

“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.

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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,

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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-

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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.

