Patriation

“Patriation” is a Canadian term that describes the transformation of Canada’s Constitution from an act of the British Parliament to an independent Canadian Constitution that was amendable by Canada. The word itself is taken from ‘repatriation,’ meaning to return something to its own country.[1] Since the Constitution did not originate in Canada but in Britain, it could not technically be repatriated. After Prime Minister Pearson publicly used the term ‘patriation’ in the House of Commons in 1966,[2] it seemed to fit and enjoyed wide use.

Britain’s 1867 *British North America Act*[3] (*BNA Act*) created Canada from three colonies.[4] The *BNA Act* and acts and statutes created before and after patriation comprised Canada’s first Constitution. Because the *BNA Act* was a law of British Parliament, every time Canada wanted to amend it, it had to rely on Britain to enact changes. Until patriation, Canada was tied to Britain constitutionally despite it having achieved independence in other significant areas.

Canada patriated its Constitution in 1982. To bring the Constitution home, Canada had to figure out a way to amend it without having to rely on permission from Britain. Since it was convention for the federal and provincial governments to agree on such an important change, the topic periodically came up in federal-provincial meetings starting in 1927.[5] Until 1981, the federal and provincial governments could not agree on how amendments should be made to the Constitution.

In 1981, the federal government and the majority of provincial governments settled on an amending formula that outlined five processes to change different aspects of the Constitution. This general formula required a great deal of consent from the provinces: it required the agreement of Parliament and at least seven provinces that together make up fifty percent or more of Canada’s population. [6]

Canada then brought the patriation package to the British Parliament. Through the *Canada Act 1982*[7], the *BNA Act* came to an end in Britain, and the *Constitution Act 1982*[8], came into force in Canada.

In popular and historical thought, ‘patriation’ is also regarded as an event in Canada’s developing nationhood because it signaled Canada’s full sovereignty. Bringing the Constitution home also meant the federal and provincial governments could tailor it to reflect current domestic priorities. Therefore, besides the amending formula, the patriation package also included the *Charter of Rights and Freedoms*[9] that entrenched rights for Canadians, sections on equalization and natural resources to recognize the new strength of provinces, and a section recognizing Aboriginal rights.

[1] "Repatriate," online: Merriam-Webster Dictionary <http://www.merriam-webster.com/dictionary/repatriate>.

[2] Canada, House of Commons, *Hansard* 27th Parl, 1st Sess, No 1 373/2 (20 Jan 1966) at 71 (Hon Lester Pearson).

[3] *Constitution Act, 1867* (UK) 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

[4] These were Nova Scotia, New Brunswick and the United Province of Canada (which became Quebec and Ontario at Confederation).

[5] Centre for Constitutional Studies, *The Patriation Negotiations Conference Program*, University of Alberta, 2011) at 6.

[6] *Constitution Act, 1982*, s 38(1), being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[7] *Canada Act 1982* (UK), 1982, c 11.

[8] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[9] *Canadian Charter of Rights and Freedoms*. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 33.