

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

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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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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


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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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