peckford lost in both courts. He had gambled everything on the judiciary and had lost badly. If the principles of federalism had been followed, Peckford would have relented. Instead, his resistance continued. He attacked the Supreme Court as a "blunt instrument with which to define the kind of Canada we want" and remained belligerent, insisting that he would not return to the bargaining table until Ottawa agreed to give the province a share of the management of the offshore. He embarked on a national speaking tour—

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<sup>18</sup> See *Globe and Mail* 10 Dec. 1981: 10.

<sup>19</sup> See *Globe and Mail* 10 Dec. 1981: 10.

“Sharing from Sea to Sea”—to promote a better understanding of Newfoundland and Labrador, but any hope of a constitutional deal was gone (Crenna).

## THE ATLANTIC ACCORD

Peckford's final act of resistance to Trudeau and the federal government was to wait, hoping that the Trudeau government would be replaced. It was the last card Peckford had to play and with the Liberals more than twenty points behind the Progressive Conservatives in most national public opinion polls during the spring of 1984, it looked like a winner. Brian Mulroney, the new Progressive Conservative leader, had promised a different concept of Canada and Canadian federalism. He had vowed to end the interventionist policies of Trudeau and repeal the National Energy Program to deregulate the oil and gas industry in Canada. He also promised to recognize provincial ownership of the offshore petroleum resource as part of the Conservative policy that embraced a decentralized Canada that gave the provinces much more control than Trudeau and other federalists committed to the concentration of power in Ottawa would ever accept.<sup>20</sup>

On June 14, 1984, when the Liberals were in the midst of a leadership campaign to replace the retiring Trudeau, there was an extraordinary occurrence as a federal opposition leader (Mulroney) and a sitting premier (Peckford) signed a Memorandum of Understanding giving the province joint control with Ottawa over the offshore if the Conservatives prevailed in the next federal election.<sup>21</sup> Although the MOU recognized that the Supreme Court had settled the issue of ownership of the offshore mineral resources and made impossible an earlier promise to recognize provincial ownership of the resource, Mulroney promised that a Progressive Conservative government would recognize the right of Newfoundland and Labrador to be the principal beneficiary of the wealth generated from oil and gas off its shores as if the resources were on land and to have an equal voice in managing development. Peckford claimed the agreement was consistent within a strong and united Canada.<sup>22</sup>

The Conservative victory in 1984 swept away the corrosive bitterness and acrimony that had characterized relations between Ottawa and St. John's for

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<sup>20</sup> See the notes from the meeting between Mulroney and Peckford, November 17, 1983 (Mulroney).

<sup>21</sup> See Brochure on Resources Offshore Newfoundland.

<sup>22</sup> *Globe and Mail* 14 June 1984: 1. See also Carney 217-20.

nearly two decades. It also marked an end to Peckford's resistance to Ottawa. On February 11, 1985, Mulroney and Peckford signed the Atlantic Accord giving both governments equal partnership in the management of offshore oil and gas resources (J. Smith). The federal minister had paramountcy until Canada established security of supply and ultimate independence from the world oil market. After that, paramountcy would pass to the provincial minister even though Ottawa had clear legal jurisdiction over the offshore oil and gas resources. If the federal minister believed that the province's insistence on a particular mode of development would unreasonably delay Canada from achieving security of supply, the federal government could appeal to a three-person arbitration panel that would make a final ruling on the matter.<sup>23</sup> There was no dollar-for-dollar loss of equalization payments for Newfoundland as offshore revenues grew, but a gradual reduction as it caught up economically and socially to the rest of Canada.<sup>24</sup>

## CONCLUSION

Federalism and the constitution were not established as instruments of coercion that would establish a final victory of one political foe over another; they were designed to manage and mediate conflict. There is always tension, on the one hand, between the view that the text of the original federal arrangement invites fidelity to that text and the framers' original intentions and, on the other hand, to the reasonable expectation that federalism and constitutionalism should fashion sensible and appropriate change and interpretations to meet new conditions and contexts. In the offshore dispute from 1972 to 1984 between successive Newfoundland premiers and the federal government, one side argued for fidelity to the original text and the other for recognizing current contingencies. When that approach failed to yield results, Premier Peckford aggressively resisted the federal *status quo*. Even when the Supreme Court of Canada ruled against him, Peckford refused to accept the outcome. He believed that Canada had a constitution that did not

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<sup>23</sup> The 1985 Canada-Newfoundland Atlantic Accord, or "Memorandum of Agreement Between the Government of Canada and the Government of Newfoundland and Labrador on Offshore Oil and Gas Resource Management and Revenue Sharing" was signed on February 11, 1985. The Legislature of Newfoundland subsequently approved the Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act in 1986 and the Parliament of Canada approved the Canada-Newfoundland Atlantic Accord Implementation Act (S.C. 1987, c. 3) a year later. See also Crosbie 267-68.

<sup>24</sup> *Globe and Mail* 11 Dec. 1984: 1-2; and 12 Feb. 1985: 8.

meet the specific objectives of a people, nor recognize the historical realities and contingencies of his provincial political community. He argued there are times when constitutional rules have to be set aside to achieve the needs of the larger political community that is divided by boundaries and space. In other words, national circumstances and national purposes change, Peckford maintained, and healthy nations must adopt a process that allows for constitutional dynamism that ensures the conditions for long-term political stability. Peckford's resistance to Trudeau's view of Canada was to achieve that objective.

The Atlantic Accord that was negotiated between the province and the federal government demonstrates that provincial resistance can change federal principles and result in reform and compromise in the nation's statecraft. As Prime Minister Mulroney said at the Atlantic Accord signing ceremony, "We have believed firmly in the principle of equality—equality in terms of joint management and equality in terms of revenue sharing."<sup>25</sup> Peckford had achieved his goal of establishing the equality of the provinces in offshore resource development. Peckford's federalist dreams had come, however, in a bilateral political agreement, not in a constitutional one, nor through the normal mechanisms of Canadian federalism. Even so, through his determined interstate resistance, Peckford had laid the groundwork for creating economically and socially vibrant provincial communities as the means to creating a strong, united Canada. As later events were to show, however, the Atlantic Accord also came with its own problems, and it did not deliver the promise for which Peckford had hoped, but in securing an equal voice for the province in a matter of federal jurisdiction, Peckford and Mulroney not only reshaped the Newfoundland-Ottawa relationship but also reshaped Canada and Canadian federalism. In the process, Peckford demonstrated that in Canada, federalism—and, indeed, Canada itself—works effectively across space and boundaries when political actors practice accommodation and compromise and are willing to move beyond the original texts of federalism and constitutionalism, but such changes came only when Canadian federalism and intergovernmental relations became a site of resistance. Yet the legacy of the acrimony of the federal-provincial disputes over control of offshore oil resources—and a variety of other issues, including constitutional renewal—during the Trudeau and Mulroney eras and the province's resistance to Ottawa's push for dominance is still evident in Canadian politics today. Since then, first ministers, both federal and provincial, have vowed never to return to such levels of discord that nearly fragmented the federation. Former Prime

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<sup>25</sup> *Globe and Mail* 14 June 1984: 1.



Minister Stephen Harper refused to meet the premiers as a group, preferring one-on-one meetings, and current Prime Minister Justin Trudeau has indicated that he will not try to force any federal demands on the provinces. The resistance of Peckford and other first ministers to federal dominance in the 1980s changed how federalism is done in Canada.

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