

CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

DIRECTOR'S INTRODUCTION

The Royal Proclamation: 250 years later

Anniversaries are fortuitous occasions to reflect on the ongoing significance of an event from the past. Of course, only certain events are remembered, and both what is commemorated and what has been forgotten can be equally interesting. This current project developed out of a [concern](#) that the 250th anniversary of the Royal Proclamation of 1763 would *not* be commemorated. We have since learned of other projects to commemorate the Royal Proclamation. I heard of prelim-

BY COLIN M. COATES

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inary discussions between Tom Peace, a former doctoral student here at York, and well-known public historian Christopher Moore, and concluded that it would be most worthwhile to dedicate an issue of *Canada Watch* to this project. Tom wished to link this initiative

to the [activehistory.ca](#) project, in which he has played a key role.

In 2008, Tom, Jim Clifford (now in the History Department at the University of Saskatchewan), Victoria Freeman (who teaches at York University and who contributed to this issue), and Lisa Helps (now a city councillor in Victoria, BC), all then graduate students in history at York University and the University of Toronto, ran a highly successful conference at Glendon College

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EDITORIAL

The politics of proclamation, the politics of commemoration

October 7, 2013 marks the 250th year since King George III issued what is, for Canadians, the Crown's most famous Royal Proclamation. Over the 17th and 18th centuries, the English monarch released over a hundred royal proclamations. Some of these proclamations declared war (usually against France), others—such as the Royal Proclamation of October 23, 1759—mandated public thanksgiving and celebration, while others focused on more local laws (lotteries in Virginia in 1621, prohibiting trade in Hudson's Bay in 1688, establishing a post office in 1711, and mandating "fast days" in England during the American Revolution). Few of these proclamations, however, carry the historical legacy of the one issued in October 1763.

BY THOMAS PEACE

Thomas Peace is the Harrison McCain visiting professor in the Department of History and Classics at Acadia University.

AN OUTLINE OF THE 1763 ROYAL PROCLAMATION

Known by some as First Nations people's or Canada's Magna Carta, the 1763 Royal Proclamation laid a framework for British behaviour and law in North America following France's defeat in the Seven Years' War. The Proclamation performed three functions. First, it established the boundaries and governance structures for four newly acquired colonies: Quebec, East and West Florida, and Grenada. It also annexed Île Saint Jean (Prince Edward Island) and Cape

Breton to Nova Scotia. Second, it established land grants for the war's veterans. Finally, it extended the Crown's claim to Indigenous territory presumed to be unoccupied by European settlers and previously unclaimed by the British Crown or its subjects.

In extending Britain's claim to Indian Country, the Proclamation required that the Crown negotiate with Indigenous people before its subjects colonized or otherwise interfered with the people living beyond the Proclamation Line. This line, which was quickly pushed

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The 1763 Royal Proclamation in Historical Context

*This issue is a joint project of the Robarts Centre for
Canadian Studies of York University and ActiveHistory.ca.*

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Thomas Peace	John S. Long
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Brian Slattery	Jay Cassel
John Reid	Robert Englebert
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on the theme of "Active History." They wished to demonstrate how historical research can inform current-day concerns, and indeed how contemporary issues must be set in their historical context. The peer-reviewed activehistory.ca website developed as a means of reaching a broad public, and it currently receives between 16,000 and 20,000 unique visits each month.

Tom completed his PhD in the Department of History in 2011, comparing the impact of the British Conquest of Acadia and New France on the Mi'kmaq in

the early 18th century and the Wendat in the mid-18th century. He then took up a post-doctoral fellowship at Dartmouth College in New Hampshire to study Indigenous engagement with colonial colleges and day schools at the end of the 18th century. He is currently the Harrison McCain Visiting Professor in the Department of History and Classics at Acadia University. We are indebted to Tom for his initiative on this project and his efficient work in bringing together this range of specialists.

The views of the significance of the

Royal Proclamation vary a great deal in the pages that follow. For some experts, the Proclamation deserves the designation as a "Magna Carta" for First Nations peoples in Canada, while others believe that the document has little relevance for today's concerns. This debate is both informative and challenging, and that has been our goal with this publication. York University's Robarts Centre for Canadian Studies is pleased to offer this contribution to the ongoing discussion of this important document in the history of Canada. 

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westward, was initially drawn between the headwaters flowing into the Atlantic Ocean and those flowing into the Ohio and Mississippi Rivers. In drawing this boundary, the Proclamation sought to clearly demarcate settler space from Indigenous space. The Crown, after all, was concerned with the "great Frauds and Abuses [that] have been committed in the purchasing Lands of the Indians" beyond the reach of colonial authority. Anyone living on land not properly ceded to the Crown was to be removed. In issuing the Proclamation, the British wished "that the Indians may be convinced of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent."

This last point gave the document a lasting legacy in Canada. How it did so, and how it shaped North America's political geography more broadly, is the subject of the following essays. In soliciting contributions to this issue, we asked a diverse array of scholars with an expertise on this document and its historical context to reflect on why it was (or was not) so significant.

AN INTRODUCTION TO THE ESSAYS

The issue begins with two essays, one by J.R. Miller and the other by Brian Slattery. Both pieces outline the Proclamation's broad context, its general impact on Canadian society and legal

Though not wholly optimistic, [Ken] Coates observes that for Canada today, honouring the spirit of 1763 not only requires the meeting of technical and legal obligations; but must also involve a cultural, and therefore personal, transformation.

culture, and its role in shaping public discourse today. John Reid then situates the Proclamation in its Atlantic Canadian context, emphasizing the edict's role in crafting the region's political geography, though not its various governments' policies toward Indigenous peoples. Two essays then address the Proclamation's impact on the St. Lawrence Valley. Denys Delâge and Jean-Pierre Sawaya argue that the Proclamation applies to all Indigenous peoples in the St. Lawrence Valley (specifically the Seven Fires Confederacy), not merely those people living in the region before the French arrived. Similarly, Donald Fyson lays out the law's ambiguous impact on the colony's French Catholic population, demonstrating that the on-the-ground legal implementation differed from what one might assume through a literal interpretation of the text.

Four essays address the Proclama-

tion's history around the Great Lakes. Keith Jamieson and Alan Corbiere, respectively, address this subject through the lens of Haudenosaunee and Anishinaabe history. Making considerably different arguments, both scholars conclude that the King's declaration in 1763 meant little to either people. They emphasize instead the long diplomatic history that preceded and followed the fall of New France. John Long makes a similar point in addressing how the Proclamation shaped the oral nature of negotiations of Treaty Nine in northern Ontario. Finally, this section concludes with a reflection on the Proclamation, governance, and litigation written by Jay Cassell and Brandon Morris, historians working for Ontario's Ministry of Aboriginal Affairs.

The next three essays address spaces wherein 1763 the British had little

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to no influence. Robert Englebert reflects on the Proclamation's impact on what became the Midwest United States, emphasizing how French settlements located deep in what by 1763 was considered "Indian Territory" undermined the Proclamation's rigid division between Indigenous and settler spaces. Neil Vallance and Hamar Foster explain the Proclamation's idiosyncratic application in British Columbia, illustrating the document's contested nature over the course of the 20th century. Similarly, Ken Coates situates the Proclamation in its national and international context to demonstrate the document's broader resonance with other colonial and post-colonial histories. Though not wholly optimistic, Coates observes that for Canada today, honouring the spirit of 1763 not only requires the meeting of technical and legal obligations, but must also involve a cultural, and therefore personal, transformation.

It is for this reason that I chose to end the collection with Victoria Freeman's contribution. Though she considers her essay to be a "rant," rather than something more academic, Freeman's personal approach uniquely addresses the complications of the Proclamation for Canadian society today. Her perspective builds upon and directly connects with the broader contemporary political context in which this issue of *Canada Watch* was compiled and the Royal Proclamation is remembered.

THE POLITICS OF COMMEMORATION

This year's commemoration of the 1763 Royal Proclamation falls at a time when Canada's history is under intense scrutiny. With two-thirds of the year complete, 2013 promises to be a banner year for popular discussions about the past. Idle No More continues to draw Canada's attention to the failed relationship between Canadians, Indigenous people in Canada, and the Canadian state. The publicity of recent historical studies conducted by Maureen Lux and Ian Mosby, documenting hor-


The stakes of commemoration are high, presenting both opportunities to learn about the past but also — as we have seen in recent years — for narrowing the scope of public historical inquiry.

rifying nutritional and medical testing on Indigenous populations, captured national and international attention and renewed discussions about whether the Canadian state committed genocide through its policies toward First Nations peoples. More broadly, debates over the politics of history and commemoration (so common in the 1980s and 1990s) have been rekindled and moved beyond the classroom, frequently appearing in the op-ed pages of our national newspapers, and on radio and television programs.

For the most part, we have Stephen Harper to thank for this period of rich intellectual discussion. More than any other year in recent memory, 2012 marked a profound shift in history- and heritage-related public policy. In that single year, the government launched a formal celebration of the War of 1812, using it to build toward the 150th anniversary of Confederation in 2017. While celebrating the past with one hand, however, the same government launched extreme cutbacks to funding for archives, museums, and national parks across the country with the other. These are the very institutions responsible for preserving Canada's documentary and material heritage. Despite pleas for the release of important and necessary

government records about residential schools, the government has withheld these documents from its own appointed commission examining the history and legacy of this dark period in Canada's history.

Commemorating the Royal Proclamation has fallen into this politically charged environment. This issue of *Canada Watch* originated from a series of conversations between Christopher Moore, Colin Coates, and me that focused on the need to draw the public's attention to this important historical document. Alan Corbiere's essay in this issue implicitly critiques our approach, pointing out that a focus on the Proclamation presents its own set of problems about how the past is remembered. In commemorating the Proclamation—a document written by and for Europeans—we neglect the outbreak of Pontiac's War, an Indigenous war against the British that nearly vanquished European troops from the western Great Lakes and Ohio Valley. The stakes of commemoration are high, presenting both opportunities to learn about the past but also—as we have seen in recent years—for narrowing the scope of public historical inquiry.

This issue of *Canada Watch* seeks to promote the former outcome. In his reflection here, J.R. Miller considers the place of the Proclamation in Canadian society as a barometer of Canada's (and Canadians') relationship with Indigenous peoples. I would like to suggest that in 2013, it is equally a barometer of what type of history is important and what events ought to be publicly considered as part of Canada's founding narrative. The essays in this collection do not present a unified perspective on this question. They provide, however, an evidence-based and informed foundation from which to evaluate the Proclamation's historical significance, the history of Canada's relationship with Indigenous peoples, and today's contemporary politics of commemoration. 

The Royal Proclamation— “The Indians’ Magna Carta”?

PROTECTING ABORIGINAL RIGHTS?

Because its concluding paragraphs deal with First Nations and their lands, the Royal Proclamation of 1763 is sometimes referred to as “the Indians’ Magna Carta.” Many people regard George III’s policy for the new territories the United Kingdom had acquired following the Seven Years’ War as the guarantor of Aboriginal title law in Canada today. Its greatest champions argue that it is like the foundation of constitutional government and law in Britain, the document that the barons made King John sign in 1215.

Is the Royal Proclamation as central to Aboriginal rights in Canada as the Magna Carta is in the UK? Or have the so-called Indian clauses of the Royal Proclamation been a dud so far as First Nations’ rights are concerned? Have Indigenous peoples not been systematically stripped of their traditional territories by rapacious settler societies that emerged in Canada as they did in other former British colonies of settlement?

As other essays in this collection demonstrate, the policy document for eastern North America that King George III issued in October 1763 certainly did not single out First Nations’ rights for attention. Its first eleven paragraphs dealt with the boundaries of newly acquired territories and their institutions of governance and law. Only the last five paragraphs addressed First Nations’ issues. First, the Proclamation recognized some sort of Indigenous right to possess territories that lay beyond existing colonial boundaries and the height of land to the west of the Thirteen Colonies. These lands, it said, were “reserved to the ... Indians.” Then, the document specified the protocol by which these protected lands could legally be acquired. To discourage free-lancing by land speculators, the Pro-

BY J.R. MILLER

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*In practice, the
Proclamation was
only partially
successful in
protecting First
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fraud and conflict.*

clamation said that the reserved and protected lands could be obtained only by the Crown, acting through its appointed agents. These Crown agents could only negotiate for Native land “at some public meeting” called “for the Purpose by the Governor.”

FRAUD AND CONFLICT

These provisions aimed to prevent Britain being dragged into conflicts with First Nations. Before the 1760s, unscrupulous land speculators in the Thirteen Colonies had sometimes obtained a fraudulent deed from a Native American by bribery or alcohol, knowing that the putative vendor had no authority to surrender lands that belonged to his community. When innocent homesteaders who purchased lands from the speculator tried to establish farms in Indian territory, there was pushback from the Natives that sometimes resulted in warfare between First Nations and colonial troops. To end the conflict, the Proclamation closed the interior of the continent to settlement, regulated access to it by traders, and promulgated the rules for exclusive Crown purchase of Native lands.

In practice, the Proclamation was only partially successful in protecting First Nations’ lands from fraud and conflict. Beginning in 1764, the custom of having British-appointed governors and Indian Department officials conduct negotiations for First Nations’ lands evolved in what is now southern Ontario. Although irregularities occurred—the governor of the region twice had to issue ordinances reminding everyone of the rules—by the 1820s, a system of treaty-making for First Nations’ lands was established. As direct control by Britain’s Indian Department gave way in stages, between the 1840s and 1860s, to administration of Indian affairs by colonial governments dominated by settlers, the degree of loyalty to the Proclamation protocol for dealing with lands waned.

The staying power of Crown monopoly over negotiating for First Nations’ land was illustrated in the 1870s. When the government of Sir John A. Macdonald had to devise a policy for dealing with the tens of thousands of First Nations who occupied the southern portions of the Hudson’s Bay Company land in the West, it reached instinctively for the Proclamation-based protocol. In striking contrast to the practices of the American government, which was busy through the 1870s fighting bloody Indian wars in the West, Canada appointed Crown commissioners to negotiate with First Nations for peaceful access to lands for settlement. Quietly and quickly, seven territorial treaties were negotiated that provided for unopposed settlement of a vast inland empire. From 1899 until 1921 in the North, the Crown similarly negotiated another four territorial treaties that gave Canada uncontested access to an enormous storehouse of natural resources. As had been the case in the middle of the 19th century, though, as time went on and the

“The Indians’ Magna Carta,” page 7

Is the Royal Proclamation of 1763 a dead letter?

The Royal Proclamation is now 250 years old. Is it still relevant today? Arguably not. The document was drafted in London in the spring and summer of 1763 by a handful of bureaucrats and politicians. It was part of a project to enforce British imperial claims to a vast American territory from which France had recently withdrawn. Most of the territory was actually controlled by independent Indigenous nations—some of them former allies and trading partners of the French, many of them hostile to the incoming English or at best suspicious. The Proclamation was designed to allay those fears while at the same time further imperial ambitions. In effect, it was crafted to deal with a very specific situation—one that has long since passed into history.

In the past two and a half centuries, the territories to which the Proclamation applied have undergone sweeping and profound changes in every sector—political, legal, demographic, economic, social. Territories that were once in the exclusive possession of Aboriginal nations are now shared with people originating from every sector of the globe and ruled by governments elected by popular majorities. How can this ancient document speak to the modern position of Indigenous Canadian peoples? Isn't it just as obsolete as the schooners and barques that carried copies of the Proclamation to America?

In reality, the Proclamation is as relevant as it ever was—some would say more relevant. It embodies the fundamental legal principles that have informed relations between the Crown and Indigenous American peoples almost since the first British settlements were founded in America in the early 1600s. In the watershed *Calder* decision of 1973, Justice Emmett Hall of the Supreme Court of Canada described the Proclamation as akin to the Magna Carta—and the analogy is an appropriate one. While

BY BRIAN SLATTERY

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How can this ancient document speak to the modern position of Indigenous Canadian peoples?

responding to a particular historical situation, the Proclamation, like the Magna Carta, sets out timeless legal principles. Changes in circumstances have altered the way in which these principles apply, but the principles themselves are as fresh and significant as ever. Three of these principles stand out.

TIMELESS LEGAL PRINCIPLES

First, Indigenous Canadian peoples are autonomous nations that have ancient historical connections with the Crown, which stands as the guarantor of their autonomy and basic rights.

Second, these peoples hold legal title to their traditional territories, which cannot be settled or taken from them without their consent.

Third, any important matters that arise between Indigenous peoples and the Crown—such as the transfer or sharing of lands—are to be settled by binding treaties freely concluded between the Crown and the Aboriginal peoples concerned.

In modern times, all three principles have been recognized by the Supreme Court of Canada as part of the legal bedrock of modern Aboriginal and treaty rights, which are now guaranteed in section 35(1) of the *Constitution Act*,

1982. Unfortunately, as the court has noted, in the past these principles were often honoured as much in the breach as in the observance, giving rise to difficult questions as to how they may best be implemented in modern times and how past injustices may best be acknowledged and remedied.

THE HONOUR OF THE CROWN

In grappling with these questions, the Supreme Court has increasingly been drawn to the concept of the “honour of the Crown” as the overarching principle of Aboriginal and treaty rights—one that invigorates the jurisprudence on Aboriginal rights as a whole and acts as a touchstone for the reconciliation of those rights with those of the larger Canadian community.

In decisions such as *Haida Nation* (2004) and *Manitoba Metis Federation* (2013), the Supreme Court has held that the honour of the Crown requires that Aboriginal rights be determined, recognized, and respected. This process must observe the basic principles implicit in the Crown's historical relationships with Aboriginal peoples as well as fundamental principles of justice and human rights.

The honour of the Crown also infuses the processes of treaty-making and treaty interpretation, so that the Crown must act with honour and integrity, avoiding even the appearance of “sharp dealing.” Where treaties remain to be concluded, it requires the Crown to engage in negotiations with Aboriginal peoples leading to a just settlement of Aboriginal claims.

Further, the honour of the Crown gives rise to a duty to consult with Aboriginal peoples and, where appropriate, to accommodate their claims, in instances when the Crown contemplates an action that will affect a claimed but as yet unproven Aboriginal interest.

Finally, as the Supreme Court has recently held, the honour of the Crown requires the Crown to fulfill its constitutional obligations to Aboriginal peoples in a diligent and purposive manner.

In a sense, these judicial developments are all prefigured in the words of the Royal Proclamation, penned two and a half centuries ago, where the Crown declares in resounding terms:

Whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, which whom We are connected, and who live under Our Protection, should not be molested or disturbed ...

The Supreme Court has increasingly been drawn to the concept of the “honour of the Crown” as the overarching principle of Aboriginal and treaty rights.

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the Indians, to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said Indians; in order therefore to prevent such Irregularities for the future, and to the End that the Indians may be convinced

of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent ...

The Crown goes on to enact specific measures to address these problems. But the Proclamation’s work is not yet done. Today, 250 years later, “reasonable Cause of Discontent” remains. 🍁

“The Indians’ Magna Carta” continued from page 5

non-Native population outstripped the Indigenous, the government’s adherence to Proclamation-based protocol weakened.

ABORIGINAL TITLE

The courts revived the Proclamation as a shield of First Nations’ rights. The highest court in the British Empire in 1888 had ruled in *St. Catherine’s Milling and Lumber Company v. The Queen* that the Proclamation recognized only “a possessory and usufructuary right dependent on the goodwill of the Sovereign.” In other words, Indigenous people had a right of usage that Crown and Parliament could abridge or cancel. Beginning in the 1970s, the Supreme Court of Canada began to revise this view of the Proclamation and the law of Aboriginal title. First, in 1973 the *Calder* decision recognized that Aboriginal title existed in law, and could therefore presumably be enforced. Then, the same court in the 1997 *Delgamuukw* decision found that Aboriginal title was something substantive and robust. It was, the Supreme Court said, “a right to the land itself.”

This rapid evolution of judicial interpretation was attributable to two things. First Nations were becoming increasingly assertive and effective in advancing

their rights. Second, an energetic group of lawyers—Aboriginal and non-Aboriginal—fashioned an expansive understanding of Aboriginal rights in law. As well, when Canada’s political leaders refashioned the country’s Constitution in 1982, they referenced the Proclamation in the *Charter of Rights and Freedoms*.

A quarter of a millennium after its promulgation, does the Royal Proclamation of 1763 stand as “the Indians’ Magna Carta”? Perhaps, but never wholly, and largely belatedly. The Proclamation is better understood as a barom-

eter of Native–newcomer relations in Canada. When non-Natives need First Nations, relations are harmonious. Proclamation principles are then respected. But when the relationship cools, usually because non-Natives no longer think they need Aboriginal people economically, the commitments concerning Aboriginal lands in the Proclamation are scouted by governments dominated by non-Natives. Whether Magna Carta or barometer of Native–newcomer relations, though, the Royal Proclamation is undoubtedly critically important to Indigenous affairs in Canada today. 🍁

The Proclamation is better understood as a barometer of Native–newcomer relations in Canada.



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The significance of the Royal Proclamation of 1763 for Atlantic Canada*

SHIFTING BOUNDARIES

The implications of the Royal Proclamation of 1763 for the territories and adjoining waters of what was later to be known as Atlantic Canada were profound. They were also diffuse and varied widely according to the political and physical geography of that vast area. The Proclamation redrew the imperial political geography. To the existing colony of Nova Scotia, it added the two large islands in the Gulf of St. Lawrence that had been surrendered by France in the Treaty of Paris: the Island of St. John (later Prince Edward Island) and Cape Breton Island. There were changes still to come. In addition to the continuing uncertainty over the western boundary of Nova Scotia with New England, the enlarged “Old” Nova Scotia of the Proclamation lasted only six years and underwent repeated revision thereafter. The Island of St. John became an autonomous colony in 1769, as did New Brunswick and Cape Breton Island in 1784, though Cape Breton reintegrated with Nova Scotia in 1820. Whatever the complications, the Proclamation was a key stage in this colonial evolution.

The Proclamation also put “the Coast of Labrador and the adjacent Islands”—including Anticosti, the Magdalen Islands, and many smaller islands—under the naval governance of Newfoundland. The coast of Labrador, as defined in the Proclamation, extended from the Rivière Saint-Jean, the mouth of which was almost directly opposite the western tip of Anticosti, to “Hudson’s Straights” at a point later determined as Cape Chidley. The definition led toward the long-lasting Labrador boundary dispute,

BY JOHN REID

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The Proclamation redrew the imperial political geography.

in which both the nature of Newfoundland’s jurisdiction over the area and the depth or otherwise of the coastal territory involved came into repeated question in the interests of the competing claim of Canada and Quebec. Nevertheless, the Proclamation was foundational to the imperial determination in 1927 that Labrador—with some boundary adjustments over time—appertained to Newfoundland, or (as it became formally known in 2001) to the province of Newfoundland and Labrador. Even so, the restoration to France of the islands of St. Pierre and Miquelon in the Treaty of Paris, also in 1763, was at least as significant as any provision of the Proclamation.

INDIGENOUS HISTORY WAS CENTRAL

Important as the Proclamation was for matters relating to imperial governance and the boundaries involved, the broader reality of 1763 was that the impingements of empire, either British or French, had had limited significance for Indigenous peoples. Without underestimating the disruptions brought about by the environmental changes from European resource-harvesting (which on the island of Newfoundland undermined the economy of Beothuk communities that were increasingly denied access to the coast), it remained true in general that Indigenous history in the region was central,

and imperial or colonial history remained on the periphery.

In Labrador, the Proclamation opened the way for Newfoundland naval governors to attempt to defuse tensions and hostilities between European fishers and the Inuit. They did so partly through diplomacy and also by facilitating the missionary activities of the Moravian Brethren, which gathered strength with the foundation of the Nain Mission Station in 1771. Colonial settlement on any significant scale, however, remained predictably absent, both for environmental reasons and because the coast of Labrador was regarded for imperial purposes as an area where, as on the island of Newfoundland, settlement was neither proscribed nor encouraged. In Nova Scotia—even though the establishment of Halifax, the deportation of the Acadians, and the influx of New England planters pointed toward a harsher future—the level of settlement in the mid-1760s remained manageable for the Mi’kmaq and Maliseet through treaty-making and occasional threats of armed intervention.

A COMPLEX HISTORY

Despite explicit evidence that the Proclamation applied throughout “Old” Nova Scotia, its provisions relating to Indigenous land had a troubled and complex history in the maritime colonies. Nova Scotia was included in key royal instructions issued on December 12, 1761, which, foreshadowing the Proclamation, put severe limits on non-Indigenous land acquisitions from “the several nations or tribes of Indians bordering upon the said colonies.” Then in January 1764, Governor Montagu Wilmot assured London that the Proclamation had been received and published in the province—which, in the British definition of the time, covered

* For valuable advice while I was preparing this essay, I thank Gillian Allen, Jerry Bannister, James K. Hiller, and Olaf Janzen.

La Proclamation royale vaut-elle pour tous les Indiens de la Province de Québec?*

Le 24 décembre 1763, au nom du Roi George III d'Angleterre, le surintendant des affaires indiennes, William Johnson rend publique la Proclamation royale du 7 octobre 1763. Nous savons que les Amérindiens domiciliés (Iroquois, Algonquins, Népissingues, Hurons, Micmacs) en ont été informés, puisqu'un parchemin de cette Proclamation fut affiché dans chacun de leurs villages de la Province de Québec au cours des semaines qui ont suivi sa publication¹. Les Algonquins et les Népissingues ont exigé et obtenu que le représentant du roi à Montréal, John Johnson, le fils de William Johnson, signe le document de la Proclamation². Cette exigence des Algonquins implique qu'ils y voyaient une promesse formelle à laquelle s'engageaient publiquement le roi d'Angleterre et son représentant.

UNE DIFFÉRENCE ENTRE LES AMÉRINDIENS D'OCCUPATION IMMÉMORIALE ET IMMIGRANTS?

Pourtant, même après avoir fait afficher la Proclamation dans tous les villages, un doute demeurerait quant à son application universelle pour les Indiens du Québec d'alors. Cela valait-il alors pour ceux qui venaient d'ailleurs : Iroquois de la région de Montréal, Abénaquis de celle de Trois-Rivières et Hurons de Lorette? William Johnson débattit explicitement de cette question avec le commandant général des troupes britanniques, Thomas Gage en janvier 1764. Il était d'avis qu'il fallait distinguer les Indiens du Québec qui y habitent de tout temps, de ceux que les Français avaient fait venir et utilisés comme mercenaires afin de protéger leur colonie et d'attaquer celles des Anglais (« Caghnawagas Abenakis &ca [Hurons] »). Ces

PAR DENYS DELÂGE
ET JEAN-PIERRE SAWAYA

Denys Delâge est professeur émérite à l'Université Laval. Jean-Pierre Sawaya est consultant en histoire et patrimoine.

La Proclamation royale s'appliquerait donc, selon Carleton, à tous les Amérindiens du Québec, qu'ils y habitent ou non de temps immémorial.

derniers n'auraient aucun droit (« claim ») concernant le territoire et de surcroît, si jamais ils réclamaient un territoire spécifique pour eux, ce ne pourrait être qu'en vertu des prérogatives de la Couronne qu'ils l'obtiendraient et non en vertu d'un titre indien³.

Thomas Gage reprit à son compte la distinction de William Johnson entre Indiens d'occupation immémoriale et immigrants tout en précisant que pour les premiers, leur titre d'occupation demeurerait valide puisque le roi de France n'avait jamais acheté leurs terres et que les colons français ne s'étaient établis parmi eux qu'avec leur autorisation⁴.

LA PROCLAMATION S'APPLIQUE AUX AMÉRINDIENS DOMICILIÉS

Cette distinction n'a pas été retenue ultérieurement. En effet, dans leur correspondance et dans leurs adresses aux chefs autochtones, les autorités britanniques ont jugé que la Proclamation royale s'appliquait à tous les Autochtones du Québec et qu'elle les protégeait tous également.

C'est le gouverneur Guy Carleton qui le premier a confirmé les droits de tous les Indiens du Québec d'alors, en vertu de la Proclamation royale. Il le fit dans une adresse aux Six-Nations iroquoises. Quand l'auteur utilise le terme « molester », il faut l'entendre au sens large de non respect des droits des Indiens:

Les Sauv^s. Abenag^s. de St. Franc^s. aussi bien que tous les autres Nations & Tribus depd^{es}. [du gouvernement de?] la Prov^e. de Quebec étant sous la protectⁿ. de sa Maj^e. ainsi qu'il l'a bien voulu déclarer par sa Proclamⁿ. du 7^e. Oct^e. 1763 peuvent être assurés qu'on les maintiendra dans tous leurs justes Droits et que le Gouvernm^t. fera traduire en Justice, et poursuivra à la Rigueur, tous ceux qui oseront les molester, de quelque manière que ce puisse être. La Presente on espere sera un Avertissement pour tous ceux qui pourroient en avoir l'Intention, et previendra les facheuses consequences qui en pourroient resulter⁵.

Par « Nations et Tribus dépendantes de la Province de Québec », nous comprenons qu'il s'agit des Indiens habitant alors la province de Québec. La Proclamation royale s'appliquerait donc, selon Carleton, à tous les Amérindiens du Québec, qu'ils y habitent ou non de temps immémorial.

LA QUESTION DU DOMAINE DU ROI

Une question se posait encore, cela valait-il pour les Montagnais (Innus) du Domaine du Roi (King's domain), couvrant le territoire du Saguenay-Lac Saint-Jean et de la haute et basse Côte Nord? L'officier Daniel Claus jugea que le Domaine du roi n'avait pas été exclu de la Proclamation royale⁶, ce que confirma le Conseil

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La Proclamation royale

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législatif de Québec en 1766⁷.

Le titre autochtone reconnu par la Proclamation royale est valide puisque que le roi de France ne l'avait jamais éteint. Il couvre tout le territoire de la Province de Québec d'alors, de même qu'il s'applique à tous les Indiens qui l'habitent, peu importe l'ancienneté de leur établissement.



NOTES

* Voir : Denys Delâge et Jean-Pierre Sawaya, *Les Traités des Sept-Feux avec les Britanniques. Droits et pièges d'un héritage colonial au Québec*, Québec, Septentrion, 2001.

1. Jean-Baptiste D'Estimauville, Québec, 10 janvier 1797, *RG 8*, bob. C-2848, vol. 250, pt. 1, p. 66; William Van Felson à James Murray, Bonaventure, 10 février 1765, *RG 4 A 1*, vol. 12, pp. 4564-4565.
2. William Johnson, « By the King A Proclamation, Given under my Hand and Seal at Arms, at Johnson-Hall, the 24th Day of December 1763 », *The Papers of Sir William Johnson (JP)*, vol. 10, p. 985; « A Proclamation by the Honorable Sir William Johnson », Johnson Hall, 24 décembre 1763, *RG 8*, bob. C-2855, vol. 267, p. 121.
3. William Johnson à Thomas Gage, Johnson Hall, 27 janvier 1764, *JP*, vol. 4, pp. 307-308.
4. Thomas Gage à William Johnson, New-York, 6 février 1764, *JP*, vol. 4, p. 318.
5. Guy Carleton, Québec, 28 février 1767, *MG 19, F 1*, bob. C-1483, vol. 21, pt. 2, pp. 54-55.
6. Daniel Claus à John Johnson, Montréal, 25 août 1766, *MG 19, F 1*, bob. C-1481, vol. 14, pt. 1, pp. 108-109.
7. « Extrait des minutes de la réunion du comité ad hoc du Conseil législatif de Québec sur les postes de la traite de Tadoussac », 11 octobre 1766, *CO 42*, vol. 5, fol. 314-318, cité dans Nelson-Martin Dawson, *Lendemain de conquête au Royaume du Saguenay*, Montréal, Nuit blanche, 1996, pp. 276-281.

Significance of the Royal Proclamation

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the area of all the later maritime provinces—and would “very shortly be effected in the distant and remote parts of this Government.” Wilmot’s statement made an implied distinction between “distant and remote parts” and the settled or granted areas of Nova Scotia. However, not only were the grants and settlements small in relation to the overall geography, but the absence of any preceding Indigenous land surrender logically brought the region within the general category recognized by the Proclamation of lands that had been neither ceded to nor purchased by the Crown, contrary to the current strictures expressed by the Supreme Court of Canada in its 2005 judgment in the cases of *R. v. Bernard Stephen* and *R. v. Marshall*. Elsewhere in what became Atlantic Canada, large areas of Labrador fell within the related category of reserved lands that lay “beyond the Heads or Sources of any of the rivers which fall into the Atlantic Ocean from the West or North-West.” As to the applicability of this or any associated provision of the Proclamation to the island of Newfoundland, evidence is lacking, and no naval governor is known to have commented or ruled on the question.

Settler encroachments not only caused profound environmental and economic harm to Indigenous communities ... but also led to the granting of land to colonists on an unprecedented scale.

INCREASING COLONIAL SETTLEMENT

In the maritime colonies, however, the real limitation on the historical application of the Royal Proclamation’s requirements for Indigenous land transfer was neither logical nor legal, but was determined largely by the dispossession brought about by increasing colonial settlement, especially during and following the Loyalist migration of the early 1780s. Settler encroachments caused profound environmental and economic harm to Indigenous communities, notably through agriculture and the disruption of transportation routes. It also led to the granting of land to colonists on an unprecedented scale. Creation of reserves, whether on an ad hoc basis or—as in Nova Scotia in 1819—more systematically, limited access to land and resources and did

nothing to prevent further encroachments. All three of the maritime colonies legislated during the pre-Confederation period for the sale or lease of reserve lands with the ostensible purpose of generating funds to be used for the benefit of Indigenous communities, but in reality these funds were used to facilitate further settler colonization. The results in terms of poverty and disease were predictable enough.

The Royal Proclamation of 1763 had historical implications with which both Indigenous and non-Indigenous inhabitants of present-day Atlantic Canada continue to live. Through enhanced historical understandings of the provisions that attempted to regulate Indigenous land alienation, and their subversion by colonial authorities, it may well prove also to be a fertile source of legal activity reaching into the future.



The Royal Proclamation and the Canadiens

BY DONALD FYSON

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In practice, the effects of the Proclamation on the Canadian population were quite different from what was envisaged.

The Royal Proclamation of 1763 holds an ambiguous place in debates over Quebec's relationship with Canada. In sovereigntist discourse, it is regularly evoked as a baleful reminder of British perfidy toward francophone Quebecers. The relatively benign military occupation between 1759-60 and 1764 raised false hopes in the minds of the Canadiens (the French-descended colonists). The Royal Proclamation dashed these hopes and stamped on Canadian rights. It took away their laws and it imposed the harsh anti-Catholic measures in force in England and its colonies. It was a "*chape de plomb*" (a leaden weight), as an editorialist for *Le Devoir* put it earlier this year, or more dramatically, according to another commentator, an "*arrêt de mort*" (a death sentence). In contrast, in what I call the "jovialist" discourse of those who see the British Conquest of Quebec as unreservedly beneficial, the Proclamation is often barely mentioned at all. The emphasis is put on the *Quebec Act*, which restored Canadian law and Canadian civil rights. At best, it is suggested that by introducing English public law, the Proclamation also introduced English liberties such as *habeas corpus* (the right to contest unlawful imprisonment) and trial by jury.

The reality was, of course, more complex. It is undeniable that initial British policy toward the Canadiens was to restrain them and, eventually, to assimilate them by converting them to Protestantism. This can be seen both in the Royal Proclamation and in other associated documents issued at about the same time, such as the commission and instructions of the first civil governor, James Murray. For example, the very limited boundaries the Proclamation set for the new province of Quebec were justified in part by the need to watch over the Canadian population. As well, the Proclamation, commission and instructions provided for calling an elected assembly, but only

Protestants would be able to sit in it. And Murray's instructions explicitly directed him to promote Protestantism among the Canadiens. Equally undeniable, though, is that in practice, the effects of the Proclamation on the Canadian population were quite different from what was envisaged. Two examples can help illustrate this point: on the one hand, the civil law and on the other, the civil rights of Roman Catholics.

THE CIVIL LAW

The civil law of pre-Conquest Canada, based on the Custom of Paris and regulating matters such as property and family relations, is often seen as one of the traditional pillars of Canadian and, later, francophone Quebec identity. The Royal Proclamation, according to some, attacked the very foundations of this identity by abolishing the civil law and imposing English law in one fell swoop, underscoring the injustice of the British and their Conquest. This is based mainly on the Proclamation's very general promise that all of the colony's inhabitants could have "the Enjoyment of the Benefit of the Laws of our Realm of England" and its vague statement that the colony's courts were to judge cases "according to Law and Equity, and as near as may be agree-

able to the Laws of England." No one has ever been able to say with certainty what either of these statements meant. Did the Royal Proclamation, or the commissions and instructions to the governors, intend to do away with French civil law? Commentators at the time were divided on the issue; historians have never been able to come to a definitive determination.

Things were more complicated on the ground. In theory, there was indeed to be only a very limited toleration of French civil law, essentially for cases between Canadiens that concerned pre-Conquest issues. In practice, though, the courts relied on both English common law and French civil law, and parties argued whatever law best suited their case. In theory, an English common-law system had no place for Canadian notaries with their French-style deeds and contracts. In practice, Canadian notaries carried on much as before the Conquest—Canadian families regulated their affairs according to pre-Conquest norms, and even British merchants had regular recourse to the notarial system. In theory, there were to be strict limits on Canadian lawyers, who could essentially only have Canadian clients. In practice, Canadian lawyers acted for both Canadian and British clients, just like British lawyers, and pleaded both French civil law and English common law. In short, the civil law survived, and formed one part of the mixed, hybrid system that characterizes Quebec law. Yet, it was certainly a fundamental shift from the pre-Conquest legal system, one to which Canadiens had to adapt as best they could.

THE CIVIL RIGHTS OF ROMAN CATHOLICS

The same sort of disjuncture between theory and reality can be seen on the issue of Roman Catholic civil rights. In the classic "miserabilist" view of the effects of the British Conquest of Quebec,

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the Royal Proclamation took away the civil rights of Catholic Canadiens. The most commonly cited example of this is the imposition of the provisions of the English anti-Catholic Test Acts. The Test Acts required anyone seeking public office or employment to abjure the Catholic faith through a series of oaths and declarations. As one commentator suggested, this meant that even the humblest town crier in Quebec could not be a Catholic, and Catholics, at least at first, could not even sit on the juries that were so central to the British liberties that supposedly accompanied the Conquest.

Yet, the Royal Proclamation mentioned nothing whatsoever about the Test Acts or any other anti-Catholic measures. Instead, this interpretation developed from the few ambiguous words in the Proclamation regarding the benefit of the laws of England, along with the 1763 Treaty of Paris, which guaranteed Canadiens the right to practise their religion “as far as the Laws of Great Britain permit.”

However, did this include English anti-Catholic legislation? Again, even contemporary commentators could not agree. In 1763, the English minister most directly responsible for the Proclamation, Lord Egremont, directed Governor Murray to adhere to the laws of

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Great Britain in matters relating to Catholicism. But as early as 1765, the English law officers of the Crown declared that the English anti-Catholic laws did not apply in Quebec. With such contradictory messages, the early governors proceeded cautiously. Their commissions and instructions took a clearly anti-Catholic stance. At the same time, they explicitly imposed oaths and declarations only on the members of the Governor’s Council and on the personnel of the courts, including judges. In practice, the governors stuck only to these restrictions, and even then, not entirely. Not because they were particularly tolerant of Catholicism; rather, it was impossible to rule the colony with only the

handful of Protestant adult male civilians present at the beginning, or even the hundreds in the colony by the mid-1770s.

Hence, colonial administrators turned to Catholic Canadiens to fill a wide range of public posts, especially those in the lower levels of the colony’s government. This included some, such as court clerks, which a strict reading of the governors’ commissions would suggest should only be held by Protestants, and even a few higher positions, including two judges. Some positions, notably parish bailiffs, were occupied right across the colony by hundreds of Canadien farmers. Canadiens also most certainly could and did serve on juries. By virtue of their sex, Canadien women were excluded from all such positions; however, this was no different from their treatment under the French régime.

Did this mean that Catholics were treated equally to Protestants? Certainly not. After all, they were excluded from most of the highest positions, including what passed for a legislature—the Governor’s Council. At the same time, the harsh anti-Catholicism that some have read into the Royal Proclamation was tempered by the practical necessities of rule and the willingness of Canadiens to fill the positions available to them.

COMPLEXITY AND AMBIGUITY

The impact of the Royal Proclamation on the Canadien population of Quebec is far from a simple question, then. And it cannot be reduced to ideologically driven certitudes, whether jovialist or miserabilist. Extrapolating from a literal and legalistic reading of the Proclamation is of little help, especially because even contemporary observers recognized that it was a very unclear and poorly drafted document. Far more important is the study of what actually occurred on the ground. Above all, such studies reveal the complex and ambiguous effects of the Royal Proclamation on the lives of Canadiens. 🍁

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The Haudenosaunee/Six Nations and the Royal Proclamation of 1763

THE COVENANT CHAIN RELATIONSHIP

The Haudenosaunee/Six Nations have a very different understanding of the Royal Proclamation of 1763. While the document stated the process by which the Crown would engage Native people in acquiring lands for settlement, it also asserted the sovereignty of the Crown over all people in North America. The Haudenosaunee would have considered this unilateral proclamation not applicable to them. It was contrary to the long-standing Covenant Chain relationship they had already agreed to with the Crown.

In order to fully grasp this assertion, one needs to understand the progression of wampum belt agreements over time—those agreements that preceded the Proclamation and those that followed. The Two Row wampum belt was formalized between the Haudenosaunee and the Dutch in 1613, as a foundation for the relationship between two sovereign nations, represented by their individual governments. In 1667, the British, having supplanted the Dutch in North America, sought to secure an alliance with the Haudenosaunee for trade purposes. They entered into the Covenant Chain, a relationship of “respect, trust and friendship.” As part of this relationship, the Haudenosaunee stipulated, “We will not be as Father and Son, but like Brothers.” Simultaneously, the French had established trading relationships with nations to the northeast.

BEAVER HUNTING GROUNDS

In 1701, the British entered into the Nanfan Treaty with the nations of the Great Lakes. This treaty established the “Beaver Hunting Grounds,” a territory that was acknowledged as shared among the nations that participated in the treaty. This included the Haudenosaunee. The Beaver Hunting Grounds was a terri-

BY KEITH JAMIESON

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They entered into the Covenant Chain, a relationship of “respect, trust and friendship.”

tory that spanned most of the Great Lakes and into the Ohio River Valley. By covering such an expanse of land, one could suggest that the Nanfan Treaty was an effort by the British to counter French ambitions of their domination over the fur trade and to assert British authority. Between 1667 and 1763, the Covenant Chain between the Haudenosaunee and the British was restored on several occasions. On each occasion, the Covenant was renewed following prescribed protocols.

There is a progression of ideas and concepts that flows from this series of significant events that speak to a Haudenosaunee perception of the Royal Proclamation of 1763. Their approach to this document is perhaps best evidenced by the Haudenosaunee’s noticeable absence (except for seven Seneca war chiefs) at the Treaty of Niagara in 1764. By 1764, the Seven Years War had ended with the defeat of the French. The successive renewals of the Covenant Chain and the British victory in the Seven Years War restored the Nanfan Treaty’s Beaver Hunting Grounds. The Royal Proclamation was issued by the Crown to address the French and to state the terms that would be taken to treaty with First Nations going forward. The Haudenosaunee respected the Two Row wampum belt by not interfering with how the British dealt with the French and

other native nations. Instead, the Haudenosaunee relied on the relationship established by the Covenant Chain.

PLEDGE OF THE CROWN BELT

This protocol was also respected during the American Revolution. Following the defeat of the British, the British compensated the Haudenosaunee as their allies with the Haldimand Deed lands. These lands were acquired from the Mississauga under the prescribed terms of the Royal Proclamation and awarded to the Haudenosaunee. As far as the Haudenosaunee are concerned, this act suggests that the Covenant Chain relationship was still intact as separate from the Royal Proclamation decades after the Proclamation was issued. In the War of 1812, the British and the Haudenosaunee once again invoked the Covenant Chain. Following the signing of the Treaty of Ghent, the Crown met with the Haudenosaunee and in the spring of 1815, presented them with the “Pledge of the Crown Belt,” which reiterated that all their possessions, rights, and privileges (land, etc.) would be restored to them as they had been before 1812.

The Crown in Canada has enshrined the Royal Proclamation of 1763 as a foundational constitutional document. In privileging this document, the Crown and the Canadian government effectively ignore those agreements and relationships that preceded and followed it. Today, the Haudenosaunee of the Grand River look to the Covenant Chain relationship and the Nanfan Treaty as informing negotiations with the Crown while making virtually no reference to the Royal Proclamation of 1763. 🍁

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The Royal Proclamation of 1763

Whereas We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to Our Crown by the late Definitive Treaty of Peace, concluded at Paris the Tenth Day of February last, and being desirous, that all Our loving Subjects, as well of Our Kingdoms as of Our Colonies in America, may avail themselves, with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation; We have thought fit, with the Advice of Our Privy Council, to issue this Our Royal Proclamation, hereby to publish and declare to all Our loving Subjects, that We have, with the Advice of Our said Privy Council, granted Our Letters Patent under Our Great Seal of Great Britain, to erect within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, stiled and called by the Names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows; viz.

First. The Government of Quebec, bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John to the South End of the Lake nigh Pissin; from whence the said Line crossing the River St. Lawrence and the Lake Champlain in Forty five Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly. The Government of East Florida, bounded to the Westward by the Gulph of Mexico, and the Apalachicola River; to the Northward, by a Line drawn from that Part of the said River where the Chatahouchee and Flint Rivers meet, to the Source of St. Mary's River, and by the Course of the said River to the Atlantick Ocean; and to the Eastward and Southward, by the Atlantick Ocean, and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly. The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six

1763, OCTOBER 7.

A Proclamation
George r.

Leagues of the Coast from the River Apalachicola to Lake Pentchartain; to the Westward, by the said Lake, the Lake Mauripas, and the River Mississippi; to the Northward, by a Line drawn due East from that Part of the River Mississippi which lies in Thirty one Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly. The Government of Grenada, comprehending the Island of that Name, together with the Grenadines, and the Islands of Dominico, St. Vincents and Tobago.

And, to the End that the open and free Fishery of Our Subjects may be extended to and carried on upon the Coast of Labrador and the adjacent Islands, We have thought fit, with the Advice of Our said Privy Council, to put all that Coast, from the River St. John's to Hudson's Straights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the Care and Inspection of Our Governor of Newfoundland.

We have also, with the Advice of Our Privy Council, thought fit to annex the Islands of St. John's, and Cape Breton or Isle Royale, with the lesser Islands adjacent thereto, to Our Government of Nova Scotia.

We have also, with the Advice of Our Privy Council aforesaid, annexed to Our Province of Georgia all the Lands lying between the Rivers Attamaha and St. Mary's.

And whereas it will greatly contribute to the speedy settling Our said new Governments, that Our loving Subjects should be informed of Our Paternal Care for the Security of the Liberties and Properties of those who are and shall become Inhabitants thereof; We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under Our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to Our Governors of Our said Colonies respectively, that so soon as the State and Circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of Our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and

Form as is used and directed in those Colonies and Provinces in America, which are under Our immediate Government; and We have also given Power to the said Governors, with the Consent of Our said Councils, and the Representatives of the People, so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Publick Peace, Welfare, and Good Government of Our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies: And in the mean Time, and until such Assemblies can be called as aforesaid, all Persons inhabiting in, or resorting to Our said Colonies, may confide in Our Royal Protection for the Enjoyment of the Benefit of the Laws of Our Realm of England; for which Purpose, We have given Power under Our Great Seal to the Governors of Our said Colonies respectively, to erect and constitute, with the Advice of Our said Councils respectively, Courts of Judicature and Publick Justice, within Our said Colonies, for the hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in Our Privy Council.

We have also thought fit, with the Advice of Our Privy Council as aforesaid, to give unto the Governors and Councils of Our said Three New Colonies upon the Continent, full Power and Authority to settle and agree with the Inhabitants of Our said New Colonies, or with any other Persons who shall resort thereto, for such Lands, Tenements, and Hereditaments, as are now, or hereafter shall be in Our Power to dispose of, and them to grant to any such Person or Persons, upon such Terms, and under such moderate Quit-Rents, Services, and Acknowledgements as have been appointed and settled in Our other Colonies, and under such other Conditions as shall appear to Us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and Settlement of our said Colonies.

And whereas We are desirous, upon all Occasions, to testify Our Royal Sense and Approbation of the Conduct and Bravery of the Officers and Soldiers of Our Armies,

and to reward the same, We do hereby command and empower Our Governors of Our said Three New Colonies, and all other Our Governors of Our several Provinces on the Continent of North America, to grant, without Fee or Reward, to such Reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject at the Expiration of Ten Years to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer, Five thousand Acres. — To every Captain, Three thousand Acres. — To every Subaltern or Staff Officer, Two thousand Acres. — To every Non-Commission Officer, Two hundred Acres. — To every Private Man, Fifty Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all Our said Colonies upon the Continent of North America, to grant the like Quantities of Land, and upon the same Conditions, to such Reduced Officers of Our Navy, of like Rank, as served on Board Our Ships of War in North America at the Times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to Our respective Governors for such Grants.

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds; We do therefore, with the Advice of Our Privy Council, declare it to be Our Royal Will and Pleasure, that no Governor or Commander in Chief in any of Our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also, that no Governor or Commander in Chief in any of Our other Colonies or Plantations in America, do presume, for the present, and until Our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands

beyond the Heads or Sources of any of the Rivers which fall into the Atlantick Ocean from the West and North-West, or upon any Lands whatever, which, not having been ceded to, or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under Our Sovereignty, Protection, and Dominion, for the Use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West, as aforesaid; and We do hereby strictly forbid, on Pain of Our Displeasure, all Our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without Our especial Leave and Licence for that Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever, who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands, which, not having been ceded to, or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the Indians, to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said Indians; in order therefore to prevent such Irregularities for the future, and to the End that the Indians may be convinced of Our Justice, and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of Our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, any of the said Indians should be inclined to dispose of the said Lands, that same shall be purchased only for Us, in Our Name, at some publick Meeting or Assembly of the said Indians to be held for that Purpose by the Governor or Commander in Chief of Our Colonies respectively, within which they shall lie: and in case they shall lie within the Limits of any Proprietary Gov-

ernment, they shall be purchased only for the Use and in the Name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose: And We do, by the Advice of Our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever; provided that every Person, who may incline to trade with the said Indians, do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively, where such Person shall reside; and also give Security to observe such Regulations as We shall at any Time think fit, by Ourselves or by Our Commissioners to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade; And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all Our Colonies respectively, as well Those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited, in Case the Person, to whom the same is granted, shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as those employed in the Management and Direction of Indian Affairs within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who, standing charged with Treasons, Misprisions of Treason, Murders, or other Felonies or Misdemeanours, shall fly from Justice, and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Tryal for the same.

Given at Our Court at St. James's, the Seventh Day of October, One thousand seven hundred and sixty three, in the Third Year of Our Reign.

God Save the King

London: Printed by Mark Baskett, Printer to the King's most Excellent Majesty; and by the Assigns of Robert Baskett. 1763. <http://www.aadnc-aandc.gc.ca/eng/1370355181092/1370355203645>.



Created by Articulate Eye Design, Saskatoon for J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), p. 68.

Parchment, wampum, letters, and symbols: Expanding the parameters of the Royal Proclamation commemoration

This year marks the 250th anniversary of the Royal Proclamation, but for some reason it does not mark the 250th anniversary of the action taken by Odaawaa Chief Pontiac and others. A piece of paper signed by King George III receives more attention than the actions of this chief and his colleagues. Pontiac loses out in public consciousness and exposure to a piece of parchment that does not have any Anishinaabe signatories.

The Royal Proclamation has been called the Magna Carta of Indian rights and Aboriginal title. However, it was not made *for* the Anishinaabeg (Ojibwe, Odaawaa, Potawatomi, Nipissing, Mississauga, Algonquin, Saulteux, and Toughkawmiwans) nor the Haudenosaunee, nor any other nations (Menominee, Sauk, Fox, Cree, Sioux, Ho-Chunk); it was made for the settlers and colonial officials. It is a legal document designed as a foundation on which the British could commence dispossessing Native American nations of their land, to affect their Manifest Destiny.

TENTATIVE STEPS TO PEACE: ANISHINAABE-BRITISH RELATIONS AFTER 1760

The Anishinaabeg did not readily accept English plans. In fact, Alexander Henry vividly recounted his first meeting in 1761 with the Michilimackinac Ojibwe Chief Minavavana (Minwewe aka Gichi-Ojibwe). Minavavana clearly stated to Henry:

Englishman, your king has never sent us any presents, nor entered into any treaty with us, wherefore he and we are still at war; and until he does these things we must consider that we have no other father, nor friend among the white men than the King of France.¹

BY ALAN OJIG CORBIERE,
BNE DOODEMAN, MCHIGIING NJIBAA

Alan Corbiere is the Anishinaabemowin Revival Program Coordinator at Lakeview School, M'Chigeeng First Nation.

It is a legal document
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In September 1761, Sir William Johnson, the newly appointed superintendent of Indian Affairs for northern British North America, had come to remedy the situation and treat with the Anishinaabeg at Detroit. Sir William, escorted by Mississauga Chief Wabbi-commicott, attempted at that time to have 13 nations, including the Odaawaa, Ojibwe, Huron, and Potawatomi, enter into that “antient [*sic*] Covenant Chain formerly existing between us.”²

At this point, the Odaawaa Chief, Macatepilesis [Makatepinesi], the Huron Chief, Anaiaasa, the Mississauga Chief, Wabbi-commicott, and others addressed the British as “Brother,” not “Father.” Each of these chiefs professed their fidelity to the British and claimed that they “are all determined as one man to hold fast by the Covenant Chain forever.”³ It seemed that the British had

concluded a treaty with the Anishinaabeg that required the British to pay tribute to the owners of the land by way of giving presents annually. These efforts by Sir William Johnson, however, were unravelled by General Jeffrey Amherst when he ordered that the “Indian presents” be discontinued following the British Conquest of New France.

PONTIAC'S WAR AND THE TREATY OF NIAGARA

By 1763, the Anishinaabeg's dissatisfaction with British policy soon turned to anger and boiled over into the war that historians often call Pontiac's Rebellion. The Anishinaabeg and many other nations captured a number of forts; but Pontiac and the confederacy were unable to take over Fort Detroit and Fort Pitt. Despite this, the resistance sent a powerful message to the British—a message that forced the British to adjust their policies. Sir William Johnson, cultural intermediary par excellence, advised his superior, General Thomas Gage, in February 1764, that to effect a peace, the British must use the diplomatic process of the nations,

[a]t this Treaty wheresoever held we should tye [*sic*] them down according to their own forms of which they take the most notice, for Example by Exchanging a very large belt with some remarkable & intelligible figures thereon, Expressive of the occasion which should be always shewn at public Meetings, to remind them of their promises. ... The use of frequent Meetings with Indns [*sic*] is here pointed out, They want the use of letters, consequently they must frequently be reminded of their promises, & this custom they keep up strictly, amongst themselves,

Parchment, wampum, page 18

Parchment, wampum

continued from page 17

since the neglect of the one, will prove a breach of the other.⁴

While Johnson stated that the purpose of the frequent meetings was to remind the Anishinaabeg of their promises, it actually worked the other way too: the Anishinaabeg took the opportunity to remind the British of their promises.

The intelligible symbols woven in wampum were two men holding hands, flanked by links of a chain with the date 1764. Johnson assembled representatives from many nations at Niagara in July 1764 and, on behalf of King George III, entered into a treaty relationship with them. At the conclusion of this meeting, Johnson distributed medals that the Anishinaabeg later used as a mnemonic device of the treaty proceedings. The various nations, on their part, delivered calumet pipes, wampum, and beaver blankets to Johnson.

In Johnson's speech to the assembled nations, he did not directly translate the Royal Proclamation. Instead, he used figurative speech and metaphorical language. Johnson spoke of an unextinguishable fire, a poker, an unending supply of wood, a mat to recline upon, and a ship that would always be filled with "warmth" or necessary goods. Johnson also compared the British nation, and the King, to the rising red sun, represented emblematically by the British soldiers wearing red. He also—unequivocally—stated that the King acknowledged that the nations owned the land and offered the nations "protection" from unscrupulous traders and speculators.

THE LEGACY OF THE TREATY OF NIAGARA

Since the delivery of the wampum at Niagara, this agreement has been "always shewn at public Meetings," and recited in council, and therefore, considered an active, living treaty. Note that the councils did not use a printed copy of the Royal Proclamation; the Anishinaabeg's "want of letters" dic-

It has only been a recent event that the chiefs, based on advice of lawyers, have used the Royal Proclamation as a legal mechanism, instead of the wampum belts, thus supplanting the "records of our old men."

tated the use of memory and mnemonic devices. The British, and the current successor Canadian government, privileges written documentation over Anishinaabe belts, pipes, and records. It is only recently that the courts have started to admit such important items as evidence. In 1852, Ojibwe Chief Shingwaukonse clearly declared the paramount importance of these items to the Anishinaabe understanding of the treaty relationship. On hearing of the discontinuation of gifts from the British, he pointedly stated:

Father—We salute you, we beg of you to believe what we say for though we cannot put down our thoughts on paper as you our Wampums and the records of our old men are as undying as your writings and they do not deceive.⁵

For years after 1852, the chiefs tried to have this foundational treaty (known as the Covenant Chain) abided by. The chiefs submitted numerous petitions, which fell on deaf ears. Eventually, the original belts disappeared, and the chiefs no longer used the belts in "public meetings" with colonial officials. It has only been a recent event that the chiefs, based on the advice of lawyers, have

used the Royal Proclamation as a legal mechanism, instead of the wampum belts, thus supplanting the "records of our old men."

In the summer of 2004, the 240th anniversary of the treaty known as the Covenant Chain, I showed replica belts to the respected and revered elder Akiwinini to see whether he had heard anything about this treaty and these belts. I held them out to him but he just pointed and said, "Maybe that is why we have had such a hard time." 🍁

NOTES

1. Milo Milton Quaife, ed., *Alexander Henry's Travels and Adventures in the Years 1760–1776* (Chicago: Lakeside Press, 1921), 45.
2. LAC RG 10, vol. 6, Proceedings of a Treaty held at Detroit, September 9, 1761.
3. Ibid.
4. *The Papers of Sir William Johnson*, vol. IV, p. 330, Johnson to Gage, February 19, 1764.
5. Speeches of Chiefs in response to hearing the discontinuation of Indian Presents, Manitowaning 1852 [LAC RG 10, vol. 198, pt. 1, nos. 6101–6200, pp. 116405–116408].



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Reflections on 1763 in Far Northern Ontario

FRAUGHT RELATIONSHIPS

The tensions in the Royal Proclamation have ebbed and flowed over the past 250 years and, of course, are still with us today. The treaty relationships that unite First Peoples with other Canadians are inherently problematic, as a result of our differing understandings (or perhaps outright ignorance) of history. Notwithstanding the Proclamation, and the gubernatorial proclamations that reinforced it, many of the early treaties in what is now Ontario were fraught with dissatisfaction on the part of First Peoples, even before 1812. After Confederation, treaty-makers sometimes resorted to almost take-it-or-leave-it bargaining. Following the 1888 *St. Catherine's Milling* decision, outright deception sometimes led to diametrically opposed written and oral versions of the treaty relationship. The respectful principles embodied in the Proclamation languished for decades.

According to the Proclamation, Indigenous lands could be acquired only if the occupants were “inclined to dispose of [them] at some public Meeting or Assembly of the said Indians, to be held for that Purpose”—implying that free, informed, prior, and collective consent were essential. In 1794, Sir Guy Carleton, 1st Baron Dorchester, issued additional instructions. Treaty deliberations must be carried out “with great Solemnity and Ceremony according to the Ancient Usages and Customs of the Indians, the Principal Chiefs and leading Men of the Nation or Nations to whom the lands being first assembled.” If the governor himself could not attend, he could appoint two representatives. The superintendent general of Indian affairs or his deputy was to use “such Interpreters as best understand the Language of the Nation or Nations treated with.” Treaties were to be signed in triplicate “in Public Council” only “[a]fter explaining to the Indians the Nature and extent of the Bargain, the situation and bounds of the Lands and the price

BY JOHN S. LONG

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The treaty relationships that unite First Peoples with other Canadians are inherently problematic, due to our differing understandings (or perhaps outright ignorance) of history.

to be paid.” The Indigenous party was to be given one copy of the treaty, together with any “Descriptive Plans”; “by that means [they] will always be able to ascertain what they have sold and future Uneasiness and Discontents [will] be thereby avoided.”

“OUTSIDERS”

The Proclamation was enhanced in a very different way after 1835. A cluster of assimilative doctrines, formulated by the British House of Commons Select Committee on Aborigines, started to be applied throughout Britain’s settler colonies. Aboriginal peoples would be treated as “outsiders” who needed to become integrated into modern society as labourers, domestic servants, or farm hands. They would be regulated through separate laws until they were ready to be citizens. And so long as they were wards of the government, they would need government-appointed “protectors.” Maintaining order and control was paramount. Aboriginal children would be radically changed through

schooling, heavily steeped in Christianity. Boarding schools (later called residential schools) and child welfare laws were employed to facilitate what we now recognize as genocide in this context.

In 1871, when the first of the post-Confederation treaties was signed, very different principles of consent were at work. Adams G. Archibald, a Father of Confederation and at different times lieutenant governor of Manitoba and Nova Scotia, became frustrated on his third day of treaty-making at Lower Fort Garry. He told spokesmen for the one thousand people before him:

[W]hether they wished it or not, immigrants would come in and fill up the country; that every year from this one[,] twice as many in number as their whole people there assembled would pour into the Province, and in a little while would spread all over it, and that now was the time for them to come to an arrangement.

In this context, it is no surprise that the treaty-signing was delayed over how to select and allocate reserves. “In defining the limits of their reserves,” Archibald wrote, “they wished to have about two-thirds of the Province.” Sharing the land, in Aboriginal eyes, apparently meant keeping most of it, so they could maintain their cultures and economies.

THE PLEASURE OF THE CROWN

When the highest court in the British Empire decreed in *St. Catherine's Milling and Lumber Company v. The Queen* in 1888 that Aboriginal title depended solely on the pleasure of the Crown, there was no real incentive to explain the full nature of Treaty Nos. 8 through 11 to the Indigenous peoples those treaties sought to encapsulate. With or without their signatures on the parchment, the Crown could erase Aboriginal title at will. And consent could be manufactured.

Reflections, page 20

By 1905, when Treaty No. 9 was signed, treaty-making meant hours, not days (or years, in the case of Treaty No. 3). At Fort Hope, a question from Moonias, a prominent member of the local Anishinaabe community, suggests that the notion that they would “cede, release, surrender and yield up” their lands forever was not understood:

He said that ever since he was able to earn anything, and that was from the time he was very young, he had never been given something for nothing; that he always had to pay for everything that he got, even if it was only a paper of pins. “Now,” he said, “you gentlemen come to us from the King offering to give us benefits for which we can make no return. How is this?”

Reserve locations, and perhaps their size, were discussed only after the treaty was signed. On the parchment that was signed, a blanket extinguishment clause was substituted for any careful delineation of any lands surrendered. At Marten Falls, William Whitehead signed the treaty—but afterward, he twice spoke out, demanding a reserve for his small band for many miles on both sides of the Albany River. “[I]t was put forcibly before them,” wrote Daniel George MacMartin, a treaty commissioner nominated by Ontario, “that they could hunt wherever they pleased.”

That is not what the parchment said.

One question always preceded treaty-signing. What about our hunting, trapping and fishing?

In contrast to this oral explanation, the parchment said that their hunting, trapping, and fishing could be curtailed in two ways. First, it was subject to regulation—that is, by the laws of the Dominion. Second, harvesting would not be permitted on lands, which might one day be “taken up” for mining, forestry, railroads, town sites, and the like.

Preceding the marks that signify Indigenous concurrence with the treaty, at each of the six locations where Treaty No. 9 was signed that summer, are the words “after having been first interpreted & explained.” A different interpreter was used at each signing. Prior to signing, the treaty was explained only to the few who would sign. Even with these limitations, one question always preceded treaty signing. What about our hunting, trapping, and fishing? The answer—the promise—always given, that these activities would not be curtailed. This assurance meant much more than feeding one’s family. It meant that each

family will have unmolested use of its traditional territory, will be able to educate its children in the ancestral language, and will be allowed to collectively resolve its conflicts.

AN ORAL TREATY

What was the purpose of Treaty No. 9? The commissioners simply said that the King, who wished the First Peoples to be happy and prosperous, had sent them. As a sign of his good intentions, there was a feast of bannock and tea, a flag for their chief, and cash—\$8 upon signing the treaty, and thereafter \$4 per person in perpetuity. No mention was made of the *Indian Act*. Treaty No. 9 was not explained at a public meeting. There was little concern for the quality of the interpreters—who do not seem to have been asked to explain the words on the parchments. The Indigenous signatories were not given a copy of it; and there was no plan or map to indicate what lands had been surrendered. The Proclamation was seemingly ignored. If the King’s red carpet was rolled out in 1763, by 1905 it was rolled up and left under a desk in Ottawa at treaty time.

Yet, it seems that there was consensual agreement. An *oral* treaty of peace and friendship was concluded, signified by gift-giving and explicitly guaranteeing continued use of ancestral lands. This appears to be what was offered—and accepted. 🍁



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“The said Lands ... shall be purchased only for Us”: The effect of the Royal Proclamation on government

FRAMEWORK FOR LAND RIGHTS

The Royal Proclamation is not an ancient document but it has remained in effect for 250 years, even if it is not well known by Canadians. It became the framework for treaty-making in relation to land rights in the decades after 1763, and as such it is a core document in Crown–First Nations relations. The principles that it established underlie a large part of the work of Aboriginal Affairs and Northern Development Canada and the Ontario Ministry of Aboriginal Affairs (MAA). Simply put, there would not be any territorial treaties, land claims, or ministries of Aboriginal affairs without the Royal Proclamation.

In the Royal Proclamation, then King George III claimed sovereignty over a large territory in North America but went on to say that “such Parts of Our [British] Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them [First Nations], or any of them, as their Hunting Grounds ...” The document continues, “if, at any Time, any of the said Indians should be inclined to dispose of the said Lands, that same shall be purchased only for Us [the Crown], in Our Name, at some publick Meeting or Assembly of the said Indians to be held for that Purpose by the Governor or Commander in Chief of Our Colonies ...”¹ In other words, the Proclamation recognizes First Nations rights to lands not yet ceded, but also establishes a framework for dealing with those rights. First Nations’ lands could only be sold to representatives of the Crown, at public meetings called for that purpose. The Royal Proclamation created legal obligations on Crown officials: a strict process had to be followed for transferring rights in land from First Nations to the Crown and settlers.

BY BRANDON MORRIS
AND JAY CASSEL

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Land claims arise from one of two circumstances: the Crown’s failure to fulfill its obligations according to the terms of a specific treaty; or its failure to abide by the terms of the Royal Proclamation.

These legal obligations, which have since been enshrined in section 25 of the *Canadian Charter of Rights and Freedoms*, have been the foundation of treaty-making in Canada since 1763.

In his book *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada*, J.R. Miller has shown that while the Crown and First Nations concluded commercial compacts, military alliances, and treaties of peace and friendship since the early 17th century, the Royal Proclamation ushered in a new phase of treaty-making. The territorial treaties signed since the Royal Proclamation provided for the exchange of First Nations lands for one-time pay-

ments (Upper Canadian Treaties) or a combination of reserves, annuity payments, and one-time payments of money and provisions (the Robinson Treaties of 1850 and the Post-Confederation Treaties).² Many of these treaties also guaranteed hunting, fishing, and gathering rights to First Nations. As a result, First Nations have a continuing interest in off-reserve Crown lands.

THE MINISTRY’S FUNCTION

One of the most important functions of the Ministry of Aboriginal Affairs is to address First Nations land claims. While the *Constitution Act* of 1867 assigned to the federal government exclusive law-making authority for “Indians, and Lands reserved for the Indians,” including the power to make treaties with First Nations, Ontario becomes involved in land claims if it was responsible for the actions giving rise to a claim, if it benefited from those actions, or if it holds Crown land that may be involved in the settlement of a claim. Land claims arise from one of two circumstances: the Crown’s failure to fulfill its obligations according to the terms of a specific treaty; or its failure to abide by the terms of the Royal Proclamation. The Crown may not have lived up to its obligations under a specific treaty if it did not set aside the proper quantity of land to which a First Nation was entitled or if agents of the Crown unlawfully took land through the construction of a dam that flooded reserve land, or created a right-of-way for a highway, railway, or power line without obtaining informed consent.

Instances in which the Crown has not fulfilled its obligations under the Royal Proclamation give rise to what are called *comprehensive claims* and,

The said lands, page 22


The said lands continued from page 21

when accepted by Canada and the province concerned, result in negotiations to establish modern-day treaties. Examples in which the Proclamation was ignored can be found across the country—in British Columbia (British Columbia Treaty Commission), Quebec (the James Bay and Northern Quebec Agreement), and in the Maritime provinces. The Crown's failure to follow the Proclamation in Ontario's Ottawa River Valley has resulted in the Algonquin Land Claim, which has led to negotiations aimed at achieving the province's first modern-day treaty.

Although the Royal Proclamation of 1763 is clearly a colonial document, establishing a process by which the Crown could acquire First Nations lands, it has also been fundamental to maintaining a relationship between the Crown and First Nations in which Aboriginal rights are acknowledged and taken seriously. In the United States where, after the Revolution, the Proclamation no longer applied, the treaty-making process unfolded differently, and the United States fought a long succession of "Indian Wars." In Canada, the relationship between the Crown and First Na-

Although the Royal Proclamation of 1763 is clearly a colonial document, establishing a process by which the Crown could acquire First Nations lands, it has also been fundamental to maintaining a relationship between the Crown and First Nations in which Aboriginal rights are acknowledged and taken seriously.

tions has been preserved in binding territorial treaties because of the Royal Proclamation. While this relationship has shifted to one of inequality in which settler interests have largely prevailed, there nevertheless continues to be a relationship anchored in this historic document. Since 1982, the *Canadian Charter of Rights and Freedoms* has incorporated the promises of 1763 in its terms, and courts have made a succession of rulings obliging the Crown to respect its undertakings. We are presented, 250 years later, with an oppor-

tunity to renew the Crown–First Nations relationship. 

NOTES

1. "Royal Proclamation of 1763": <http://www.aadnc-aandc.gc.ca/eng/1370355181092/1370355203645>, accessed July 31, 2013.
2. J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), chapter 3.



Much ado about nothing: The Royal Proclamation on the edge of empire

On October 7, 1763, only months after signing the Treaty of Paris and ending the Seven Years' War, Britain sought to confirm sovereignty over its newly acquired territories in North America through a Royal Proclamation. "The Royal Proclamation"—as it is now known—was a document designed to address the challenges born of conquest. The exigencies of an expanded empire necessitated imperial directives to bring new peoples and lands into the British imperial fold. In short, the Royal Proclamation prescribed a series of changes that attempted to redefine North America.

A PIVOTAL MOMENT IN THE HISTORY OF NORTH AMERICA

For many historians, the Proclamation has become a crucial turning point where broader continental discussions of empires, colonies, and peoples give way to national discourses.¹ In Canada, there has been an overwhelming focus on one particular aspect of the Proclamation, the creation of the colony of Quebec. The new colony signalled an end to French North America and the beginning of two national historiographies—one for Canada and one for Quebec. American historiography, on the other hand, has focused primarily on the creation of Indian Territory in the trans-Appalachian West as part and parcel of the growing tensions that led to the American Revolution. Much like their English Canadian counterparts, American historians see French North America as having disappeared after 1763. It was replaced by a westward-marching American Frontier.²

A VIEW TO THE WEST: THE PAYS DES ILLINOIS

Looking at French settlements in the Illinois Country offers an alternative point of reference from which to understand the effects of the Royal Procla-

BY ROBERT ENGLEBERT

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The Proclamation has become a crucial turning point where broader continental discussions of empires, colonies and peoples give way to national discourses.

mation and the consequences of imperial change in North America. While Quebec and Indian Territory received considerable attention from British authorities, the villages of the Illinois Country were mostly forgotten. In fact, the Illinois Country was not mentioned at all in the Proclamation. Yet at the western edge of the new Indian Territory, a group of five villages dotted the east bank of the Mississippi between the Ohio and Illinois rivers. Together they made up the most concentrated French settlement in what had been known during the French Regime as the *pays des Illinois*.³ Here, on the periphery of the British Empire, the effect of the Royal Proclamation was negligible.

It took nearly two years following the 1763 Treaty of Paris for the British to claim this newly acquired territory. When Captain Thomas Stirling and his men finally arrived on the banks of the Mississippi at Fort de Chartres in 1765, they found Louis St. Ange de Bellerive governing a French-speaking popula-

tion as if nothing had changed. The Royal Proclamation's directive to extend British law to the colony of Quebec did not apply to French settlements further west. General Thomas Gage's address—delivered to the inhabitants of the Illinois Country by Captain Stirling in 1765—made no mention of the rule of British law, the creation of a civil government, or the maintenance of a military regime. It simply reiterated the protections afforded under the Treaty of Paris, such as freedom of religion, the right to relocate, and a provision for an oath of allegiance. Thus, French law continued to reign despite British imperial rule. British attempts to handle local disputes and establish English courts were undermined by a revolving door of commandants and resistance from French settlers and merchants. In many ways, day-to-day life in the Illinois Country remained unchanged.⁴

THE ROYAL PROCLAMATION'S LIMITS

French settlements in the Illinois Country undermined the Royal Proclamation. Established French settlements dispelled the myth of Indian Territory as a settler-free zone with limited and tightly controlled trade. Moreover, *Canadiens* continued to migrate to the Illinois Country and marry into established families, which served to maintain the French character of many of the villages.⁵ Trade between the Illinois Country and Canada persisted, thanks in large part to Illinois merchants with ties to Aboriginal nations throughout the interior of North America and traders at Michilimackinac, Detroit, and Montreal. The British trade licence system initially slowed the southern fur trade, but it ultimately failed to stem the flow of goods and people to the Illinois Country. Hundreds of fur trade voyageur contracts signed in Montreal confirmed the

Much ado about nothing, page 24

re-emergence of robust trade with the Illinois Country in the years following the Proclamation.⁶ Merchants travelled back and forth between the St. Lawrence and Mississippi and helped families keep in touch with loved ones and settle business over long distances.⁷

The Royal Proclamation may have redrawn the imperial map, but it did not, in one fell swoop, break the historic French socio-economic linkages between the Illinois Country and Canada.⁸ Nor did it effectively assert British control over new subjects at the edge of empire. The Proclamation projected a new vision of empire with which colonial administrators and subjects were left to grapple. Examining the Illinois Country and French colonial continuity provides an opportunity to break away from our narrow national discourses, broaden our historical gaze, and ask new questions about the relationship between imperial directives and colonial historical realities. 🍁

NOTES

1. Allan Greer, "National, Transnational, and Hypernational Historiographies: New France Meets Early American History" *Canadian Historical Review* 91, no. 4 (December 2010): 698-699; Robert

Englebert, "Mental Mapping and the French River World in North America, 1763-1805," PhD diss., University of Ottawa, 2010; Bethel Saler and Carolyn Podruchny, "Glass Curtains and Storied Landscapes: Fur Trade Historiography in Canada and the United States," in *Bridging National Borders in North America: Transnational and Comparative Histories*, ed. Andrew Graybill and Benjamin Johnson (Durham, NC: Duke University Press, 2010), 275-302.

2. See Jay Gitlin, *The Bourgeois Frontier: French Towns, French Traders & American Expansion* (New Haven, CT: Yale University Press, 2010).

3. There was also Ste. Geneviève on the west bank of the Mississippi, but it became part of Upper Louisiana with the Treaty of Fontainebleau in 1762.

4. Colin G. Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (Oxford: Oxford University Press, 2006), 131.

5. Englebert, op. cit.

6. Ibid.

7. Robert Englebert, "Merchant Representatives and the French River World, 1763-1803" *Michigan Historical Review* 34, no. 1 (Spring 2008): 63-82.

8. Although I have focused here on French settlements, equally important ties to Spanish Louisiana and Aboriginal peoples throughout the interior of North America make this a broader continental history. Robert Englebert and Guillaume Teasdale, *French and Indians in the Heart of North America, 1630-1815* (Michigan State University Press / University of Manitoba Press, 2013), xi-xxxiii.

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The life and times of the Royal Proclamation of 1763 in British Columbia

[The Royal Proclamation's] force as a statute is analogous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories. It follows, therefore, that the *Colonial Laws Validity Act* applied to make the Proclamation the law of British Columbia.

—Hall J, in *Calder et al. v. Attorney-General of British Columbia*, [1973] SCR 313, at 395

This quotation from the dissenting opinion of Justice Emmett Hall in *Calder et al. v. Attorney-General of British Columbia* represents the high point of a long struggle by First Nations for recognition of the Royal Proclamation of 1763 as part of “the law of British Columbia.” For over 100 years the Proclamation has played an important, though hotly contested, role in what was known until recently as the “British Columbia Indian Land Question.”

EARLY RECOGNITION

The history of the Proclamation in BC began shortly after confederation with Canada, when the Dominion government disallowed the new province's *Crown Lands Act*. In recommending this course of action, the Dominion minister of justice explicitly pointed out BC's failure, in direct violation of the policy set out in the Royal Proclamation, to protect or even to acknowledge Indian land rights in the legislation. A slightly amended version of the statute was approved, and the Dominion government declined to pursue the matter of the Proclamation's legal status in BC.

British Columbia's Aboriginal leaders became aware of the Proclamation early in the 20th century, and quickly grasped its significance. In an interview

BY NEIL VALLANCE
AND HAMAR FOSTER

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in June 1910, a reporter for the *Victoria Daily Colonist* asked some Nisga'a elders why they thought that their legal case for Aboriginal title was strong. There were many reasons, they said, and one of the most important was the Royal Proclamation of 1763. “[T]he King is on our side,” they said, and then quoted from the Proclamation, noting that it “had the effect and operation of a statute of the Imperial Parliament.” The astonished reporter asked how they knew all this when he, a white man, did not. One reason, they said, was that their lawyer was “the very best in Canada”—referring almost certainly to J.M. Clark, KC, of Toronto.

Therefore, it is hardly surprising that the Proclamation is quoted at length in the Cowichan Petition of 1909 and in the Nisga'a Petition of 1913, both of which were taken to the Privy Council

in England by Arthur E. O'Meara, a lawyer and Anglican priest who worked with Clark and eventually replaced him as counsel. The Proclamation continued to be cited and relied on for another 17 years in what amounted to a full-fledged campaign for Aboriginal title.

DISMISSAL

Then, in 1927, a parliamentary committee dismissed the land claims of the Allied Indian Tribes of British Columbia and Parliament amended the *Indian Act* to make raising funds for this cause effectively illegal, actions that drove the campaign underground. The Great Depression and the Second World War ensured that the BC “Indian Land Question” stayed on the back burner. When Aboriginal veterans returned from the battlefields, the issue resurfaced, especially once the prohibition against funding was rescinded in 1951. Indeed, the Proclamation dominated the new campaign for title, which got under way in the late 1950s.

RENEWAL

In the *White and Bob* case, Thomas Berger was the first lawyer to argue in court that the Proclamation applied to BC. In 1964, one Court of Appeal judge decided in favour of the Proclamation, one against, and the third did not mention it, leaving its status undecided. Berger repeated his arguments in 1973, this time before the Supreme Court of Canada in the *Calder* case. Three justices decided in favour of the Proclamation, and three against. Once again, its status remained in limbo. In many respects, the point became moot after the 1984 Supreme Court of Canada decision in the *Guerin* case, in which the court decided that Aboriginal title exists at common law, independently of the Proclamation. Ironically, this is a con-

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clusion that lawyers for the Nisga'a and the Allied Tribes had reached three-quarters of a century earlier. In fact, in 1909, even the lawyer retained by Ottawa in response to the Cowichan Petition was of this view. The wheels of justice grind exceedingly slow.

The fight did not end there, however. Many still believed that a favourable court decision had the potential to advance the cause of Aboriginal title in BC. In the 1991 trial decision in the *Delgamuukw* case, Chief Justice McEachern acknowledged that "[a] great deal of interesting evidence was adduced about this Proclamation and I estimate almost one-quarter of the arguments of counsel was devoted to this question." In the end, he concluded, "the Royal Proclamation, 1763 has never had any application or operation in British Columbia." On appeal, the Supreme Court of Canada declined to engage with the

British Columbia's Aboriginal leaders became aware of the Proclamation early in the 20th century, and quickly grasped its significance.

issue in its 1997 decision, merely noting that "although aboriginal title was recognized by the *Proclamation*, it arises from the prior occupation of Canada by aboriginal peoples" (per Lamer CJ). That statement effectively ended the fight, leaving the legal status of the Proclamation in BC forever undecided.

A NEW ROYAL PROCLAMATION?

The continuing symbolic power of the Proclamation was highlighted in 2009, when the provincial government of Premier Gordon Campbell and the First

Nations Leadership Council (composed of the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs) retained a small team of historians and lawyers to draft a new Royal Proclamation to accompany proposed legislation recognizing Aboriginal title in the province. The new Proclamation was intended to supplement and complement the original one, and was to be proclaimed by BC's first Aboriginal lieutenant governor, Steven Point. Although this project did not come to pass, the story of the Proclamation in BC may not be over. 🍁

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The spirit of 1763: The Royal Proclamation in national and global perspective

It is an auspicious moment for Canadians to revisit one of the founding documents in Canada's legal and political history. After a century of near neglect from politicians, bureaucrats, and lawyers, the last 40 to 50 years have seen this document brought to new life and vigour. The renewal of interest in the Proclamation, however, was not solely a domestic event. The Royal Proclamation re-emerged in First Nations and Canadian legal cultures at a time when Indigenous rights became increasingly important around the globe. Though not anchored in the Royal Proclamation of 1763 per se, countries around the world grappled with similar histories of promises and neglect. As we look forward, beyond this 250th anniversary, it seems prudent to situate this document in the broader context, asking the question: "What does the Royal Proclamation mean for Canadians today?"

NORTH AMERICAN CONTEXT

Issued at a time of fundamental transition in North American affairs—with the French defeated, the British in the ascendency, and the real prospect of seemingly endless conflicts on the continent coming to an end—the Royal Proclamation of 1763 promised respect for Indigenous peoples and a commitment to deal honourably with First Nations in the future. While politicians and business leaders in some of the British colonies found the Proclamation constraining, there was broader agreement that negotiating treaties before occupying Indigenous lands would prevent the violence that attended the western advance of the settlement frontier.

The start of the American Revolution and the British–American tensions that ended in the War of 1812 prevented the stepwise implementation of the Proclamation. The newly founded United States of America largely ignored this particular part of its British legal leg-

BY KEN COATES

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The Royal Proclamation re-emerged in First Nations and Canadian legal cultures at a time when Indigenous Rights became increasingly important around the globe.

acy, sparking conflict with Indigenous peoples as its population surged westward. In the remaining British North American colonies, the Robinson Superior Treaties of the mid-19th century captured some of the spirit of the Proclamation, but faltered in implementation. The new Dominion of Canada, more for financial and logistical reasons than from a commitment to the Proclamation, negotiated treaties in western Canada as a prelude to settling the frontier. After a weak start under Governor James Douglas, the Colony of British Columbia and the province that followed in 1871 brushed aside on specious legal grounds any political or moral obligation to sign treaties with First Nations peoples west of the Rockies.

Much later, beginning in the early 1970s, with the Yukon Native Brotherhood (later the Council for Yukon First

Nations) and the Nisga'a in northwestern British Columbia, the Government of Canada rediscovered its commitment to signing treaties with Indigenous peoples. The modern treaties bear scant resemblance to the 19th-century accords that started the process. Today's lengthy and complicated legal culture shares little in common with the general and superficial agreements of the Robinson Treaties or the Numbered Treaties on the prairies and northern Ontario. In a technical manner, the modern treaties reflect an effort to exercise the honour of the Crown, and to bring contemporary Canadian public policy and Aboriginal–newcomer relations in line with both the spirit of the Royal Proclamation and the requirements of Canadian law.

As the events associated with the Idle No More movement, the growing frustration among Aboriginal leaders, and the 2012-13 threats of more aggressive Indigenous protests reveal, however, First Nations, Metis, and Inuit peoples clearly do not believe that this country has honoured its historical commitments or captured in law and practice the aspirations articulated in the Royal Proclamation. The non-Aboriginal backlash against assertions of Indigenous rights (which, incidentally, are those defined by British and Canadian law and not the rights that Indigenous peoples believe arise from their cultural and legal traditions) suggests that a rapprochement remains a far way off. The Catalonia standoff by the Six Nations in southern Ontario and Chief Theresa Spence's winter 2012-13 fast in Ottawa produced bitter critiques of Aboriginal aspirations and tactics. With the exception of the territorial North, where modern treaties have been generally accepted as establishing new political realities, non-Indigenous frustration with Aboriginal rights, claims, and tactics appears to be increasing rather than declining.

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Meaningful partnership with Aboriginal peoples is not a technical or legal accomplishment but rather a cultural one.

GLOBAL CONTEXT

Canada is not alone in its struggles to find common ground with Indigenous and other marginalized peoples. Nor is the Royal Proclamation the only example of a colonial or national administration establishing lofty aspirations for cultural cooperation and peaceful co-existence. The 1840 Treaty of Waitangi, effectively the founding document for the nation of New Zealand, articulated a commitment to Maori-Pakea (newcomer) cooperation that languished for almost 150 years until a national commitment was rediscovered in the late 20th century. The newly established Communist government of China offered strong constitutional assurances of respect for minority languages and cultures, and then imposed a state-driven system of cultural standardization. The newly independent state of Burma, in its 1947 constitution, established a foundation for nation-building that recognized the territorial and cultural aspirations of tribal peoples. This commitment, following a global pattern, was followed by decades of neglect, attempted assimilation, and cultural genocide.

Indeed, Indigenous peoples and cultural minorities worldwide have had a rough ride over the last 200 years. In country after country, regardless of legal assurances of land and cultural rights, Aboriginal communities and minorities found themselves dominated by national governments, often with the aid of religious organizations, marginalized by economic and land acquisition processes, and overwhelmed by the cultural forces of the dominant societies. Where possible, these peoples have held onto their languages, traditions, life ways, and even their lands, typically at the cost of a great deal of

suffering, cultural loss, and social dislocation. The passage of time has not been easy. Written assurances of partnership, cooperation, and fair treatment have rarely provided much protection.

LESSONS FOR CANADA

Canada faces two fundamental challenges as it contemplates the 250th anniversary of the Royal Proclamation. The first is the technical requirement that the country honour British and Canadian law by ensuring that contemporary practices are aligned with the constitutional and legal rights of Indigenous peoples. This is an ongoing and costly process whereby Aboriginal peoples are often forced to turn repeatedly to the courts in order to force government compliance. That there is a modern treaty process still under way in Canada, with a significant number of impressive and substantial agreements already concluded, indicates that the Canadian government is moving slowly, and usually reluctantly, toward ensuring that the nation's formal obligations are met.

The second challenge is much more formidable, and moves away from the technicalities of the law. The underlying spirit of the Royal Proclamation recognized the legitimacy and partnership of Indigenous peoples with colonial settlers, just as the Treaty of Waitangi did in New Zealand and other founding constitutional documents have done elsewhere around the globe. The cultural, social, and economic imperatives of recognition, acceptance, and cooperation are, clearly, even harder to achieve. Dominant cultures expect migration to be the norm. They often struggle to accept difference and peaceful co-existence. Assumed superiority is the hallmark of dominant socio-polit-

ical groups, achieved as much through education, social relationships, hiring practices, and cultural norms as through political and legal action.

CAN CANADIANS RECAPTURE THE SPIRIT OF 1763?

Recapturing the underlying meaning of the Royal Proclamation is not simply a task for lawyers, judges, and politicians. Meaningful partnership with Aboriginal peoples is not a technical or legal accomplishment but rather a cultural one. To honour the spirit of 1763 requires Canadians to move away from the narrow focus on the law and stop seeing Aboriginal people simply as poor and disadvantaged citizens. Instead, Canadians must recognize that Indigenous peoples have rich and vibrant cultures and are true partners in Confederation. Far from leaving the task of reconciliation to the courts and the legislatures, Canadians need to reach out to Indigenous Canadians in friendship and a sincere desire for cultural understanding and sharing.

The national discussion of the Royal Proclamation of 1763 has focused on legal and constitutional obligations, for the simple reason that social, cultural, and economic cooperation continues to remain elusive. For Canadians to rediscover the spirit of 1763, they must first realize the vital role that First Nations, Metis, and Inuit people played in this country's history. Indigenous peoples must be embraced as full partners in nation-building. Upon this foundation, together Canadians and Aboriginal communities must find new ways of collaborating.

Most likely, however, the 250th year of living under the Royal Proclamation will bring further evidence of a continued, in some quarters growing, gap between Indigenous peoples and newcomers in Canada. This, as much as the failure to attend systematically to legal and constitutional obligations, is the true sadness of the long history of the Royal Proclamation of 1763. 🍁

The Royal Proclamation and colonial hocus-pocus: A learned treatise

We do further declare it to be our Royal Will and Pleasure, for the present, as aforesaid, to reserve under Our Sovereignty, Protection and Domain, for the use of said Indians, all lands and territories not within the limits of ... etc., etc.

DON'T GET ME STARTED

Someone should write a PhD thesis on the number of Indigenous lifetimes wasted on litigation because of these words. Someone should quantify exactly how much money lawyers (and historians) have made from them since 1763, or perhaps real estate developers, past and present. Someone else should write a dissertation on Stephen Harper and the concept of "protection." I could go on ...

I tried to write something balanced and thoughtful about the Royal Proclamation for this issue of *Canada Watch*. But the truth is that it just makes me mad. It is embarrassing, but my contribution to this discussion of the historical legacy of the Royal Proclamation is a rant. Oh dear, there goes my career ...

The Royal Proclamation makes me think of some Hollywood actor in red-face intoning, "White man speaks with forked tongue!" In its "equivocation between sovereignty and subordination," as someone so succinctly put it (was it John Borrows? Jim Miller? Brian Slattery?), it has been used creatively to both deny Aboriginal title (*St. Catherine's Milling*) and assert it (did I mention lawyers?). Really, we should probably thank the Royal Proclamation for the Indian business. I hate to say it, but its lasting legacy is ineffectual treaties on the one hand and the *Indian Act* on the other.

On second thought, how can one begin to say one is sorry?

I know. I know. The Royal Proclamation is the Magna Carta of Native

BY VICTORIA FREEMAN

Victoria Freeman is a sometime lecturer at York University who struggles to control her emotions.

While the Proclamation seemingly offered Indigenous peoples permanent "protection" against the "Frauds and Abuses" of settlers and land speculators ... it did not protect Indigenous peoples from the Proclamation's author.

rights in Canada. But only in a legal sense. The human relationships agreed to through the Treaty of Niagara have been forgotten; we are left with words on paper. And wampum, if one likes that sort of thing.

"POOR" POLICY

The Royal Proclamation of 1763 was a unilateral attempt to deal with Indigenous-settler-Crown relations by royal edict. Given that legislative assemblies on two continents were busy undermining George's authority, the Proclamation was plagued by bad timing. Ineffectual in many instances, since the King was so damn far away, local governments, like Nova Scotia, could just ig-

nore the parts of the Proclamation they did not like, such as having to purchase Unceded Land before moving on to it. In the end, it was poor policy. Trying to control the relationship between Indigenous peoples and settlers through law without attempting to build bridges or facilitate relations between peoples on the ground created some unfortunate [settler blowback](#). Even the Treaty of Niagara, which successfully "tied down" two thousand Indigenous leaders in an alliance with the British through promises that First Nations would never live in poverty (will you commemorate this First Confederation, Stephen Harper?), did not meaningfully engage settler populations. Indigenous leaders consulted their constituencies before ratifying treaties, Europeans less so.

The British never attempted to educate their own population or build a consensus for mutual co-existence with Indigenous people. This was beyond the perceived role of government at the time. Also, permanent mutual co-existence between two sovereign polities was never the aim of the Crown. The return of peace, the securing of alliance with the western Indians, and the direction of settlers north and south rather than west was expedient as Britain extended jurisdiction over the new territories it had gained from France, especially in light of Pontiac's war.

YOU CROSS THIS LINE AND I'LL ...

While the Proclamation seemingly offered Indigenous peoples permanent "protection" against the "Frauds and Abuses" of settlers and land speculators through the creation of a line demarcating Indian territory and zones of prohibited settlement, as well as a formalized process for land purchases, it did not protect Indigenous peoples from

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A learned treatise

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the Proclamation's author. The Great Protector had his own economic and political agenda, such as turning allies into subjects without their knowledge or consent (just as today we still insist that all Native people are Canadians, whether they or their ancestors ever agreed to be). The stipulation of the Crown's monopoly on land purchases from the Indians, while protecting First Nations from some "Frauds and Abuses" by settlers, allowed the Crown to dictate the price of land and acquire it far below its market value. In the case of the Mississauga tract in 1805, the purchase price was reportedly 2.5 percent of market value, thus excluding Aboriginal peoples from the new economy being created around them and financing the development of the colony's infrastructure on their backs. Joseph Brant fought against this, but that is another story.

That the British never conceived of the Proclamation Line, or British promises generally, as permanent was demonstrated only five years later, when the line was extended westward in the

The Proclamation has had its uses in the struggle to maintain Indigenous connections to land and assert Indigenous self-determination.

Treaty of Fort Stanwix, a move from which Sir William Johnson, superintendent of the Northern Indians, personally benefited. Empire was always understood to be a work in progress; what First Nations did not understand was that treaties were inviolable until circumstances changed.

The Proclamation also formalized extinguishment as the *sine qua non* of the treaty process—rather than any idea of sharing territory in a mutually beneficial way, the latter a concept of clearly

inferior peoples with quaint, progress-inhibiting ideas about peace and friendship. Extinguishment is a word with genocidal resonance, methinks.

THE LIGHT AT THE END OF A VERY LONG TUNNEL

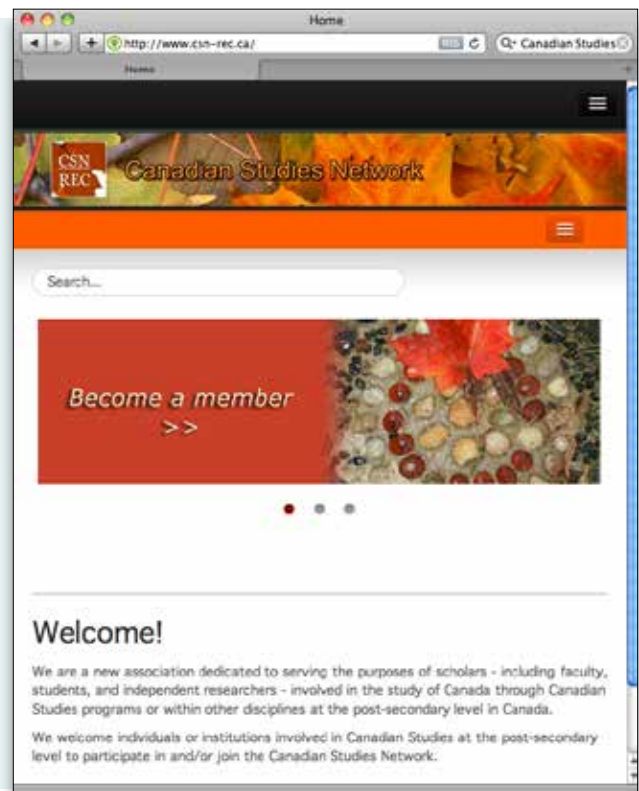
Yet—I cannot deny that the Proclamation has had its uses in the struggle to maintain Indigenous connections to land and assert Indigenous self-determination, a struggle that I, with my unprofessional presentist bias, support. It kept hope alive by offering a vision of a world governed by the principles of non-interference and consent (if you read the text with one eye shut). The treaties it engendered over the centuries, imperfect as they are, are a start, the beginnings of learning how to live together. Perhaps, for these reasons, the Royal Proclamation has persisted, through the *British North America Act*, through the Constitution of 1982 and the *Charter of Rights and Freedoms*. You could say that it has successfully resisted extinguishment, and there must be a lesson in that. 🍁



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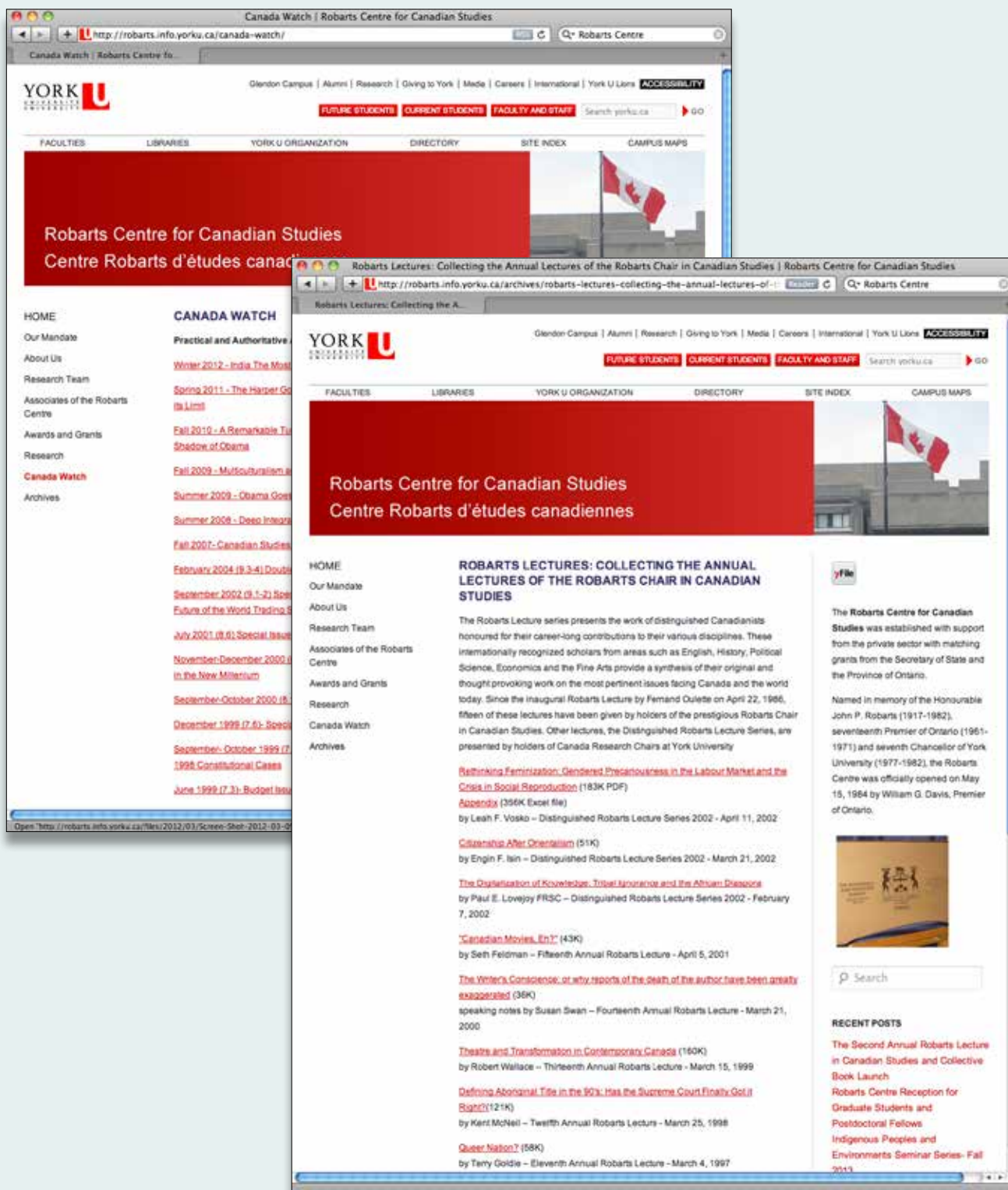


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