

The Royal Proclamation and its Impacts on the USA

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I will try and quickly survey how I see the Proclamation and its legacy playing out or not playing out in the area that became the United States.

A few years after the Proclamation was issued, George Washington wrote to his friend and business associate (read: fellow land speculator) William Crawford saying: Survey, find, mark out rich lands for me. Do it surreptitiously, do it on the quiet, I don't want people to know but, unless we get a move on here we're going to lose out, because this Proclamation line, he said, is "a temporary expedient to quiet the minds of the Indians." It wasn't going to last. I think he was right. I think in many ways the British saw it as that. It was not a permanent barrier that would always be fixed in place but rather, I think, a baseline, on which to build and to regulate the inevitable westward expansion of settlement.

Immediately after the Proclamation was issued, pressure began to build to have the Proclamation either repealed or moved. Many of the people that I mentioned this morning shifted their eyes from the Ohio Valley to London to begin to lobby, or to exert influence on those who could lobby the people in power to move this line. Quite early on, as soon as 1765, there were negotiations to renegotiate the line with Native people. Under the terms of the Proclamation of course, that could only be done by the King's duly appointed representatives, which meant John Stuart, who was the Superintendent of Indian Affairs south of the Ohio River, and Sir William Johnson, Superintendent of Indian Affairs north of the Ohio. Those people set about renegotiating the line.

Stuart renegotiated the line primarily with the Cherokees and moved the line so that it ran up the back country of Virginia and North Carolina. Sir William Johnson renegotiated the line at the Treaty of Fort Stanwix in upstate New York in the fall of 1768. This is an incredibly interesting treaty. In many ways it's the largest Indian treaty held in colonial America. Its cast of thousands involved not only several thousand native people, predominantly Haudenosaunee but also a kind of rogues gallery and who's who of colonial America. The illegitimate son of Benjamin

Franklin is there, there are representatives from Virginia, representatives from Pennsylvania, Sir William Johnson, George Croghan, who was a land speculator and trader, even representatives of Dartmouth College were there to try and wangle land out of the deal.

Sir William Johnson's instructions were that he could and should renegotiate a line to go down the Ohio River as far as the Kanawha River. That would have lined up with the boundary that John Stuart negotiated with the Cherokees. So instead of the Proclamation line being broken, it would bulge westward.

Sir William did more than he was asked to do. What he did was negotiate a line that ran 400 miles or so further down the Ohio River to the Cherokee River or the Tennessee River. And that was a huge deal for a lot of people, particularly for Virginia, because that opened up the area which became known as Kentucky.

Together, the net effect of these two treaties – and there were adjustments to the southern treaty, because once Virginia and John Stuart realized what had happened in the north they had to finesse the southern treaty line – but essentially the Proclamation line now, instead of becoming a barrier to westward settlement, acts like an arrow into the heart of Indian Country, through which population pressure and Anglo and American expansion is funneled.

When you look at that you can see what the Iroquois delegates at Fort Stanwix were doing. They ceded far more land than Sir William was authorized to take. But in doing so, what they effectively do is divert the path of that tsunami that's coming, so that instead of it going across Iroquois country it now tends south and west below the Ohio River. I always read that as an achievement of some statecraft on the part of the Iroquois.

The people who were most affected by this treaty however, were not there, except in very few numbers: the Shawnee, and to some extent the Cherokee, who still claimed Kentucky and West Virginia as their land. So when people like Daniel Boone and other Anglo-American settlers go across the Appalachians and into Kentucky, thinking that they have rights to do so, they meet Shawnees who regard them as trespassers, kick them out, confiscate their pelts and worse. So this is why this area of the country, Kentucky, becomes what's called "The Dark and Bloody Ground" in American history. This is where population pressure and Indian resistance come head to head.

Virginia continues to try and get this land. Virginia I think forces the Shawnees into war in 1774, and as a result of that war, the Shawnees grudgingly accept the Ohio River as the border. But for Virginia to make good on that land still it has to be confirmed by the Crown, and the British

government is not thinking along those lines. The Quebec Act essentially takes land north of the Ohio off the table for American speculators and settlers. People like George Washington have confirmed their fear that under the British Empire there will be no open season on Indian land. The Declaration of Independence actually mentions the inappropriate or restrictive conditions that the King has placed on access to Indian land. The State of Virginia repeals the Royal Proclamation and the Quebec Act, and the war of the American Revolution is, yes, a war for freedom, but also a war about Indian land, and who is going to control that land, and have access to it. For Indian people in this area of the country, the American War of Independence translates into an ongoing war for the Ohio River, and the Ohio boundary.

At the end of that war, at the Peace of Paris in 1783, the British recognize the independence of the United States, and hand over to the United States all territory south of the Great Lakes, north of Florida, and west as far as the Mississippi. And just as in the Peace of Paris 20 years earlier, of course, most of this is Indian land. And again, European, now American powers, are treating Native homelands as part of a huge kind of board game in which you can shuffle territory back and forward.

Indian people, many of whom had fought for the British – because the British at least had some record of trying to protect Indian land, whereas the American record was clearly land hunger – were outraged by the Peace of Paris, and they made their feelings known. As Governor Frederick Haldimand, Governor of Canada said,

“These people have as enlightened ideas of the nature and obligations of treaties as the most civilized nations have, and they know that no infringement of the Treaty of 1768 (the treaty designating the Ohio River as the boundary) can be binding upon them without their express concurrence and consent.”

So for these Indian people, their war of independence did not end in 1783, it carries on for at least a dozen years more, where they are now fighting to defend, and hold back what is now American settlement at the Ohio River boundary.

The United States found itself in 1783 in somewhat the same position as the British had been in 1763. A huge empire, if you like, has fallen into its lap. And like Britain in 1763, America in 1783 has no money. All it has is what it chooses to call Public Land (read: Indian land), and it can fill its treasury, it can finance its government, it can build its nation on that land. But that land is inhabited by Indian people.

So the United States, though it has cast aside the Royal Proclamation, faces many of the same challenges and adopts some of the same approaches and policies as the British had done. The United States government and the individual states want the buying and selling of Indian land to be centralized, they want it to be done by the government, they want it to be regulated. They don't want this to be an open season, pell mell and haphazard land rush, in which anything goes and all hell breaks loose as it did in Pontiac's war. But again, how does a distant government impose its will on a frontier, and on people living hundreds if not thousands of miles away?

The United States at first tries to dictate treaties to Indian people in the Ohio Valley by what it calls 'Right of Conquest': "You allied with the British, we defeated the British, you lost your land." In 1786, there is a huge multinational summit, an intertribal gathering, where delegates of Indian nations congregate around Detroit--more than a dozen Indian nations. And they send a message to Congress, saying, basically, "Knock it off. We're not going to make individual treaties. We will only recognize treaties if they are done with the consent of all of us in public council." Essentially saying what the Proclamation had said should be the way to conduct treaties.

The United States tries to do things in a regulated way and with at least a nod to fairness and decency. In 1787 Congress issues The Northwest Ordinance. This was basically a program to organize the territory beyond the Ohio River, north and west of the Ohio River – that was the Northwest Territory. What it did was lay down the provisions by which territories could become states. In a way it's brilliant, because they looked at what had happened in their experience. As colonies of Britain, they'd been children, they'd grown to maturity, they'd cast off the mother country and gone their own way. What was to stop that happening again and again? If people went to live in Ohio and Minnesota, as they grew in number and maturity they would say "We don't need to be tied to a government in the east." What the Northwest Ordinance did was lay out a blueprint by which that could work, by which territorial status would be temporary, not permanent.

Once a territory acquired a certain population, it could adopt a form of government that mirrored that of the United States. And once it had 60,000 people, it could petition to be admitted to the United States, on an equal basis with all of the other states. So it lays out the roadmap for national expansion, and that's the way that the majority of states entered the United States.

An interesting aspect of that Ordinance, however, is what it says about relations with Indian people. It says we will conduct our relations with Indian people with fairness and honesty, we will not invade their territory, and we will not wage war against them, except in "just and lawful

wars authorized by Congress". I think we've all had occasion to ponder just and lawful wars authorized by Congress in our lifetimes.

I think for the framers of this a "just relationship" with Indian people always involved Indian people giving up land. And I think, if I could read their mind, what they would say would make that fair and decent was what we give you in return. And what the United States would give Native people in return was civilization. You give us land; you won't need as much land to be primitive hunters if you become civilized farmers. So everyone can benefit from this deal.

When the United States Constitution is adopted, again, Congress has control over Indian Affairs. And in the Constitution, treaties have to be ratified by a 2/3rd vote of the Senate. In 1790, Congress passes something which to me looks very much like the Royal Proclamation. The Indian Trade and Intercourse Act of 1790 said a couple of things: first, traders in Indian Country have to be licensed by the United States government. We don't want maverick, renegade traders cheating Indians, causing problems. Second, no transfer of land from Indian people – no land sales – are valid and legal without the approval of Congress. Of course, the United States government is a baby at this time, and lots of people ignored that, which has given rise to numerous land claims in the United States, I think there is an interesting parallel there.

Native American people, of course, resisted both American expansion and American civilization. The area north and west of the Ohio River had to be essentially seized by force. The Indian Confederacy that grew up to defend that region of the country was finally defeated at the Battle of Fallen Timbers in 1794, and the following year at the Treaty of Greenville, 69 chiefs of the Indian Confederacy signed their agreement, ceding what is now most of State of Ohio to the United States, plus places like the site of Chicago, and that established a new boundary line.

George Washington said it's probably not going to make a whole lot of difference. It probably won't be any more effective than the 1763 line or the 1768 line, because, he said, "Scarcely anything short of a Chinese Wall or a line of troops will restrain land jobbers and the encroachment of settlers upon the Indian territory." In fact, treaties increased dramatically after this; more than 200 treaties between 1795 and 1840. This was the age of Indian removal; moving Indian peoples out of their homelands in the east, westward. The Potawotamis, who lived in the coveted lands around Lake Michigan, hold the unfortunate record. They signed 26 treaties, including one each year from 1826 to 1829, two in 1832, another in 1833, four treaties in 1834, nine in 1836, and another in 1837.

And now the United States Supreme Court in *Johnson vs. MacIntosh*, invokes not only the Doctrine of Discovery, but also invokes the Royal Proclamation of 1763, to reaffirm that the United States government has right of pre-emption over Indian land. So that Indian people, Indian nations, have ownership, they have title in the soil, they have rights of occupancy, but they're not really the same rights as English people have when they own their land. As my colleague Bruce Duthu, who is a former attorney, says, essentially what that does is reduce Indian people to the status of tenants. They are occupying their land until such time as the United States sees fit and requires them to transfer that land to the United States. The issue of Indian title in the United States is a whole set of other questions.

In 1871, the United States Congress unilaterally puts an end to treaty making; there will be no more treaties with Indian nations in the United States. That doesn't mean there will be an end to land acquisitions. Indian land can still be acquired by agreements and executive orders, and those kinds of things—but there will be no more treaties. That nation to nation relationship that treaties represent will end, and Congress will now act as it sees fit for Indian people.

The most glaring legacy of this comes in 1903 in the Supreme Court case *Lone Wolf vs. Hitchcock*, which comes from a blatant and flagrant violation of the Treaty of Medicine Lodge in 1867 between the United States government and the Kiowas Comanches, Kiowa Apaches, southern Cheyennes and southern Arapahos, one provision of which had said, you will not have to give up any more land, unless three-quarters of your adult male population agrees to it.

The Jerome Commission, which secured cession of Kiowa land, did so with a list of names as long as you can imagine. They went to Washington, and apparently produced another list of names. It was understood, on the ground, on the Kiowa reservation, and seems to have been understood by many in the nation at large that these were fraudulent. There were lots of forgeries, etc. The case went to the Supreme Court, and the United States Supreme Court acknowledged that was the case, but said that that really didn't matter, because the United States Congress had "plenary power" over Indian land, and Congress could therefore do what it saw fit – whatever it liked, including abrogating (i.e. breaking) its own treaties with Indian people.

Things obviously I think have improved somewhat in the past 110 years. But as I look at the landscape of Aboriginal rights and treaty relations in this country (Canada), very much as an outsider, with very minimal understanding, obviously there's a lot wrong, but I wonder what things might be like if the United States could restore a set of relationships that were treaty based. By that I don't mean specific provisions about what moneys, or what goods, or what

services are provided for land, but, to steal a phrase from Mark Walters, “An ethic rather than a text.” Because as I’ve understood them, early treaties between Europeans and Indians were not all about taking land. Fundamental to those treaty relationships were respectful relations embedded in protocols and good understanding, and nation to nation relationships.

Questions (for Ghislain Otis and Colin Calloway):

Comment by Terry Fenge:

Note to Ghislain Otis’s presentation that the concept of sovereignty is included in the Nunavut Land Claims Agreement (NLCA) in the preamble and in Article 15 on Marine Areas. In the NLCA, Inuit did not claim to be sovereign, but wanted to bolster Canada’s claim to sovereignty.

Tony Hall:

The Royal Proclamation line, could that line be a permanent line that could have delineated an Indian dominion? In 1812, were there still aspirations for an Indian Land/Nation?

Answer: With Chief Tecumseh, you get a revival of the idea of an independent Indian state, which was supported by the British, but was incompatible with American ideas.