The Royal Proclamation and the Canadiens

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The Royal Proclamation of 1763 holds an ambiguous place in debates over Quebec's relationship with Canada. In sovereignist 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 Canadien 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 Canadien law and Canadien 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 Canadien 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 Canadien 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.

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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 Canadien 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 agreeable 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 Canadien notaries with their French-style deeds and contracts. In practice, Canadien notaries carried on much as before the Conquest—Canadien 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 Canadien lawyers, who could essentially only have Canadien clients. In practice, Canadien lawyers acted for both Canadien 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,

The Canadiens, page 12

 continued from page 11

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 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.

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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.