

# NEGOTIATING SOVEREIGNTY: *Indigenous Perspectives on the Patriation of a Settler Colonial Constitution, 1975–83*

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MADELINE ROSE KNICKERBOCKER  
AND SARAH NICKEL\*

ON 18 FEBRUARY 1980, George Manuel, a Secwépemc leader and president of the Union of British Columbia Indian Chiefs (UBCIC), attended an Indigenous sovereignty workshop at Canim Lake, British Columbia. There, he told participants: “Sovereignty is the supreme right to govern yourselves, to rule yourselves. Indians used to be able to control and exercise that right, now we have to work to get that right back.”<sup>1</sup> In contrast to settler colonial legal understandings of Indigenous rights and self-government within the Canadian state, Manuel’s statement suggests a philosophical notion of Indigenous rights stemming from the inherent, pre-colonial sovereignty and nationhood of Indigenous peoples. Manuel’s declaration came as the discourse of Indigenous sovereignty intensified during debates on the patriation of the Canadian Constitution, reignited years earlier by Prime Minister Pierre Trudeau. Galvanized by these events, Indigenous activists – among whom were several from British Columbia – used local, provincial, and national organizations to bring their concerns before the government and the international community.<sup>2</sup>

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<sup>1</sup> “Canim Lake Elders Talk,” *Indian World* 2, 9 (1980): 18. See also Union of British Columbia Indian Chiefs, 1973–1976, Union of BC Indian Chiefs (hereafter UBCIC), memorandum, 6 May 1971, Library and Archives Canada (hereafter LAC), RG 10, box 2, file 978/24-2-12, pt. 1.

<sup>2</sup> Michael Woodward and Bruce George, “The Canadian Indian Lobby of Westminster, 1979–1982,” *Journal of Canadian Studies* 18, 3 (1983): 119–43.

Here we consider Indigenous critiques of constitutional patriation on Indigenous terms, not in relation to settler colonial mandates, and focus particularly on Indigenous political actors from British Columbia. Centring the perspectives of UBCIC members and Stó:lō activists, we argue that those who protested constitutional patriation between 1975 and 1983 were not ahistorical agents participating in an isolated movement but, rather, people well aware not only of their communities' embedded sovereignties but also of generations of Indigenous resistance to settler colonialism. To make this argument, we attend to the ways in which BC Indigenous peoples drew upon oral tradition and historical experience to frame multiple expressions of sovereignty that they mobilized according to the shifting contexts and demands of the settler colonial state's push for constitutional patriation. We examine this sovereigntist discourse at three nested levels – localized Stó:lō discussions, provincial pan-Indigenous UBCIC concerns, and collective BC Indigenous activism nationally and internationally. We concentrate our analysis on connections and ruptures between these perspectives. Our focus on the UBCIC, a political organization made up of chiefs representing Indigenous communities throughout the province, and Stó:lō, a collective of twenty-five nations indigenous to what is now British Columbia's Fraser Valley, provides a broad cross-section of both local and pan-Indigenous articulations of sovereignty during this time. Our tiered approach demonstrates that Indigenous peoples' expressions of sovereignty were variously and concurrently grounded in specific tribal understandings of self-government and territoriality, of pan-Indigenous collective identity and political autonomy, and of shifting national and international political epistemologies.

The broader point here is that the patriation of the Constitution was not a Canadian issue in which Indigenous peoples intervened: it was an inherently Indigenous issue from the beginning. Most historical scholarship downplays this. To avoid this, we theorize patriation, Indigenous governance, and sovereignty in ways that privilege Indigenous understandings, drawing from political scientist Kiera Ladner and legal scholar John Borrows (among others), who locate Indigenous thought, histories, and legal traditions as pivotal components of Canada's multi-juridical history.<sup>3</sup> This helps us to understand multiple and contested

<sup>3</sup> Kiera Ladner, "Take 35: Reconciling Constitutional Orders," in *First Nations, First Thoughts: The Impact of Indigenous Thought in Canada*, ed. Annis May Timpson, 279–300 (Vancouver: UBC Press, 2010); Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38, 4 (2005): 923–53; John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010); John Borrows, *Freedom and Indigenous*

sovereignties and constitutional reconciliation, and facilitates our historical contextualization of Indigenous roles in patriation. A similarly broad range of interdisciplinary scholarship informs our engagement with theoretical concepts of Indigenous sovereignty, which we define as the processes by which Indigenous people understand and execute their own political strategies, institutions, and customs according to local and historically specific circumstances.<sup>4</sup> Using the methodologies of critical ethnohistory and oral history, we approach both written documents and oral history interviews reflexively and with an awareness of the colonial legacy of academia in Indigenous communities.<sup>5</sup> On this basis we explore a specific historical movement in order to better understand the ebb and flow of Indigenous sovereignty as lived by particular communities of BC Indigenous peoples in their own socio-historical contexts. By centring Indigenous peoples in the history of constitutional patriation we reveal alternate understandings of the political environment and produce a decolonized and resurgent historical narrative.

The constitutional debates are only one example of the long-standing dynamism of Indigenous peoples' understandings and assertions of sovereignty. Indigenous sovereignty has deep roots in pre-contact socio-political bodies. Even though this influence is not widely acknowledged

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*Constitutionalism* (Toronto: University of Toronto Press, 2016). See also Douglas Sanders, "The Indian Lobby," in *And No One Cheered: Federalism, Democracy, and the Constitution Act*, ed. Keith Banting and Richard Simeon, 301-32 (Toronto: Methuen, 1983); Woodward and George, "Canadian Indian Lobby."

<sup>4</sup> Self-government, self-determination, and Indigenous rights and title exist within and stem from Indigenous sovereignty. Activists used these interrelated concepts variously and sometimes interchangeably, and they are referred to throughout this piece. Anthropologists, Indigenous studies academics, and other scholars have devoted considerable attention to Indigenous governance and sovereignty. Recent monographs include: Taiaiake Alfred, *Wasase: Indigenous Pathways of Action and Freedom* (Toronto: University of Toronto Press, 2005); Joanne Barker, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005); Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Felix Hoehn, *Reconciling Sovereignties: Aboriginal Nations and Canada* (Saskatoon: Native Law Centre, University of Saskatchewan, 2012); Audra Simpson, *Mohawk Interruptus: Political Life across the Border of Settler States* (Durham, NC: Duke University Press, 2014).

<sup>5</sup> This work reflects a combined total of fourteen years working with Indigenous communities in British Columbia, and it employs a type of community engagement that troubles identity and position, politics, notions of community, and historical methodologies. We recognize that our identities as women, as junior scholars, as Indigenous and settler influence our access to certain forms of historical information as well as the types of histories we can write. See Sarah Nickel, "You'll Probably Tell Me That Your Grandmother Was an Indian Princess: Identity, Community, and Politics in the Oral History of the Union of British Columbia Indian Chiefs, 1969-1980," *Oral History Forum d'histoire orale* 34 (2014): 1-19; Keith Thor Carlson, John Lutz, and David Schaepe, "Turning the Page: Ethnohistory from a New Generation," *University of the Fraser Valley Research Review* 2, 2 (2008): 1.

in settler society, Indigenous sovereign politics shaped the history of what we now call British Columbia millennia before European settlers arrived. For example, Stó:lō peoples look to the oral tradition of X̱ex̱á:ls' ordering of the world through transformations of people, animals, and the environment as proof of their rights and responsibilities to their territory.<sup>6</sup> In Stó:lō s̱wōx̱wiyá:m (oral tradition), X̱ex̱á:ls were four bears (one daughter and three sons of Red-Headed Woodpecker and Black Bear) who travelled through the Salish world when it was chaotic and set it right through transformational encounters with other living beings.<sup>7</sup> S̱wōx̱wiyá:m locate Stó:lō in their territories historically and remind them of their pre-contact relationships and obligations to the land. Stó:lō also pursued military action to protect their territory from other Indigenous invaders, primarily Laich-Kwil-Tach Kwakwaka'wakw raiders: in the pre-contact era, Stó:lō constructed fortresses along what is now the Fraser River to defend against attacks, and, in the mid-1800s, they participated in a pan-Salish attack against one of these Kwakwaka'wakw raiding groups.<sup>8</sup> Elsewhere, the Secwépemc, whose traditional territories are in the interior of British Columbia, maintain oral traditions of Sk'elép's (Coyote's) laws, which explain that each nation holds exclusive rights to its homeland and resources. Stseptekwle (Secwépemc oral tradition) also reveals that Sk'elép protected these rights in multiple ways, including negotiating land use with neighbouring nations and meeting with the Queen of England to assert Secwépemc sovereignty over their lands.<sup>9</sup> Though Indigenous expressions of sovereignty changed over time, they remained rooted in Indigenous knowledge of the past.

Indigenous peoples also upheld their own political structures after contact and sought to affirm their sovereignty by resisting colonization. According to Splantsin te Secwépemc Kukpi7 (chief) Wayne Christian, interactions with the state prompted Indigenous communities to modify

<sup>6</sup> Albert (Sonny) McHalsie, David M. Schaepe, and Keith Thor Carlson, "Making the World Right through Transformations," in *A Stó:lō-Coast Salish Historical Atlas*, ed. Keith Thor Carlson (Vancouver: Douglas and McIntyre, 2001), 3, 6-7; and Naxaxalhts'í (Albert "Sonny" McHalsie), "We Have to Take Care of Everything that Belongs to Us," in *Be of Good Mind: Essays on the Coast Salish*, ed. Bruce Granville Miller, 82-130 (Vancouver: UBC Press, 2007).

<sup>7</sup> X̱ex̱á:ls are also referred to as X̱á:ls, in the singular, and as "The Transformer(s)."

<sup>8</sup> Bill Angelbeck and Eric McLay, "The Battle at Maple Bay: The Dynamics of Coast Salish Political Organization through Oral Histories," *Ethnohistory* 58, 3 (2011): 359-92; David M. Schaepe, "Rock Fortifications: Archaeological Insights into pre-contact Warfare and Sociopolitical Organization among the Stó:lō of the Lower Fraser River Canyon, BC," *American Antiquity* 4 (2006): 671-705. Laich-Kwil-Tach has been historically written as "Lekwiltok."

<sup>9</sup> Kukpi7 Wayne Christian, personal communication with Sarah Nickel, Vancouver, BC, 10 September 2014; Ron Ignace, "Our Oral Histories are Our Iron Posts: Secwepemc Stories and Historical Consciousness" (PhD diss., Simon Fraser University, 2008).

existing vocabularies of sovereignty to present their political practices in terms the state would understand. In doing this, Indigenous peoples were not adopting settler concepts of sovereignty based on Western Enlightenment ideas of land ownership; rather, they were trying to explain notions of sovereignty that they already knew and practised.<sup>10</sup> We see evidence of this in the late nineteenth century, when Stó:lō put forth a series of petitions challenging settler colonial land appropriation in an attempt to reframe Stó:lō-settler relations.<sup>11</sup> Similarly, Secwépemc, Nlaka'pamux, and Syilx (Okanagan) chiefs asserted their unequivocal sovereignty over the lands and resources of their territories in the 1910 Laurier Memorial, a letter they presented to the prime minister as he made his way through their territories.<sup>12</sup> Indigenous peoples also used this strategy in response to both the 1912-16 Royal Commission on Indian Affairs for the Province of British Columbia (commonly known as the McKenna-McBride Commission) and the 1969 Statement of the Government of Canada on Indian Policy (commonly known as the White Paper). Between the late nineteenth century and the mid-twentieth, BC Indigenous peoples mastered colonial political practices and, when appropriate, used those forms to advance their own assertions of sovereignty.

Given millennia-long traditions of Indigenous sovereignty and centuries of challenging settler colonialism, it is not surprising that Indigenous peoples were highly critical of plans to patriate the Canadian Constitution.<sup>13</sup> Their principal concern was that they might lose their “special status” codified by the Royal Proclamation of 1763, which outlined the Crown’s process for negotiating control over Indigenous lands through treaties, and the 1867 British North America Act, which affirmed the federal government’s legislative responsibility for Indigenous peoples and their lands.<sup>14</sup> Indigenous interests were at stake

<sup>10</sup> Christian, personal communication.

<sup>11</sup> Megan Harvey, “Story People: Stó:lō-State Relations and Indigenous Literacies in British Columbia, 1864-1874,” *Journal of the Canadian Historical Association* 24, 1 (2013): 51-88.

<sup>12</sup> Christian, personal communication.

<sup>13</sup> Of course, Indigenous peoples were not the only ones challenging constitutional patriation. The proposal generated much debate and conflict, particularly from provincial leaders concerned about appropriate divisions of power between the provinces and the federal government. Quebec’s francophone population, as well as women’s rights groups (among others), also watched the constitutional developments with interest and concern.

<sup>14</sup> Section 91 (24) of the act confers “special status” as referenced in Woodward and George, “Canadian Indian Lobby,” 121. See also Sharon Venne, “Understanding Treaty 6: An Indigenous Perspective,” in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference*, ed. Michael Asch, 173-207 (Vancouver: UBC Press, 1997); J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009).

in constitutional revisions, but this was not reflected in emerging discussions about patriation.<sup>15</sup> Trudeau continued the process of patriation in 1968 through dialogue with provincial leaders, culminating with the Victoria Conference in 1971 and the failed Victoria Charter.<sup>16</sup> Indigenous concerns escalated as Trudeau's government prevented meaningful Indigenous involvement in these debates, which threatened to minimize protections the new Constitution would provide to Indigenous peoples and their rights.

Stó:lō and the UBCIC responded quickly. In 1975, Stó:lō chiefs signed the Stó:lō Declaration, asserting sovereignty over their territory. The declaration looked to Stó:lō cosmology as the source of their sovereignty and, on this basis, affirmed their "inalienable right" to their territory and demanded reparations for settler colonial injustices.<sup>17</sup> In an era of strident activism, Stó:lō political leaders were familiar, and even comfortable, with this level of discourse. Indeed, at the time, Stó:lō communities occupied a major role in BC Indigenous politics. Years later, hereditary Ts'elxwéyeqw siyá:m and Skowkale chief Siyémches (Frank Malloway) recalled: "People used to always say, you know, when we would go to provincial or national meetings and they see the Stó:lō Nation people come in they tremble ... [T]hat's how strong they said we used to be, we'd walk in [and] people would acknowledge us."<sup>18</sup> The assertive language in the Stó:lō Declaration, combined with this strong sense of community power, set the tone for Stó:lō actions throughout the patriation debates.

Stó:lō people also drew from their communities' histories and the knowledge of their sovereignty to respond to the possibility that their rights might be excluded from the new Canadian Constitution. In January 1977, the *Stó:lō Nation News* marked Stó:lō assertions of their rights in the face of settler colonial policies by including Dennis S. Peters's

<sup>15</sup> Woodward and George, "Canadian Indian Lobby," 121.

<sup>16</sup> The Victoria Charter outlined an amending formula for the Constitution that would give Quebec, Ontario, and the federal government veto powers. Several provinces were reluctant to sign on, but Quebec's premier Robert Bourassa expressed the greatest resistance, ultimately stalling negotiations altogether. See Government of Canada, Intergovernmental Affairs, <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=hist&doc=victoria-eng.htm>; University of Alberta, Centre for Constitutional Studies, <http://ualawccsprod.srv.ualberta.ca/ccs/index.php/sz/554-victoria-charter>.

<sup>17</sup> The declaration has been reprinted frequently; for a full version, see "The Stó:lō Declaration," in Carlson, *Stó:lō-Coast Salish Historical Atlas*, 191, app. 2. Other Indigenous communities also drafted similar documents during this period. See the 1975 Dene Declaration and the 1976 Musqueam Declaration.

<sup>18</sup> Frank Malloway, interview with Martin Hoffman, 10 May 2011, Stó:lō Archives (hereafter SA), oral history collection. This point was also made by former Stó:lō Cheam chief Sioliya (June Quipp). See Sioliya (June Quipp), interview with Sarah Nickel, Cheam First Nation, Rosedale, BC, 25 June 2012, Sarah Nickel's private collection.

1915 letter to the editor of the *West Yale Review*. Peters, a member of the Chawathil Band, emphasized the relationship between Stó:lō and the Crown: “We claim that our Indigenous rights have been guaranteed by proclamation of King George the Third [in 1763] ... We claim that holding under the words of that Proclamation a tribal ownership of the territory, we should be dealt with in accordance with its provisions, and that no part of our land should be taken from us or in any way disposed of.”<sup>19</sup> Despite the passage of time, Peters’s message spoke directly to the political climate in Stó:lō communities in 1977. Though Stó:lō political organizations were as strong as they had been at any time in the twentieth century, some Stó:lō people feared that patriation of the Constitution would destroy their political capital and undermine the special status and rights guaranteed in 1763. Reprinting Peters’s letter reminded Stó:lō of the significance of their relationship to the Crown, affirmed Stó:lō oral tradition, and invoked the British Crown’s acknowledgment of Stó:lō sovereignty.

Oral histories revealing Stó:lō political protocols also heightened Stó:lō commitment to fight for their rights. In the 1980s, Naxaxalhts’i (Dr. Albert “Sonny” McHalsie) recorded Stó:lō elders’ knowledge of place names and Stó:lō histories. As part of this project, Naxaxalhts’i spent considerable time with Xwiyálemot (Matilda “Tillie” Gutierrez), a respected elder with Stó:lō and Nlaka’pamux ancestry who lived most of her life in the Fraser Valley.<sup>20</sup> She recalled that early twentieth-century Stó:lō chiefs began their meetings with the Halq’eméylem phrase: “S’ólh Téméxw te íkw’élò. Xólhmet te mekw’ stám ít kwelát,” which means, “This is our land. We have to look after everything that belongs to us.” Naxaxalhts’i understood the maxim (which became a central motto for Stó:lō political organization in the 1980s) to signify Stó:lō peoples’ sovereign rights over, and accountabilities to, their territories.<sup>21</sup>

Despite the political strength and sovereign traditions of Stó:lō communities, Stó:lō and settler understandings of sovereignty diverged. The two groups interpreted even such a commonly used term as “Indigenous rights” differently. In recent interviews, Grand Chief Clarence “Kat” Pennier (Xa:yslemtel, Hi’yolemtel) reflected on the challenges of nego-

<sup>19</sup> Dennis S. Peters, “To the Editor, *West Yale Review*,” as quoted in *Stalo Nation News*, January 1977, 15, Chilliwack Museum and Archives, ad. mss. 362, Edenbank Farm Fonds, box A441, file 177.

<sup>20</sup> Ella Bedard, “Becoming Xwiyálemot: Traditional Knowledge and Colonial Experiences in the Life of a Stó:lō Elder,” Ethnohistory Field School report, 2013, SA, reference collection.

<sup>21</sup> Naxaxalhts’i, “We Have to Take Care,” 85-86.

tiating Indigenous sovereignty when opponents framed the discourse.<sup>22</sup> As he explained, Stó:lō resisted fully embracing settler colonial language because: “that terminology arises from court cases, and it has different meanings to the governments and different meanings to us.”<sup>23</sup> Echoing the Stó:lō Declaration and Xwiyálemot’s maxim, Pennier articulated a connection to territory that marked both authority over and duty to the land:

To us the right to fish is the right to harvest, the right to protect, the right to conserve, the right to make sure it’s there for future, you know, and the teachings that go along with doing all the different harvesting and looking after the land, those are all things that are integral to fishing ... [However,] to the government, it’s mainly trying to control us in terms of what it is we can harvest, that’s all they want to do ... It’s hard for the governments to look at things in that light.<sup>24</sup>

The differences between Stó:lō ideas of sovereignty and the government’s model of surveillance and control made meaningful discussion difficult and left Stó:lō leadership worried about constitutional patriation.

In their community discussions, BC Indigenous peoples drew on a common belief in their inherent rights to govern themselves and their territories. Defining its vision of Indigenous governance, the UBCIC noted:

We the original peoples of this land know the Creator put us here. The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind. The laws of the Creator defined our rights and responsibilities. We have maintained our freedom, our languages, and our traditions from time immemorial ... We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the lands upon which we were placed. The Creator has given us the right to govern ourselves and the right to self-determination. The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other nation.<sup>25</sup>

<sup>22</sup> Clarence Pennier, interview with Ben Clinton-Baker, 13 May 2011, SA, oral history collection; Clarence “Kat” Pennier, interview with Sarah Nickel, Stó:lō Tribal Council Offices, Agassiz, BC, 25 July 2012, Sarah Nickel’s private collection. See also: Clarence Pennier, *Stó:lō History and Information: Before You Know Where You Are Going, You Must Know Where You’ve Been* (Chilliwack: Stó:lō Research and Resource Management Centre, 1999).

<sup>23</sup> Pennier, interview with Clinton-Baker, SA.

<sup>24</sup> Ibid.

<sup>25</sup> UBCIC Resource Centre (hereafter URC), UBCIC Bulletins: Constitution Bulletin, 17 December 1980.



Stó:lō political actors likewise emphasized the spiritual roots of their sovereignty, defining a “sovereign nation” as “a unique group of people who have their own language, customs, beliefs, laws, government, and other ways of life that are carried on in a certain defined territory (e.g., the Stó:lō Nation) who gain their existence from the Creator.”<sup>26</sup> Both definitions embodied an understanding of sovereignty that differed fundamentally from that of the settler state. Leaders of Indigenous communities and tribal councils across the province emphasized an inalienable right conferred by the Creator and immune to revision by “any other nation.”

Still, there were differences among Indigenous groups, and positions changed over time. At the 1979 provincial UBCIC general assembly, President George Manuel, speaking about Indigenous sovereignty and rights, declared: “If you really believe you have the right, take it! Indians need to get away from the belief that big things only happen in Ottawa under the authority of White people.”<sup>27</sup> Asserting the importance of Indigenous peoples’ own recognition and practice of their rights, Manuel and the UBCIC challenged communities to reject settler state recognition as a precondition for legitimizing Indigenous sovereignty. Within a year, however, Manuel declared a “state of emergency” at the UBCIC assembly, arguing for immediate action to have Indigenous rights and governance (as expressions of sovereignty) entrenched in the Constitution.<sup>28</sup>

The resulting 1980 Aboriginal Rights Position Paper directly tethered Indigenous rights and governance to constitutional structures. The paper reads: “Aboriginal rights means that we as Indian people have the right within the framework of the Canadian Constitution to govern through our own unique forms of Indian Governments (Band Councils).”<sup>29</sup> This recognition of Canada as a legitimate polity in which Indigenous sovereignty and rights could be situated contrasted sharply with the Stó:lō’s staunch claims to autonomy and Indigenous sovereignty as well as with the UBCIC’s previous position. Yet this political shift made sense when considered against the pressure, imposed by impending patriation, to construct a vision of sovereignty and rights compatible with current Canadian political goals.

<sup>26</sup> “When the Runner Comes the Message Will be Heard,” *Stó:lō Nation News*, October 1982, 2, SA, box 2010-005.

<sup>27</sup> URC, Vancouver, BC, summarized minutes of the Union of BC Indian Chiefs 11th Annual General Assembly, 15-18 October 1979.

<sup>28</sup> URC, summarized minutes of the Union of BC Indian Chiefs 12th Annual General Assembly, 14-18 October 1980.

<sup>29</sup> URC, Union of BC Indian Chiefs, “Aboriginal Rights Position Paper,” 1980.

Recognizing that the window for including Indigenous rights in the Constitution was limited and that the federal government was intent on preserving Canadian unity, the UBCIC offered a strategic compromise that grounded these within state-recognized structures. As an experienced and established organization, the UBCIC framed Indigenous self-government – termed “Indian government” – within the broader Canadian socio-political context, which, in 1980, included unstable French-English relations and a Quebec referendum. Conscious of Trudeau’s concerns about special group rights, the UBCIC purposefully constructed Indigenous self-government as preserving rather than as threatening liberal multiculturalism and the Canadian nation-state. The organization insisted: “In our quest for self-determination, we should not be called separatists. The tensions between the English and the French have led governments to refuse to even listen to our position. We are committed to a strengthening of Canada for we have more at stake in this country than anyone else.”<sup>30</sup>

Still, the UBCIC rejected Trudeau’s proposal to erase Indigenous-Crown relationships and to transfer federal responsibility for Indigenous peoples to the provinces. Although section 24 of the proposed Constitution recognized “Native rights and freedoms as they presently exist,” the UBCIC argued that this failed to capture Indigenous understandings of rights, eliminated Indigenous peoples’ fundamental connection to the British Crown, and denied Indigenous involvement in shaping constitutional definitions of “Native rights.”<sup>31</sup> Manuel insisted: “We have no objection to the decolonization of Canada. What we are objecting to is [that] during the course of decolonization, the obligations by the Royal Proclamation of 1763, and many other treaties will automatically be repealed or deleted.” He continued: “As I see it, once the Constitution is patriated, the Queen will just be a figure head [*sic*]. I see our rights that *we presently hold* and the governing authority which *we hope to increase* to generate self determination [*sic*] will go out the window.”<sup>32</sup>

Seeking compromise, then, the UBCIC suggested the creation of a third level of government equal to the federal and provincial governments but run by and for Indigenous peoples within constitutional federalism. The organization argued that such trilateral federalism would ensure that Indigenous rights would be “recognized, expanded, and entrenched within the British North America Act” and would not be subject to

<sup>30</sup> Ibid.

<sup>31</sup> URC, UBCIC Bulletins: Constitution Express, 29 October 1980.

<sup>32</sup> URC, summarized minutes of the Union of BC Indian Chiefs 12th Annual General Assembly, emphasis added.

intervention.<sup>33</sup> In recommending this framework, the UBCIC sought to entrench in the Canadian Constitution the types of Indigenous governance that bands were already practising by creating a separate level of Indigenous government, without conceding the validity or genesis of Indigenous sovereignty and governance to the Canadian state.

The Aboriginal Rights Position Paper of 1980 pointed to the Splatstine Secwépemc's Indian Child Caravan of 1980 as an example of Indian government and the expression of Indigenous sovereignty.<sup>34</sup> Organized to protest the high rates of child apprehension (by settler-society's social service organizations) in Splatstine communities, the "Caravan" resulted in a bylaw that gave the Splatstine nation exclusive jurisdiction over its children. The UBCIC also found evidence of strong Indian government in the bylaw passed by the Mowachaht Band of Gold River and members of the Nuu-chah-nulth Tribal Council to restrict pollution from a pulp and paper mill in their territory. These actions, according to Manuel, codified tribal law into Canadian law and validated Indian government.<sup>35</sup> Recognizing the coexistence of settler colonial and Indigenous sovereignties, this political plurality resembles but does not mirror Audra Simpson's concept of "embedded sovereignties." Simpson notes that the Kahnawà:ke Mohawk community possesses "a consciousness of itself as a nation" within its reserve and as a nation within Canada; it is "a sovereignty within multiple sovereignties."<sup>36</sup> The UBCIC's position paper created space for such embedded sovereignties, but it did so through a framework of strategic settler recognition rather than through the outright refusal of state recognition, which Simpson regards as a fundamental aspect of embedded Indigenous sovereignties.

Several groups contested the UBCIC's definition of Indigenous sovereignty and governance, its calculated alliance with the settler state, and its assumption of the authority to impose its views on all Indigenous communities in the province.<sup>37</sup> Although Manuel referenced the importance of Indigenous peoples' "own unique forms of Indian Governments," and agreed that, philosophically, Indian government was inherent to

<sup>33</sup> URC, Union of BC Indian Chiefs, "Aboriginal Rights Position Paper."

<sup>34</sup> Splatstine Secwépemc is known as Spallumcheen in the archival materials.

<sup>35</sup> URC, summarized minutes of the Union of BC Indian Chiefs 12th Annual General Assembly.

<sup>36</sup> Simpson, *Mohawk Interruptus*, 187.

<sup>37</sup> For this debate, see Beth Cuthand, "Editorial," *Indian World* 3, 1 (1980): 2; "Indian Government," *Indian World* 3, 3 (1980): 8-9; "Knowing How Is the Key," *Indian World* 2, 9 (1980): 24-25; Tom Sampson, "Indian Government the Alternative to LSA: In the South Island Traditional Leadership Shows the Way," *Indian World* 2, 9 (1980): 31-32; Saul Terry, "Indian Government the Alternative to LSA: In the Central Interior DIA Is Seen as Merely a Clearing House," *Indian World* 2, 9 (1980): 30.

Indigenous peoples and could not be undermined, he insisted that, to guarantee protection, it should be contained within settler colonial political paradigms.<sup>38</sup> Even as a deliberate strategy of compromise, this move legitimized Canadian authority by binding Indigenous sovereignty to recognition by the settler state. Several Indigenous communities, especially in Nuu-chah-nulth and Haida territories, rejected this stance, arguing that Indigenous peoples had a natural right to sovereignty and that they simply needed to exercise it.<sup>39</sup> This philosophical dispute highlighted the profound challenges of pan-Indigenous representation.

The constitutional debates also uncovered the extent to which embedded and multiple sovereignties were contemplated and contested within Indigenous groups as well as between Indigenous peoples and the settler state. Indigenous expressions of sovereignty reflected the continuity and flexibility of BC Indigenous political thought and practice. Position papers and declarations were part of a sustained conversation with state actors and political modalities that had been part of Indigenous political realities for generations. In addition to articulating their political stances in policy papers, the UBCIC and Stó:lō used direct action to implement these and to resist government initiatives.

In 1980, Indigenous political organizations across the country were poised to resist the federal government's constitutional patriation plans, believing they were, as Manuel told reporters, "designed to make Indian rights illegal."<sup>40</sup> Indigenous leaders were included in constitutional talks leading up to patriation but only as observers: they were denied full and equal participation. This prompted a series of Indigenous leaders meetings as well as marches and demonstrations on Parliament Hill in spring 1980.<sup>41</sup> In response, Trudeau told leaders of the UBCIC, the National Indian Brotherhood, and other Indigenous organizations: "you will continue to be involved in the discussion of constitutional changes *which directly affect you*."<sup>42</sup> This was understood by Indigenous peoples as a declaration that the federal government had no duty to consult them on many constitutional issues, and it undercut the UBCIC's efforts to act as a partner in Canadian politics.

In November 1980, UBCIC hired two passenger trains to bring people from across Canada to Ottawa to protest constitutional content and

<sup>38</sup> URC, Union of BC Indian Chiefs, "Aboriginal Rights Position Paper," 1980.

<sup>39</sup> "Haida/Nuu-chah-nulth Land and Sea Claim," *Indian World* 3, 9 (1981): 12.

<sup>40</sup> Sanders, "Indian Lobby," 311.

<sup>41</sup> "Constitutional Changes: March to Demand Full Participation," *Indian World* 3, 1 (1980): 3; "First Nations Constitutional Conference," *Indian World* 3, 1 (1980): 4.

<sup>42</sup> "Prime Minister Offers No More Than Observer Status at Constitutional Talks," *Indian World* 3, 1 (1980): 6, emphasis added.

processes. In the lead-up to this initiative, dubbed the Constitution Express, the UBCIC published a series of bulletins on constitutional issues to raise grassroots awareness and support. It organized billets to house the participants along the way and in Ottawa, and it asked participants to bring drums and traditional dress to participate in songs and ceremonies.<sup>43</sup> On board the trains, members also took part in constitutional workshops designed to educate individuals and prepare them for political engagement and protest in Ottawa. The Express gained considerable momentum, attracting approximately one thousand participants of all ages, including numerous Stó:lō people, along the five-thousand-kilometre trek to Ottawa. When the Constitution Express reached Ottawa on 5 December 1980, George Manuel's son Arthur, there to meet the protestors (who included his wife Beverly and their children and his brother Bobby), described the atmosphere as "electric." He explained that the "station [was] throbb[ing] with Indian music and with the excitement of the arriving protestors."<sup>44</sup>

The Constitution Express reinvigorated activists, allowed Indigenous peoples to voice their concerns about the Constitution and the patriation process, and enabled them to enact expressions of sovereignty they had been honing through debates and policy papers. These developments, and the related international lobbying efforts they spurred, shifted patriation procedures from "executive-level governmental relations known as 'executive federalism'" towards "spectator constitutionalism," in which, according to historian Penny Bryden, "ordinary citizens followed the twists and turns of constitutional politics."<sup>45</sup>

The Constitution Express also, unexpectedly, led leaders of the UBCIC to replace limited definitions of Indian government, and the goal of state recognition, with concepts of sovereign nationhood.<sup>46</sup> This shift reflected new attitudes towards and suspicions of constitutional practices. After returning from Ottawa, George Manuel presented UBCIC supporters with this change in strategy. He explained that, because the federal government had not consulted Indigenous peoples about their definitions of Indigenous rights and governance, entrenching state definitions in

<sup>43</sup> URC, UBCIC Bulletins: Constitution Express, November 1980; URC, "Constitution Express: Newsclippings, Trip to Ottawa November 1980," in summarized minutes of 6th Special General Assembly, Union of British Columbia Indian Chiefs, held 14 and 15 May 1981.

<sup>44</sup> Arthur Manuel and Grand Chief Ronald M. Derrickson, *Unsettling Canada: A National Wake-Up Call* (Toronto: Between the Lines, 2015), 69.

<sup>45</sup> Quoted in Lois Harder and Steve Patten, "Looking Back on Patriation and Its Consequences," in *Patriation and Its Consequences: Constitution Making in Canada*, ed. Lois Harder and Steve Patten (Vancouver: UBC Press, 2015), 11-13.

<sup>46</sup> "A Journey to Nationhood," *Indian World* 3, 8 (Nov./Dec. 1980): 4-6.

the Constitution would not only fail to guarantee these important rights but actually compromise them.<sup>47</sup> To this point, the UBCIC had been open to strategic compromise that left room for state political structures and recognition, but it now viewed this negotiation as unproductive. According to *Indian World*, the Constitution Express “re-awakened our nations” and led Indigenous people to appeal to the international community to promote their visions of Indigenous governance, sovereignty, and nationhood.<sup>48</sup>

Between 1980 and 1981, BC Indigenous politicians pressed their cause on a global stage. The UBCIC sent representatives to several international locations: to Holland, to give testimony to the Russell Tribunal, a third-party organization that accepted cases in much the same way as a court; to the United Nations in New York; and, finally, to the British Parliament in London. The Russell Tribunal supported the UBCIC’s call for Indigenous sovereign self-determination. In a written decision in November 1980, it denounced Canada’s exclusion of Indigenous peoples from the patriation process and confirmed the right of Indigenous peoples to exist as distinct and sovereign nations.<sup>49</sup> Fortified by this decision, forty-one activists who had taken part in the Constitution Express to Ottawa turned (in the footsteps of earlier activists who opposed settler colonial interventions and dispossession through petitions and delegations to Victoria, Ottawa, and London) to the United Nations in New York to protest their treatment by the federal government and ask that the United Nations mediate between Indigenous nations, Canada, and the British Crown.<sup>50</sup>

The Russell Tribunal’s decision was not only a noteworthy ideological victory for the UBCIC, it also influenced Canada’s constitutional negotiations by extending the date for constitutional hearings from 8 December 1980 to 8 February 1981 so that the Constitution committee

<sup>47</sup> URC, UBCIC Bulletins: Constitution Bulletin, 17 December 1980. Indigenous organizations across Canada did not fully support the UBCIC’s position against entrenchment. The Assembly of First Nations, the Inuit Tapirisat, and the Native Council of Canada accepted the government’s demands for entrenching Indigenous rights, while the Indian Association of Alberta, the Four Nations Confederacy, and others opposed this stance. See Archie Pootlass, “Dilemma at NIB,” *Indian World* 3, 10 (1981): 8.

<sup>48</sup> “Constitution Express Re-awakened Our Nations,” *Indian World* 3, 9 (1981): 6-7.

<sup>49</sup> “Russell Tribunal Finds Canada Guilty,” *Indian World* 3, 8 (1980): 10; “Petition and Bill of Particulars on the Standing of Indigenous Tribes and Bands under the Protection of the British Government in the Face of Impending Canadian Independence,” UBCIC webpage: <http://constitution.ubcic.bc.ca/node/128>.

<sup>50</sup> George Manuel, “President’s Message,” *Indian World* 3, 10 (1981): 7; Carlson, *Stó:lō-Coast Salish Historical Atlas*; Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990).

could hear from Indigenous groups across the country. In preparation for these consultations, Indigenous leaders met in Vancouver in January 1981 to develop a unified position and form a national provisional Indian government.<sup>51</sup> Participants also negotiated clear definitions of important terminology, including “sovereignty,” “self-governance,” “self-determination,” and “nationhood.” This would ensure a strong position from which to negotiate Indigenous protections. Unfortunately, the federal government showed little interest in safeguarding Indigenous rights and was even less interested in accepting Indigenous definitions of these concepts.

In November 1981, the constitutional agreement hammered out by Canada’s first ministers dropped the language of Aboriginal and treaty rights that had been added to federal proposals the previous spring.<sup>52</sup> This move was an egregious violation of the federal government’s stated commitment to take Indigenous claims seriously and reflected a fundamental misunderstanding of Indigenous concerns. Vigorous Indigenous protest yielded a bittersweet victory. Negotiators reinserted the clause recognizing and affirming Aboriginal and treaty rights, but they still declined to define those rights, so Indigenous politicians felt it offered little, if any, real protection.<sup>53</sup>

At the same time, another delegation of participants from the Constitution Express petitioned the British Parliament to refuse patriation of the Canadian Constitution until Indigenous peoples were duly and genuinely consulted. But the British Parliament declined to become involved in what it considered an internal conflict between Canada and its Indigenous nations. Neutrality lent support to the Canadian government’s position. In the winter of 1981, Stó:lō chief Pennier noted that the gains won by international lobbying efforts had been undone when federal officials reinserted the “existing Aboriginal and treaty rights” clause and informed European governments that “the Indian people were ‘happy’ once again.” This meant, said Pennier: “We would have to explain to those Governments again that we are not ‘happy’, [sic] with the present situation.”<sup>54</sup>

British Columbia’s Indigenous leaders remained highly critical of the reinserted clause. Pennier objected to the language, calling it “watered

<sup>51</sup> “Council of Chiefs Deliberate,” *Indian World* 3, 9 (1981): 12; “If We’re a Nation We Have to Act Like One,” *Indian World* 3, 9 (1981): 30.

<sup>52</sup> Harder and Patten, “Looking Back on Patriation,” 13.

<sup>53</sup> Sanders, “Indian Lobby,” 318–21.

<sup>54</sup> Chief Clarence Pennier, “Report on the Constitution Issue,” *Stó:lō Nation News*, November and December 1981, 22, SA, box 2010-005.

down” and argued that this version would only guarantee federally and provincially recognized rights, not “what we want recognized from time immemorial and what rights we may gain from negotiations after patriation.”<sup>55</sup> Members of the UBCIC had similar criticisms. One unnamed activist held that the government’s recognition of Aboriginal and treaty rights in the Constitution did not capture Indigenous understandings of rights, which included sovereign self-government: “The Federal Government, which has not had a new thought about Indians in one hundred years, adopted the phrase and changed it to Indian self-government. The Federal Government’s definition is very narrow while the Indians’ definition encompasses our universe.” By co-opting Indigenous terminology while ignoring the tribal and historical specificities of Indigenous sovereignties, the government was instantiating settler understandings of political epistemologies. As far as BC Indigenous activists were concerned, the government falsely equated “Aboriginal and treaty rights” with settler modes of “Indian government,” and activists balked at this misrepresentation. As the unnamed UBCIC member insisted: “Indian Government defined by the Federal government can never be Indian Government.”<sup>56</sup>

Stó:lō activists unequivocally and explicitly refused the inherently unequal form of recognition proffered by the federal government. In 1981, Darrell Ned, guest editor of the *Stó:lō Nation News*, wrote that, since only “existing” rights would be protected, unresolved issues such as contemporary limits on Indigenous hunting and fishing and ongoing land claims would be forever held as they were, unacceptably imposing a federal chokehold on Indigenous rights.<sup>57</sup> The phrase “existing Aboriginal rights” was insidious because it implied that Indigenous perspectives were taken into account in the patriation process, despite the fact that Indigenous people were excluded from meaningful participation. Stó:lō, said Ned, should be “moving and doing something” to forestall “the end of [their] rights as Aboriginal people.”<sup>58</sup> “What,” he asked, “are you going to tell your grandchildren in 20 to 30 years, when they ask you what you did to stop the white people from stealing your land and rights? I want to be able to at least say I tried something.”<sup>59</sup>

<sup>55</sup> Ibid.

<sup>56</sup> “Another Termination Attack: Indian Government Bill,” *Indian World* 3, 10 (1981): 22. See also “Prime Minister Offers No More Than Observer Status.”

<sup>57</sup> Ned was the editor of the UBCIC newspaper *Indian World*. See Darrell Ned, editorial, *Indian World* 3, 10 (1981): 34; Darrell Ned, “Guest Editorial - Constitution Issue: Where Do We Stand?” *Stó:lō Nation News*, November and December 1981, 1-2, SA, box 2010-005.

<sup>58</sup> Ned, “Guest Editorial,” 1.

<sup>59</sup> Ibid., 2.



By the time Ned wrote these words in late 1981, it had become clear that the patriation of the Constitution was inevitable. UBCIC and Stó:lō activists, assured that, at the very least, “existing” Indigenous rights would be affirmed in section 35, turned their energies to advocating for the inclusion of a new clause, section 37, that would require Indigenous consent for further constitutional amendments. These efforts were unsuccessful. After much debate and political jockeying among provincial leaders, the provinces, with the exception of Quebec, agreed to the Constitution without the consent clause. On 17 April 1982, Queen Elizabeth II proclaimed the new Constitution Act in Ottawa and codified this exclusion of Indigenous participation. However, the Constitution required that the government convene a conference within one year of its proclamation, at which Indigenous leaders could speak directly to the prime minister and premiers about the Constitution’s effects on their communities. Some BC Indigenous politicians saw these meetings as an opportunity to retroactively strengthen Indigenous rights within the Constitution.

In preparation for the upcoming First Ministers Conference the following spring, Stó:lō Nation activists focused on community knowledge-sharing about sovereignty and resistance. In the fall of 1982, they organized two think tanks to analyze two interlocking issues: the Constitution debates and the land question.<sup>60</sup> After the first of these, an article in *Stó:lō Nation News* (headlined “When the Runner Comes the Message Will be Heard”), defined a list of key political terms and invoked the age-old practice of runners carrying important messages from one village to the next.<sup>61</sup> The meaning was clear: just as Stó:lō should know their histories, so should they develop the capacity to protect them by engaging with each other to affirm their sovereignty in light of the challenges posed by constitutional patriation.

Moreover, Rose Ann Stewart’s report on the second think tank in November 1982 exemplifies Stó:lō women’s roles in deploying historical consciousness to guide community discussions about contemporary politics. In the article, Stewart reprints the testimonies of Stó:lō chiefs before the McKenna-McBride Royal Commission of 1912–16, indicating the need to fight for Indigenous rights and connecting contemporary

<sup>60</sup> See Pennier, “Report on the Constitution Issue,” 24; Mark Point, “Stó:lō Nation Think Tank: Introduction,” *Stó:lō Nation News*, October 1982, 1, SA, box 2010-005; Rose Ann Stewart, “Think Tank 2: Seabird Island, November 2 & 3, 1982,” November 1982, 6–11, SA, box 2010-005.

<sup>61</sup> “When the Runner Comes, the Message Will be Heard,” *Stó:lō Nation News*, October 1982, 2, SA. See also Keith Thor Carlson, ed., *You Are Asked to Witness: The Stó:lō in Canada’s Pacific Coast History* (Chilliwack: Stó:lō Heritage Trust, 1997), 44.

Stó:lō to previous generations of anti-colonial work in their communities.<sup>62</sup> Stewart begins her report by referring to a narrative shared by a prominent Stó:lō matriarch:

Tillie Gutierrez [Xwiyálemot] tells the story about the spider who tries to reach the moon. The spider shoots an arrow at the moon and much to his surprise, he hits it. He shoots another arrow, another and yet another, and he begins to see that all the arrows are making a ladder. So, the spider kept shooting the arrows until finally the ladder was within his reach. The spider climbed up the ladder of arrows and much to his delight, he reached the moon. The spider's target was the moon. Our target is getting recognition of aboriginal title and sovereignty.<sup>63</sup>

While the primary point here is to remind Stó:lō that it would take many small steps to enshrine Indigenous rights in the new Constitution, the story gains added significance as it represents one of the few moments in which Stó:lō women are central, both as authors and as actors, in the recorded histories of the constitutional debates. Stewart's retelling of an oral tradition shared by a prominent female elder as a preface to the male chiefs' statements asserting Stó:lō sovereignty is one example of how BC Indigenous women played important roles, alongside the men from their communities, in shaping activist responses to constitutional patriation.<sup>64</sup>

Following the provision for a constitutional conference, Prime Minister Trudeau and the premiers met with Indigenous politicians in March 1983. In contrast to earlier meetings, at this conference Indigenous delegates from the Assembly of First Nations (formerly, the National Indian Brotherhood), the Native Council of Canada, the Métis National Council, and the Inuit Committee on National Issues had a seat at the table. The agenda was ambitious and included topics such as Aboriginal rights, self-government, financial support, a Métis land base, gender parity for Indigenous women, and entrenching Indigenous

<sup>62</sup> Rose Ann Stewart, "Think Tank 2: Seabird Island, November 2 & 3, 1982," November 1982, 8, SA, box 2010-005.

<sup>63</sup> *Ibid.*, 6.

<sup>64</sup> Issues of sovereignty, nationhood, and citizenship are deeply gendered, and this short piece cannot do justice to exploring them. For in-depth discussions, see Sarah Nickel, "I Am Not a Women's Libber although Sometimes I Sound Like One: Indigenous Feminism and Politicized Motherhood in British Columbia, 1950-1983" (*American Indian Quarterly*, forthcoming); Joanne Barker, *Sovereignty Matters: Locations of Contestations and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005); Kathleen Jamieson, "Sex Discrimination and the Indian Act," in *Arduous Journey: Canadian Indians and Decolonization*, ed. J. Rick Pointing, 112-36 (Toronto: McClelland and Stewart Limited, 1986).

participation in future constitutional amendments.<sup>65</sup> British Columbia's Indigenous leaders outlined their position on Indigenous issues, but, by Chief Pennier's account, they and some of the first ministers continued to be divided by a common language:

In Trudeau's opening statement, he said that "Title" was already in the Constitution as part of our Aboriginal Rights. When George Erasmus asked him to make it very explicit and include the word Title in there, then Trudeau asked what we meant when we talked of Title. James Gosnell explained what we meant, we are the owners of the land and we never gave it away, signed treaties, or were conquered, we owned it "lock, stock and barrel." Even Allen [*sic*] Williams could explain it but then the delegations were not prepared to accept our interpretation.<sup>66</sup>

BC attorney general Allan Williams's fluency in Indigenous conceptions of title reveals diverse understandings among settler politicians and demonstrates that some settler allies also struggled against the federal government's stance.

Ultimately, Indigenous leaders lacked the formal political capital to influence these proceedings in significant ways. They had no voting rights in this forum.<sup>67</sup> Critiquing this, Pennier points out that Indigenous peoples' demands for recognition of their title and rights continued to be sidelined by settler interests.<sup>68</sup> The First Ministers Conference and the promise of future meetings was a token, belated gesture of conciliation on the part of Canadian settler officials. Recognizing their limited power in this arena, Indigenous leaders at the conference nevertheless saw these amendments as a start. Capturing BC Indigenous chiefs' hopes and frustrations, Pennier remarked drily: "We still have a lot of work to do."<sup>69</sup>

<sup>65</sup> Sharon D. McIvor, "Aboriginal Women's Rights as 'Existing Rights,'" *Canadian Woman Studies* 15, 2/3 (1995): 37; Jeremy H.A. Webber, "After Patriation: Aboriginal Rights, Meech Lake, and Charlottetown, 1982-1992," in *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montreal and Kingston: McGill-Queen's University Press, 1994), 122.

<sup>66</sup> Kat Pennier, "The First Ministers Conference," *Stó:lō Nation News*, March 1983, 1, SA. There is no indication that Allen Williams, a Stó:lō Scowlitz elder, was at the First Ministers Conference; Pennier here is referring to BC attorney general Allan Williams.

<sup>67</sup> Kat Pennier, "Constitution," *Stó:lō Nation News*, February 1983, p. 1, SA.

<sup>68</sup> *Ibid.*

<sup>69</sup> Pennier, "First Ministers Conference," 1. While the First Ministers Conference did not effectively resolve any issues, concerns Indigenous representatives expressed motivated federal politicians to make the first set of amendments to the Constitution. The 1983 Constitution Amendment Proclamation promised two more such conferences, entrenched limited protections for present and future land claims agreements, and guaranteed consultation with Indigenous peoples on future constitutional amendments if they directly affected Indigenous

Thirty years later, however, there is still much to be done. In 2016, many Indigenous activists lament the haltingly slow progress on Indigenous rights issues. In the view of the late Lower Nicola chief Don Moses, activists today are fighting the same battles as he sought to address fifty years ago.<sup>70</sup> Yet there is a glimmer of hope. Indigenous resistance has prevented the completion of the settler colonial project, and dialogue continues between Indigenous and state actors. Some Indigenous politicians find hope in the current BC treaty process. Among them is former lieutenant-governor and Skowkale chief Steven Point, who sees treaty negotiations as a possible solution to remaining constitutional issues – namely, the interpretation of section 35’s recognition and affirmation of existing Indigenous rights.<sup>71</sup> On the other hand, the UBCIC remains staunchly opposed to the provincial treaty process. It favours Indigenous sovereignty over the modified Indigenous rights approach associated with the treaty process.<sup>72</sup> This perspective is shared by Indigenous academics such as Taiaiake Alfred and Jeff Corntassel, who assert that the British Columbia Treaty Commission (BCTC) aims to secure the supremacy of federal and provincial governments over Indigenous nations.<sup>73</sup>

As many Indigenous activists reject the necessity of settler recognition through treaty, recent initiatives, such as the Truth and Reconciliation Commission’s (TRC) reports and Calls to Action, may hold more promise of autonomous futures for Indigenous peoples than does the BCTC. The highly public process of the TRC and the attention focused on the cultural genocide that occurred in residential schools could have transformative potential for Indigenous-settler relations in Canada. For instance, the TRC’s Calls to Action demand the reconciliation of “Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples

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peoples’ rights. Indigenous activists today would point out that many of these issues still have not been conclusively resolved; however, one of these amendments did result in significant change. Indigenous women’s testimony at the First Ministers Conference ultimately resulted in an addition to section 35 of the Constitution to guarantee that Indigenous women would enjoy the same rights as Indigenous men. This constitutional amendment set the course for the elaboration of those protections of Indigenous women’s rights in Bill C-31, which, in 1985, brought the Indian Act into line with the Canadian Charter of Rights and Freedoms. See McIvor, “Aboriginal Women’s Rights,” 34–38; and Webber, “After Patriation,” 122.

<sup>70</sup> Don Moses, interview with Sarah Nickel, 11 June 2014, Merritt, BC, Sarah Nickel’s private collection.

<sup>71</sup> Steven Point, interview with Byron Plant, 3 June 2002. SA, oral history collection.

<sup>72</sup> Don Bain, personal communication with Sarah Nickel, 1 April 2012, Union of BC Indian Chiefs Office, Vancouver, BC. The modified rights approach of the BCTC replaced the cession and rights extinguishment clauses of earlier treaties. Critics argue that this approach substitutes cession principles in language only, not in intent or effect.

<sup>73</sup> Taiaiake Alfred and Jeff Corntassel, “Being Indigenous: Resurgences against Contemporary Colonialism,” *Government and Opposition* 40, 4 (2005): 603.

are full partners in Confederation.”<sup>74</sup> If implemented, this could bring both Constitution and Indigenous-settler relations closer to Indigenous aspirations expressed in the patriation debates. This would require recognition of Indigenous governance systems and Indigenous sovereignty, and an affirmation that this sovereignty was not negated by the imposition of settler colonialism. The TRC’s Calls to Action alone are not enough to precipitate this type of transformative reconciliation, but, coupled with the “resurgent politics of recognition” – as Yellowknives Dene political scientist Glen Coulthard terms a movement “premised on self-actualization, direct action, and the resurgence of cultural practices that are attentive to the subjective and structural composition of settler-colonial power” – they may yet change the country.<sup>75</sup>

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<sup>74</sup> Truth and Reconciliation Commission of Canada, “Calls to Action,” section 45iv (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), 4-5, [http://nctr.ca/assets/reports/Calls\\_to\\_Action\\_English2.pdf](http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf).

<sup>75</sup> Coulthard, *Red Skins, White Masks*, 24. The Idle No More movement, opposition to pipeline expansion, and protests over missing and murdered Indigenous women mark the success of grassroots Indigenous political resurgence.