

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 ascendancy, 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

Ken Coates is the Canada Research Chair in Regional Innovation at the Johnson-Shoyama Graduate School of Public Policy at the University of Saskatchewan and a Senior Fellow at the Macdonald-Laurier Institute in Ottawa, responsible for the Institute's program on Aboriginal peoples and resource use.

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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.

The spirit of 1763, page 28

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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. 🍁