DECOLONIZATION, NOT PATRIATION:
The Constitution Express at the Russell Tribunal

Emma Feltes and Sharon Venne*

On 24 November 1980, nearly a thousand Indigenous people gathered at the Pacific Central Railway Station in Vancouver, British Columbia. Drumming their way into the station, Elders, Chiefs, and whole families piled into two trains – one heading north through Jasper, the other along the southern route through Calgary, both bound for Ottawa. Meanwhile, two delegates landed in New York. At the very same moment, a young Cree articling student was on her way to Rotterdam, Netherlands. All of these travellers, traversing Indigenous territories and state borders, carried with them the same message: no patriation. That is, the Canadian government could not patriate the Constitution without the consenting authority of the Indigenous Nations upon whose territories and terms the Canadian state very tenuously sits. Over the next two and a half years, more of these journeys would be made: to the United Nations in New York, to the British Parliament in London, to Indigenous communities throughout British Columbia, and to cities and towns across Europe. Starting from the train ride that launched it all, together these journeys would come to constitute a movement known as the Constitution Express.

At the time, Prime Minister Pierre Elliott Trudeau had proposed to "bring home" the Constitution from the United Kingdom – a prospect that fuelled his return to leadership and on which he became, by all accounts, hell-bent.[1] He touted the move as a decolonial one, ostensibly

* We would like to thank Glen Coulthard and Paige Raibmon for their editorial guidance, as well as the two anonymous peer reviewers, whose suggestions helped immensely to deepen and fine-tune our legal and political analysis. Our deepest gratitude goes to Vicki George, Emma's research partner, who worked around the clock to capture everything in the archives of the Fourth Russell Tribunal at the International Institute of Social History in Amsterdam. Without her, this research would not have been possible. We thank the other participants in *Indigenous Internationalism in Context*, a symposium at The Centre for Sami Studies at UiT The Arctic University of Norway where we first presented an early draft of this work, and especially Jonathan Crossen, who organized it. We also thank Corey Snelgrove for his insights in helping to parse through the positions of Sartre and Baldwin. Research was supported by the Social Sciences and Humanities Research Council of Canada, as well as the Public Scholars Initiative at the University of British Columbia. Finally, we thank all those involved in the Constitution Express.

meant to "break this last colonial link" to the British Crown.[2] And yet, his proposal failed to mention the existence of Indigenous Peoples in Canada – their treaties, rights, title, and their persistent jurisdiction. For a decolonial project, it was a rather conspicuous exclusion. Ignoring Indigenous Peoples, patriation promised to consolidate Canadian sovereignty once and for all. Wise to the fact that their rights and jurisdiction were about to be extinguished by omission, the Union of British Columbia Indian Chiefs (UBCIC), with Grand Chief George Manuel at its helm, organized the Constitution Express to oppose patriation outright – that is, until they had the opportunity to sit down with Canada and the United Kingdom at an internationally supervised "Imperial Conference" to determine the nature of their political relationship, responsibility for the treaties, and their respective jurisdiction. This proposal effectively moved the question of "decolonization" outside the parameters of Canadian federalism and into the international arena.

What might appear to be a domestic struggle for constitutional rights and recognition – what could be more domestic than a constitution, after all? – revealed itself to be an international movement for Indigenous nationhood and jurisdiction. The Constitution Express did not leave the station in search of incorporation into Trudeau's version of the Constitution. Instead, it challenged state sovereignty, shifted the focus from Indigenous Rights to nationhood, and moved the issue into international fora. Its leaders realized that, "without guarantees by the British Government and the International community that bands will retain their lands and resources, the continuing right of self-government and self-determination," they would find themselves "living without Indians lands" and "assimilated under the authority" of the provincial and federal governments.[3] Their shrewd interplay of domestic and international

[1] In a confidential telegram from Lord Moran, then British high commissioner to Canada, Trudeau is described as "obsessed with a sense of urgency" over patriation. See John Wilson, Second Baron of Moran, to various Lords and legal advisors, London, 8 February 1981, fol. 669, box 19, Records of the Prime Minister's Office (PREM), correspondence and papers 1979–97, UK/Canadian relations, patriation of the Canadian Constitution (*British North America Act, 1867*), pt. 2, National Archives, London (hereafter TNA). A telegram from Moran's predecessor, Sir John Ford, similarly warned of Trudeau's "steely determination to press on regardless of consequences." See Sir John Ford, British High Commissioner to Canada, to the Foreign and Commonwealth Office, 20 December 1981, fol. 397, box 19, Records of the Prime Minister's Office (PREM), correspondence and papers 1979–97, UK/Canadian relations, patriation of the Canadian Constitution (*British North America Act, 1867*), pt. 2, TNA.

[2] Pierre Elliott Trudeau, "Bringing Home the Constitution," 17 April 1982, CBC Archives, https://www.cbc.ca/player/play/1402903173.

[3] Union of British Columbia Indian Chiefs (hereafter UBCIC), *Indian Nations: Self-Determination or Termination* (1980), UBCIC Constitution Express Digital Collection, ii, http://constitution.ubcic.bc.ca/node/122.

action was not just a tactic to apply global pressure to Canada to accommodate Indigenous Peoples in the constitutional process (though this it did, very effectively). Rather, the interplay was the objective – that is, to establish Indigenous self-determination on both a local and international basis. Examining this, our article demonstrates how the movement's assertions of Indigenous nationhood at the international level belie the narrative of Canadian sovereignty at the heart of the patriation project.

We focus particularly on what transpired at the first international venue before which the Constitution Express made such assertions: the Fourth Russell Tribunal on the Rights of the Indians of the Americas. Taking place in Rotterdam in November 1980, the Fourth Russell Tribunal operated outside of existing international infrastructure; rather, it was a kind of shadow tribunal, organized expressly "to adjust the failing international law system."[4] Here the movement pushed the bounds of international recognition as well. It is not that the Constitution Express left the domestic scene only to seek liberal rights elsewhere; rather, we argue, the movement's interventions at the Russell Tribunal pushed the conversation beyond protections for minority rights and cultural survival into the realm of jurisdiction, self-determination, and decolonization – topics that other international fora, particularly the United Nations, had reserved for postcolonial states alone and not Indigenous Peoples. By seeking decolonization instead of patriation, it sought to bring about the "Fourth World" – a world beyond the Three Worlds of the United Nations, where constitutions and confederations could be built free of imperial domination.[5] To borrow Adom Getachew's pertinent phrase, it was "worldmaking."[6]

And so our article examines the efficacy of transnational political action in matters that are, at once, domestic *and* international. The Constitution Express was not simply seeking a mention in Trudeau's vision of a multicultural Canada. Nor was it looking to vernacularize international rights in the context of Canadian federalism. Rather, it put forward a full expression of Indigenous nationhood that could be acted upon in both local and international arenas – one that, if taken seriously, would change that federalism fundamentally. For its part, Canada set about thwarting the movement's aims by domesticating them. Despite

[4] *The Rights of the Indians: The 4th Russell Tribunal*, directed by Jan Henk Kleijn, produced by Cinelab Ears and Eyes (1980), https://zoeken.beeldengeluid.nl/program/urn:vme:default:program:210190205025326623 1?ac=dgtl&q=russell+tribunal.

[5] George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (New York: Collier-Macmillan, 1974), 12.

[6] Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton, NJ: Princeton University Press, 2019).

this, the impacts of the Constitution Express on decolonial thought in British Columbia and in forging transnational solidarities flourish.

METHOD AND THEORY: A CONVERSATION

This article is the written outcrop of an ongoing conversation between co-authors Sharon Venne (masko nohcikwesiw manitokan) and Emma Feltes. Venne, now a renowned lawyer and expert in treaty, Indigenous, and international law, was that young articling student sent by UBCIC to the Fourth Russell Tribunal. Venne is Cree from Treaty 6 and, by marriage, a citizen of the Kainai Nation within Treaty 7. When Manuel took up the presidency of UBCIC at the end of the 1970s to fight patriation, he began amassing a team of collaborators (a skill he became known for). He knew Venne through Harold Cardinal and sought her out: "We sort of had this mutually decided decision to work together."[7] And so, fresh out of law school, Venne accepted a post articling with Douglas Sanders, one of UBCIC's legal strategists. She took the helm preparing the organization's submissions to the Fourth Russell Tribunal. After completing her articles in 1981, Venne moved into a position with the Indian Association Alberta (IAA), which had launched its own objections to patriation. This landed Venne in London, where she spent many months lobbying British MPs and challenging patriation in the British courts.[8] At this time she also began work at the United Nations, before it had any formal infrastructure for Indigenous Peoples. She would go on to become one of the premier lobbyists for Indigenous Peoples internationally, working on the development of the *UN Declaration on the Rights of Indigenous Peoples* and the groundbreaking *Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: Final Report*, completed in 1999.[9]

Feltes also comes at this as a collaborator of the Manuel family. A settler scholar, writer, and activist with Irish and English ancestry, she was a mentee of George's son, the late Arthur Manuel, having spent the better part of a decade conducting economic and policy analysis under the auspices of his organization, the Indigenous Network on Economies and Trade. It was Arthur who asked her to talk to people involved in

[7] Sharon Venne interview with Emma Feltes, 24 July 2018.

[8] *The Queen v. The Secretary of State for Foreign and Commonwealth Affairs,* [1981] 4 C.N.L.R. 86 (Eng. C.A.)

[9] Miguel Alfonso Martínez, *Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: Final Report* (Geneva: United Nations, 1999), https://digitallibrary.un.org/record/276353?ln=en.

the Constitution Express and to write about it. She began this task in earnest in 2015 as a PhD student. Working in partnership with those who led it, she set out to help document the movement and to understand its decolonial principles and aims. Since then, Feltes has done extensive research, submersing herself in the oral, written, and material archives of the movement, following its path across North America and to Europe. This includes her immersion in the extensive archive of the Fourth Russell Tribunal housed at the International Institute of Social History in Amsterdam. She did this together with Wet'suwet'en legal expert and Indigenous Rights advocate Vicki George, daughter of movement leader Ron George, and a brilliant documentarian of the Constitution Express in her own right.[10]

Drawing together Venne's firsthand accounts with Feltes's new research, this article is the written outgrowth of a dialogue between us that is still unfolding and that simultaneously remembers and analyzes the movement. Which is to say, there are a few conversations going on here at once: between domestic and international anticolonialism, between story and theory, and between the two of us. Venne's stories, which are quoted extensively here, are those of someone who was there, who is the source of the original analysis that went into the movement's international submissions, and who has four decades of experience at the international level. Hers are accounts already dense with theory. The additional analysis, which weaves between her stories, is also born of our conversation. It reflects our engagement in narrating and theorizing together what transpired at the Fourth Russell Tribunal and why it is significant. In this way, we attempt to avoid any bifurcation of theory and story. As Venne has written of Indigenous legal traditions elsewhere, "It is through telling stories that the histories of the peoples, as well as important political, legal, and social values are transmitted."[11] The telling of this particular story interrupts another, domineering one – for nested in the Constitution Express is a refusal and a rebuttal of colonial narratives of sovereignty.

---

[10] George's superb collection of filmed interviews with leaders of the Express, entitled, *The Constitution Express: A Multimedia History*, is available at http://constitution.ubcic.bc.ca/node/133.

[11] Sharon Venne, "Understanding Treaty 6: An Indigenous Perspective," in *Aboriginal and Treaty Rights in Canada*, ed. Michael Asch (Vancouver: UBC Press, 1997), 174.

THE RUSSELL TRIBUNAL

On the very day the Constitution Express left the station, the Fourth Russell Tribunal on the Rights of the Indians of the Americas began in Rotterdam. Over seven days it would hear fourteen cases and receive a much larger number of standalone presentations, petitions, and submissions, including that of UBCIC. It was modelled after any other international tribunal or court of law, though without their statist structure or institutional clout; rather, under the direction of a private body, the Bertrand Russell Peace Foundation, it had an expressly anti-imperial bent.

The first Russell Tribunal, on which the fourth was modelled, had taken place in 1966, investigating US war crimes in Vietnam. It was organized by Bertrand Russell himself – then well into his nineties – and presided over by Jean-Paul Sartre. Through their recruitment, the jury was a veritable who's who of the global left, including artists, intellectuals, and leaders of the social movements of the 1960s: Stokely Carmichael, Simone de Beauvoir, David Dellinger, and Mahmud Ali Kasuri, among others. Without the "force majeure"[12] of a state-backed body, they had no formal capacity to compel law- and policy-makers to implement their findings. Yet this was seen to be a boon, not a shortcoming. As Russell put it, "I believe that these apparent limitations are, in fact, virtues. We are free to conduct a solemn investigation, uncompelled by reasons of State of other such obligations."[13] Sartre agreed: "We are independent because we are weak."[14] Unlike the UN system at the time, it threw open the protocols of participation, inviting anyone, particularly those directly affected, to testify. State parties (i.e., the accused), on the other hand, declined to take part. Though US officials tried to downplay the tribunal, deriding it as a kangaroo court, its finding that the United States was committing genocide in Vietnam circulated globally and was made famous through Sartre's rendering in *On Genocide*.[15]

Shirking the official flags of legitimacy – particularly the state sanction depended upon by the United Nations and World Court – the first Russell Tribunal refused to fall prey to the ideological and imperial contests that played out in those venues. And yet, it was exceedingly

---

[12] Russell, quoted in Ken Fleet, "Speech by Ken Fleet, Secretary of the Russell Peace Foundation," 1980, item 2.9, fol. 57, box UBA/CSD VrZ 07.15, archive ARCH02318, Fourth Russell Tribunal Archives, International Institute of Social History (hereafter IISH), Amsterdam, the Netherlands.

[13] Russell, quoted in Fleet, 1980 speech.

[14] Jean-Paul Sartre, "Imperialist Morality," *New Left Review* 1, no. 41 (1967): 3–10.

[15] Jean-Paul Sartre, *On Genocide* (Boston: Beacon Press, 1968).

careful to speak "the language of international law."[16] Throughout the hearings, it followed strict standards of legal precedent for the presentation of evidence and witness testimony, and adhered scrupulously to the "arsenal of jurisprudence" contained in existing treaties and conventions.[17] Law, in Sartre's view, was both a product of history and a superstructure, exerting a "'feedback' effect" by allowing one "to judge a society in terms of the criteria which it has itself established."[18] The creation, at Nuremburg, of an international law to preside over "political crimes" provided the precedence needed to condemn Western imperialism on the basis of its own criteria – not just moral criteria but legal criteria as well.[19]

Sticking, then, to the standards of international law served two important purposes. For one, it helped to fend off charges of "petit bourgeois idealism," where the "indignant disproval" of a group of progressive personalities could be written off as mere moral indictment. Sartre and Russell sought to create a new kind of global forum – a space where the dialectical rigour of such personalities could be brought to bear on the "juridical dimension" of international politics.[20] Second, it allowed the tribunal to take established measures of criminality and extend them beyond the individual. Perhaps informed by Hannah Arendt's *Eichmann in Jerusalem*,[21] the tribunal understood that guilt lay not with a few hideous, power-wielding war criminals but with the whole policy of a state and its structuring ideology. Finding collective culpability in the US government, legal scholar Zachary Manfredi writes, "Sartre connected the question of criminality and intention to large-scale military and political practices and found evidence for that criminality not in individual consciousness but in a systematic policy."[22]

This approach, while serving the tribunal, also opened it up to anti-colonial critique. While on the one hand seeking to reimagine international justice beyond state domination and impunity, the trial fit squarely in the Eurocentric lexicon of international law. It relied on the assumption that there are legal parameters inherent to imperialism, where it crosses into the realm of criminality (namely, into genocide). In a 1967 interview

[16] Zachary Manfredi, "Sharpening the Vigilance of the World: Reconsidering the Russell Tribunal as Ritual," *Humanity* 9, no. 1 (2018): 79.
[17] Sartre, "Imperialist Morality," 5.
[18] Sartre, 4.
[19] Sartre, 5.
[20] Sartre, 5.
[21] Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking, 1963).
[22] Manfredi, "Sharpening the Vigilance of the World," 85.

defending the tribunal, Sartre clarified: "We only have to try and find out whether … there are people who are exceeding the limits; whether imperialist policies infringe laws formulated by imperialism itself."[23] This suggests, of course, the legitimacy of policies that operate within these limits – that is, that there is an imperialism that is not criminal. Here the tribunal accepted the criteria set by imperialist powers themselves – Western ones, universalized in international law – and not, for example, the jurisdiction or laws of international relation practised by the peoples imperialism oppressed. For Sartre, this was the very point: "to apply to capitalist imperialism its own laws."[24] The tribunal sought legitimacy not in state sanction but in Western state legal custom nonetheless.

Elements of this critique were raised by James Baldwin, who, after enthusiastically accepting Russell's invitation to participate in the tribunal, developed reservations about its Eurocentrism. Declining to attend sessions in Sweden and Denmark, Baldwin's contribution came in the form of a fiery 1967 article entitled "The War Crimes Tribunal," published in the Black theory journal *Freedomways.* In it, he globalized the war, noting it was inherited from France and that, when it comes to imperialism, "all the Western world is guilty."[25] For Baldwin, it seems, the crux of the issue was not that the West be more consistent with its own laws and limits but that Western imperialism be done away with altogether – that the world decolonize.

Given the predominantly European jury, Baldwin proposed they instead investigate their own actions in, say, South Africa, Algeria, or Rhodesia (now Zimbabwe). By the same token, he proposed that any tribunal on the Vietnam War "should really be held in Harlem,"[26] where, among the Black community, the material and moral conditions of US imperialism could really be felt: "No one, then, could possibly escape the sinister implications of the moral dilemma in which the facts of Western history have placed the Western world."[27] This was a nuanced, total condemnation of imperialism, linking its transnational and domestic violence. What's more, it shone a light on the tribunal's neglect of the racism behind US efforts to "liberate" South Vietnam. As Baldwin concluded, "A racist society can't but fight a racist war – this is the bitter truth. The assumptions acted on at home are also acted on abroad, and

[23] Sartre, "Imperialist Morality," 6.
[24] Sartre, "Imperialist Morality," 6.
[25] James Baldwin, "The War Crimes Tribunal," *Freedomways* 7, no. 3 (1967): 242.
[26] Baldwin, 243.
[27] Baldwin, 243.

every American Negro knows this, for he, after the American Indian, was the first 'Vietcong' victim."[28]

Perhaps provoked by Baldwin's article, Sartre went on to weave thick threads between European and US imperialism in the tribunal's findings, discussing at relative length the similarities between French transgressions in Algeria and Vietnam, and the "neo-colonialism" of the Vietnam War.[29] While conceding that colonialism, as a "system," is always "cultural genocide,"[30] he remained focused on proving that US intentions in Vietnam met its specific criteria. Establishing this, Sartre concluded not by affirming the countervailing self-determination of the Vietnamese but, instead, by universalizing the threat of US hegemony as a crime against all humanity, appealing to the immanent idiom of Nuremburg. This turning of imperial law on itself was a shrewd way to take the United States to task. But the tacit implication remained that imperialism's internal checks and balances were enough to rein it in.

The question, then, is whether the Fourth Russell Tribunal, launched more than a decade later, followed the same path as the first. Did it stick to this model of immanent critique? Or did its focus on the rights of Indigenous Peoples within the Americas redress its tensions and gaps? By contrast, what model of international law did it put forth?

By the late 1970s, a crop of European solidarity groups emerged, attuned to the threats facing Indigenous Peoples' cultural and material survival and, most prominently, their rights. The 1970s had seen the rise of a global human rights movement unlike any before, made exceptional by its proliferation outside of international institutions. As faith in the respective promises of socialism, liberalism, and postcolonialism began to wane, historian and legal theorist Samuel Moyn argues, human rights arrived just in time to fill the moral and emotional void left in their wake.[31] It was the harbinger of a new kind of universal justice and liberation, this one generated beyond state governments. It was led instead by concerned intellectuals and publics as a league of non-governmental organizations took up the cause.

The United Nations followed suit, finding for itself a renewed relevance in human rights. At the same time – for the first time – it took an interest in discrimination against Indigenous Peoples, and, in 1971, the Sub-Commission on the Prevention of Discrimination and the

---

[28] Baldwin, 244.
[29] Sartre, *Genocide*, 15.
[30] Sartre, 13.
[31] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).

Protection of Minorities appointed Special Rapporteur José Martínez Cobo to undertake a comprehensive study of the issue (a report that would take him twelve years to complete). Meanwhile, many on the European left were captivated by the high-profile actions of the American Indian Movement (AIM), news of which had made it into local media.[32] By the first International NGO Conference on Discrimination against Indigenous Populations in the Americas, held at the Palais des Nations in Geneva in 1977, a number of solidarity organizations had coalesced.

Building on the momentum of the UN conference, and taking to heart its final resolution that efforts should be made to bring Indigenous Rights abuses before international scrutiny, one such group – a Dutch collective called the Stichting Werkgroep Indianen Projekt (Workgroup Indian Project Foundation) – came up with the idea for a tribunal.[33] Its members contacted the Bertrand Russell Peace Foundation seeking sanction to hold a fourth tribunal to investigate rights violations committed against Indigenous Peoples in the Americas. This they received in full. As then secretary of the foundation, Ken Fleet, put it, "the case of the Indian peoples, does seem and has seemed to us to be very suitable … The oppressions and the disabilities of the Indian peoples are not well-known, even though they are deep-rooted and long-standing and very closely connected with the actions of western countries."[34] Like the first tribunal, this one would investigate infractions of Western imperialism – but an older, yet ongoing form of imperialism, newly understood through the lens of rights.[35]

As with the original, the Fourth Russell Tribunal sought to provide recourse where the existing international system would not. Though the United Nations had taken an interest in Indigenous Peoples, it provided

---

[32] Yvonne Bangert, interview with the author, 12 April 2018.

[33] Some documents indicate that it was Indigenous Peoples who recommended a tribunal be convened coming out of the NGO conference. See *Declaration of the Indigenous Peoples, Fourth Russell Tribunal*, 1980, item 58.j, fol. 15, box UBA/CSD VrZ 07.15, archive ARCH02318, Fourth Russell Tribunal Archives, IISH. However, other materials state that the idea for a tribunal was conceived by the Workgroup Indian Project in 1978, and its "necessity" was later "confirmed by Indian organizations and representatives." See Fons Eickholt, "Memorandum," 21 February 1979, item a.6, fol. 61, box UBA/CSD VrZ 07.16, archive ARCH02318, Fourth Russell Tribunal Archives, IISH.

[34] Fleet, 1980 speech.

[35] After the first tribunal, Italian socialist Lelio Basso launched a second Russell Tribunal on Repression in Brazil, Chile, and Latin America before establishing the Italian-based Permanent Peoples' Tribunal. It was at this second tribunal that the focus started to shift towards the language of human rights. See Umberto Tulli, "Wielding the Human Rights Weapon against the American Empire: The Second Russell Tribunal and Human Rights in Transatlantic Relations," *Journal of Transatlantic Studies* 19 (2021): 215–37. A third tribunal was convened in 1978–79 to address civil liberties in West Germany.

no avenues for their direct participation. Their grievances could only be addressed by proxy, through the goodwill of sympathetic state parties, many of them former colonies themselves. As Survival International legal advisor Gordon Bennett wrote for the tribunal, Indigenous tribes were classified "as the object rather [than] the subjects of international law."[36] In contrast, the tribunal created an open forum where a host of injustices could be brought to the table by Indigenous Peoples themselves. Plus, this time the world was perhaps better primed for a "kangaroo court" than it had been in the mid-1960s as the intervening discourse on human rights had normalized extra-judicial, citizen-based advocacy.

The Fourth Tribunal also found for itself a particular raison d'être in restructuring rights to include Indigenous Peoples. When the Workgroup first laid out its memoranda, the idea was to follow in the steps of the first tribunal and investigate whether actions against Indigenous Peoples met the legal definition of genocide. At the same time, it sought to take up the mantle of the 1977 NGO conference in Geneva in order to investigate the violation of Indigenous Peoples' Rights more broadly. However, it was quickly deciphered that the question of rights and the question of genocide could not be so easily conjoined (and an effort to link them through the concept of "ethnocide" was quickly abandoned). Genocide, as it was defined, could not capture the myriad insidious rights violations taking place since "[m]any rights claimed by Indian peoples and the Inuit, are not recognized and formalized in international and national law, and are therefore automatically violated."[37] And so, the tribunal amended its focus to inquire after the recognition of Indigenous Peoples' Rights in international law.

The question as to whether human rights, with their Western, universalist, and individualist bent, could account for the specific, political, and collective rights of Indigenous Peoples was still a new one, and the tribunal, it seems, would be an early testing ground for it. As coordinator Fons Eickholt put it in his opening speech, it was the "obligation" of the tribunal to try to extend human rights to include the "rules, religion, [and] social structure" of Indigenous Peoples, "structures that are neglected in our definition of rights."[38] In a way, then, the Fourth Tribunal would both embrace and exceed the mandate of the first. It would apply to

[36] Gordon Bennett, "Why an International Tribunal: The Legal Background," Survival International, 30 July 1979, item c. 1, fol. 16, box UBA/CSD VrZ 07.16, archive ARCH02318, Fourth Russell Tribunal Archives, IISH, 1.

[37] "Elucidation of the Memorandum," 1 June 1979, 1, item a.6, fol. 61, box UBA/CSD VrZ 07.16, archive ARCH02318, Fourth Russell Tribunal Archives, IISH.

[38] Fons Eickholt, "Opening Speech of Fons Eickholt," 1980, item 2.3, fol. 15, box UBA/CSD VrZ 07.15, Archive ARCH02318, Fourth Russell Tribunal Archives, IISH.

Western imperialism its own criteria – though that criteria was now articulated through the language of rights. At the same time, it would seek to expand and redefine that criteria to encompass a new set of rights: Indigenous ones, generated from within their own "social structures."

However, in the case of Indigenous Peoples in the Americas, the international system had failed them another way – one it was not clear that rights could resolve. In a moment of collusion between some of the Western world's most beloved liberals, Indigenous Peoples were excluded from gaining access to the UN's decolonization mechanisms. This moment predated the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* (known as the *Decolonization Declaration*).[39] by a decade, when in 1949 the process for decolonizing "non-self-governing territories" was just taking shape, as mandated by the UN Charter.[40] At the time, Belgium was going around admonishing states who were "administering within their own frontiers territories" populations who "did not enjoy self-government in any sense of the word."[41] In so doing, it effectively made the argument that the provisions of the UN Charter pertaining to other colonized peoples should apply equally to Indigenous Peoples. This would require, per Article 73 (b), that their respective colonizers "assist them in the progressive development of their free political institutions."[42] Throwing a "hissy fit,"[43] Eleanor Roosevelt stepped down from her role as chair of the Commission on Human Rights to bring a counter-resolution limiting the right to self-determination to overseas colonies, thereby laying the roots of what is known as the blue water thesis. As Venne explains:

> In the UN system it's completely unknown to have two resolutions at the same time. You usually have to debate one, and if that one is defeated then the next one comes forward, but to have them on the floor at the same time is a no-no … And guess who [stepped into] the Chair, and allowed that to happen? In 100 years, you'll never guess. Lester B. Pearson …
>
> Everybody thinks Pearson is this great guy, but … he's over there at

[39] UN Declaration on the Granting of Independence to Colonial Countries and Peoples General Assembly Resolution, 1514 A/RES/1514 (XV).

[40] United Nations, *United Nations Charter, Chapter XI: Declaration Regarding Non-Self-Governing Territories* (1945), https://www.un.org/en/about-us/un-charter/chapter-11.

[41] As quoted in Patrick Thornberry, "Self-Determination, Minorities, Human Rights: A Review of International Instruments," *International and Comparative Law Quarterly* 38, no. 4 (1989): 873.

[42] United Nations, *United Nations Charter, Chapter XI.*

[43] Venne, interview.

> the UN trying to stop us being put on the list for decolonization. If we are the most colonized people, we were the ones that made the criteria.[44]

This set the groundwork for Resolution 1541 ten years later, qualifying which territories would be covered in the *Decolonization Declaration* as those "geographically separate … from the country administering it,"[45] thus formally excluding so-called settler states. By the 1970s, Indigenous Peoples would instead be "offered a carrot,"[46] jettisoned to the human rights side of the United Nations as a consolation prize for decolonization.

Given the Fourth Russell Tribunal's focus on redefining rights, it is not clear whether it was prepared for testimonies set on redefining decolonization, as Venne's would be.

This time around, the jury was stacked with activist anthropologists and Latin American anti-imperialists. It included high-profile exiles like Uruguayan writer Eduardo Galeano and Bolivian feminist labour leader Domitila Barrios de Chungara. Isabel Allende was also slated to participate but, facing health issues and a broken arm, was unable to travel.[47] When Xavante leader Mario Juruna was elected president of the tribunal, Brazilian officials refused to issue him a passport. However, with support from the tribunal's organizers, Juruna successfully challenged the decision in Brazil's Supreme Court and, by the end of the first week, made it to Rotterdam to take up his seat. An International Advisory Council was also convened, including the likes of Noam Chomsky, anthropologist Shelton Davis, and Bishop Edward Scott, primate of the Anglican Church of Canada.[48] Meanwhile, Vine Deloria Jr., AIM leader Russell Means, International Indian Treaty Council representative Roxanne Dunbar-Ortiz, and Canadian justice Thomas Berger were invited as expert witnesses.[49]

By the time the Constitution Express coalesced in the fall of 1980, it had missed the window to submit a full case to the tribunal. Nevertheless, the organizers reached out to George Manuel, encouraging him to present a standalone submission. By this time, Manuel was well-known globally. He had spent much of the 1970s on what was essentially

---

[44] Venne, interview.

[45] Jonathan Crossen, "Another Wave of Anti-Colonialism: The Origins of Indigenous Internationalism," *Canadian Journal of History* 52, no. 3 (2017): 552.

[46] Sharon Venne, "The Road to the United Nations and Rights of Indigenous Peoples," *Griffith Law Review* 20, no. 3 (2011): 564.

[47] Fleet, 1980 speech.

[48] Members of the Jury and Advisory Council, 1980, item e.2, fol. 61, box UBA/CSD VrZ 07.16, archive ARCH02318, Fourth Russell Tribunal Archives, IISH.

[49] Eickholt, "Memorandum."

an anti-colonial world tour, from Aotearoa, to Tanzania, to Sápmi. He built close ties with solidarity groups that would come to be involved in the Russell Tribunal, starting in 1972, when he served as an adviser to the Canadian delegation at the UN Conference on the Human Environment in Sweden.[50] But, most significantly, he forged alliances with and between Indigenous Peoples worldwide as well as with newly "postcolonial" peoples. Influenced by his close friend and colleague, Blackfoot intellectual Marie Smallface Marule, Manuel became taken with Third World anti-colonialism and set out to learn from its thinkers and leaders.[51] (This included an accidental tête-à-tête with Tanzania's Julius Nyerere himself.)[52] Inspired by their cosmopolitanism, Manuel similarly imagined uniting Indigenous Peoples globally. He relayed this vision to Mbuto Milando, first secretary of the Tanzanian High Commission in Ottawa. Milando responded, "When the Indian peoples come into their own, that will be the Fourth World."[53] Manuel leapt at the concept, elaborating on it most vividly in his 1974 book, *The Fourth World*, written with Michael Posluns. That same spring, he convened a meeting of Indigenous Peoples in Georgetown, Guyana, followed in 1975 with the historic World Conference of Indigenous Peoples in Port Alberni, British Columbia, where the World Council of Indigenous Peoples (WCIP) was founded.

Throughout this period, Manuel carried cautious optimism that the United Nations – and human rights in particular – held promise for Indigenous Peoples. He sought non-governmental accreditation at the Economic and Social Council, first for the National Indian Brotherhood and then for the WCIP.[54] When member states of the Third World rallied in support of these applications, this kindled hopes for "another wave" of decolonization,[55] but, Manuel imagined, one revamped to meet the particular conditions and aspirations of the Fourth World. And yet, by the end of the 1970s, his confidence that this could be achieved at the United Nations was beginning to dim.[56] At the same time, an urgent struggle – the suddenly imminent patriation of the Canadian Constitution – was calling him back to British Columbia.

---

[50] Crossen, "Another Wave of Anti-Colonialism," 542.
[51] Glen Coulthard, "Introduction: A Fourth World Resurgent," in *The Fourth World*, by George Manuel and Michael Posluns (Minneapolis: University of Minnesota Press, 2019), originally published in 1974 by the Free Press.
[52] See the introduction to this special issue.
[53] Manuel and Posluns, *The Fourth World*, 5.
[54] Venne, "Road to the United Nations," 563.
[55] Crossen, "Another Wave of Anti-Colonialism."
[56] Crossen, 555.

Manuel understood the struggle over patriation to be more than domestic – it had potential to open up the very pathways to decolonization he had been seeking. And then, at a moment when the United Nations was proving less than willing to forge such pathways, the Russell Tribunal presented another opportunity to get on the international agenda. Manuel set Venne to work on a submission on behalf of UBCIC. Sadly, the day before he was to fly to Rotterdam to present it, Manuel suffered a heart attack. It was his second.

Rosalee Tizya, UBCIC's administrator, called Venne to the hospital. Pretending to be Manuel's daughter, she was cleared to see him in recovery. It was an emotional scene, but he was focused on the task at hand. Turning to Venne, he said, "You need to go to Rotterdam." She returned to UBCIC's offices to tell her articling principal, Douglas Sanders, the news:

> He said, "What?!"
>
> I said, "I'm going to Rotterdam."
>
> And he says, "And where's that?"
>
> I said, "You know, in the Netherlands."
>
> He said, "I know there's a Rotterdam, Netherlands! But you're an articling student … you need to clear it with your articling principal."
>
> I said, "Okay, I'm telling you I'm going to Rotterdam, because your client, George Manuel, says that I'm going to Rotterdam for him."
>
> He said, "When are you leaving?"
>
> I said, "Tonight."[57]

And off she went. It was no small task to fill Manuel's shoes: "People were disappointed that George Manuel wasn't there … and there's this young woman there saying 'I'm mandated by George Manuel.'"[58] But Venne was focused on the even more formidable challenge before her: explaining the confounding quirks and intricacies of patriation before an international audience.

---

[57] Venne, interview.
[58] Venne, interview.

THE PATRIATION OF JURISDICTION

Patriation was a strange beast, even by Commonwealth standards. In order to understand the jurisdictional argument made by the Constitution Express and presented by Venne at the Russell Tribunal, it helps to understand that patriation itself was a project born of Canada's deep jurisdictional anxiety. While the 1931 *Statute of Westminster* limited British legislative authority over Canada, it did not do away with it entirely.[59] Instead, due to a never-ending spat between the provinces and the federal government over who had authority to make constitutional amendments – a spat that is, in its own awkward way, the very story of Canada – the federal government asked the British Parliament to hang on to a fiduciary jurisdiction to amend the Constitution. This did not mean the United Kingdom could make amendments willy-nilly; rather, in circuitous fashion, it would perform amendments at the request of the Canadian Parliament. In any case, this half-in, half-out arrangement with the United Kingdom left Canadian sovereignty something of a liminal thing. If, as Lisa Ford characterizes it, settler sovereignty seeks "perfection" by "shoring up" exclusive jurisdiction,[60] the retention of even a scrap of constitutional authority in the United Kingdom left Canadian sovereignty pointedly imperfect. For those who had a heartfelt sense of standalone Canadian sovereignty, and the exclusive, hermetic jurisdiction inherent to the settler imaginary[61] – i.e., people like Pierre Elliott Trudeau – this was deeply embarrassing.

By the time Trudeau took the role in 1968, this pesky disagreement over an amending formula had proved insurmountable for three prime ministers. In fact, the issue had become more fundamental: "No longer centred on trying to find an acceptable amending formula; it was viewed more as a means of reopening the whole question of the division of powers between the federal and provincial governments."[62] Trudeau was undeterred. He began his second stint as prime minister in late 1979, determined to be the one to patriate the Constitution and to consolidate jurisdiction within the bounds of Canadian sovereignty once and for all. While he was at it, he promised to tack on the *Charter of Rights and Freedoms*, "a recognition of values and ideals shared by Canadians

[59] Statute of Westminster, 1931 (UK), 22-23 George V, c 4.
[60] Lisa Ford, *Settler Sovereignty* (Cambridge: Harvard University Press, 2010), 2.
[61] Eva Mackey, *Unsettled Expectations: Uncertainty, Land and Settler Decolonization* (Black Point, NS: Fernwood, 2016).
[62] Jean Chrétien, "Bringing the Constitution Home," in *Towards a Just Society: The Trudeau Years,* eds. Thomas S. Axworthy and Pierre Elliott Trudeau (Toronto: Penguin, 1992), 327.

wherever they live."[63] This process of adding yet holding apart the Charter from the Constitution made the delineation of rights-bearers and jurisdiction-bearers plain: rights were for individuals and minorities, and jurisdiction was for provincial and federal governments. Neither held space for the existence of Indigenous polities, with their own legal orders and jurisdictional authority, and their own "values and ideals."

Which is to say, beneath the skirmish between provincial and federal powers lay a much more fundamental flaw with Canada's claims to "perfect" patriated sovereignty – one that would propel the Constitution Express to Ottawa, London, and Rotterdam: the fact of the jurisdiction-bearing, title-holding, self-determining Indigenous Nations on top of which Crown sovereignty was superimposed in the first place. On this basis Venne's argument was built:

> The constitutional debate involving the interpretation of the relationship and constitutional authority as between the Federal and Provincial Governments … has focused on a relatively recent history and truncated conception of the constitution of Canada … the complete Canadian constitution begins with the relationship of Great Britain, as the primary colonizer, and the Indian People, as the original Nations inhabiting North America. It is the fundamental laws and compacts involved in this relationship which must inform the present constitutional debate … It was on the basis of these initial compacts that the Provincial Governments and later the Federal Government were founded and were able to eventually consolidate power and authority under the *B.N.A. Act*.[64]

So began the story of Canadian constitutionalism as told by Venne at the Fourth Russell Tribunal – from the first inklings of a legal relationship between two much older jurisdictional entities, the British Crown and Indigenous Peoples.

To recover this "complete" Constitution, UBCIC's submission draws on a suite of "Royal instruments and directions" that span the first century of British colonialism in Canada, each corroborating the "fundamental obligations which Great Britain undertook toward the Indian Nations."[65] This includes, of course, the Royal Proclamation of

---

[63] Chrétien, "Bringing the Constitution Home," 353.

[64] *The Substance of Great Britain's Obligations to the Indian Nations Presented at the Fourth Russell Tribunal*, 1 November 1980, UBCIC Constitution Express Digital Collection, http://constitution.ubcic.bc.ca/node/486.

[65] *Submissions to the Russell Tribunal Presented by the Union of BC Indian Chiefs,* 10 November 1980, UBCIC Chiefs Constitution Express Digital Collection, http://constitution.ubcic.bc.ca/node/485.

1763, in which the British articulated its code of conduct in the colonies – namely, that British settlement on Indigenous lands could only occur with Indigenous consent through international treaty-making.

The submission traces this obligation, indeed the Royal Proclamation itself, in even older international law, dating to Spanish cleric Francisco de Vitoria, who in 1532 affirmed Indigenous Peoples' "true Dominion in both public and private matters."[66] Following Vitoria, by seeking and obtaining Indigenous consent, colonial powers recognized the dominion that lay behind it, entering into a mode of political relationality in which they weren't the only jurisdictional game in town. Legal thinker Antony Anghie reads this moment – not just the colonial encounter but Vitoria's interpretation of the juridical obligations it brought on – as the origin of international law. By this interpretation, international law and Canadian constitutional law find their origins in the same moment: the meeting of colonial polities with Indigenous Peoples' territorial authority. As UBCIC argues, the recognition of this authority was consistently endorsed in customary international law from the sixteenth century through to its formalization in the League of Nations.[67]

However, according to Anghie, Vitoria's recognition of Indigenous Peoples' international legal personality was partial at best. The jurisdiction they possessed, while imbuing them with a degree of international personality (enough, at least, to consent to the dispossession of their lands) fell short of European sovereignty, which Vitoria defined in contrast to this lesser jurisdiction. To make this case, he relied on patently racist arguments regarding Indigenous deviation from Western cultural and economic norms.[68] Following this, Anghie finds the "sovereignty doctrine" to be the product of Indigenous difference and not inherent to Western statehood, as conventional histories of international law tend to treat it.[69] In this version of the story, Indigenous Peoples instead help to establish the international community as sub-sovereign members, only to be penalized for their cultural and economic deviation from it.[70]

From this perspective, international law is still at its heart structured by imperial domination. On this basis we might conclude that efforts to hold imperial powers accountable to its criteria, as Sartre would have had the tribunal do, are thus compromised. This is fair, and we could

---

[66] Quoted in UBCIC, *Substance*, 5.
[67] UBCIC, *Substance*, 7.
[68] Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 21.
[69] Anghie, *Imperialism*, 16.
[70] Getachew, *Worldmaking after Empire,* 60.

leave it at that. We might also surmise that treaties that sprang from this unequal integration of Indigenous Peoples in international law should be read as qualified agreements made between sovereign and less than sovereign polities in the interest of imperial expansion. These suppositions, however, ignore the presence of Indigenous law.

As Venne has written, Indigenous Peoples dealt with the arrival of European subjects the same way they dealt with others who entered their jurisdiction: by concluding agreements according to certain Protocols.[71] Which is to say, for them, international law did not originate with the colonial encounter, as Anghie posits, but far predated it. Instead of producing European sovereignty, UBCIC argues, it was the "doctrine of consent" – a marker of mutual self-determination already familiar to Indigenous international relations – that was affirmed in this moment of encounter.[72] When the Royal Proclamation came along, it only codified this established Indigenous legal concept as the "fundamental principle of relations" between Indigenous polities and the United Kingdom,[73] foregrounding their "the territorial integrity and political sovereignty."[74] Which is to say, colonial polities arranged themselves relative to Indigenous political and legal systems, and not the other way around.

This, of course, has implications for Sartre's ambitions to apply to imperialism its own laws. It changes the criminality of imperialism if we understand its "criteria" to be that of consent, generated not just by Western legal orders but also by Indigenous ones. It is this understanding upon which UBCIC's submission to the Russell Tribunal is based. Where Anghie focuses on the consequences brought upon Indigenous Peoples for violating the early precepts of international law,[75] UBCIC focuses on the consequences of its violation by the Crown – a Crown that was struggling to actualize its international obligations in the Royal Proclamation.

First, before warranting any lands to British subjects, the Crown had to set about treaty-making. Just two months after the Royal Proclamation was issued, James Murray Esquire, captain general and governor in chief over the Province of Quebec in America, was given specific instructions as to how to do so:

---

[71] Venne, "Understanding Treaty 6," 184.

[72] UBCIC, *Substance*, 4.

[73] Marie Smallface Marule, ed., *First Nations, States of Canada and United Kingdom: Patriation of the Canadian Constitution* (Lethbridge, AB: World Council of Indigenous Peoples, commissioned by the Constitutional Committee of the Chiefs of Alberta, 1981), 3.

[74] UBCIC, *Substance,* 45.

[75] Anghie, *Imperialism*, 21.

> You are to inform yourself with the greatest exactness of the Number, Nature, and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives and *the Rules and Constitutions, by which they are governed or regulated*. And You are upon no Account to Molest or Disturb them in the Possession of such Parts of the said Province as they at present Occupy or possess.[76]

Over the next century, where consent was obtained, it was to the sharing and disposition of certain tracts of land per Indigenous law – their "rules and constitutions" – and not to the extinguishment of Indigenous Title or jurisdiction. These international agreements would not demand the erasure of one another's jurisdiction as, unlike the European sovereignty doctrine, exclusivity was not necessarily prerequisite in Indigenous bodies of law.

Relative exclusivity did apply, however, when it came to relations *between* colonizing powers and their rivalry for trade and use of Indigenous lands.[77] This was formalized through the rule of pre-emption, which undergirded the Royal Proclamation, stipulating that Indigenous Peoples' lands could only be ceded to the British Crown (by treaty) and not to other imperial powers. Much important work has been written about how brazenly entitled and paternalistic this self-given right of pre-emption was – that is, its poorly veiled assumption that territories would eventually and inevitably be ceded to the Crown, as if a foregone conclusion.[78] Furthermore, it is hard to see past the seemingly fundamental paradox of the British unilaterally claiming sovereignty while at the same time making Indigenous consent mandatory – a phenomenon Pasternak calls the "double move" of recognition and subordination.[79] UBCIC points this out too, noting the Royal Proclamation's subsequent usage by the courts to qualify Indigenous jurisdiction.[80] Nevertheless, counter to its subsequent reinterpretation, UBCIC argues that pre-emption was intended as a limit on colonizing powers only – retaining their exclusivity *relative to one another* – and not Indigenous Peoples' territorial jurisdiction.

---

[76] UBCIC, *Submissions,* 17, emphasis added.

[77] Smallface Marule, *First Nations*, 3.

[78] For example, see Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (Minneapolis: University of Minnesota Press, 2017); Gordon Christie, "A Colonial Reading of Recent Jurisprudence: *Sparrow*, *Delgamuukw* and *Haida Nation*," *Windsor Yearbook of Access to Justice* 23, no. 1 (2005): 17–54; Mackey, *Unsettled Expectations*.

[79] Shiri Pasternak, "Jurisdiction and Settler Colonialism: Where Laws Meet," *Canadian Journal of Law and Society* 29, no. 2 (2014): 156.

[80] UBCIC, *Substance*, 45.

Despite the written versions invented by the dominion government,[81] the treaties followed in this line of thinking. Indeed, both the oral records of Indigenous signatories[82] and written records of the Crown's treaty commissioners[83] demonstrate a shared understanding that in treaty-making Indigenous jurisdiction was preserved. Even after confederation, the Numbered Treaties[84] "followed the pre-confederation treaty-making pattern,"[85] creating a "bi-lateral political and legal relationship between two sovereign nations."[86] For this reason, UBCIC points out (as do others),[87] they should be understood as fundamental constitutional documents,[88] comprised of Indigenous, international, and common law. Indeed, their negotiations were a meeting place for these different legal orders, involving "legal and diplomatic" ceremonies from each.[89] The resulting agreements gave British subjects the right to use certain lands, according to a robust set of obligations. For this reason, anthropologist Michael Asch argues, it is the treaties, and not the Charter, that comprise a charter of rights for non-Indigenous people in Canada.[90]

Meanwhile, until treaties were made, and in the places where treaties were not made, as in much of British Columbia, the Crown had an obligation "to protect unceded Indian lands" from any non-Indigenous person who endeavoured to enter them for the purposes of settlement or trade.[91] This put the Crown in a "protectorate" role, springing from another foundational tenet of customary international law – the "sacred trust of civilization." The Royal Proclamation was, UBCIC would argue, only the formal expression of this principle, in which imperial

[81] J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 101, 163–65, 181–82. See also the reports of treaty commissioner Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Prospero Books, 2000 [first published Toronto: Belfords, Clarke, 1880]), 126, where he acknowledges that "certain verbal promises" made in Treaties 1 and 2 were not included in the written text.

[82] Venne, "Understanding Treaty 6"; Harold Cardinal and Walter Hildebrand, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000).

[83] Michael Asch, *On Being Here to Stay* (Toronto: University of Toronto Press, 2014), 89–91.

[84] Treaties 1–11, made between Indigenous Peoples and the Crown between 1871 to 1921.

[85] UBCIC, *Substance*, 60.

[86] UBCIC, *Submissions*, 35.

[87] For some of these narratives, see John Borrows, "Canada's Colonial Constitution," in *The Right Relationship: Reimagining the Implementation of Historical Treaties,* eds. John Borrows and Michael Coyle (Toronto: University of Toronto Press, 2017), 17–38.

[88] UBCIC, *Substance,* 1–2.

[89] Heidi Kiiwetinepinesiik Stark, "Changing the Treaty Question: Remedying the Right(s) Relationship," in Borrows and Coyle, *The Right Relationship*, 255; Venne, "Understanding Treaty 6," makes a similar point at 188.

[90] Asch, *On Being*, 99

[91] UBCIC, *Submissions*, 25.

powers would assume a responsibility to protect the property, status, and institutions of Indigenous Peoples in their colonies.[92]

While taking up the language of "trust" could rightly be seen as a dangerous path to go down, UBCIC was quite specific in its conception and application of the term. That is, UBCIC understood the trust taken up by the Crown not as an assumption, per private law, of "the *incapacity* of individuals or nations to manage their own affairs."[93] Nor did it see it as a sneaky way to usurp Indigenous jurisdiction while awaiting (and abetting) their assimilation, as the "fiduciary doctrine" was subsequently deployed by the Canadian courts.[94] Instead, UBCIC shone a light on how trust was initially presented to Indigenous Peoples – that is, as an admission of the corruption of the Crown's own citizenry. Citing Justice Chapman of New Zealand in 1847, UBCIC clarified that the stipulation that lands were only extinguishable to the Crown, and not to individuals, "operates only as a restraint upon the purchasing capacity of the Queen's European subjects" and not on Indigenous people.[95] This trust, then, was as a legal responsibility to protect Indigenous Peoples' territorial integrity against its own settler subjects and local governments. For in all practicality, enforcing the Royal Proclamation meant curbing settlers from taking up land without Indigenous consent.

This was not rhetorical. The Royal Proclamation was, after all, not just an international aspiration but "a legislative act" in the common law,[96] with "the force of a statute."[97] To this point, UBCIC lays out an extensive catalogue of evidence, spanning the years from 1763 to 1876, in which the Crown moved to embody its trust obligation, enacting and enforcing countless measures to boot settlers off of lands where they had "no authority under the law" to be,[98] and to censure the local governments who had let them in. Such measures included frequent legislation, regulation, Executive Council decisions, and imperial directives to its governors, all of which demonstrate the Crown's repeated attempts to rein in its own citizenry from dispossessing Indigenous land. Stiff penalties would befall any settlers who overstepped the bounds of consent, prompting

---

92 *Substance*, 6–7.

93 Brian Slattery, "First Nations and the Constitution: A Question of Trust," *Canadian Bar Review* 71, no. 2 (1992): 275, emphasis in original.

94 See Christie , "A Colonial Reading."

95 Quoted in UBCIC, *Substance*, 51.

96 *St. Catherine's Milling and Lumber Co. v. R.*, (1887), 13 S.C.R .577 at 628 (per Strong J. in dissent).

97 Kent McNeil, *Flawed Precedent: The* St. Catherine's *Case and Aboriginal Title* (Vancouver: UBC Press, 2019), 94.

98 UBCIC, *Substance*, 27.

the relevant dominion authority to nullify their land grants,[99] and to remove, fine, and prosecute them.[100] Those who disputed or petitioned the government for land they had no business claiming were invariably, and most satisfyingly, rebuffed.[101]

One local government that was famously uncooperative with these directives of the Crown, essentially operating what Cole Harris calls "a Native policy run by settlers,"[102] was British Columbia. By the time of its joining Confederation in 1871, BC's first lieutenant-governor, Joseph Trutch, "steadfastly refused" the existence of Indigenous jurisdiction,[103] declared the so-called "Indian land question" a mere matter of reserve size, and set about downsizing them.[104] Indeed, BC's posture towards Indigenous Peoples was so brazenly hostile to the Crown's obligations that things spiralled into a full-fledged (though short-lived) showdown between the "bewildered dominion officials" and "their petulant provincial counterparts."[105] Multiple attempts were made to bring British Columbia in line when the Earl of Dufferin, governor general of Canada, made a last-ditch effort, asserting in a 1876 address, "No government, whether provincial or central, has failed to acknowledge that the original title to the land existed in the Indian tribes … Before we touch an acre we make a treaty with the Chiefs representing the Bands we are dealing with."[106] Unfortunately, this was to no avail.

When asked how she knew of this historical evidence of the Crown's attempts to actualize its obligations in the Royal Proclamation, Venne recalled a fortuitous foray into Canada's national archives. She was in Ottawa researching Canada's efforts to undermine the treaties for her honours degree in history, when it landed in her lap:

> This was the early seventies, and the archives were a complete mess. I mean, they just dropped boxes on your desk … so you start pawing through them. And I started seeing some stuff … and I'm thinking, "Oh, this is interesting." So, I sort of made a mental note of it. It didn't really have anything to do with my particular thesis, but it was interesting to me … because Canada tries to discount the Royal Proclamation. But without the Royal Proclamation there would be no Canada.[107]

[99] *Substance*, 36.
[100] UBCIC, *Submissions*, 21.
[101] *Submissions*, 27.
[102] Cole Harris, *Making Native Space* (Vancouver: UBC Press, 2002), 69.
[103] UBCIC, *Substance*, 103.
[104] Harris, *Making Native Space*, 71.
[105] Harris, 71.
[106] A quote that features in UBCIC's submissions to the Queen, governor general, UN, and Russell Tribunal.
[107] Venne, interview.

In a satisfying moment of administrative irony, Canada's own colonial archives betrayed it, uncovering extensive evidence as to its recognition of Indigenous Title and jurisdiction, and plopping it on the desk of someone who would come to find a very good use for it.

Nevertheless, between 1876 and 1980, two mysterious things happened in Canadian law that would reverse the previous century of colonial policy and join British Columbia in its contempt of Indigenous jurisdiction. First, Crown title magically slipped beneath that of Indigenous Peoples, becoming "underlying," regardless of Indigenous consent. And, second, unbeknown to the Indigenous Nations who negotiated them, the federal government swapped itself in for the British Crown as a partner to the treaties. Together, these would sow the conditions for a colonial about-face – a "relentless policy of assimilation for well over one hundred years."[108]

Much has been written about the first phenomenon, in particular the way the courts managed to vest underlying title to the land with the Crown, despite its being new to the scene.[109] It did so, in part, though a reinterpretation of the principle of trust so as to situate Crown sovereignty as paramount to that of Indigenous Peoples. In its first piece of jurisprudence on the issue, 1888's *St. Catherine's Milling*, the Privy Council flipped the terms of the Royal Proclamation, designating it the source of Indigenous Peoples' right to use the land at the pleasure of the Crown rather than, as the Constitution Express understood it, the source of British subjects' rights to use the land on terms of Indigenous consent. It was a wildly inferior right at that: "personal and usufructuary."[110] Through some impressive time-bending alchemy, this made pre-existing Indigenous Title a burden on the title newly acquired by the Crown.[111] By 1973, in *Calder*, the Supreme Court of Canada would revise its position, sourcing Nisga'a Title not in the Crown's recognition of it but in its own legal orders.[112] Nevertheless, it remained usufructuary relative to "the Crown's paramount title as it is recognized by the law of nations."[113] In *Guerin* a few years later, Justice Dickson would employ an even

[108] National Indian Brotherhood, as quoted in UBCIC *Substance*, twelve 7.

[109] As far as we have been able to trace it, the word "underlying" in reference to Crown title first appears in *St. Catherine's Milling and Lumber Co. v. The Queen* (1888), 14 App. Cas. 46 (P.C.), at para. 55: "There has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished."

[110] *St. Catherine's Milling and Lumber Co.* at para. 54.

[111] John Borrows, "Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*," *Osgoode Hall Law Journal* 37, no. 3 (1999): 537–96.

[112] McNeil, *Flawed Precedent*, 149.

[113] *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313 at 352 (per Hall J.).

narrower application of the "fiduciary doctrine" in order to further justify the diminutive status of Aboriginal Title vis-à-vis the "ultimate title" of the Crown.[114]

To get to any of this reasoning, some legal vacuum – some version of *terra nullius* – had to be mobilized in order to sweep away the Crown's previous recognition of Indigenous territorial authority and make way for its own.[115] As Manuel writes in *The Fourth World*, "It is as though the land was moved from under us."[116] However, as Asch writes, "given our legal history, it would not be easy for the courts in this country to dismiss the claims of aboriginal peoples by recourse to an unambiguous (if erroneous) legal belief that, at contact, the land was completely unoccupied."[117] Racist evolutionary anthropology, as well as a virulent sect of British legal positivism,[118] was mobilized to argue that Indigenous Peoples had no capacity for territorial jurisdiction, with a bewildering time-warp effect. With astonishing colonial finesse, more than a century of engaging with Indigenous "rules and constitutions" on the part of the Crown had to be imagined away in order to make the retroactive claim that Indigenous Peoples lacked any sort of recognizable jurisdiction in their lands at the moment the Crown asserted sovereignty.

If not through the consent of Indigenous Peoples, one would think some other source of Canadian sovereignty would have to be established in its place, since "to discount the legitimate governments of Indigenous Peoples is to discount Canada's own legitimacy."[119] And yet, the jurisprudence "unreflectingly" accepts its mere assertion to be sufficient.[120] The source of Canadian sovereignty, it seems, makes little difference, repeatedly sidestepped by the courts.[121] The effect is the dispossession of Indigenous authority, fuelling what Eva Mackey calls Canada's "fantasies of entitlement."[122]

This clearing of Indigenous jurisdiction also made it possible for Canada to commandeer responsibility for the treaties without consent and through no explicit act of law. It may be the case that, at Confed-

---

[114] *Guerin v. The Queen*, [1984] 2 S.C.R. 335 at 382 (per Dickson J.).

[115] Michael Asch and Patrick Macklem, "Aboriginal Rights and Canadian Sovereignty: An Essay on *R. v. Sparrow*," *Alberta Law Review* 29, no. 2 (1991): 498–517.

[116] Manuel and Posluns, *The Fourth World*, 32.

[117] Michael Asch, *Home and Native Land* (Scarborough, ON: Nelson, 1988), 47.

[118] Including people like John Westlake, W.E. Hall, and later Lassa Oppenheim, who saw territorial sovereignty as the sole purview of Western-style statehood. See UBCIC, *Substance*, 4.

[119] Venne, "Understanding Treaty 6," 207.

[120] Borrows, "Sovereignty's Alchemy," 574. See also Christie, "A Colonial Reading," 23.

[121] Michael Asch, "From *Terra Nullius* to Affirmation: Reconciling Aboriginal Rights with the Canadian Constitution," *Canadian Journal of Law and Society* 17, no. 2 (2002): 23–40.

[122] Mackey, *Unsettled Expectations*.

eration, Canada assumed jurisdiction for "Indians and lands reserved for Indians" in section 91(24) of the *British North America Act, 1867*. But UBCIC made it clear that the *BNA Act* was nothing but a "delegation of administrative responsibilities"[123] – a "subordinate instrument by which Britain transferred some of its duties to Indian Nations to Canada,"[124] while retaining for the Crown a "supervisory protectorate role over Indian affairs within the context of Canadian federalism."[125] Instead, Canada took its *BNA Act*–delegated jurisdiction and pushed it to new colonial extremes, turning the "administration of Britain's trust responsibilities by the neo-colonial governments of Canada" into "a state of suzerainty" for Indigenous Peoples.[126]

However, as Venne argued before the Russell Tribunal, neither the *BNA Act* nor any of the "contentious Statutes which some argue have nullified the effect of the *Royal Proclamation*,"[127] including the *Colonial Laws Validity Act, 1868*; the *Statute of Westminster, 1931*; or 1949 *BNA Act* amendments, had the legal capacity to replace, domesticate, or derogate it. For this could not be done without Indigenous consent. Nevertheless, what these acts *did* do was shore up delegated Canadian jurisdiction in other areas, which continued to inflate Canada's heartfelt sense of sovereignty. As geographer Shiri Pasternak has argued, the taking of jurisdiction and its conflation with sovereignty is a critical expression of colonial authority, invalidating plural Indigenous authorities while bringing sovereignty under the exclusive purview of colonial governments.[128]

Patriation, then, would be the "final betrayal"[129] – a last act of fortifying Canadian jurisdiction and, with it, state sovereignty. As Venne recounts, "They would think they could just go ahead with their colonial project without involvement and even recognizing that this country was founded by and belongs to the Indians."[130] But, with Indigenous jurisdiction legally unextinguished, and with the treaties still sitting with the United Kingdom, those working to patriate the Constitution could not proceed without Indigenous consent. As UBCIC argued, patriation would domesticate these international agreements *for the first time*. And for this they needed permission. It is on the basis of this permission – a

123 UBCIC, *Substance*, 54.
124 UBCIC, *Indian*, 3.
125 UBCIC, *Substance*, 60.
126 Smallface Marule, *First Nations*, 10.
127 UBCIC, *Submissions*, 29.
128 Pasternak, "Jurisdiction."
129 UBCIC, *Submissions*, 7.
130 Venne, interview.

permission that ran through the very foundations of international law, from Indigenous treaty law to the sacred trust of civilization – that Venne would urge the Russell Tribunal to oppose patriation and condemn the alchemies on which it rests.

FROM SACRED TRUST TO DECOLONIZATION

Canada's handling of patriation was itself strange alchemy. On the one hand, patriation was branded a mere formality, codifying something already assumed indisputable: full Canadian sovereignty. It was as though the Constitution had belonged to Canada to begin with and simply went for an extended visit to England. Trudeau aggressively framed it this way in London, where it was argued that any move to deliberate, amend, or even discuss the content of the patriation bill by British parliamentarians would be taken as "colonialist" interference in the domestic affairs of an all-but-sovereign state.[131] But, in so doing, he alluded to a process that was more than a formality, and certainly more than a domestic one, declaring that patriation would dispose of the "last vestige of colonialism."[132] This glib appropriation of decolonial narrative claimed for Canada the very decolonial aspirations from which Indigenous Peoples had been excluded at the United Nations. But it also invoked the conventions of international decolonial process that Trudeau hoped to bypass. UBCIC wasn't going to have it. If Trudeau was going to invoke decolonization, then decolonization he would get. Drawing on international law, Indigenous law, and Third World anticolonialism, UBCIC ran the decolonization argument to its logical conclusion: Indigenous self-determination.

To do this, UBCIC again relied on the "rubric" of the sacred trust of civilization[133] – that tenet protecting the property and institutions of colonized peoples. But, more than a bygone principle, the sacred trust found "its clearest modern expression" in the mandate system of the League of Nations,[134] followed by the trusteeship system of the United Nations, where colonized territories were administered in "trust" until they gained independence. By this time, it exceeded a protectorate function: imperial powers were not just to *safeguard* the self-determination of the peoples they had colonized but to *advance*

[131] Ford to Foreign and Commonwealth Office, 20 December 1981..

[132] *Notes for an Address by Canadian High Commissioner to the Commonwealth Parliamentary Association*, 11 December 1980, fol. 1000, box 82, Records of the Foreign and Commonwealth Office (FCO), North America Department, Registered Files (AM Series), Canada, Patriation of the Canadian Constitution: enquiry by House of Commons Foreign Affairs, TNA, 9.

[133] UBCIC, *Substance*, 6.

[134] *Substance*, 5.

it, supporting their self-government and facilitating their eventual decolonization. As a 1970 Advisory Opinion of the International Court of Justice on the continued presence of South Africa in Namibia would confirm, the foundational treaties, mandates, and subsequent actions of the United Nations, "leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned."[135]

Refuting its limited application to overseas colonies, Venne extended this "trust" to the Fourth World and invoked the obligation of the British Crown to advance the self-determination of Indigenous Peoples. During her testimony before the Russell Tribunal, she explained:

> I am going to try to draw a line between the royal prerogatives and the royal proclamations made by the non-Indian Crown, the King or Queen of Great Britain, in relation to the Indian Chiefs and our Indian nations, and this line can be drawn right till today and documented in international law. The line which is called the "sacred trust" is a non-Indian term and it is used by the white man in relation to various relationships between them and the rest of the people in the world. We are submitting that Great Britain entered into a sacred trust with the Indian nations of Canada … We maintain that this sacred trust between the Indian nations and the British Crown is very strong and very real.[136]

The submission draws this line gracefully, tracking the language of "trust" throughout Britain's history as a colonial power as well as its more recent UN commitments, and citing examples from its judicial and legislative conduct in places like India, Fiji, and Kenya. But trust did not just apply to its Third World colonies. The British had also used the language of "trust" in direct reference to Indigenous Peoples in North America, for example during the 1837 *Select Committee Report of the House of Commons*, affirming it could not be devolved to the local legislatures.[137] As UBCIC writes, "That the United Kingdom recognized it had a positive duty under customary international law (and therefore under the common law) involving legally binding obligations to the Indigenous Peoples of the colonies is clear." The mandate and trusteeship systems

[135] Quoted in *Substance*, 9.
[136] Sharon Venne, "The Testimonies of the Indian Association of Alberta, the Union of the British Columbia Indian Chief and the Cree," 1980, item 5.2, fol. 57.b, box UBA/CSD VrZ 07.15, archive ARCH02318, Fourth Russell Tribunal Archives, IISH.
[137] UBCIC, *Substance*, 6.

were not new inventions of international law, they merely "formalized" this customary practice.[138]

Acknowledging that Canada was never by definition a trust territory,[139] UBCIC nevertheless wove a strong thread between the development of the notion of trusteeship and Canada's colonial origins. It did this by arguing that the very custom on which trusteeship is based – the sacred trust of civilization – included, if not originated in, the Crown's encounter with Indigenous jurisdiction in the Americas, where, "The Royal Majesty agreed to continue to treat Indian Nations as protected people with collective national status, amounting in modern terms, to a recognition to the right to self-determination."[140] As trust evolved and was made manifest in modern international law, UBCIC argued, it should continue to apply equally in Canada as in other colonies. This would require the Crown to assist Indigenous Peoples in decolonizing – an obligation that would persist despite Canada's incremental independence.[141] As UBCIC explains,

> the obligations acquired by the Imperial Crown through the consent of the Indian Nations included the fundamental obligation, the sacred trust of civilization, to protect and preserve the property and status of the Indian people. Subsequent developments of that doctrine show that this obligation was to adhere until the Indian peoples had attained independence or otherwise exercised self-determination.[142]

In this sophisticated move to suture together the self-determination of colonized peoples globally, UBCIC not only called the Crown to make good on its promises, it made a tacit jab at Indigenous Peoples' omission from the UN's decolonization mechanisms, refusing to treat so-called settler states differently from other colonies.

However, invocations of the trusteeship system were not made uncritically. UBCIC's model for decolonization took its cues from Third World anticolonialism more than from the League of Nations and the United Nations, where the trusteeship system had been "redeployed in service of expanding imperial power."[143] Here, the decolonization process universalized the Western nation-state as its common – indeed, only – aim.

---

[138] *Substance*, 6.
[139] UBCIC, *Submissions*, 4.
[140] UBCIC, *Submissions*, 10.
[141] *Submissions*, 2.
[142] UBCIC, *Substance,* 9.
[143] Getachew, *Worldmaking after Empire*, 81.

When Edmund Burke first described trusteeship before the British House of Commons in 1783, it was to argue for limitations on imperial rule. Speaking to the East India Bill, he made the case that any imperial power should be used to the benefit of colonized peoples, describing the rights and obligations of British rule as, "in the strictest sense, a trust."[144] While arguably already paternalistic, when Woodrow Wilson – a professed Burkean – incorporated trusteeship into his vision of international order it took on a markedly racist flavour, used to justify, not to limit, colonial rule. Now, reaching self-determination was not necessarily the end goal; rather, it became the job of the trustee to decide if and when colonial subjects were ready for it – that is, when they demonstrated the institutional discipline and capacity required. As Getachew makes clear, Wilson defined these on racialized lines, transforming self-determination "from a right to which all people were entitled to an achievement of historical development and a specific inheritance of the Anglo-Saxon race."[145] South African President Jan Smuts took this further, arguing for the development of different forms of self-determination on racially differentiated trajectories. This created a kind of scalar jurisdiction fitted to different peoples' capacities, laying the groundwork for apartheid.[146] Together, Wilson and Smuts wed trusteeship to assimilation, preserving racial hierarchy and colonial longevity in the mandate system of the League of Nations.

To do this, they also appropriated the language of consent, using the principle of "the consent of the governed" to sustain this racially differentiated version of self-determination.[147] Like Vitoria, they imbued colonized peoples with just enough jurisdiction to consent to their own dispossession,[148] but not enough to wield sovereignty.[149] Consenting to be dominated (even in trust) was the best they could hope for – the highest expression of "self-determination" available. Contrastingly, for Venne consent was not the end game; rather, it marked the beginning of a political relationship. Rather than signal Indigenous Peoples' submission to a superior power, consent represented the Crown's recognition of the self-determination lying behind it – a full, flourishing self-determination, bursting with Indigenous political and legal tradition. Ultimately, the

144 UBCIC, *Substance*, 6.

145 Getachew, *Worldmaking after Empire*, 46; see also Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (Minneapolis: University of Minnesota Press, 1996), 121.

146 Getachew, 46–48; Grovogui, *Sovereigns,* 27.

147 Getachew, 50.

148 See Grovogui, *Sovereigns,* 80–88.

149 Getachew, 19–20.

Crown was obligated to bolster this self-determination, not dictate how it would be executed. Meanwhile for Smuts and Wilson, consent was seen to stand in for self-determination itself, operating as a diminished form of self-government and a mechanism for colonized peoples' unequal integration into the international ambit.

However, with the formation of the United Nations, Third World thinkers seized upon self-determination and remade it along radically egalitarian lines. Here Getachew dispels the idea that the Third World simply appropriated the Wilsonian notion of self-determination, mimicking the institutional form of the nation-state in order to prove their capacity for it.[150] Such "anticolonial critics and nationalists" as the United States and Ghana's W.E.B. Du Bois, Ghana's Kwame Nkrumah, and Tanzania's Julius Nyerere instead launched concurrent projects of nation-building and "worldmaking,"[151] insisting that postcolonial self-government would require correlated international institutions designed expressly to prevent their continued domination. Rather than vernacularize self-determination as it was conceptualized by Western, liberal internationalists – the Wilsons and Smuts of the world – they untethered self-determination from the "fortress-like concept of state sovereignty."[152] They set about reinventing it, "beyond and below the nation-state,"[153] experimenting with different political formulations, transnational alliances, and regional federations to redistribute political and economic jurisdiction. Which is to say, they remodelled international legal institutions on anti-imperial lines well before Russell and Sartre did. Instead of simply applying to imperialism its own flawed laws, they reshaped those laws to fit a variety of decolonial formulations. In this sense, self-determination became a collective transnational project – one that imagined anti-imperial and "often antistatist" futures.[154]

In conversation with these critics, though two decades later, the Constitution Express undertook its own project of decolonial world-making. Seizing upon the patriation moment, it too sought to remake self-determination at the local and transnational levels, invoking international law while reimagining the kinds of jurisdictional arrangements it made available to Indigenous Peoples. It revived both the sacred trust of civilization and the doctrine of consent, only to wrest them from their paternalistic, assimilatory appropriations and redeploy them in service of

[150] Getachew, *Worldmaking after Empire*, 14.
[151] Getachew, 2.
[152] Getachew, 31.
[153] Getachew, 4.
[154] Getachew, 4.

Indigenous Peoples' self-determination at its fullest expression. Indeed, the model of decolonial process that UBCIC put forward at the Russell Tribunal did both things at once, applying to British imperialism its own laws while also exceeding them.

For example, in proposing the Imperial Conference, UBCIC drew on British legal tradition while asserting its alliance with Third World decolonial process. It took inspiration from the long-time practice of the United Kingdom to gather together leaders from its dominions and self-governing colonies. These conferences took place regularly between 1887 and 1937, when they became known as Prime Ministers Meetings, and from 1969, Commonwealth Heads of Government Meetings. While at first intended to promote unity within the empire, these meetings quickly became a forum for dominion governments – notably, South Africa, Fiji, Rhodesia (now Zimbabwe), and India – to introduce their plans to decolonize and develop new constitutional arrangements for the Commonwealth. So, when Venne testified before the Russell Tribunal that "we are asking that an international tribunal … be set up to determine once and for all our relationship between Great Britain and Canada,"[155] it was not without precedent. The idea was to transpose this customary legal practice of the Commonwealth into the Canadian context, while remodelling it in a few key ways.

In the tradition of treaty negotiations, the Imperial Conference would operate as a kind of meeting place of Indigenous and Crown jurisdiction, though this time, for the first time, it would involve the Canadian state. The objective was twofold: to determine how the Crown would discharge its treaty obligations and to define the jurisdictional relationship between Canada, the United Kingdom, and Indigenous Peoples. In effect, it would open up decolonial possibilities beyond the singular model of Western state sovereignty and its insistence on jurisdictional exclusivity.[156] Rather than agree to let Canada determine what the pathway to self-determination would be, it provided an opportunity to revamp Canadian federalism at its base, imagining different political forms and federations – as Third World anticolonial critics had done – in order to redistribute jurisdictional authority along anti-imperial lines. In this case, these lines would be drawn in accordance with the resurgence of Indigenous political and legal relationality, drawing on treaty, nation-to-nation configurations, and other models of Indigenous confederacy and partnership.

In the *Fourth World*, Manuel describes Indigenous organizations that were already working to embody such arrangements in their own

[155] Venne, "Testimonies."
[156] Ford, *Settler*; Pasternak, "Jurisdiction."

institutional structures, citing the National Indian Brotherhood as one such model that linked autonomous local and regional bodies to serve diffuse yet collective aims: "We have by no means achieved the perfect model of cooperative federalism. Yet we share that dream with non-Indian North Americans as the one way in which such vast territories can fairly serve their collective and common needs."[157] (At the regional level, UBCIC could be seen as another example,[158] and internationally, the WCIP.) But applying such a model in relations with settler polities, indeed to the Canadian state as a whole, would be a bigger challenge, requiring new Indigenous *and* non-Indigenous institutions.

Such transformations would not be limited to the "domestic" realm. Institutionalizing Indigenous Peoples' jurisdiction at the local level meant that correlate international institutions would need revamping too. So UBCIC proposed that the United Nations act as mediator of the Imperial Conference, drawing again on the model of the sacred trust of civilization, where international law was seen as necessary to mediate the relationship between states and their constituent populations.[159] In this case, however, the United Nations would oversee a negotiation understood not to be between a state and its inequitably served subjects but, rather, between self-determining peoples. It would be responsible to create and maintain the conditions in which novel jurisdictional arrangements might emerge.

As a quasi-legal interface, the Russell Tribunal provided a testing ground for such an idea, where UBCIC could put it before other peoples who had also been left out of the UN's decolonization process. In this way, the movement made space for "decolonization's forgotten people."[160] Fulfilling Sartre's vision, it would dig up the laws of imperialism – both its principles, such as the sacred trust, and its procedure, with the Imperial Conference – and apply them to the Canadian colonial context. But, ultimately, it would surpass Sartre's vision. Wedding to Third World anticolonialism, the Constitution Express sought the realization of a new decolonial process, which could then be adapted to different

[157] Manuel and Posluns, *The Fourth World*, 210–11.

[158] See Sarah A. Nickel, *Assembling Unity: Indigenous Politics, Gender, and the Union of BC Indian Chiefs* (Vancouver: UBC Press, 2019), for an analysis of UBCIC's efforts to balance regional unity with local autonomy.

[159] Evan J. Criddle, "A Sacred Trust of Civilization: Fiduciary Foundations of International Law," in *Philosophical Foundations of Fiduciary Law*, eds. Andrew S. Gold and Paul B. Miller (Oxford: Oxford University Press, 2014), 404–21.

[160] Tracey Banivanua Mar, *Decolonization and the Pacific: Indigenous Globalisation and the Ends of Empire* (Cambridge: Cambridge University Press, 2016), 2.

Fourth World contexts, re-establishing Indigenous jurisdiction at the international level.

THE RESULT

"We are asking this tribunal to understand the position which we find ourselves in the world today and to lend the weight of your authority to our plea for justice."[161] So concludes UBCIC's submission to the Fourth Russell Tribunal. Though it is hard to qualify the impact of this plea, it resonates strongly in the final report, where the jury's sixth finding reads:

> *The General Refusal on Failure to Involve Native Nations in the Creations of Constitutions or Basic Instruments of Government in the States of the Americas*, even in instances where the federal principle of government obtains, as in the current creation of a new constitution in Canada where Indian rights are, at present, not being considered. As sovereign units of governance, Native Nations and Republics or Pueblos possess the inherent right of refusing any incorporation or of being authentically represented as a self government unit where their territory has been included in the area claimed by a state apparatus. In other words, a constitution and government cannot be imposed on Indian people without authentic participation and the right of refusal to be incorporated involuntary [*sic*] is a precondition.[162]

Strikingly, the Russell Tribunal did not just adopt UBCIC's proposal but applied it broadly to the position of Indigenous Peoples throughout the Americas. It took the trickery of patriation and transposed it to the common situation of Indigenous Nations, Republics, and Pueblos that had been forcibly incorporated or falsely represented by their respective colonizing governments. The principle of consent rings clearly through this finding, reframed as a "right of refusal" to be encompassed by the state apparatus. Significantly, the jury understood this right to be a "pre-condition" of colonial constitution-making. In this way, something novel happened at the Fourth Tribunal, which reformulated Sartre's vision for the first. Rather than understanding international law to be colonially derived, holding imperial powers to their own immanent standards – no matter how flawed or fantastical those standards might be – colonial

[161] UBCIC, *Submissions,* 70.

[162] Workgroup Indian Project, *A Summary Report on the Results of the Fourth Russell Tribunal,* 1981, item h.1, fol. 63, box UBA/CSD VrZ 07.16, archive ARCH02318, Fourth Russell Tribunal Archives, IISH, 4.

states were instead held to an international standard generated by the resurgence of Indigenous Peoples' refusal.

Though not articulated as such, this is consistent with the way Third World anticolonial critics had institutionalized the right to self-determination at the United Nations – a "prerequisite" right,[163] from which others flow. The Russell Tribunal took a similar approach, situating the denial of self-determination as antecedent to other rights violations and retaining its status as a "precondition" for just anticolonial arrangements. And so, rather than stretching human rights to encompass the rules, religion, and social structure of Indigenous Peoples, as the tribunal originally envisioned it would do, you might say it did the reverse, having rights flow from Indigenous self-determination.

Back in Canada, the impacts of the Russell Tribunal were mixed. Tk'emlupsemc historian Sarah Nickel believes it to have had a major political effect, surmising it was likely the tribunal's findings that pushed Canada to delay constitutional hearings from December to February so that Indigenous Peoples might be consulted.[164] But Venne believes its most significant impacts were international:

> [George Manuel's] goal was to try to bring these issues to an international community. When I was in London lobbying, people knew about the Russell Tribunal because Bertrand Russell has a big profile … We used it a lot in the lobbying effort, so in that way it was effective in trying to bring attention to the issues. But … back home here on Turtle Island it was much more difficult to try to get people's heads wrapped around that.[165]

For Venne, it was an international action with an international effect. It fuelled the movement to launch the first large-scale campaign to promote Indigenous self-determination throughout Europe a year later (see Williams, this issue). When that campaign – known as the Constitution Express II – held a public hearing in the Netherlands, the organizers of the Russell Tribunal lent a hand, with opening remarks from Fons Eickholt.[166]

At the United Nations, these events also played a part. A week after the conclusion of the Russell Tribunal, a delegation of about forty Constitution Express participants arrived in New York. Their trip happened

---

[163] Getachew, *Worldmaking after Empire*, 74.
[164] Nickel, *Assembling Unity*, 164.
[165] Venne, interview.
[166] *Indian Nations from Canada "Constitution Express,"* fol. 115, box UBA/CSD VrZ 07.36, archive ARCH02318, Fourth Russell Tribunal Archives, IISH.

to coincide with the twentieth anniversary of the *Decolonization Declaration*, where Secretary General Kurt Waldheim was making celebratory speeches to the effect that, in two decades, the project of decolonization was very nearly complete.[167] Meanwhile, the delegation was articulating its own persistent decolonial aspirations in backrooms and embassies, shining a light on the declaration's Indigenous exclusion. Refusing to be pigeonholed to the human rights side of the United Nations, they gained audiences with both under-secretaries: that of Human Rights and that of Political Affairs, Trusteeship and Decolonization (see Rÿser, this issue).

Members of the Constitution Express – Venne included – would go on to take the argument for self-determination much further in the UN system, contributing to the *UN Declaration on the Rights of Indigenous Peoples*. Which is to say, the movement's contributions to what was then a relatively new wave of Indigenous internationalism still echo today.

While the proposed Imperial Conference was never convened – instead it was disastrously domesticated in four failed First Ministers Conferences within Canada after patriation – what the Fourth Russell Tribunal did do was turn an international eye to the utterly colonial aspirations of the Canadian government at the very moment Trudeau was touting patriation a "decolonial" move. As Venne reflects, this stood in stark contrast to Canada's reputation, which implies that "everything is great … people are tripping through the fields, spreading lightness and happiness everywhere, without seeing that Canada is a colonial project. And that as a colonial project, it's a very vicious colonization of the Indigenous Peoples."[168]

Perhaps this is why the story is still so significant. It demystifies the prevailing alchemy by which Canada assumed paramount sovereignty and claimed a jurisdictional monopoly over Indigenous lands while, at the same time, becoming a global symbol for liberal equality. Refusing to be delimited this way, the story of Indigenous jurisdiction that the Constitution Express told in venues like the Russell Tribunal rewrites colonial history and, with it, the possibilities of decolonization, which rumble from below the assertion of state sovereignty. Such resurgent history also writes a different, decolonial future – perhaps the kind of "future history" George Manuel envisioned in *The Fourth World*.[169]

---

[167] Kurt Waldheim, "Statement by the President of the Thirty-Fifth General Assembly on the Occasion of the Granting of Independence to Colonial Countries' Twentieth Anniversary," Peace Keeping Operations Files of the SG, Kurt Waldheim – Miscellaneous Files, Political Matters – Decolonization, 11 March 1980–21 January 1981, United Nations Archives, New York.

[168] Venne, interview.

[169] Manuel and Posluns, *The Fourth World*, 12.

Sharon Venne presents testimony at the Fourth Russell Tribunal on the Rights of the Indians of the Americas. *Source*: photo permissions obtained through Fons Eickholt.

Grand Chief George Manuel leads walk-out to Parliament Hill in Ottawa. *Source*: Photo courtesy of Union of British Columbia Indian Chiefs.

U.K. MPs back rights for Canadian natives

TORONTO STAR, SAT., NOVEMBER 8, 1980

Toronto Star special

LONDON — Canadian nativ groups went on the warpath ove federal government plans for const tutional reform and won Labor MJ support yesterday, while Prim Minister Pierre Trudeau appear to be backing off his rights stand.

Trudeau said he would protect tive rights in an amended consti tion if all federal parties and seve provinces agree.

External Affairs Minister M MacGuigan plans to fly here Mon for a visit billed as routine. But obvious that a swift sortie is plar to remedy recent bad publicity the patriation issue.

The constitution is embodie the British North America A 1867, which, at present, only British Parliament has the power to amend. Jealous of the enshrined in the act, six of the wants to wash Canada's dirty linen," Labor MP Mike English told reporters.

"We in this country must be in- as it is a campaign for

Canadian natives seek membership in the United Nations

They call themselves the indigenous Provisional Government of Canada, and they want UN membership. Their delegation gathered to smok Monday at the "peace" plaque dedicated to Ralph Bunch at the UN's Dag Hammarskjold Plaza. The group has not yet been accredited by any Indian gathering. See story on Page D8.

Indians take grievances to UN

Canadian Press

UNITED NATIONS — A group of Canadian Indians took their

spokesman for the Canadian

"We're here specifically to meet with different missions of different coun ries," Christian said.

Marie Marule, secretary-general o e World Council of Indigenous Peo es, said the Indians have appoint ents during the next three days wit e missions of Australia, Britain iba, Denmark, Finland, India, Iran land, Jamaica, Norway, Saudi Ara , Tanzania, Trinidad and Tobag Yugoslavia.

Marule said the Indian delegate e to get these countries to inter with Britain and Canada on be of the Indian demand for a three y meeting on the constitution

Canada guilty of stealing Indian lands — tribunal

The Province Dec. 1/80 An 46

Associated Press

ROTTERDAM, Netherlands — An international tribunal Sunday found Canada, the United States and five Latin American countries "guilty" of stealing the land and crushing cultures of 14 native American Indian peoples.

The 12-member jury of the fourth Bertrand Russell tribunal issued its detailed verdicts, which carry only moral force, after a week of often-bitter testimony.

Mario Juruna, Xavante Indian leader from Brazil at first denied permission to attend the tribunal, arrived in time for the final session to take his seat as chairman of the jury. A Brazilian federal court ruled Thursday he had the same right to a passport as any other Brazilian. Conference officials said the decision is an important step toward winning full rights for Brazilian Indians, legally wards of the state.

The Brazilian government was found guilty in three cases, the U.S. in four, Peru and Canada on two complaints each, Colombia, Panama and Guatemala in single cases. No government accepted the invitation to appear.

The tribunal's final decision listed: "Massive killings of Indian people, harassment of their traditional homelands and expulsion from their historic territories, plundering of their natural resources, extreme exploitation of their labor and violation of the spiritual foundations of their cultures . . ." It was sponsored by the Bertrand Russell Peace Foundation, named for the British philosopher and mathematician who died in 1970.

Each ruling was based on international laws and agreements. The North American cases charged Canadian and U.S. governments relied on "illegal" treaties and "puppet" tribal councils to win land transfers and mineral contracts, especially for uranium in the U.S. Southwest.

The statement specifically blamed Guatemala, Bolivia, Chile and El Salvador for "massacres," kidnappings and other attempts to destroy native Indian organizations and demanded an end to sterilization programs.

Source: News clippings courtesy of Neskonlith Indian Band.