

# INTRODUCTION

## *The Constitution Express Revisited*

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EMMA FELTES AND GLEN COULTHARD

“TODAY AT LONG LAST, Canada is acquiring full and complete national sovereignty,” began Prime Minister Pierre Elliott Trudeau at the rainy ceremony marking the end of patriation on 17 April 1982 – exactly forty years ago this spring. He continued:

We became an independent country for all practical purposes in 1931, with the passage of the Statute of Westminster. But by our own choice, because of our inability to agree upon an amending formula at that time,<sup>1</sup> we told the British Parliament that we were not ready to break this last colonial link.<sup>2</sup>

On that day, he, along with Queen Elizabeth II and Minister of Justice Jean Chrétien, sat down at a desk set up on Parliament Hill to sign the proclamation that would bring the *Constitution Act, 1982*, into effect, formally transferring the Constitution from the United Kingdom to Canada. And the next day, as the Queen’s plane departed, Trudeau did a little pirouette. It was a throwback to an even more famous and controversial pirouette he had done in 1977, when he flouted protocol at Buckingham Palace by doing a spin behind the Queen’s back. But patriation, you might say, was the ultimate flouting of British authority. For Trudeau, a personal ambition had been fulfilled. The Constitution belonged to Canada now.

Among Indigenous Peoples, however, the mood was a little different. The National Indian Brotherhood declared 17 April a day of mourning. In British Columbia, the *Vancouver Sun* quoted then Union of BC Indian Chiefs (UBCIC) President Robert (Bobby) Manuel as saying that anyone

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<sup>1</sup> The “formula” here being how many provinces, representing what proportion of the population, would need to consent for the federal government to amend the Constitution. Because the federal and provincial governments could never agree as to what this formula would be, the British Parliament had retained the ultimate authority to amend Canada’s Constitution, holding the balance of power.

<sup>2</sup> Pierre Elliott Trudeau, “Bringing Home the Constitution,” 17 April 1982, CBC Archives, <https://www.cbc.ca/player/play/1402903173>.

who participated in the celebration of patriation would be committing a “treasonous act against the Indian nations and their citizens.”<sup>3</sup> All the way along, Indigenous Peoples from across the province had been fighting to stop patriation from happening without Indigenous consent. As Herman Thomas wrote in an editorial for UBCIC’s newspaper, *Indian World*:

The fight has been a long tedious one and shall not end here, the Indian people are presently planning how to further continue the fight not only nationally but internationally. Indian people have found no reason to celebrate patriation; in fact Indians are demonstrating across Canada stating that the Constitution is unconstitutional. If Canada’s version of democracy means stripping Indian people of their pride, dignity and depriving them of self-determination and self-government, then I shall not stand for thee O Canada, but continue to fight for democracy and freedom as we see it.<sup>4</sup>

The “fight” to which he was referring had begun in earnest about eighteen months earlier (though the seeds were laid long before), when UBCIC declared Canada’s plans to patriate the Constitution to be a “state of emergency” for Indigenous Peoples.<sup>5</sup> Within five short weeks from this declaration, UBCIC would charter two full passenger trains from Vancouver to Ottawa, determined to derail patriation until it gained Indigenous consent. Thus launched a movement that would come to be known as the Constitution Express.

When Trudeau began pushing for patriation in the late 1970s, he touted it as a decolonial move – one that promised to rid Canada of any “residual colonialism.”<sup>6</sup> Yet, at the same time, his 1978 proposal, “A Time for Action,” excluded any mention of Indigenous Peoples’ rights, treaties, or the Crown’s obligations to them. Meanwhile, his process for achieving patriation was equally exclusionary, relegating Indigenous Peoples to observer status. “Patriation,” a made-up word, perfectly captured this revisionist appropriation of decolonial sentiment – a bringing home of something that had never been here in the first place,

<sup>3</sup> Quoted in Douglas Sanders, “The Indian Lobby,” in *And No One Cheered: Federalism, Democracy, and the Constitution Act*, eds. Keith Banting and Richard Simeon (Toronto: Methuen, 1983), 324.

<sup>4</sup> Herman Thomas, “Patriation,” *Indian World* (April 1982): 16, <http://constitution.ubcic.bc.ca/node/150>.

<sup>5</sup> *Indian World* 3, no. 5, “State of Emergency” (October 1980): 4, Union of BC Indian Chiefs Constitution Express Digital Collection, <http://constitution.ubcic.bc.ca/node/2>.

<sup>6</sup> Michael Alexander, Private Secretary to Downing Street, to Paul Lever, Foreign and Commonwealth Office, 23 December 1980, 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, National Archives, London, UK.

while absolving Canada of any responsibility to the peoples whose lands and authority it had dispossessed. In addition, Trudeau promised to add a new *Charter of Rights and Freedoms* to the package – one whose liberal equality provisions, many worried, would have a kind of levelling effect, achieving the goals of the 1969 White Paper by effectively wiping away Indigenous Peoples' collective rights and status.<sup>7</sup> It was a tactic Canada had deployed repeatedly in the postwar period, weaponizing “equality” against Indigenous nationhood.<sup>8</sup>

So, Indigenous Peoples across the country mobilized to stop this from happening. The Constitution Express, a movement led predominantly (though not exclusively)<sup>9</sup> by Indigenous people from British Columbia, was a massive grassroots expression of this mobilization.<sup>10</sup>

The train ride itself, from which the movement got its name, was a mammoth operation. Though initiated by then UBCIC President Grand Chief George Manuel, and coordinated by UBCIC, it was powered by community. For example, Tk'emlúpsenc historian Sarah A. Nickel writes in this issue about the incredible feats of fundraising – led mostly by women – that were performed to pull it off, as every community across the province was asked to support at least one representative to go on the journey (some, however, sent dozens). By the time of the trains' departure from Vancouver Pacific Central Station on 24 November 1980, their passengers included Elders, community leaders, women, and children (lots of them, as they travelled for free). Further, the advantage of having two train routes meant that it would be easier for passengers from northern, and not just southern, communities to join in the ride. When the northern train stopped in such places as Clearwater, Vavenby, Avola, and Jasper, it gathered travellers from as far as Williams Lake, Bella Coola, and Kitimat before carrying on through Edmonton and

<sup>7</sup> *Indian World*, “State of Emergency.”

<sup>8</sup> Peter Kulchyski, “Anthropology in the Service of the State: Diamond Jenness and Canadian Indian Policy,” *Journal of Canadian Studies* 28, no. 2 (1993): 21–50.

<sup>9</sup> A number of central organizers and strategists from communities beyond British Columbia, including Mildred Poplar (Vuntut Gwitchin), Rosalee Tizya (Vuntut Gwitchin), Marie Smallface Marule (Blackfoot), and Sharon Venne (Cree), two of whom are featured as authors in this issue. There were also participants who joined one or another leg of the movement, such as Dene leader Stephen Kakfwi, Cree Elder Albert Lightning.

<sup>10</sup> There were a number of lobbies and actions were under way, both in the United Kingdom and in Ottawa, organized under the auspices of various Indigenous nations and organizations, such as the Association of Iroquois and Allied Indians, the Grand Council of Treaty 9, the Indian Association of Alberta, the Federation of Saskatchewan Indians, the Four Nations Confederacy of Manitoba, the National Indian Brotherhood (which would reorganize as the Assembly of First Nations in this period), and the World Council of Indigenous Peoples. Though this is beyond the scope of our special issue, the Constitution Express would converge and diverge with their efforts at various points along the way.



Travellers hold up 'Indian Constitution Express' banner at Pacific Central Station before departing on the Constitution Express. *Source:* Photo courtesy of Union of BC Indian Chiefs.

Saskatoon. Meanwhile, the southern train stopped in Salmon Arm, Sicamous, Revelstoke, Golden, Banff, Calgary, and Regina. As they travelled, the movement's spokespeople and UBCIC staff held roving workshops in each train car,<sup>11</sup> discussing and honing their aims. In these meetings Elders began to bring forward oral history, deepening the discussion of their nationhood and law.<sup>12</sup> The trains conjoined in Winnipeg, where, after a raucous night of rallying hosted by the Four Nations Confederacy of Manitoba, they carried on to the capital. Upon their arrival, they immediately delivered a petition to Governor General Ed Schreyer before joining the All Chiefs Meeting on the Constitution being hosted by the National Indian Brotherhood.

The message of the Constitution Express was clear: patriation could only proceed with Indigenous consent. To get to consent, the movement proposed an internationally supervised trilateral conference, at which Indigenous Peoples, Canada, and the United Kingdom would sit down together to work out their respective realms of authority, "define the

<sup>11</sup> Four Chiefs were nominated as spokespeople on the train: Splatsin Kukpi7 Wayne Christian, Neskonalith Kukpi7 Bobby Manuel, Nuxalk Chief Archie Pootlass, and Xwisten Chief Saul Terry.

<sup>12</sup> Wayne Christian interview with Emma Feltes, 4 September 2018.

terms for political existence” between them,<sup>13</sup> and create the “conditions necessary to enable the Indian Nations of Canada to achieve self-determination within the Canadian Federation.”<sup>14</sup> It was a proposal that would shake up the patriation process fundamentally, while remodelling the very Constitution being patriated. If Canada was unwilling to partake, they promised to seek other remedies:

As the last recourse, we propose to take whatever other measures are necessary to separate Indian Nations permanently from the jurisdiction and control of the Government of Canada, if its intentions remain hostile to our peoples, while insisting the fulfillment of the obligations owed to us by Her Majesty the Queen.<sup>15</sup>

Predictably, Canada declined the invitation.

Over the next eighteen months, what began as a train ride grew to be a broad political movement with both local and international inflections. In fact, as this issue of *BC Studies* demonstrates, these facets were entirely intertwined. Court cases were launched in both Canadian and British courts. A smaller delegation went on from Ottawa to New York, where the movement’s proposals were put before the United Nations. A submission was made before the Fourth Russell Tribunal<sup>16</sup> on the Rights of the Indians of the Americas, held in Rotterdam, Netherlands. A series of at least eight “Constitution Express Potlaches” was held in communities across British Columbia. And a second journey, dubbed the “Constitution Express II,” was made through Western Europe, where it initiated a massive popular education campaign on Indigenous self-determination in the heartland of former empires. Finally, the movement ended up in London, joining a major Indigenous political and legal lobby already under way.

By the time the Canada Bill came before British Parliament, Indigenous Peoples’ concerns dominated the debate, with new clauses being proposed by British MPs that reflected the kind of consent and self-government for which they had been lobbying. But ultimately, when the bill finally passed, what they got was section 35, a concession by the Canadian government that “recognized and affirmed” the “existing aboriginal and treaty rights of the aboriginal peoples of Canada.” What

<sup>13</sup> “Petition by the Indian People of Canada to Her Majesty Queen Elizabeth II,” in *Box of Treasures or Empty Box? Twenty Years of Section 35*, eds. Ardith Walkem and Halie Bruce (Penticton, BC: Theytus Books, 2003 [1980]), 38.

<sup>14</sup> “Petition,” 29.

<sup>15</sup> “Petition,” 39–40.

<sup>16</sup> See Feltes and Venne, in this issue.

this section meant, and what it would do for Indigenous Peoples, was shrouded in mystery, yet to be defined.

Over the four decades since, the mystery of section 35 has taken on a kind of life of its own, evolving incrementally in law and policy in Canada (an evolution Kent McNeil expounds beautifully in his contribution to this issue). Yet the movements that brought it about – and that aimed for much more – seem to have receded from view, at least in scholarship, where they’ve received stunningly little academic attention.<sup>17</sup>

The thinking behind this special issue on the Constitution Express was to create a kind of retrospective of the movement, and one that would look at two things simultaneously: what the movement did then and its significance now, forty years on. To achieve this, we set out to bring Indigenous scholars and community organizers who were directly involved in the movement together with other prominent and emerging scholars who might bring a unique perspective to it. In the end, through a combination of five academic articles and two personal reflection pieces, both of which foreground the voices of those who were there, we came away with a powerful collection – one that moves through the movement’s varied aims, the methods and theories it deployed to achieve them, and its resonant effect today, including its political, legal, intellectual, and inter-generational legacy. When we originally pitched the issue, the aim was to publish in the fall of 2020, marking the forty-year anniversary of the train ride. However, due to pandemic-related delays, its publication now coincides instead with the forty-year anniversary of patriation – the end, rather than the beginning, of the movement’s story. The interesting thing, though, is that this only makes the retrospective element stronger, looking back on what has happened since the Constitution came to

<sup>17</sup> Notable exceptions include works by those directly or tangentially involved, such as Arthur Manuel and Ronald M. Derrickson, *Unsettling Canada: A National Wake-up Call* (Toronto: Between the Lines, 2015), 103–27; Sanders, “Indian Lobby”; Michael Woodward and Bruce George, “The Canadian Indian Lobby of Westminster, 1979–1982,” *Journal of Canadian Studies* 18, no. 3 (1983): 119–43; Louise Mandell, “The Union of British Columbia Indian Chiefs Fights Patriation,” *Socialist Studies* 2 (1984): 164–95; Louise Mandell and Leslie Hall Pinder, “Tracking Justice: The Constitution Express to Section 35 and Beyond,” in *Patriation and Its Consequences: Constitution Making in Canada*, eds. Lois Harder and Steve Patten (Vancouver: UBC Press, 2015), 180–202; and Ardith Walkem and Halie Bruce, *Box of Treasures or Empty Box: Twenty Years of Section 35* (Penticton, BC: Theytus Books, 2003 [1980]). They also include a handful of secondary sources that focus on or make mention of the movement, such as Madeline Rose Knickerbocker and Sarah Nickel, “Negotiating Sovereignty: Aboriginal Perspectives on a Settler-Colonial Constitution, 1975–1983,” *BC Studies* 190 (2016): 67–87; John Borrows, “Indigenous Freedom and Canadian Constitutionalism,” in *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016). By our estimation the best record of the movement is Vicki Lynne George’s multimedia work, *The Constitution Express: A Multimedia History* (UBCIC and University of British Columbia), Constitution Express Digital Collection, UBCIC, 2006, <http://constitution.ubcic.bc.ca/node/133>.



Canada with section 35 in it, and how, as Herman Thomas put it in that article for *Indian World*, the fight continued “not only nationally but internationally.”

## INDIGENOUS INTERNATIONALISM AND THE BC LAND QUESTION

One of the things so keenly interesting about the Constitution Express – and something this issue tries explicitly to represent – was its interplay between national and international action. It was a movement grounded in the resurgence of Indigenous legal and political authority in Indigenous lands. It was a movement committed to upholding the kinds of international relationships, particularly jurisdictional relationships, that Indigenous Peoples had historically sought to establish with colonial polities through treaty and other political arrangements. And it was also a movement informed by anticolonial thought exchanged between the postcolonial “Third” and Indigenous “Fourth” Worlds on what decolonization – and constitution making – might look like. In this, it built upon a resurgent Indigenous internationalism that had been accelerating throughout the 1960s and 1970s, in which Secwépemc leader George Manuel was at the forefront. But Indigenous nations in what is now known as British Columbia have a rich history of international activism and diplomacy stretching back much longer than this.<sup>18</sup> While it is beyond the scope of this introduction to delve into this history of Indigenous internationalism in detail, we felt it might be useful to hit on few of its touchpoints, grounding the movement in what came before

<sup>18</sup> See, for example, George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Minneapolis: University of Minnesota Press, 2019); Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia* (Vancouver: UBC Press, 1990); Andrew Woolford, *Between Justice and Certainty: Treaty Making in British Columbia* (Vancouver: UBC Press, 2006); Sarah A. Nickel, *Assembling Unity: Indigenous Politics, Gender, and the Union of BC Indian Chiefs* (Vancouver: UBC Press, 2019); R.M. Galois, “The Indian Rights Association, Native Protest Activity and the ‘Land Question’ in British Columbia, 1903–1916,” *Native Studies Review* 8, no. 2 (1992): 1–34; Hamar Foster, “Letting Go the Bone: The Idea of Indian Title in British Columbia, 1849–1927,” in *Essays in the History of Canadian Law: British Columbia and the Yukon*, eds. Hamar Foster and John McLaren (Toronto: The Osgoode Society for Canadian Legal History, 1995); Hamar Foster, “We Are Not O’Meara’s Children: Law, Lawyer, and the First Campaign for Aboriginal Title in British Columbia, 1908–28,” in *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights*, eds. Hamar Foster, Heather Raven, and Jeremy Webber (Vancouver: UBC Press, 2007), 61–84; Keith Thor Carlson, “Rethinking Dialogue and History: The King’s Promise and the 1906 Aboriginal Delegation to London,” *Native Studies Review* 16, no. 2 (2005): 1–38; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002).

it as a way to provide context for and intellectual continuity with the articles to come.

It is important to note that one of the core determinants of this activism was always the refusal of the BC government to satisfactorily resolve the “Indian land question” in the province.<sup>19</sup> Unlike many other regions in Canada, very few historic treaties were signed between Indigenous Peoples and the Crown in British Columbia (save the Douglas Treaties on Vancouver Island and Treaty 8 in the northeastern corner of the province). From the perspective of the federal government, the purpose of signing historic treaties with Indigenous nations was to secure state sovereignty over what were previously the self-governed territories of Indigenous nations through a process called “extinguishment” – thought to be the most expedient way to eliminate Indigenous Land Title for the twin purposes of colonial settlement and capitalist development on Indigenous land. In most of British Columbia and many places across northern Canada, these mechanisms of legalized land theft were not historically implemented, thus leaving a black hole of legal and economic uncertainty over the unceded territories in question. Who owns the land in such circumstances? What are the rules that guide settlement and economic development in these places? Developers tend to like answers to these questions before they invest too heavily in infrastructure and extraction projects, especially in liberal democracies like Canada, so that Indigenous communities have no legal recourse when they disrupt profit margins by blocking flows of resource capital haemorrhaging from their traditional territories.<sup>20</sup>

Treaties, of course, hold a radically different meaning for Indigenous Peoples – even for those communities that never entered into negotiations over them, such as many of those involved in the Constitution Express. Generally speaking, most of the historical treaties signed between Indigenous Peoples and the Crown describe exchanges whereby Indigenous Peoples agree to share some of their lands in exchange for payments and promises made by officials representing the Crown. They are often understood as sacred commitments to maintain a relationship of reciprocity that respects the way of life and relative autonomy of each partner over time, while sharing certain obligations to each other and to the land.<sup>21</sup> As such, treaties are agreements that affirm Indigenous Rights

<sup>19</sup> Tennant, *Aboriginal Peoples*; Woolford, *Between Justice and Certainty*.

<sup>20</sup> Nicholas Blomley, “Shut the Province Down: First Nations Blockades in British Columbia, 1984–95,” *BC Studies* 111 (Autumn 1996): 5–35.

<sup>21</sup> See Sharon Venne, “Understanding Treaty 6: An Indigenous Perspective,” in *Aboriginal and Treaty Rights in Canada*, ed. Michael Asch (Vancouver: UBC Press, 1997), 173–207; Harold



and Title, not extinguish them. Seen in this light, treaties provide an international framework for ensuring “nation-to-nation” relations with Canada, and Indigenous Peoples have defended them as such. It seems to be this understanding that the movement deployed, for example, when it called for treaty, to “fulfill covenants and commitments made.”<sup>22</sup>

Without an acceptable mechanism in place to secure their Rights and Title, the default position of Indigenous Peoples in the province and across Canada has been that the land remains theirs and, as such, still falls under their sovereign jurisdiction. Over the last century and a half, Indigenous Peoples in British Columbia have defended this stance, legally and politically, through numerous venues, including the sending of formal petitions and/or delegations to Victoria, Ottawa, and London to defend their case.<sup>23</sup> For example, in 1904, Syilx Chief Johnny Chilaheetza and Secwépemc Chief Clexléxqen (Petit Louis) made a trip to London and Rome accompanied by Oblate missionary, Father J.M. LeJeune. While failing to gain an audience with King Edward VII they did meet Pope Leo XIII.<sup>24</sup> Two years later, Squamish Chief Joe Capilano, Cowichan Chief Charley Isipaymilt, and Secwépemc Chief Basil David also went to London,<sup>25</sup> where they aimed to get a case before the Privy Council – then the highest court of recourse for colonized peoples within the empire – arguing that the Crown’s constitutional obligations per the Royal Proclamation “were being violated by the Provincial Government, who was taking away their land without their consent.”<sup>26</sup> In 1909, another delegation, we believe mostly Tsimshian, went again to London.<sup>27</sup> And

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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); Heidi Kiiwetinewinewisiik Stark, “Changing the Treaty Question: Remediating the Right(s) Relationship,” in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, eds. John Borrows and Michael Coyle (Toronto: University of Toronto Press, 2017), 248–76; Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishnabe Understanding of Treaty One* (Vancouver: UBC Press, 2013); Michael Asch, *On Being Here to Stay* (Toronto: University of Toronto Press, 2014).

<sup>22</sup> Union of BC Indian Chiefs, “Indian Nations: Self-Determination or Termination” (1980), 25, Constitution Express Digital Collection, <http://constitution.ubcic.bc.ca/node/122>.

<sup>23</sup> See Daniel Raunet, *Never without Consent: A History of the Nishga Land Claims* (Vancouver: Douglas and McIntyre, 1984).

<sup>24</sup> Nickel, *Assembling Unity*, 37.

<sup>25</sup> Emma Feltes, “We Will Help Each Other to Be Great and Good’: The Memorial to Sir Wilfrid Laurier and Resolving Indigenous-State Relations in Canada” (MA thesis, Dalhousie University, 2011), 65.

<sup>26</sup> Louise Mandell, Minutes of the 13th Annual General Assembly, Union of BC Indian Chiefs (1981), 19, Union of BC Indian Chiefs Constitution Express Digital Collection, <http://constitution.ubcic.bc.ca/node/138>.

<sup>27</sup> Douglas Sanders, “Aboriginal Rights: The Search for Recognition in International Law,” in *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights*, eds. Menno Boldt and J. Anthony Long (Toronto: University of Toronto Press, 1985), 294.

in 1909 and 1913, respectively, Cowichan and Nisga'a groups again tried without success to get a case before the Privy Council regarding the illegal expropriation of their lands.<sup>28</sup> Accompanying the Nisga'a petition was the following declaration, unanimously adopted by the Nisga'a Nation on 22 January 1913:

We are not opposed to the coming of the white people into our territory, provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If therefore, as we expect, the aboriginal rights which we claim shall be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, claiming the right to decide for ourselves the terms upon which we would deal with our territory we would be willing that all matters outstanding between the Province and ourselves be finally adjusted by some equitable method to be agreed upon which would include representation of the Indian Tribes upon any commission that might then be appointed.<sup>29</sup>

In 1916, the Nisga'a Land Committee then joined forces with two other early pan-Indigenous organizations in British Columbia – the Indian Rights Association and the Interior Tribes of British Columbia – to form a unified front in the Allied Tribes of British Columbia,<sup>30</sup> who in 1919 and 1923 also tried to get a case before the Privy Council. As Nickle notes, this new organization “allowed the Nisga'a, interior Salish and southern nations to pursue land claims as a cohesive provincial force rather than as isolated groups.”<sup>31</sup>

Though in each case they were turned away – with the British Crown insisting that their concerns regarding land title were a strictly *domestic* affair – these delegations demonstrate the persistence of Indigenous political organizing over the last century and also hint at the international character of such efforts. However, the federal government would soon make sure that these types of claims against the state would not happen without punitive consequence. To this end, in 1927, the government

<sup>28</sup> In response, in 1914, the government of Canada passed an Order-in-Council agreeing to submit the claims to the Exchequer Court of Canada, with the right to appeal to the Privy Council, but only on one condition: should the Privy Council decide in their favour that there was, indeed, something to their Title claims, the claimants would consent in advance to extinguish it at that moment. They didn't go for it.

<sup>29</sup> Edward Allen, “Letter from British Columbia: Reflections on the 40th Anniversary of the *Calder* Decision,” *Northern Public Affairs* (September 2013), 14.

<sup>30</sup> Sometimes referred to as the Allied Indian Tribes of British Columbia.

<sup>31</sup> Sarah A. Nickel, “Reconsidering 1969: The White Paper and the Making of the Modern Indigenous Rights Movement,” *Canadian Historical Review* 100, no. 2 (2019): 230.

made it illegal, via amendments to its already racist and sexist *Indian Act*, 1876, to formally organize for political purposes or to solicit legal representation (or raise money to do so) to pursue claims against the state, thus undermining to a significant degree the foundation of Indigenous organizing during this period.<sup>32</sup>

While the 1927 amendment to the *Indian Act* outlawing Indigenous legal and political activism had the expected consequence of significantly curtailing this work – it effectively destroyed the Allied Tribes of British Columbia, for instance – it did not stamp it out entirely.<sup>33</sup> Indigenous Peoples continued to press their concerns through the 1930s, 1940s, and 1950s, although often concealed or under different guises, via organizations like the Native Brotherhood of British Columbia (a First Nations fishing organization established in 1931), the Nisga'a Land Committee (which managed to carry on with its work in a truncated manner), and a variety of BC Native women's "Homemaker Clubs" (which would eventually amalgamate in the formation of the British Columbia Indian Homemakers Society and the BC Native Women's Society in 1968).<sup>34</sup> In terms of the latter organizations, Indigenous women were able to effectively use openly patriarchal assumptions of the day regarding the domestic and apolitical nature of women's labour in the home to discuss, formulate, and pursue their individual and collective political interests under the radar of an increasingly repressive settler-state surveillance apparatus. This latter point is beautifully expounded upon in Sarah Nickel's contribution to this special issue.

For similar reasons, the politics of Indigenous labour organizing in early-twentieth-century British Columbia is also worth briefly noting here. As the work of labour historian Andy Parnaby demonstrates, this history has a long lineage of Native radicalism, especially on the shores of Burrard Inlet in North Vancouver, where Squamish longshore workers not only dominated lumber-related work on the docks but were also "pioneers of industrial unionism."<sup>35</sup> Essentially, the seasonal wage labour offered by "working the lumber" on the waterfront served as a temporary buffer for the Squamish as two distinct and asymmetrical modes of production were starting to come into violent conflict with each other: industrial capitalism, on the one hand, and the subsistence economy of

<sup>32</sup> Bob Joseph, *21 Things You May Not Know about the Indian Act: Helping Canadians Make Reconciliation with Indigenous Peoples a Reality* (Port Coquitlam, BC: Indigenous Relations Press, 2018), 70–74.

<sup>33</sup> Nickel, "Reconsidering 1969," 230.

<sup>34</sup> Nickel, *Assembling Unity*, 23–31.

<sup>35</sup> Andy Parnaby, "The Best Men That Ever Worked the Lumber: Aboriginal Longshoremen on Burrard Inlet, BC, 1863–1939," *Canadian Historical Review* 87, no. 1 (2006): 68.

the Squamish/Coast Salish, on the other. “Squamish men and women were important, if unequal, actors in this new industrial context,” writes Parnaby. “That all the occupational pursuits undertaken by Aboriginal workers were seasonal is important,” he continues, as it “hint[s] at the ways in which the temporal and spatial rhythms of a customary, kin-ordered way of life articulated with the logic of a burgeoning capitalist labour market.”<sup>36</sup> At a time when it was becoming increasingly difficult to organize as Indigenous people, doing so as workers allowed Squamish men and women to selectively deploy their labour power through the seasonal wage to protect that which was most important to them: access to a life on the land and waters determined by customary law and tradition, not to a life dictated solely by the demands of colonial capital.<sup>37</sup>

Protecting the fragile articulation of these modes of production by defending seasonal wage work became the focus of early Indigenous union activity on the coast. By our estimation, the most fascinating union to do so at the time was Local 526 of the Industrial Workers of the World (IWW), established in 1906 by primarily Squamish and Tsleil-Watuth log handlers. The local, formed a year after the Wobblies formed in Chicago in 1905, became known fondly by its approximately fifty to sixty Indigenous members as the “Bows and Arrows” chapter. As far as defending the type of people and labour in question, the IWW was a natural choice, given its progressive racial politics for the time as well as its reputation for serving “workers who did not fit well into the established craft union structures: the unskilled, the migratory, and the marginal.”<sup>38</sup> While the local only lasted for two years, many of the Squamish workers involved in the Bows and Arrows went on to form the – again, largely Indigenous – Local 38-57 of the International Longshoremen’s Association (ILA). ILA 38-57, it turned out, would emerge as a launching pad for the next generation of Indigenous Rights advocates in the province, of which the most prominent was Squamish Chief Andrew (Andy) Paull.

Paull emerged out of his union days as a tireless Native Rights activist, fighting for the betterment of Indigenous people, land, and communities in British Columbia, Canada, and the United States through organi-

<sup>36</sup> Parnaby, “The Best Men,” 58–59.

<sup>37</sup> For an application of the “articulation” debates regarding the convergence of capitalist and Indigenous modes of production in the North, see Chapter 2 of Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

<sup>38</sup> Parnaby, “The Best Men,” 68. On race and the IWW, see, Peter Cole, David Struthers, and Kenyon Zimmerman, eds., *Wobblies of the World: A Global History of the IWW* (London: Pluto Press, 2017).

zations like the previously mentioned Allied Tribes of British Columbia (he was a founding member) and then, after the latter's demise, the North American Indian Brotherhood (NIAB), which he co-founded in 1944.<sup>39</sup> During his tenure as president of the NIAB, Paull would serve as a friend and mentor to George Manuel, another emerging Indigenous political force in the province. Manuel would take over the presidency of the NAIB following the death of his mentor in 1959 and serve in this capacity until 1963, after which he moved on to serve in numerous other critically important provincial, national, and international political organizations, including as Chief of the National Indian Brotherhood between 1971 and 1976 (now the Assembly of First Nations), the founder and chair of the World Council of Indigenous Peoples (WCIP) from 1975 to 1981, and as president of UBCIC between 1979 and 1981, during which time he led the Constitution Express.

Manuel's foundational 1974 book, *The Fourth World: An Indian Reality* (co-written with Michael Posluns), details his life of Indigenous activism and leadership during this period. Republished in 2019 for the first time since 1974, *The Fourth World* is unquestionably one of the core texts in the wave of Native literature that emerged out of the tumultuous politics of the global 1960s and 1970s. The text lays out the political and cultural foundation of Indigenous resistance to colonial domination over the last four centuries. He argues that colonization set in motion a Manichean struggle between the colonizer and Indigenous Peoples propelled by two fundamentally incommensurable "ideas of land": land as a commodity – as something that can be "speculated, bought, sold, mortgaged, claimed by one state, surrendered or counter-claimed by another" – and land as a relationship, "The land as our Mother Earth." Indigenous Peoples' struggle to defend the latter against the violent globalization of the former is at its core the struggle of what Manuel calls the "Fourth World."<sup>40</sup>

Politically the "Fourth World" developed and deepened through Manuel's extensive international travel and advocacy work, of which a 1971 trip to Tanzania was particularly important. Manuel travelled to Tanzania as part of a small delegation of Canadian diplomats invited to attend the commemoration of Tanzania's tenth year of independence. Jean Chrétien, then minister of Indian affairs and northern development, was originally supposed to lead the small delegation but had to cancel his participation at the last minute. As a result, Manuel was greeted by

<sup>39</sup> Parnaby, "The Best Men," 71. See also Brendan F.R. Edwards, "I Have Lots of Help behind Me, Lots of Books to Convince You: Andrew Paull and the Value of Literacy in English," *BC Studies* 164 (2009–10): 7–50.

<sup>40</sup> Edwards, "I Have Lots of Help," 6.

local politicians as Canada's lead representative. The elite access that this unorthodox situation provided gave Manuel an opportunity to engage in one-on-one conversations with key government ministers, including President Julius Nyerere himself, about their respective colonial experiences and what a genuinely postcolonial form of economic, social, and cultural development might look like, one that refused to mimic European models. Indeed, Tanzania's 1969 *Arusha Declaration* outlined what was to be a culturally informed model of socialist political-economic development called *Ujamaa*, or "familyhood," in Kiswahili, which was to draw off the communal social relations of traditional African societies in building the postcolonial state and economy.<sup>41</sup> While the first few years of Tanzanian independence were shaped by economic and social policies inherited from British colonialism, from the *Arusha Declaration* until 1974, Tanzania had established itself as a veritable "epicentre" for freedom fighters, Non-Aligned Movement militants, US Black nationalists, Marxist intellectuals, and Pan-Africanists, all enamoured with the anti-colonial and socialist political stance offered by Nyerere and Tanzania's single political party, Tanganyika African National Union (TANU): socialism, democracy, unity, self-reliance, and peasant empowerment at home; Pan-African and Third World solidarity abroad.<sup>42</sup> Inspired by this vision of solidarity, Sharon Venne and Emma Feltes posit in this issue that such influences fed directly into the Constitution Express, which took its cues from Third World anti-colonialism in its arguments for decolonization, not patriation.

Manuel's international travels would eventually culminate in the historic October 1975 founding of the World Council of Indigenous Peoples in Port Alberni, British Columbia, which hosted Indigenous participants from nineteen different countries across four continents. The WCIP would go on to champion the Rights of Indigenous Peoples across the planet, with its advocacy work being instrumental to the eventual development of the UN Working Group on Indigenous Populations in 1982 and the *UN Declaration on the Rights of Indigenous Peoples* in 2007.<sup>43</sup>

Meanwhile, through the very same period Indigenous nations in British Columbia were fighting for their Title and self-determination at the local and regional levels. Though in 1951 the federal government

<sup>41</sup> Priya Lal, *African Socialism in Postcolonial Tanzania: Between the Village and the World* (Cambridge: Cambridge University Press, 2015).

<sup>42</sup> Seth Markel, *A Motorcycle on Hell Run: Tanzania, Black Power, and the Uncertain Future of Pan-Africanism* (East Lansing, MI: Michigan State University Press, 2017), 75.

<sup>43</sup> Jonathan Crossen, "Another Wave of Anti-Colonialism: The Origins of Indigenous Internationalism," *Canadian Journal of History* 52, no. 3 (2017): 533–59.



repealed many of the most repressive legislative features of the *Indian Act*, decriminalizing Native People's legal advocacy and political work, by 1969 it would launch another major assimilative offensive in the form of the White Paper. But instead of serving as a mechanism for accelerated assimilation and land theft, as intended, the failed 1969 White Paper helped to spawn a renewed national unity among Indigenous Peoples from coast to coast to coast. This included the formation of the Union of BC Indian Chiefs at a meeting in Kamloops in 1969, called together by Cowichan leader Dennis Alphonse, South Vancouver Island Tribal Federation President Philip Paul, North American Indian Brotherhood President Don Moses, and British Columbia Indian Homemakers Association President Rose Charlie. Less than a year after its founding, the newly formed UBCIC produced *A Declaration of Indian Rights: The B.C. Indian Position Paper* (often referred to as the "Brown Paper"). And, by 1977, it was drafting a new Aboriginal Rights Position Paper (one that would eventually be adopted by the NIB as the national response to Trudeau's patriation package),<sup>44</sup> advocating for "the absolute right to self-determination"<sup>45</sup> and laying out twenty-four "jurisdictional areas"<sup>46</sup> forming the basis of Indian government's "home rule."<sup>47</sup>

While the 1970s were a hotbed for political action, influenced, of course, by Red Power and the American Indian Movement (AIM), the resurgence of jurisdiction at the community level in British Columbia is a lesser-known part of the story. For example, there was a string of road-blocks in the summer of 1975, including the six-week St'uxwtews blockade in Cache Creek, armed and backed by AIM. Fishing then became a "lightning rod," spurring more blockades as well as an astounding legal winning streak as UBCIC lawyer Louise Mandell won sixty-four fishing

<sup>44</sup> Though endorsed in principle in 1977, subsequent revisions of the paper received endorsement in 1978 and 1979.

<sup>45</sup> UBCIC, *Aboriginal Rights Position Paper* (1979), 2, Union of BC Indian Chiefs Constitution Express Digital Collection, <http://constitution.ubcic.bc.ca/node/168>.

<sup>46</sup> These included: (1) the development of constitutions; (2) citizenship; (3) management of reserve lands and resource areas; (4) waterways and water rights; (5) air space above reserves, waterways, and resource areas; (6) forestry; (7) mineral resources; (8) oil and gas resources; (9) conservation management of migratory birds; (10) wildlife resources; (11) fish resources; (12) conservation; (13) environmental management; (14) economic management and trade regulation; (15) education; (16) the maintenance of social order; (17) health, welfare, and care; (18) marriage; (19) safeguarding of sacred spaces; (20) communications systems; (21) revenues; (22) justice, including courts; (23) the imposition of penalties for violations of law; and (24) matters of local or private nature on reserve lands, waters, and resource areas to be establishing within Indian government jurisdictional boundaries.

<sup>47</sup> UBCIC, *Aboriginal Rights Position Paper*, 3.

rights cases in 1977 alone.<sup>48</sup> But, as George Manuel reflected, “the real signs of the renaissance” could also be seen “in the resurgence of our languages, in the growth of political institutions both old and new ... in the growing number of young people seeking out the wisdom of the grandfathers and finding ways to apply it in their own lives.”<sup>49</sup> Against this backdrop, Trudeau initiated the patriation process, thus beginning his “constitutional offensive” against Indigenous Peoples.<sup>50</sup>

This is all to say that, by the time of the Constitution Express, Indigenous people in British Columbia had already established themselves as skilled organizers, having defended their land and sovereignty in both national and international forums for decades. As Louise Mandell would later write for *Socialist Studies*, by the time the movement landed in London, and submitted a reference to the Privy Council, it “continued a process for the BC Chiefs which had begun in 1906,”<sup>51</sup> referring, of course, to those early delegations. Indeed, it was this long history of expansive pan-Indigenous activism in British Columbia and beyond that ultimately contributed to the power and momentum of the movement, felt strongly across the set of articles and reflections contained here. What this collection shows is that, more than solely a movement for domestic constitutional recognition, it was also a movement for Fourth World self-determination and decolonization. By the same token, it might be said that the creation of section 35 was not entirely successful in domesticating its aims. The BC “land question” is still very much an active one – and one that Constitution Express participants, and the next generation of Indigenous activists, have continued to pursue from the local to the international level.

#### OUTLINE OF THE SPECIAL ISSUE

With all of these preliminary remarks made, we now provide a breakdown of the structure and contributions to this special issue. Here we draw together five academic articles with two firsthand reflections, both of which feature the voices of those directly involved in the movement. The articles and reflections are more thematic than chronological, approaching the story of the movement from different angles and per-

<sup>48</sup> Peter McFarlane with Doreen Manuel, *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Toronto: Between the Lines, 2020 [1993]), 230.

<sup>49</sup> George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Minneapolis: University of Minnesota Press, 2019 [1974]), 69.

<sup>50</sup> McFarlane and Manuel, *Brotherhood to Nationhood*, 236.

<sup>51</sup> Mandell, “The Union,” 180.

spectives: its gendered dynamics, its internationalism, its legal arguments and implications, and so on. Some look at one facet of the movement. For example, the article by Emma Feltes and Sharon Venne homes in on its submissions to the Fourth Russell Tribunal on the Rights of the Indians of the Americas, while others, like those by Kent McNeil and Louise Mandell, take a more retrospective look at developments within policy, law, and political organizing. Meanwhile, the personal reflections link these together, providing small yet powerful vignettes inviting readers to imagine what it was like to be there and to be in on the action.

We begin with a powerful reflection by Mildred Poplar, a Vuntut Gwitchin Elder and central protagonist of the Constitution Express. Recounting her experience of the Express as one of its main organizers, she drives home not only the profound feeling of accomplishment – organizing, as they did, at breakneck speed – but also the stakes involved: this was a struggle for nationhood and self-determination, not for the inclusion of a truncated set of rights in a colonially imposed constitution. The history that Poplar retells also sheds important light on the character of the labour that went into the material and intellectual life of the movement, most notably that of Indigenous women.

The question of whose labour was central, yet too often buried or overlooked, is taken up explicitly in the contribution by Tk'emlúpsenc historian Sarah A. Nickel. Although Indigenous women were deeply committed to the struggle represented by the Constitution Express, their work also departed from its efforts through the creation of the Concerned Aboriginal Women splinter group (or CAW). According to Nickel, the “CAW used its own brand of grassroots and kinship-based activism to critique not only the relentless barrage of colonial violence Indigenous Peoples faced daily but also, at times, the patriarchal underpinnings and practices of Indigenous leadership and the settler state.” Nickel’s piece is crucial to understanding the gendered dynamics of settler-colonial violence and dispossession, which place Indigenous women on a necessarily dual-track struggle: that against the externally created structure of colonial rule and that against the nefarious ways in which the character of this structure can and has influenced Indigenous communities.

The next two articles and one reflection move from Canada into the various international venues, where the movement carried on its fight against patriation. First, a co-authored article by legal anthropologist Emma Feltes and Cree legal expert Sharon Venne (*masko nohcikwesiw manitokan*) delves into UBCIC’s submission to the Fourth Russell Tribunal on the Rights of the Indians of the Americas. Venne, a young

articling student at the time of the Constitution Express, presented this submission at the tribunal, having produced the novel legal analysis upon which it relied. Recontextualizing the British Crown's historic legal obligation to obtain and uphold Indigenous consent within international and Indigenous law, Venne argued before the tribunal that Indigenous Peoples should have access to the United Nations' decolonization mechanisms – mechanisms normally held out to overseas or "Third World" colonies alone. Featuring Venne's voice in a dynamic and layered analysis that transpires between the two authors, the article looks back at the Constitution Express's deeply decolonial aspirations and, in particular, at the influence of Third World anti-colonialism on the movement.

Rudolph Rýser's article does an excellent job of unpacking the longer historical arch within which the Constitution Express formed, from the perspective of a key strategist in the movement. Here we see the patriation process as merely one attempt among three centuries of attempts at Indigenous dispossession and genocide. It then follows closely the movement's multi-pronged political strategy directed simultaneously at the Government of Canada, the governor general, and the Queen, before picking up where Feltes and Venne left off: at the United Nations. Here the article elaborates on the movement's diplomatic actions at the UN, drawing the under-secretary general for political affairs, trusteeship and decolonization; the under-secretary general for human rights; and twelve UN member state missions "into the political confrontation." Ultimately, Rýser's piece offers a novel firsthand account of the movement's local and international politics.

The reflection to follow, by Lorna Wanosts'a7 Williams, also speaks of local and international politics. But it speaks intimately, as the story of "establishing the protest and assertion of Indigenous Rights in one community": Mount Currie of the Lil'wat/St'at'yem'c Nation. Having sent a great number of people on both the original Constitution Express to Ottawa, and the second Constitution Express to Europe, Mount Currie was a hub of action, and Williams weaves beautifully between these international and community-based contexts as she remembers the movement with the help of other family and community members. With a feeling of being almost transported back to 1981, recollections about the importance of ceremony and song, about the teaching and learning that took place, and about relationships forged with media and other allies in Europe unfold.

The next two articles move the issue from its more historical and retrospective points of view up to the present moment. First, Kent McNeil's article leads the reader through four decades of jurisprudence,

asking, point-blank, from the legal perspective: “Has constitutionalizing Aboriginal and Treaty Rights made a difference?” With his trademark clarity and in succinct prose, McNeil compares Indigenous Peoples’ pre-section 35 treatment in the eyes of the law to post-1982 developments and the presumed “gains” since. McNeil casts his careful eye over almost the entire body of Aboriginal law in Canada, reflecting on what it does and doesn’t do for Indigenous Rights, Title, and Treaties. The result is one of the most lucid and methodical narratives of this body of law we have seen to date, concluding with some thoughts about the confounding contradiction between a rights clause that clearly falls short of what the Constitution Express lobbied for yet, at the same time, is an undeniable victory against unilateral extinguishment.

Finally, the issue comes to a close with an article by Louise Mandell, an in-house lawyer for the Union of BC Indian Chiefs at the time of the Constitution Express, and one of the movement’s key legal strategists. This piece draws on a previous chapter,<sup>52</sup> written by Mandell alongside Mandell’s long-time legal partner, Leslie Pinder, another of the movement’s original legal team, who sadly died this spring. In her updated contribution here, Mandell delves deeply into her memories of the movement – from navigating the British legal and political system for the first time, and the intricacies of Imperial legal history, to her simultaneous introduction to Indigenous law over the course of the movement. But this article does more than detail these intersections of law: it is a profoundly personal story too, and one that moves back and forth to the present day. Mandell finds threads of hope in and among her many experiences in the field since – something that speaks both subtly and directly to the movement’s achievements and ongoing relevance.

<sup>52</sup> Louise Mandell and Leslie Hall Pinder, “Tracking Justice: The Constitution Express to Section 35 and Beyond,” in *Patriation and Its Consequences: Constitution Making in Canada*, eds. Lois Harder and Steve Patten (Vancouver: UBC Press, 2015), 180–202.



A traveller drums and sings on the Constitution Express train. *Source:* Archive Gesellschaft für bedrohte Völker, Göttingen, Germany, photographer unknown.