

**The application in British North America of the  
Royal Proclamation, 1763-1764**

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Application in British America of the Royal Proclamation (1763)

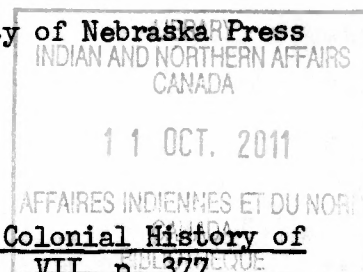
1. Indian land policies up to the Royal Proclamation

As British settlement in the Thirteen Colonies advanced inland, the Indian tribes withdrew west of the Appalachians. The land-hunger of the English settlers in the middle decades of the 1800's threatened to alienate the Indians of the Ohio and Mohawk River valleys to such an extent that their continued allegiance to the British during the Seven Years War (1753-1760) was placed in jeopardy.

Various reasons for this Indian dissatisfaction were advanced by colonial officials. Lieutenant Governor Dinwiddie of Virginia informed the Board of Trade in February, 1756, that the malpractices of English traders were chiefly responsible for the desertion of the Indian tribes from the British interest. He suggested that Parliament levy a poll tax to manage Indian affairs.<sup>1</sup> Governor Shirley of Massachusetts in 1756 proposed imperial regulation of the Indian trade<sup>2</sup> and George Washington, commanding a Virginia regiment, suggested a general system so that the rules of one colony would not undermine the regulations of the others.<sup>3</sup> Sir William Johnson, Indian Superintendent for the Northern District, urged that the superintendents under the authority of the Crown should direct Indian affairs.<sup>4</sup>

A major point of discontent among the Indian people arose from the fraudulent purchases of their lands by the white settlers. Indeed William Johnson frequently urged the imperial government to redress the grievances of the tribes over the large grants of land made by colonial governments.<sup>5</sup> He warned that these acts were driving the Indians into the arms of the French. In response to these arguments, the Commissioners of Trade in November 1757, admitted to the Governor of South Carolina that:

1. Sosin, J.M. Whitehall and Wilderness (Lincoln) University of Nebraska Press 1961. p. 30.
2. I.B.I.D. p. 30.
3. I.B.I.D. p. 30.
4. I.B.I.D. p. 30.
5. O'Callaghan, Edmund B. (ed.), Documents relative to the Colonial History of the State of New York, vol. VII, p. 377.



"... the only effectual method of conducting Indian affairs will be to establish one general system under the sole direction of the Crown and its officers ..." 6

However, while the Seven years War was in progress in North America, the imperial government took no step to impose an all embracing policy.

During the war (referred to by American historians as the French and Indian War) the British government fostered policies on the western frontier which were formalized by the provisions of the Royal Proclamation. The refusal by Colonel Bouquet in 1758 to permit settlement in the Ohio Valley reflected the British government's desire to restrict settlement on lands claimed by their Indian allies. In October 1761 Bouquet issued a proclamation\* prohibiting settlement in the Ohio Valley. The Proclamation had the twofold effect of placing a curb on the Indian trade and restricting settlement in "Indian territory". Only by reassuring the Indians of continued possession of their lands could the British maintain peace and stability on the colonial frontier. The scattered garrisons at Forts Pitt, Detroit, Michilimackinac and Vincennes provided little military power and influence.

In 1754 Governor Dinwiddie of Virginia had promised 200,000 acres of land for those who volunteered for the French and Indian War.<sup>7</sup> In December 1759, Governor Fauquier asked the Board if the Crown would renew lands grants on the Ohio. No reply was forthcoming. In March 1760, Fauquier wrote again this time under pressure from

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6. Sosin, J.M. Whitehall and Wilderness. p. 31.

7. I.B.I.D. p. 43.

\* a proclamation similar to Bouquet's was issued by Lieutenant-Governor Johnathan Belcher (May 1762) on authority of instructions from His Majesty dated 3 December, 1761.  
See Appendix C for Proclamation and Royal Instructions.

two land speculators, George Washington and George Mercer.<sup>8</sup> The Commissioners of Trade replied ordering Fauquier to take no action for settling "any Lands upon the waters of the Ohio, until His Majesty's further pleasure be known."<sup>9</sup> The Board added that it would be "imprudent in the highest degree" to promote settlement on lands claimed by the Indians. As for New York State the Board felt that further lands could be granted "provided such settlements do not interfere with the Claims of Our Indian Allies..."<sup>10</sup>

However, under pressure from General Amherst, Governor Cadwallader Colden encouraged settlers to homestead in the Mohawk Valley. The Mohawk Indians claimed ownership of these lands, and in a report of 11 November 1761, the Board of Trade termed the situation

"... 'Dangerous to (the) Security of the colonies'. In the past, the Indians had taken up arms against the colonists. The primary causes for their dissatisfaction were the violations of treaties guaranteeing the tribes their hunting grounds. Consequently, the practice of granting lands before the claims of the natives had been ascertained was 'a measure of the most dangerous tendency...' "<sup>11</sup>

On 3 December 1761, the Privy Council issued instructions to the Colonial governors prohibiting settlement on lands "which may interfere with the Indians" bordering on those provinces.\* In future, the governors had to refer all applications for Indian lands to the Board of Trade.<sup>12</sup>

By 1762, the Board of Trade was under the direction of Lord Sandys. In that year in response to continued pressure from Virginia the Board prohibited further grants of land on the Ohio. Interestingly, the Board dismissed Virginia's arguments

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8. I.B.I.D. p. 44.

9. I.B.I.D. p. 45.

10. I.B.I.D. p. 47.

11. I.B.I.D. p. 48.

12. I.B.I.D. p. 48.

\* A copy of these instructions are included in Appendix C.



based on the purchases from the Indians at Lancaster (1744) and Logstown (1752) as agreements "vague and void of precision" made by a "few Indians." 13

In January 1763, the Secretary of State (Egremont) informed General Amherst that the British government was endeavouring to prevent further Indian hostilities and

"...to conciliate...the Indian Nations, by every Act of strict Justice, and by affording them...Protection from any Incroachments on the Lands they have reserved to themselves, for their Hunting Grounds...a Plan, for this desirable End, is actually under Consideration." 14

At this time, the colonial advisor to Egremont was Henry Ellis, Governor of Nova Scotia in absentia. On request from Egremont, Ellis provided him with a document entitled "Hints relative to the Division and Government of the Conquered and newly acquired Countries in America." So great was the influence of Ellis that Francis Maseres, later an agent for the Canadians in London, was convinced that Ellis drew up the 1763 Proclamation.<sup>15</sup> However, as J.M. Sosin has noted, Ellis' ideas only paralleled those already formulated by Egremont. The Board of Trade, under John Pownall was also asked to give an advisory opinion. In May 1763, Pownall presented the Board's report which differed with Egremont's only on the proposed division of Canada into two governments - the Board wanted one government, and they (the Board) were opposed to granting any one province civil jurisdiction over Indian country, as Egremont had suggested.<sup>16</sup> However the deliberations of the British government were overtaken by events on the frontier.

## 2. Pontiac's War 1763

The most pressing problem in the fall of 1763 was restoring the British alliance with the native peoples, broken by the Indian uprising under Pontiac earlier that year.

- 13. I.B.I.D. p. 49.
- 14. I.B.I.D. p. 51.
- 15. I.B.I.D. p. 56.
- 16. I.B.I.D. p. 60.

As long as the Indian people remained hostile, Amherst could make no permanent arrangement for the defence of America. Many reasons were offered for the Indian rebellion. 17

- (a) Lieutenant Governor Fauquier of Virginia maintained that the Indian tribes had revolted in resentment over unauthorized settlements on their lands.
- (b) At Detroit, Major Henry Gladwin was under the impression that disaffected Canadians and French traders inspired the uprising.
- (c) From Montreal, General Gage reported that the French, Canadians, and Spaniards had stirred up the Indian people by circulating rumors that the English planned to deprive the latter of their lands.
- (d) Governor Thomas Boone of South Carolina reported that the native tribes refused to recognize the right of the British to take over Spanish and French holdings which the tribes had never ceded.
- (e) In the north, George Croghan related that the Indian people were complaining that the French had no right "to give away their country...".

In a letter of 1 July 1763, Sir William Johnson informed the Lords of Trade that the French had been instrumental in stirring up Indian sentiment against the English. The letter pointed out that the British had discontinued the policy of giving presents to the native people, with the result that the Indians turned to the French. The French had continued to give such presents as a matter of principle regarding them as payment to the Indians for permission to occupy the interior posts. According to Johnson, when the Indians heard of the attack on Fort Detroit in May "the Mississaugas and Chippewas were greatly encouraged by officers sent among them from the governor of New Orleans." 18

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17. I.B.I.D. p. 66.

18. O'Callaghan, Edmund B. (ed.) Documents relative to the Colonial History of the State of New York, Vol. VII, p. 525-527.

The Indian uprising was short lived as the cohesion of the native tribes was not strong enough to sustain a prolonged war. Nevertheless, the event had the short term effect of speeding up the deliberations of the British government on the proposed proclamation. In a representation of August 5, 1763, to King George III, the Lords of Trade proposed that:

"a Proclamation be immediately issued ... to permit no grant of Lands nor any settlements to be made within certain fixed Bounds under pretence of Purchase or any other Pretext whatever, leaving all that Territory within it free for the hunting Grounds of those Indian Nations, Subjects of Your Majesty, and for the free trade of all your Subjects, to prohibit strictly all Infringements or Settlements to be made on such Grounds, ..." 19

On 19 September 1763, Halifax reported to the Lords of Trade that:

"His Majesty approves Your Lordships' Proposition of issuing immediately a Proclamation, to prohibit for the present, any Grant or Settlement within the Bounds of the Countries intended to be reserved for the Use of the Indians..." 20

### 3. The Proclamation of 1763

The formulation of the Proclamation of 1763 sheds some light on the proposition advanced by many historians that the British politicians of the eighteenth century were primarily administrators who arrived at particular solutions for specific problems as these issues arose. An analysis of the Proclamation shows that the formulators simply expressed in more precise terms the practical lessons learned stage by stage during the Seven Years War. According to historian J.M. Sosin:

"The line delineated in the Proclamation of 1763 was merely a temporary expedient; it reflected neither the actual state of settlement nor respective claims of the tribes or whites who had interests on both sides of the Alleghany Mountains. A more accurate boundary was necessary." 21

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19. A. Shortt and A.G. Doughty Documents Relating to the Constitutional History of Canada 1759-1791. Ottawa: Queen's Printer (1907) p. 111.

20. I.B.I.D. p. 112.

21. Sosin, J.M. Whitehall and Wilderness. p. 105.



In addition to the creation of four new administrations (Quebec; East and West Florida; Grenada) the Proclamation gave definition to those lands termed "Indian Hunting Grounds".

"And we do further declare it to be Our Royal Will and Pleasure for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion, for the use of the said Indians, all the Lands and Territories not included within the limits of Our Said Three new Governments ..." (i.e. Quebec, East Florida and West Florida)" ... or within the Limits of the Territory granted to the Hudson's Bay Company ..." (i.e. Rupert's Land)" ... as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid "(i.e. west of the Appalachian watershed).

Consequently "Indian Hunting Grounds" were lands

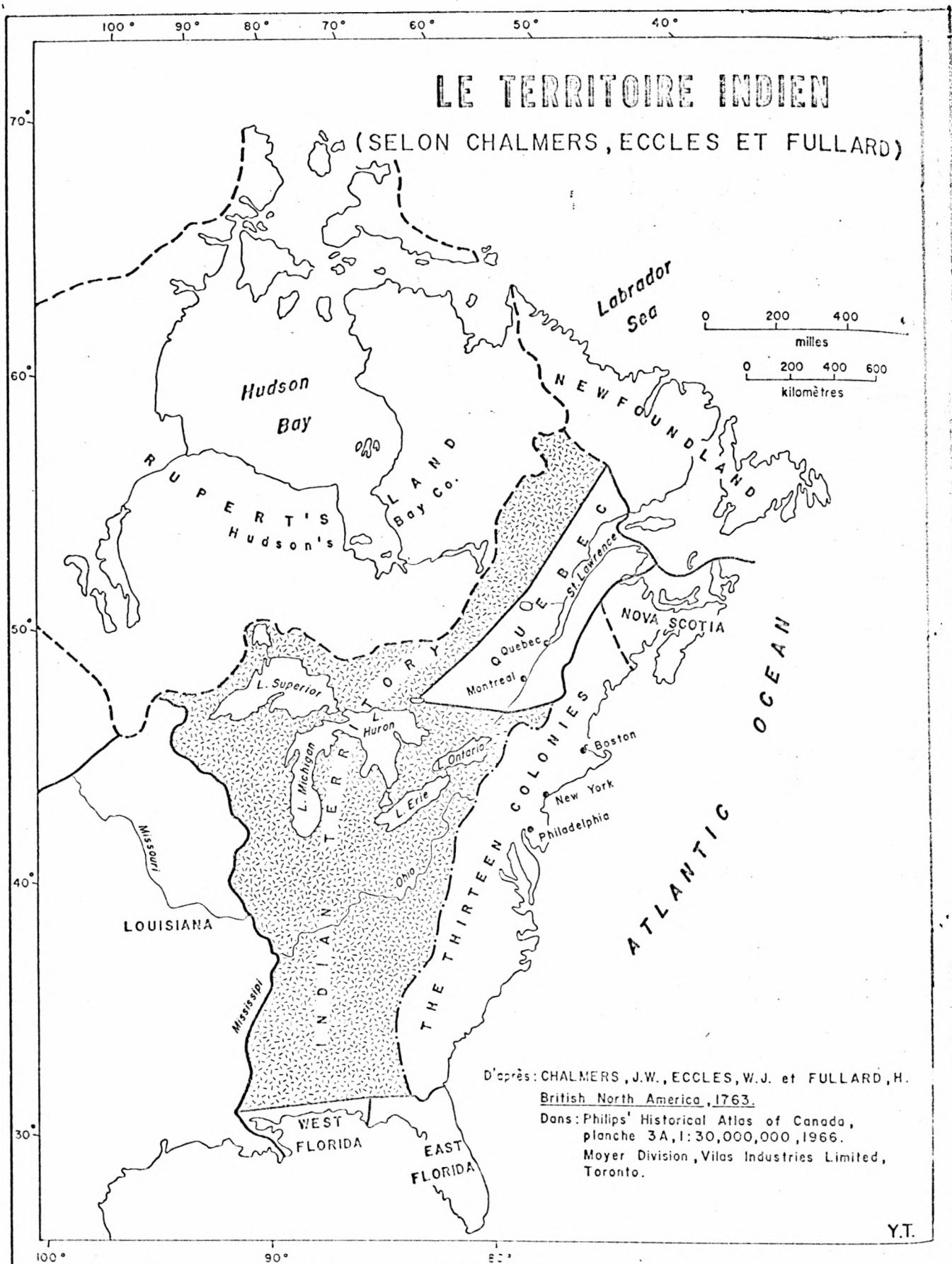
- (a) under the British Monarch's Sovereignty and Dominion;
- (b) bounded on all sides by fixed administrations;
  - (i) in the south, by East and West Florida
  - (ii) on the west, by Louisiana (Spain)
  - (iii) on the north, by Rupert's Land
  - (iv) on the extreme north-east by the (indeterminate) western boundary of the Coast of Labrador and the northern boundary of Old Quebec
  - (v) on the east by the eastern boundary of Old Quebec and the "Thirteen Colonies."

At this point, consideration should be given to the description of Quebec's boundaries presented in the Royal Proclamation.

"... bounded on the Labrador Coast by the river St. John, and from thence by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissim; from whence the said line, crossing the river St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the Baye des Chaleurs, and the coast of the gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid river St. John".

As a result of this imprecise description the question of Labrador's western boundary remained unresolved for 164 years and, along with it, the eastern terminus





to the Indian corridor between Rupert's Land and Old Quebec. In 1927, the Judicial Committee of the Privy Council commented:

"The contention that the territory annexed to Newfoundland was intended to run back to the watershed is supported by the fact that in the Proclamation of 1763 the Province of Quebec is described as bounded on the north by a line drawn from the head of the River St. John to the westward - a description which leads to the inference that the land on the east or left bank of the River St. John from its head to the sea had been already allotted to the Government of Newfoundland. It has been ascertained by recent surveys that the River St. John here mentioned does not in fact rise near the watershed; but at some point between the height of land and the sea; but it is plain from contemporary maps that the sources of the River Romaine, which rises at the watershed and runs parallel with the St. John, had been taken for the sources of the latter river, and that the eastern boundary of the new Province of Quebec at this point was intended to follow the course of the River Romaine from the watershed to the sea." 22

In 1949, the Labrador boundary settlement of 1927 was incorporated into the B.N.A. Act admitting Newfoundland into Confederation. Since then the Province of Quebec has established a commission to systematically examine provincial boundaries. One of the main contributors to the study was Professor Henri Dorion, who in 1963 wrote a book entitled, La Frontier Quebec - Terrebonne (Laval). In this work Professor Dorion disputed the findings of the Judicial Committee and proposed a reopening of the boundary question.

The lands belonging to the Hudson's Bay Company (Rupert's Land) were exempt from the provisions of the Royal Proclamation. In Regina v. Sikiyea, 43 D.L.R. (2d) 150 (N.W.T.C.A.), Johnson, J.A., observed at page 152:

"The Indians inhabiting the Hudson Bay Company lands were excluded from the benefit of the Proclamation, and it is doubtful, to say the least, if the Indians of at least the western part of the Northwest Territories could claim any rights under the Proclamation, for these lands at the time were terra incognita and lay to the north and not "to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West."

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22. Labrador Boundary (1927) 2 D.L.R. p. 416.



In terms of modern Canada, Rupert's Land included all of Manitoba, all of Saskatchewan except for the north-west corner, the southern half of Alberta and northern Ontario and Quebec beyond the height of land.

There has been a great deal of speculation whether the Royal Proclamation applied to the Maritimes. In Rex v. Syliboy (1929) 1 D.L.R. 307, Acting County Court Judge Patterson observed at page 310:

"If that proclamation (1763) be examined it will be found that it deals only with those territories or countries, of which Nova Scotia was not one, that had been ceded to Great Britain by France. These territories or countries, exclusive of Cape Breton and St. John's Island which, as we have seen, were annexed to Nova Scotia, were divided into four distinct governments, namely: Quebec, East Florida, West Florida and Grenada."

4. Application of the Royal Proclamation 1763 - 1774.

Two months after the Royal Proclamation (7 December 1763) the Governor of Quebec, James Murray, was issued Imperial Instructions which contained three provisions (articles 60, 61, 62) specifically relating to Indians.

60. And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict Friendship and good Correspondence, so that they may be induced by Degrees, not only to be good Neighbours to Our Subjects, but likewise themselves to become good Subjects to Us; You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on Our part, and delivering them such Presents, as shall be sent to you for that purpose.

61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means You can for conciliating their Affections, and uniting them to Our Government, reporting to Us, by Our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid, on pain of Our Displeasure, all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of



any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under Our Protection, without Our especial Leave for that Purpose first obtained; It is Our express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.

Articles 60 - 62 were indicative of a clear resolve on the part of the British government to enforce the Indian provisions of the Royal Proclamation.\* Unfortunately, in practice the colonial officials found it very difficult to enforce the boundary line between the colonies and the "Indian Hunting Grounds." 23

Part of the difficulty on the frontier after 1763 was that the proclamation line did not reflect the actual state of settlement in North America. Some of the settlers west of the Alleghany mountains were legally entitled to their lands under grants made by Virginia before the outbreak of the Seven Years War. And in all fairness to the settlers, it is important to note that the Imperial government was inconsistent in its policies. By the terms of the Proclamation land claims were denied west of the proclamation line, but as late as 1766, the Auditor General for Plantations, Robert Cholmondeley, insisted that the colonists pay quit rents for these same lands. 24

Despite the Proclamation line, land speculators from the Thirteen Colonies (including George Washington, Thomas Walker and William Crawford\*\*) secretly marked out lands on the Monongehela, Greenbriar and New Rivers. In October 1765 the Privy Council approved additional instructions to the governors of Virginia and Pennsylvania. The governors were instructed to remove all settlers on lands contiguous to the Ohio River - if necessary with the aid of troops. However these orders had little

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23. Shortt and Doughty. Documents Relating to the Constitutional History of Canada. p. 145.

24. Sosin, J.M. Whitehall and Wilderness. p. 106.

\* Articles 60, 61 and 62 were repeated in the Instructions issued to Murray's successor, Guy Carleton, in 1768.

\*\* not to be confused with William Redford Crawford.

effect as there was no effective law enforcement agency for the interior region. In contrast to the land-hunger of the Thirteen Colonies Guy Carleton, who had recently been appointed Governor of Quebec, reported to Shelburne on 20 December 1766 that he had not received "the least Intimation, either Public or Private" that the inhabitants of Quebec had mistreated the Indians residing within or adjacent to the colony. <sup>25</sup>

Between 1763 and 1774 the management of Indian Affairs in America was dominated by William Johnson of Upper New York. Johnson's influence and prestige among the tribes was great. In April 1764 Johnson signed a peace and land cession treaty at Johnson Hall with the Seneca Indians. By Article 3, the Senecas ceded:

"...to His Majesty and his successors for ever, in full Right, the lands from the Fort of Niagara, extending easterly along Lake Ontario, about four miles, comprehending the Petit Marais, or landing place and running from thence southerly, about fourteen miles to the Creek above the Fort Schlosser or little Niagara, and down the same to the River, or Strait and across the same, at the great Cataract; thence Northerly to the Banks of Lake Ontario, at a Creek or small Lake about two miles west of the Fort, thence easterly along the Banks of the Lake Ontario, and across the River or Strait to Niagara, comprehending the whole carrying place, with the Lands on both sides of the Strait, and containing a Tract of about fourteen miles in length and four in breadth--" <sup>26</sup>

On 8 July, Johnson travelled to Niagara where he met with deputies from the Hurons, Ottawas, Chippewas, Menomonies, Foxes, Sakis and Puans. There he signed a peace treaty with the Hurons of Detroit in which they acknowledged "His Britannic Majesty's right to all the lands above their Village, on both sides the strait, to Lake St. Clair, in as full and ample manner as the same was ever claimed or engaged by the French." <sup>27</sup> This treaty was followed by another with the "Chenussio (Genessee)

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25. I.B.I.D. p. 124.

26. O'Callaghan, E.B. (ed.) Documents relative to the Colonial History of the State of New York, Vol. VII, p. 612.

27. I.B.I.D. p. 651.

Indians and other Enemy Senecas" dated 6 August, 1764. In addition to the lands acquired at Johnson Hall in April, the Genesseees surrendered

"... all the lands from the upper end of the former Grant (and of the same breadth) to the Rapids of Lake Erie, to His Majesty, for His sole use, and that of the Garrisons, but not as private property, it being near some of their hunting grounds; so that all that Tract, of the breadth before mentioned, from Lake Ontario to Lake Erie, shall become vested in the Crown, in manner as before mentioned ..." 28

It should be noted that the British administrators found it necessary in 1781 to take a title surrender for the same tract (this time only on the Upper Canada side) dealt with in April and August 1764. This time the Chippewas and Mississaugas surrendered the land noting that in 1764, the cession was "not then fully arranged and finally executed."

In June 1764 Johnson presented a comprehensive plan on Indian Affairs to the Board of Trade in which he proposed that Indian interpreters, black smiths and deputy Indian agents be stationed at the principal forts of the interior.\* On 10 July 1764 the Board of Trade sent a circular letter to the colonial officials in America outlining Johnson's plan. Although the plan's acceptance was general, the Board of Trade had to defer action until the Grenville administration could find a source of revenue to finance the Imperial scheme. Until permanent revenue could be found, the Plan of 1764 lay dormant.

In 1764 increased political pressure was brought to bear on London by colonial land speculators who wanted a revision of the 1763 proclamation line. By 1765, John Stuart had negotiated a new line in the southern district. However, in the northern district negotiations depended upon the settlement of conflicting claims among the various Indian tribes, and the claims of colonial land speculators. In 1765 Johnson broached the question of negotiating a new boundary line with the northern tribes.

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28. I.B.I.D. p. 653.

\* Appendix B.



Soon he was able to determine that the Six Nations and Cherokees of the Ohio Valley were claiming the same hunting lands. Johnson proposed to take no action until these conflicting tribal claims were resolved.

For three years the British Government hesitated to issue instructions for the negotiation of a new northern boundary line. In the meantime Lord Shelburne took charge of the Board of Trade and began to prepare a new imperial program for the interior. On 14 November, 1767, Shelburne wrote the Governor of Quebec that:

"As an accurate knowledge of the Interior Posts of North America would contribute much towards enabling...Ministers to judge soundly of the true Interests of the different Provinces, I cannot too strongly recommend to you the encouraging of such Adventurers as are willing to explore those Parts which have not hitherto been much frequented and consequently are scarcely, if at all known..." 29

Shelburne was convinced that exploration and settlement of the interior was essential to reduce the costs of frontier garrisons. On 5 October 1767, Shelburne presented his proposals to the Board of Trade supported by letters of approval from Generals Gage and Amherst, local Indian superintendents, Canadian merchants and land speculators.

In January 1768 Shelburne lost control of colonial affairs as a result of changes in the British ministry. The Earl of Hillsborough who now headed the new American Department was determined to introduce a new western policy capable of financing colonial defence requirements. On 7 March 1768 Johnson was authorized by the Board of Trade to negotiate a new northern boundary line for the Indian hunting grounds.

The instructions issued to Johnson in March specifically cautioned him against extending the boundary line down the Ohio River from the mouth of the Great Kanawha to the Cherokee (Tennessee) River.<sup>30</sup> There is evidence that Johnson deliberately

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29. Sosin, J.M. Whitehall and Wilderness. p. 157.

30. I.B.I.D. p. 172.

disobeyed these instructions.

In June 1768, three months after he received his instructions from the Board, Johnson was vacationing at New London, Connecticut. There he was visited by George Croghan (Johnson's deputy), Samuel Wharton of Philadelphia and William Trent, all determined to obtain additional lands on the Ohio. The only solution was to purchase more land from the Six Nations than authorized by the Board of Trade. According to Sosin:

"... Johnson had indicated to John Blair (President of the Virginia council) in September, before the opening of the Congress (at Ft. Stanwix), that it was possible and desirable to extend the boundary on the basis of claims of the Six Nations." 31

Clearly Johnson intended, before the opening of the negotiations at Ft. Stanwix in November, to accept the inflated land claims of the Six Nations in order to obtain for the traders and land speculators more land than ordered by the Commissioners of Trade. Most of the negotiating done at Ft. Stanwix was in private, and as Sosin has noted:

"Ostensibly at the insistence of the Indians, Sir William extended the boundary line from the confluence of the Ohio and Great Kanawha to the mouth of the Tennessee River." 32

The additional land purchased at Ft. Stanwix (not authorized by the Board) and later called "Indiana", was territory originally claimed by Virginia in 1763.

"The boundary of the grant to the traders began at the south side of Little Kanawha Creek and followed the stream to Laurel Hills and along this range to the Monongahela (River). It then followed the river to the southern boundary of Pennsylvania and along this line to the Ohio." 33

In 1770, the southern boundary was revised by the Treaty of Lochaber so as not to antagonize the Cherokees.\*

By 1772 the situation in the interior had become chaotic. During a meeting at German Flatts the Indians complained of abuses at the hands of traders and land speculators. New plans were already laid to establish a transmontane colony named

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31. I.B.I.D. p. 176.

32. I.B.I.D. p. 175.

33. I.B.I.D. p. 175.

\* See Appendix D.

"Vandalia". Troops which could have been used to maintain order in the interior were occupied by colonial disorders on the coast and restricted by the lack of funds.

In July 1773, William Murray, a trader of the newly formed Illinois Company negotiated and contracted a deed with certain tribes for territory between the Wabash and Illinois Rivers.\* Soon after two local French inhabitants also purchased lands from one of the tribes. The French traders applied to Captain Hugh Lord, commander at Ft. Gage, to register their deeds. The commandant refused, considering those lands to be the property of the British monarch "ceded to him on the peace by the French king." <sup>34</sup> The Secretary of State for the American Department instructed Frederick Haldimand (Gage's temporary replacement) to give Captain Lord all possible assistance to prevent the speculators from establishing any settlements as a consequence of "those pretended titles."

In February 1774 instructions were issued to the governors of Nova Scotia, New Hampshire, New York, Virginia, the Carolinas, Georgia and Florida, to suspend all land grants and rescind all licences held by private individuals to purchase Indian lands. The new policy proved of little value in checking the activities of Virginia land speculators. Governor Dunmore of Virginia expressed his intention of granting patents for lands in the Kentucky basin to the officers and soldiers claiming titles under the Proclamation of 1763. When the Virginians received news that the Privy Council had exempted soldiers under the Proclamation from new restrictions on granting lands, George Washington pressed Dunmore on behalf of the provincial officers. Taking advantage of the withdrawal of royal troops from Fort Pitt and the failure of the Pennsylvania Assembly to garrison the post, Dunmore sent Dr. John Connally to take possession of the fort and rename it Fort Dunmore. Dunmore's bold gamble seemed

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34. I.B.I.D. p. 233.

\* See Appendix A. - "The Yorke-Camden Opinion".



to succeed when Dartmouth temporarily sanctioned the new Virginia government at the forks of the Ohio. The immediate result of Dunmore's action was an Indian uprising - Dunmore's War. According to Patrick Henry who was with Dunmore during the conflict, the Imperial orders from the ministry (1774) prohibiting land grants in the region had led the governor to press the war on the natives to force them to cede territory on the right bank of the Ohio River near Fort Dunmore.

By the end of 1773, the correspondence of the Earl of Dartmouth, First Lord of Trade, indicates that the British ministry had decided to terminate the program of accomodation which the British government had adopted in 1768 to reconcile the objections of colonial governments to imperial regulation. The failure of the colonies to legislate for the Indian trade, the withdrawal of interior garrisons, and increased tension with the Indian tribes in the face of continuous encroachments on their lands had forced the North Ministry to adopt a new approach to the northern wilderness. Jurisdiction over the interior would henceforth be exercised through the province of Quebec, the only colony which had demonstrated an ability to co-exist with the native tribes.

##### 5. The Quebec Act - 1774

The historian J.M. Sosin has remarked:

"In the years preceeding the Revolution one can discern a constant element in British policy: the desire to secure the frontier. To achieve this goal, the ministers had to satisfy the tribes; prevent encroachments on their lands, and accord them an equitable trade program." 35

The British colonists south of the St. Lawrence had refused to acknowledge the necessity for imperial control of the wilderness and responsibility for the taxes required to finance such a program. Only the Canadians - and in this Governor Guy Carleton had fully supported them - had demonstrated ability and willingness to deal

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35. I.B.I.D. p. 250.

fairly with the tribes. In addition, with the withdrawal of the bulk of British troops from the interior, the problem of the French had become acute. Some concession was necessary to hold their allegiance to the British Crown. The extension of the government of Quebec over the interior, under a form of government following the traditions and circumstances of the French inhabitants, was the logical solution after a decade of experimentation.

The Quebec Act contained no specific mention of Indians, but article 3 provided that no previous title would be changed:

III. Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title or Possession, derived under any Grant, Conveyance or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that this same shall remain and be in Force, and have Effect, as if this Act had never been made." 36

While the Quebec Act was before Parliament, the Colonial Office had been considering additional measures to prevent unlawful settlement in the interior, to administer justice more effectively in the area annexed to Quebec, and to regulate the Indian trade. The ministry resolved these questions in the additional instructions issued to Guy Carleton at Quebec in January 1775.

Carleton was directed to create local governments with limited jurisdiction in criminal and civil matters at posts such as Vincennes, Detroit and Michilimackinac. A responsible official would administer these districts and fix definite boundaries beyond which no settlements would be allowed. The local trade with the Indians would be open to traders from all the colonies who would first obtain licenses from the governors and observe regulations passed by the Quebec council.

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36. Shortt and Doughty. Documents relating to the Constitutional History of Canada. p. 402.

A forty-three point plan for the Future Management of Indian Affairs accompanied the instructions to Carleton. Article 42 provided for a survey to determine the exact boundaries to Indian lands. Articles 41 and 43 related to the purchase of Indian lands:

"41. That no private person, Society, Corporation, or Colony capable of acquiring any Property in Lands belonging to the Indians; either by purchase of, or Grant, or Conveyance from the said Indians, excepting only where the Lands lye within the Limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown; in which Cases such Proprietaries or Corporations only shall be capable acquiring such property by purchase or Grant from the Indians."

"43. That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the Use of proprietaries of Colonies be made but at some general Meeting, at which the principal Chiefs of each Tribe, claiming a property in such lands, are present..." 37

6. Indian Relations with the "Canadians" 1760-1774

Article 40 of the terms of capitulation at Montreal, 8 September 1760, provided for the Indian people who had fought for France during the Seven Years War. In part Article 40 read:

"The Savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit if they choose to remain there..." 38

This provision applied to such established Indian settlements as Caughnawaga, St. Regis, Lake of Two Mountains and Lorette\*. It is one of the ironies of history that the Iroquois of Caughnawaga, who had received their lands from the French (1680), led General Amherst through the Lachine Rapids in September 1760 to lay siege to Montreal. The British showed their gratitude in September 1762 when General Gage's Military Council restored a disputed strip of land, adjacent to the Caughnawaga Reserve and claimed by the Iroquois, to the Jesuit Order at Laprairie.

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37. I.B.I.D. p. 436.

38. I.B.I.D. p. 27.

\* See Henri Brun "Les droits des Indiens sur la territoire du Québec. Les Cahiers de Droit. (1969) 10 c. de - D. p. 441.



R O Y A L  
P R O C L A M A T I O N

1 7 6 3

R U S S I A N  
A M E R I C A

T H E S E  
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\* W H E T H E R T H I S  
I S S E A O R L A N D

\* T H I S P A R T  
L I T T L E K N O W N

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Hudson  
Bay

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F L O R I D A

F L O R I D A

C O L O N I A S

Q U E B E C

N O V A

S C O T I A

S C O T I A

\* Comments From  
John Rocque's  
Map 1761

Treaties  
November 1970

After the Treaty of Paris (1763) confirmed British sovereignty over the former French colony, some western tribes around the posts at Detroit and Michilimackinac remained loyal to the French. Sir William Johnson countered this situation by instructing Captain Claus to hold a congress of "all the (Indian) nations in Canada" at Caughnawaga. At this meeting, Claus urged the Indians to send messengers into the western interior to notify the hostile tribes that they were now subjects of the British Crown and all hostilities should cease; subsequently tribes from La Presentation, Three Rivers, St. Francis and Lorrette carried Johnson's message to the western tribes. No Iroquois envoys were included in this group as their relations with the western tribes were not amicable. 39

During the period from 1760-1774 the colony of Quebec grew little in geographic size and population. Its economy was still based on the fur trade and no demands were placed before government officials for additional lands in the interior. Although the Caughnawaga Indians did not experience abuses from settlers encroaching on their lands, nevertheless, they allied themselves with the Ohio tribes who met William Johnson at German Flatts in July 1770 to complain of unfair treatment at the hands of traders and settlers. Indeed, for the Canadian tribes near Quebec the 1760 - 1774 period was marked by calm and order, a direct contrast to the situation of the American tribes.

## 7. Indian Entitlement and the Royal Proclamation of 1763

### (a) Geographic Area:

Under the terms of the 1763 Royal Proclamation specific lands were set aside for the Indians, designated as "Indian Hunting Grounds." These lands had definite boundaries which did not extend into the uncharted regions of western and northwest Canada. The map opposite indicates the extent of these "Hunting Grounds". The

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39. O'Callaghan, E.B. Documents relative to the Colonial History of the State of New York. Vol. 8 p. 542.

question which must be answered is whether the Royal Proclamation was declaratory of an original "aboriginal title" to these lands.

(b) The Status of Native Lands in International Law & Practice  
(16th Century to 1760)

The earliest opinion on the status of aboriginal lands conquered by the European powers was presented by the Spanish theologian Vitoria in the sixteenth century. Vitoria stated that there was a prior native sovereignty to the territory conquered by the Spanish armies in America. However, as M.F. Lindley has noted in The Acquisition and Government of Backward Territory in International Law (London, 1926):

"He (Vitoria) suggested with hesitation that if the Indians were not capable of forming a State, then, in their own interests, the King of Spain might acquire sovereignty over them in order to raise them in the scale of civilization treating them charitably and not for his personal profit." 40

Vitoria was perhaps the leading exponent of the "Conquest Theory", according to which lands could be lawfully acquired from the aboriginal inhabitants by military force. Professor Henri Brun noted that:

"At the time of the discovery of the present territory of Quebec, numerous authors of International Law acknowledged therefore the initial sovereignty of the Indians over the whole discovered territory." 41

However, Brun states that even if a prior Indian sovereignty (admitted by the Conquest Theory) had survived after the French discovered Quebec in the sixteenth century, that native sovereignty would have been denied by subsequent stages of International Law. According to the principle of "continuous manifestation" derived from the Palmas Island case, 42 an initial sovereignty must in fact be maintained

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40. I.B.I.D. p. 420.

41. I.B.I.D. p. 420.

42. (1935) R.G.D.I.P. 172, D.O. O'Connell, International Law, London, Stevens, 1965, Vol. 1, p. 471.



throughout time and throughout successive legal systems.<sup>43</sup> In addition, Professor Brun notes that legal theoreticians such as Vitoria cannot exclusively be relied upon as a source of law because their writings lacked constancy and consistency. In reality "positive law" resided in the international practice of the larger colonizing nations of the day.

In the eighteenth century the Conquest Theory progressively gave way to the "Occupation Theory". The later authors of International Law (such as Vattel) no longer attempted to base the sovereignty of the European states over new territories on the military defeat of the aboriginal population (the only method by which the Conquest Theory permitted the acquisition of native lands), but now treated these territories as "deserted" countries, sovereignty to which could be acquired by peaceful occupation and natural expansion of settlement.

"Vattel poses certain conditions that recall the actual territory of Quebec during the eighteenth century with exactness: there must be a "vast area", which the nomadic and small (native) populations cannot occupy entirely. It justifies the colonial implantation as the result of a demographic necessity of European expansion, which materialized itself in the form of an occupation that was a priori peaceful. This occupation forcibly denies the existence of a native sovereignty over the territory so described, but it does not exclude the fact that this native sovereignty may exist over a part of the discovered territory. The occupation must in fact, be real, and criteria established to that effect - and it must only deal with "pushing the wild tribes within the smallest limits."<sup>44</sup>

Finally, in the nineteenth century a more radical version of the "Occupation Theory" was developed by the British. Now territories inhabited by the native

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43. Brun, H. p. 421.

44. I.B.I.D. p. 422.

populations could be fully acquired by limited occupation. This theory absolutely denied the existence of any prior native sovereignty.

As Brun previously stated, the actual practices of the colonial powers were more important than theoretical writings on contemporary International Law. According to Brun:

"France has never acted in North America in a manner that showed a recognition of a native sovereignty. It did not do so with respect to the natives themselves, nor with respect to the territory." 45

Indeed France successively granted the lands of New France to individuals and Companies on terms that implicitly excluded the recognition of any previous sovereignty. For example, the 1627 charter for the Company of New France (obtained from the French King) granted them "in full ownership"

"... All the said land of New France called Canada, along the coast, from Florida ... until the Arctic Circle by way of latitude and, by way of longitude, from the Island of Newfoundland running to the West, until the big lake called "mer douce" (Sweet Lake), and beyond into the lands, far and wide and beyond and as far as they (the Co. of New France) will be able to extend themselves and make known the name of His Majesty." 46

Since the French King granted a similarly worded charter to the West Indies Company (successor in 1664 to the Company of New France) Brun contends that the French King " ... did not recognize any right in the property other than his own right or the rights that he had granted." 47 The authors of Native Rights in Canada (1970) concur with Brun's opinion that "at no time was an aboriginal title expressly recognized" by the French. 48

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45. I.B.I.D. p. 428.

46. I.B.I.D. p. 427.

47. I.B.I.D. p. 430.

48. Native Rights in Canada I.E.A. (1970) p. 56.

Contrary to Professor Brun's stand, Professor G. La Forest in Natural Resources and Public Property under the Canadian Constitution, maintained that:

"France, like other European powers also followed a policy of recognizing the Indian title and on the capitulation of Canada attempts were made to protect the Indians." 49

Professor La Forest claimed that Article 40, Articles of Capitulation (Montreal - 1760), protected the "Indian title" in the area of Old Quebec. In part, this Article read:

"The savages or Indian Allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they choose to reside there; they shall not be molested on any pretence whatsoever, for having carried arms and served His Most Christian Majesty ..." 50

Commenting on this provision, Brun states that:

"...the French had the habit of reserving relatively precisely described territories in favour of the Indians ... but there is no text that leads us to believe that the French colonizers had issued some general title in the territory to the Indians of New France." 51

As for the colonial practice of Great Britain, Brun maintains that:

"...the charters, letters patent or commissions granted by the King of England to his various discoverers or founders, at the time, generally contained territorial concessions that invariably ignored any native sovereignty." 52

Furthermore,

"England subjected the native populations to the English law; like France she denied them any sovereignty." 53

This fact is emphasized by the clause in the Royal Proclamation describing the Indians as living "under Our sovereignty, Our protection and Our authority."

Considering the evidence, Professor Brun concludes:

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49. La Forest, G. Natural Resources and Public Property under the Canadian Constitution (1969) p. 109.

50. I.B.I.D. p. 109.

51. Brun, H. p. 440.

52. I.B.I.D. p. 431.

53. I.B.I.D. p. 432.



"It must definitely be admitted that the practice of the nations, during the sixteenth and seventeenth centuries never resulted in the concrete fact of admitting a native sovereignty, as alleged by the doctrine of the time. That practice appeared to lie general and constant, and it leads us to believe that it reflects more correctly the condition of International Law at that time. The conquest theory has not been followed in all its logical implications; the occupation theory does not apply to the natives. Whether a conquest or occupation is involved, according to the distinction of the doctrines, it seems that the concrete result was always the same: the denial of any native sovereignty, the denial of a true native right." 54

Brun states that to confirm the survival of a native title (supposing it did exist after 1760) it would be necessary to show that: 1) by the Treaty of Paris (1763), France transferred the burden of the "Indian title" on Quebec lands to England, and 2) that the 1763 Proclamation confirmed Indian land rights in a territory that previously belonged to the Indians.

(c) The effect of the Conquest and the Peace of Paris

In 1760 the British conquest of Canada changed the sovereignty and introduced a different legal system.

"Consequently, an Indian sovereignty over the present Quebec territory, to the extent that it would have existed, disappeared automatically, after an ultimate transfer of the territory by France." 55

Indeed in the 1763 Peace of Paris there is no mention of Indians; however, in passing, it would be well to bear in mind the administrative fact that the Hudson Bay Co. had control - before, during and after the Conquest - of a substantial portion of "present Quebec" in the form of Rupert's Land.

(d) The Royal Proclamation and the Courts.

The importance of the Royal Proclamation for Indian rights has been given consideration by the courts on many occasions. Perhaps the key judgement in any understanding of the attitude which the courts have taken on the Proclamation's terms was handed down in 1774.

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54. I.B.I.D. p. 432.

55. I.B.I.D. p. 433.

In the case of Campbell v. Hall (Leeward Islands), the powers of the Crown in newly annexed territories were given definition and established as basic principles of the British Constitution.

- i) A country conquered by British arms becomes a dominion of the Crown and, therefore, subject to the legislature, the Parliament of Great Britain.
- ii) The conquered inhabitants once received under the King's protection become subjects and are to be universally considered in that light, not as enemies or aliens.
- iii) The law and legislative government of every dominion equally affects all persons and all property within the limits thereof and is the rule of decision for all questions which arise there. Whoever purchases, lives or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man or the Plantations has no privilege distinct from the natives." 56

For the inhabitants of conquered or ceded lands ruled by Britain this decision was of great importance for it settled three legal concepts fundamental to any colonial inhabitant....citizenship, land title and compliance with the laws of the land.

In 1888, the Judicial Committee of the Privy Council in the St. Catherine's Milling Case heard an appeal "whether certain lands within the boundaries of Ontario belonged to the Province or to the Dominion of Canada." In the course of their judgement the Court referred to the "Indian Hunting Grounds" provision of the Royal Proclamation. Commenting upon the nature of the Indian tenure to these "Hunting Grounds" the Court held:

"...the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign. The lands reserved are expressly stated to be "parts of the dominions and territories" and it is declared to be the will and pleasure of the sovereign that, "for the present" they shall be reserved for the use of the Indians, as their hunting grounds, under his protection and dominion." 57

On the subject of the "Indian right" to these "Hunting Grounds" the Court stated:

"There was a great deal of learned discussion at the Bar with respect to the precise quality of the Indian right, but their Lordships do not consider it necessary to express any opinion upon the point. It appears to them sufficient for the purposes of this case that there has been all along vested in the Crown

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56. O'Reilly, J. Whither the Indian (Sept. 1969) p. 7.

57. 10 A.C. (1888) p. 25.

a substantial and paramount estate, underlying the Indian title, which became a plenum dominium whenever that title was surrendered or otherwise extinguished." 58

The real importance of the St. Catherine's decision was that the Judicial Committee recognized that the political sovereignty of the Crown extended over those lands to which the Proclamation applied. The assumption of this sovereignty nullified any claims the Indian people might have had to a sovereign and independent status. This decision clearly demonstrated the close juridical relationship between citizenship and land ownership.

In subsequent judgements since 1888 the nature of the native title has been considered by many courts and the result has been the implicit denial that the Indian people enjoyed any sovereign status over lands coming under dominion of the Crown. Such decisions were reached in Sero v. Gault (Six Nations, Ontario) 1921; Rex v. Syliboy (Nova Scotia) 1928; Warman v. Francis (Micmacs, Nova Scotia) 1958 and Logan v. Styres (Six Nations, Ontario) 1958.

In conclusion, Professor Brun states:

"... it is possible to say that in no case, as far as we know, has it been correctly described as meaning anything else than a right to hunt ... it seems clear that the right to hunt (and fish) is limited to subsistence for himself and his family." 59

(e) "The Corridor" and "New Quebec".

According to Professor Brun:

"The Indian territorial rights which it (the Royal Proclamation) created were not to be applied to the domain granted to the (Hudson's Bay) Company." 60

Thus in Quebec, "Indian Hunting Grounds" referred only to the corridor lands lying to the south of the Height of Land (the southern boundary of Rupert's Land) and north of the boundary of the old "Government of Quebec".

Since the 1763 Proclamation did not apply to Rupert's Land a separate set of legal instruments must be examined when considering Indian territorial claims in New

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58. I.B.I.D. p. 56.

59. H. Brun, p. 449.

60. I.B.I.D. p. 459.



Quebec. In 1868 the Rupert's Land Act authorized the Crown to transfer the Hudson Bay Company lands to Canada. Section 3 of this Act declared that the reassignment would be made on conditions established by the Company, the British Government and the Canadian Parliament. Article 14 of the Order-in-Council (1870) admitting Rupert's Land and the North-Western Territory into Confederation stipulated:

"14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian government in communication with the Imperial government; and the company shall be relieved of all responsibility in respect of them." 61

When part of Rupert's Land was annexed to Quebec in 1898 there was no mention of Indian territorial rights in the provincial legislation. However in 1912, when the District of Ungava was added, the provincial legislation stated:

- (c) "That the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and obtained surrender thereof, and the said province shall bear and satisfy all charges and expenditures in connection with or arising out of such surrenders;
- (d) That no such surrender shall be made or obtained except with the approval of the Governor-in-Council;
- (e) That the trusteeship of the Indians in the said territories, and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament."

Thus any native claims to compensation in New Quebec rest on 1) Article 14 of the 1870 Order-in-Council admitting Rupert's Land into Confederation, and 2) the 1912 Quebec Boundary Extension Act.

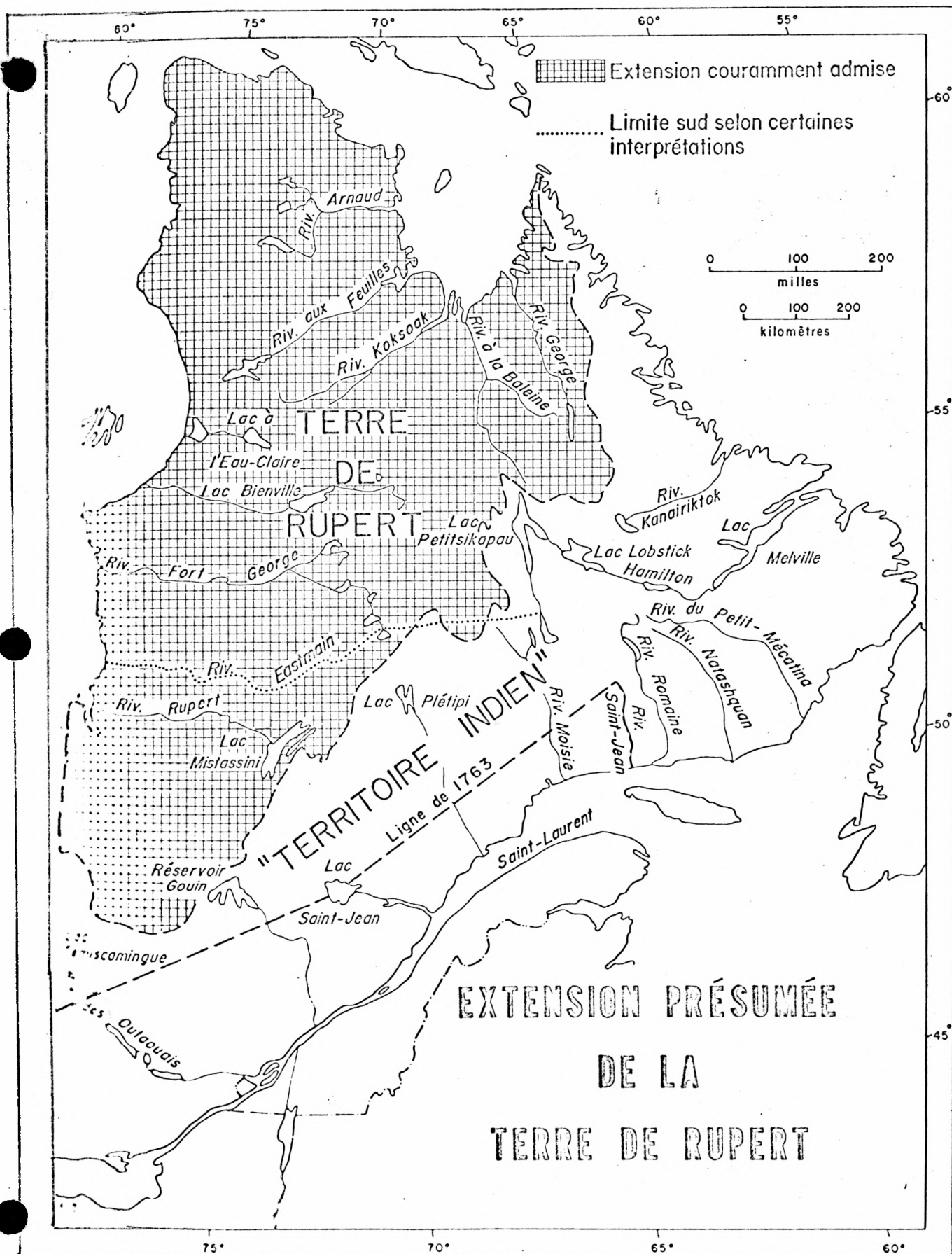
The 1912 Boundary Act stipulated that "the province of Quebec will recognize the rights of the Indian inhabitants in the territory above described...". Since these lands were once the property of the Hudson Bay Co., then the 1932 Alberta Supreme Court judgement in Rex v. Wesley 4 D.L.R. 774 is of assistance in defining Indian "rights" in

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61. R.S.C. (1952) p. 146.

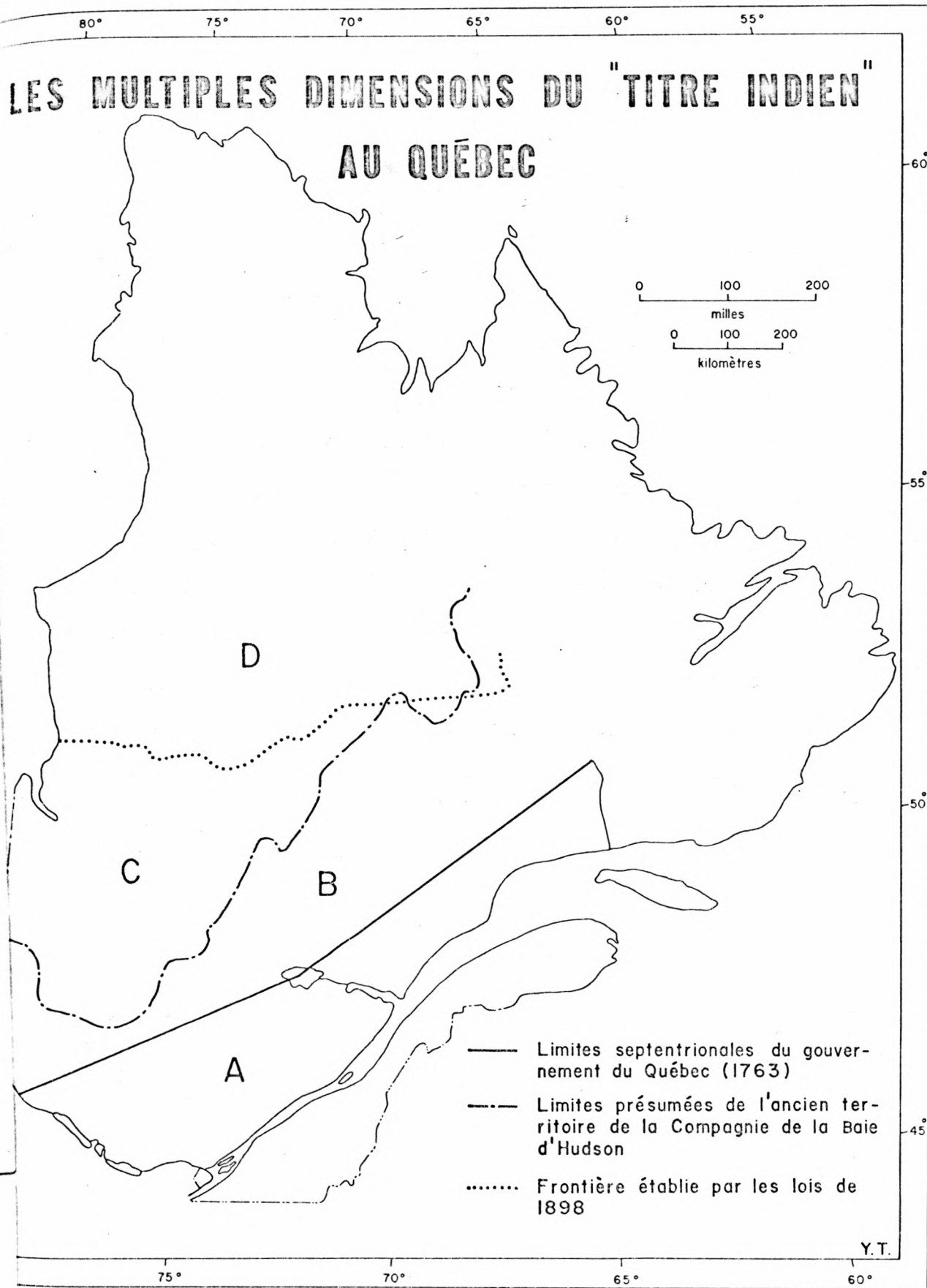
New Quebec. At page 787 the Court stated:

"Whatever the rights of the ... Indians were under the Hudson's Bay regime, it is clear that at the time of the making of the treaty to which I next allude (22 September, 1877), the Indian inhabitants of these Western plains (once part of the Hudson Bay Co.'s domain) were deemed to have or at least treated by the Crown as having rights, titles and privileges of the same kind as Indians whose rights were considered in the St. Catherine's Milling Case."





From: Commission d'étude sur l'intégrité du territoire du Québec



Commission d'étude sur l'intégrité du territoire du Québec

Figure 16

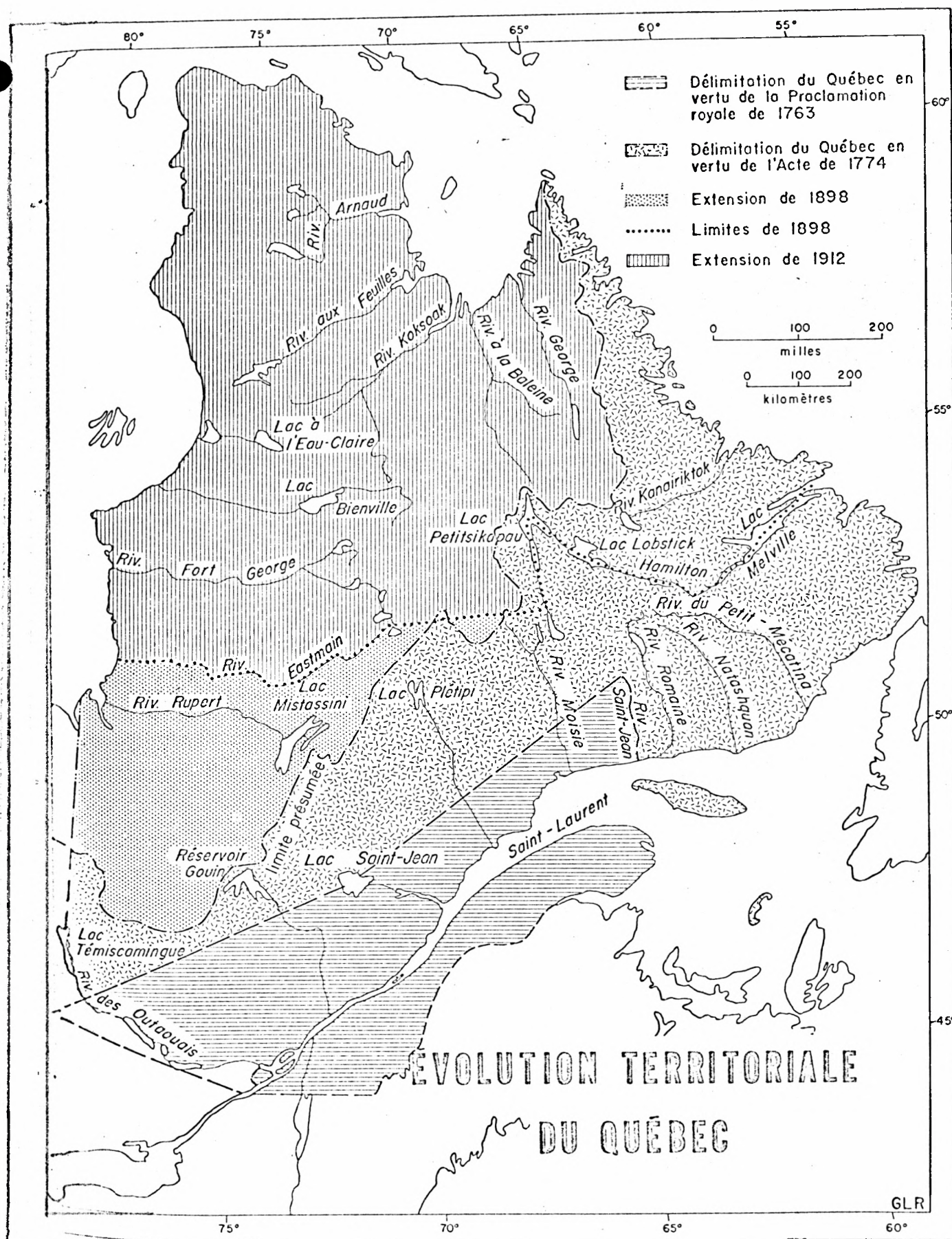
Les multiples dimensions du "titre indien" au Québec

(figure 16)

- A. Territoire du gouvernement de Québec (1763). Les Indiens n'y détiennent que les droits reconnus sur les établissements qu'ils occupent (plus tard institués en "réserves").
- B. Situation présumée du territoire réservé aux Indiens par la Proclamation royale.
- C. Partie (présumée) de l'ancien territoire de la Compagnie de la Baie d'Hudson affectée d'une garantie en faveur des Indiens qu'ils seraient remboursés pour les terres qui leur seraient soustraites.
- D. Région affectée de la même garantie qu'en C, mais aussi d'une obligation imposée au Québec d'éteindre le titre indien sur ce territoire.

Note a) Si l'on interprète l'histoire en plaçant les limites de la Terre de Rupert à la rivière Eastmain, il faut ignorer C et reporter les limites septentrionales de B jusqu'à la rivière Eastmain (limite sud de D).

Note b) Les limites du côté du Labrador ne sont pas indiquées, les interprétations pouvant être nombreuses (voir tranche 3 du Rapport de la Commission d'étude sur l'intégrité du territoire du Québec).





## Appendix A

### The Yorke - Camden Opinion

Following the issuance of the Royal Proclamation (1763) certain lands were reserved to the Indians as "Hunting Grounds" upon which no white settlement was allowed. A prohibition on direct land purchases from the Indians was also instituted. However, the thirst of the Thirteen Colonies for additional fertile lands on the Ohio easily overcame the prohibitions outlined by the Royal Proclamation. Indeed the colonists forwarded a theory supposedly formulated by the English Attorney General (Lord Camden) and Solicitor General (Charles Yorke) in support of their contention that contrary to the 1763 Proclamation, direct land purchases from the natives was valid and procured "as Full and Ample a title as could be obtained ...".

The Yorke-Camden opinion has since become famous, but its origin had nothing to do with the lands of the North American aborigines. The two lawyers in question were Charles Pratt (later Lord Camden) and Charles Yorke (later Baron Morden). In 1757, as the English Attorney General and Solicitor General respectively, they had delivered a commentary on the rights of the East Indian Company for the guidance of the Privy Council in reply to a petition of the corporation. As one scholar has pointed out, from the circumstances in which the law officers delivered the opinion at that time, it represented a specific answer to a question respecting India which the petitioners had raised. Their opinion of 1757 reads as follows:

"As to the latter part of the prayer of the petition relative to the holding or retaining Fortresses or Districts already acquired or to be acquired by Treaty, Grant or Conquest, We get leave to point out some distinctions upon it. In respect to such Places as have been or shall be acquired by treaty or Grant from the Mogul or any of the Indian Princes or Governments(,) Your Majestys Letters Patent are not necessary, the property of the soil vesting in the Company by the Indian Grants subject only to your Majestys Right of Sovereignty over the Settlements as English Settlements & over the Inhabitants as English Subjects who carry with them your Majestys Laws wherever they form Colonies & receive your Majestys protection by virtue of your Royal Charters, In respect to such places as have lately been acquired or shall hereafter by acquired by Conquest the property as well as the Dominion vests in your Majesty by Virtue of your known Prerogative & consequently the Company can only derive a right to them through your Majestys Grant." <sup>1</sup>

This opinion of 1757 drew a distinction between those areas in India conquered by the Crown and those regulated by the company as a corporation under its charter rights. In the latter case, the company had obtained title from the sovereign and independent Indian princes by treaty or grant.

Under what circumstances American land speculators obtained this opinion is an open question. <sup>2</sup> What is known is that as early as the spring of 1773 a garbled version of the opinion was in the possession of William Murray, an agent for

Michael and Bernard Gratz, the Philadelphia merchants. The statement in Murray's possession carried a heading denoting that it was the opinion of the late Lord Chancellor Camden and Lord Chancellor Yorke (actually Morden) on "Titles derived by the King's Subjects from the Indians or Natives," and bore the further notation that the document was "a true Copy compared in London the 1st April 1772." This opinion reads as follows:

"In respect to such places as have been or shall be acquired by Treaty or Grant from any of the Indian Princes or Governments; Your Majesty's Letters Patents are not necessary, the property of the soil vesting in the Grantees by the Indian Grants; Subject Only to your Majesty's Right of Sovereignty over the Settlements and over the Inhabitants as English Subjects who carry with them your Majesty's Laws wherever they form Colonys and receive your Majesty's Protection by Virtue of your Royal Charters." 3

Someone had so edited and altered the original opinion of 1757 as to eliminate the references to India and the East India Company. The opinion now failed to note the distinction between lands foreign powers had ceded to the British King and those the King reserved for the use of the North American aborigines. Nor did it include the vital reference to the King's charter by which the company exercised quasi-governmental powers in India. For reasons of expediency the British government had to acknowledge native ownership in the soil to the North American Indians, but vis-à-vis British subjects and foreign powers, the British King, of course, had the dominion as well as the ownership of the lands by virtue of the Peace of Paris. To acknowledge the implication of the edited "Yorke-Camden opinion," one would have to deny that by the Treaty of Paris the British monarch had obtained even a first option to purchase lands of the sovereign American Indian tribes. The British government could not accept such a proposition. By the Proclamation of 1763, the ministry had reserved the lands in the interior under the King's dominion for the use of the Indians.

Nevertheless, on the basis of this questionable opinion, the land speculators began forming a syndicate, the Illinois Company. Its members included Murray, a trader in the Illinois country; his employers, Michael and Bernard Gratz, merchants of Philadelphia; David and Moses Franks; and several Pennsylvania traders, among them Joseph Simons, Levy Andrew Levy, and Robert Callender. 4 There was some duplication in personnel with the "suffering traders" whom Samuel Wharton and William Trent then represented in London. With the Illinois Company partially organized in the spring of 1773, Murray set out for the Illinois country. En route he stopped at Pittsburgh, where he saw George Croghan. Murray wrote his employers that Croghan "assures me, That Lords Camden & Yorke Personally Confirmed to him the Opinion respecting Indian Titles, when C(rogha)n was last in England ...." 5 From the particular phrasing he used, it would seem that up to this time Murray was not certain of the validity or source of the opinion in his possession. Yet by June 11 he was in the Illinois country, where he presented the document to Captain Hugh Lord, commanding Fort Gage at Kaskaskia. In his report, Lord described the documents as "The opinion of my Lord Camden & the late Lord Morden, that His Majesty's subjects were at liberty to purchase whatever quantity of lands they chose of Indians ...". Murray then entered into negotiations with different tribes for territory between the Wabash and the Illinois rivers, although Lord had warned him that he would not allow him to settle any of the lands, for this was expressly contrary to royal orders.



The commandant promptly wrote to the Commander-in-Chief in New York for instructions.<sup>6</sup> In July, Murray contracted a deed<sup>7</sup> with the tribes for lands; Lord's letter to army headquarters did not reach New York until September 10. By this time General Thomas Gage was in England for a conference with the home government and his temporary replacement, General Frederick Haldimand, did not forward Lord's report until October 6. In the meantime, from the Illinois country Lord wrote to Haldimand with more disquieting news. Following the example Murray had set, two of the local French inhabitants had also purchased lands from one of the minor tribes. The Frenchmen had applied to Lord to register their deeds, but the commandant had refused, for he regarded those lands to be the property of the British monarch, "ceded to him on the peace by the French King."

These land purchases evoked a sharp response in London. The Secretary of State for the American Department himself wrote Haldimand about Murray's activities in the Illinois country. They were "proof," he charged, "of the Unwarrantable Attempts to acquire Title to possessions of lands in a part of the Country where all Settlement has been forbidden by the King's Proclamation ....". Dartmouth instructed Haldimand to give Captain Hugh Lord at Kaskaskia all possible assistance to enable him to prevent the speculators from establishing any settlements in consequence of "those pretended Titles" and to authorize the local commander in the Illinois country to declare the "King's disallowance of such unwarrantable proceedings" which could have no other effect than to bring the authority of the Crown "into Contempt" and disrupt the peace of the frontier by antagonizing the Indians.<sup>8</sup> Acting on these orders, Haldimand issued a proclamation on March 10, 1774, prohibiting the private purchase of land from the natives. He also instructed Lord at Kaskaskia to delete from the public notary's register any of the proceedings relating to purchases already made and to declare publicly that they were invalid.<sup>9</sup>

#### FOOTNOTES TO THE YORKE-CAMDEN OPINION

1. The opinion as quoted above was discovered in the records of the East India Company in London by Professor Wayne E. Stevens and is printed in Shaw Livermore, *Early American Land Companies; Their Influence on Corporate Development* (New York, 1939), 106 n69.
2. The explanations given by Alvord, *Mississippi Valley*, II, 210 n; *Memorial of The United Illinois and Wabash Land Companies* (Baltimore, 1816 ed.), 23-24; Archibald Henderson, *Conquest of the Old Southwest* (New York, 1920), 201, and Abernethy, *Western Lands and the American Revolution*, 116-120, cannot be reconciled with relevant, extant evidence. Compare the accounts in the above works with George Croghan to William Trent, July 13, 1775; *Ohio Company Papers*, II, 6, HSP; James Hogg to Richard Henderson, n.d., Peter Force (ed.), *American Archives*, 4th ser., IV, 543-545; and the letters of George Croghan, William Trent, and Samuel Wharton in the Croghan Papers, Cadwallader Collection, boxes 36, 37, HSP.
3. C.O. 5/1352: 155, LC transcript. This copy was given by William Murray to Dunmore and transmitted to Dartmouth on May 16, 1774.
4. For a list of the original proprietors of the Illinois Company see "Illinois and Wabash Land Company Minutes, 1778-1812," f. 1, HSP.



5. William Murray to Michael and Bernard Gratz, May 15, 1773, Ohio Company Papers, I, 102, HSP. At the time Croghan was in England in 1764, Camden (then Charles Pratt) was Lord Chief Justice of the Court of Common Pleas. In what connection Croghan might have consulted him on titles for Indian grants is not known. The whole story is suspect, for if Croghan was convinced of the sufficiency of his Indian title, why should he merge his grant with the "suffering traders" to obtain confirmation by the ministry?
6. Lord Gage, July 3, 1773, Add. MSS 21730, f. 132, PAC transcript; copy in Gage Papers, WLCL, sent as enclosure in Haldimand to Gage, Oct. 6, 1773.
7. A copy of the deed sent by Murray to Dunmore and transmitted to Dartmouth on May 16, 1774, C.O. 5/1352: 157-160; printed in Memorial of the United Illinois-Wabash Land Companies to the Senate and House of Representatives of the United States (Baltimore, 1816), 33-39.
8. Lord to Haldimand, Sept. 3, 1773, Add. MSS 21731, f. 7; Dartmouth to Haldimand, Dec. 1, 1773, Add. MSS 21695, f. 53, PAC transcripts.
9. A copy of the proclamation, enclosure in Haldimand to Gage, June 10, 1774, Gage Papers. WLCL.

*Plan for the future Management of Indian Affairs. (1764)*

[ Plantations General Entries, XLV., (M.) p. 488. ]

Plan for the future Management of Indian Affairs.

1<sup>st</sup> That the Trade and Commerce with the several Tribes of Indians in North America under the protection of his Majesty shall be free and open to all his Majesty's Subjects under the several Regulations & Restrictions hereafter mentioned so as not to interfere with the Charter to the Hudson's Bay Company

2<sup>d</sup> That for the better regulation of this Trade and the management of Indian Affairs in general the British Dominions in North America be divided into two Districts to comprehend and include the several Tribes of Indians mentioned in the annexed Lists A and B.

3<sup>rd</sup> That no Trade be allowed with the Indians in the Southern Districts, but within the Towns belonging to the several Tribes included in such District; and that in the northern District the Trade be fixed at so many posts and in such Situations as shall be thought necessary

4<sup>th</sup> That all laws now in force in the several Colonies for regulating Indian Affairs or Commerce be repealed

5<sup>th</sup> That there be one general Agent or Superintendent appointed by his Majesty for each District

6<sup>th</sup> That the Agent or Superintendent for the Northern District shall be allowed three Deputies to assist him in the Administration of Affairs within his District; and that the Agent or Superintendent for the southern District shall be allowed two Deputies

7<sup>th</sup> That there shall be a Commissary Interpreter, and Smith appointed by his Majesty to reside in the Country of each Tribe in the southern District

8<sup>th</sup> That it be recommended to the society for the propagation of the Gospel in foreign Parts, to appoint four Missionaries in each District to reside at such places as the Agent or Superintendent for each District shall recommend.

9<sup>th</sup> That the Commissaries, Interpreters and Smiths, in each District, do act under the immediate Direction and Orders of the Agent or Superintendent who shall have a power of suspending them in case of misbehaviour and in case of suspension of a Commissary or of a vacancy by death, or Resignation the office shall be executed, until the King's pleasure is known by one of the Deputies to the Agent or Superintendent

10<sup>th</sup> That the said Agent or Superintendent shall have the conduct of all public Affairs relative to the Indians and that neither the Commander in Chief of his Majesty's Forces in America nor any of the Governors and Commanders in Chief of any of the Colonies or persons having Military Commands in any of the Ports within each of the said Districts do hold any general meetings with the Indians or send any public Talks to them, without the concurrence of the Agent or Superintendent unless in cases of great exigency or when the said Agent or Superintendent may be in some remote part of this District

11<sup>th</sup> That the said Agents or Superintendents do in all affairs of political consideration respecting peace and War with the Indians purchases of lands or other matters on which it may be necessary to hold any general meetings with the Indians advise and act in Council with the Governors (or the Governors and Councils as the occasion may require) of the several Colonies within their respective Districts and that the said Agents or Superintendents shall be

Councillors extraordinary within each Colony in their respective Districts in like manner as the Surveyors General of the Customs for the northern and southern Districts of America.

12<sup>th</sup> That the Governor or Commander in Chief of every Colony be Directed to communicate to the Agent or Superintendant of that District within which his Government lyes all such information and intelligence as he may receive respecting Indian Affairs and that the Agents or Superintendants shall in like manner communicate to the Governors all intelligence and information respecting the state of Indian Affairs which may in any wise regard the Security and interest of the said Colonies

13<sup>th</sup> That no order shall be issued by the Governor or Commander in Chief of any of his Majesty's Colonies or by any Officer having Military Command in any Ports within the Indian Country for stopping the Trade with any Tribe of Indians in either of the said Districts without the concurrence and consent of the Agent or Superintendant for Indian Affairs.

14<sup>th</sup> That the said Agents or Superintendants shall by themselves or sufficient Deputies visit the several Posts or Tribes of Indians within their respective Districts once in every year or oftener as occasion shall require to enquire into and take an account of the conduct and behaviour of the subordinate Officers at the said Posts and in the Country belonging to the said Tribes to hear appeals and redress all complaints of the Indians make the proper presents and transact all affairs relative to the said Indians

15<sup>th</sup> That for the maintaining Peace and good order in the Indian Country and bringing Offenders in criminal cases to due punishment the said Agents or Superintendants as also the Commissaries at each Post and in the Country belonging to each Tribe, be empowered to act as Justices of the peace in their respective Districts and Departments, with all powers and privileges vested in such Officers in any of the Colonies and also full power of committing offenders in capital Cases in order that such offenders may be prosecuted for the same and that for deciding all, civil Actions the Commissaries be empower'd to try and determine in a summary way all such Actions as well between the Indians and Traders as between one Trader and another to the amount of ten pounds Sterling with the liberty of appeal to the Chief Agent or Superintendant of his Deputy who shall be empower'd upon such appeal to give Judgment thereon which Judgment shall be final and process issue upon it in like manner as on the Judgment of any Court of Common Pleas established in any of the Colonies.

16<sup>th</sup> That for the easy attainment of Justice the evidence of Indians under proper regulations and restrictions be admitted in all criminal as well as civil causes that shall be tryed and adjudged by the said Agents or Superintendants or by the said Commissaries and that their evidence be likewise admitted by the Courts of Justice in any of his Majestys Colonies or Plantations, in criminal cases subject to the same Pains and Penalties, in cases of false evidence as his Majestys Subjects.

17<sup>th</sup> That the said Agents or Superintendants shall have power to confer such honors & rewards on the Indians as shall be necessary and of granting Commissions to the principal Indians in their respective Districts, to be War Captains or Officers of other Military Distinctions

18<sup>th</sup> That the Indians of each Town in every Tribe in the southern District, shall choose a beloved man, to be approved of by the Agent or Superintendant for such District, to take care of the mutual interests both of Indians & Traders in such Town; and that such beloved men so elected and approved in the several Towns shall elect a Chief for the whole Tribe who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally attend upon the said Agent or Superintendant as Guardian for the Indians and protector of



their Rights with liberty to the said Chief to be present at all meetings and upon all hearings or tryals relative to the Indians before the Agent or Superintendant or before the Commissaries and to give his opinion upon all matters under consideration at such meetings or hearings.

19<sup>th</sup> That the like establishments be made for the northern Districts as far as the nature of the civil constitution of the Indians in this District and the manner of administering their civil Affairs will admit.

20<sup>th</sup> That no person having any military Command in the Indian Country, shall be capable of acting as Commissary, for the Affairs of the Indians in either of the above mentioned Districts respectively; nor shall such person having military Command be allowed to carry on Trade with the Indians or to interpose his Authority in any thing that regards the Trade with, or civil concerns of the Indians but to give the Commissary, or other civil Magistrate all assistance in his power whenever thereunto requir'd.

21<sup>st</sup> That the said Commissaries shall keep exact and regular accounts by way of Journal of all their Transactions and proceedings and of all occurrences in their respective Departments; and shall by every opportunity communicate such transactions and occurrences to the Agent or Superintendant in their respective Districts; which Agent or Superintendant shall regularly by every opportunity correspond with the Commissioners for Trade and Plantations.

22<sup>nd</sup> That the Agent or Superintendant to be appointed for each District as also the Commissaries residing at the Posts, or in the Indian Country within each District shall take an Oath before the Governor or Chief Judge of any of the Colonies with their respective Districts, for the due execution of their respective Trusts; and they and all other subordinate Officers employed in the Affairs of the Indians shall be forbid under proper penalties to carry on any Trade with them either upon their own account or in Trust for others or to make any purchase of, or except any Grants of Lands from the Indians.

23<sup>rd</sup> That for the better regulations of the Trade with the said Indians, conformable to their own requests and to prevent those Frauds and Abuses which have been so long and so loudly complained of in the manner of carrying on such Trade, all Trade with the Indians in each District be carried on under the Direction and Inspection of the Agents or Superintendants, and other subordinate Officers to be appointed for that purpose as has been already mentioned.

24<sup>th</sup> That all persons intending to trade with the Indians shall take out licences for that purpose under the hand and Seal of the Governor or Commander in Chief of the Colony from which they intend to carry on such Trade for every of which licences no more shall be demanded or taken than two shillings.

25<sup>th</sup> That all persons taking out licences shall enter into Bond, to His Majesty His Heirs & Successors in the sum of                      with one Surety in the sum of                      for the due observance of the regulations prescribed for the Indian Trade.

26<sup>th</sup> That every person willing to give such Security and finding a Surety willing, if required to take an Oath that he is possessed of Property to double the value of the sum he stands Security for shall be intitled to a licence.

27<sup>th</sup> That every such licenced Trader shall at the time of taking out the licence declare to the Post or Truckhouse at which or the Tribe of Indians with which he intends to trade which shall be specified in the licence itself.

28<sup>th</sup> That no licence be granted to continue longer than for one Year.

29<sup>th</sup> That no Person trade under such licence but the Person named in it his Servants or Agents whose names are to be inserted in the Margent; and in case any of the Servants

or Agents named in such licence shall die or be discharged the same shall be notified to the Governor by whom the licence was granted or to the Commissary of the Post or in the Tribe where such Trader carries on Trade to the end that the name or names of any other Servants or Agents employed by the said Trader in the place of those dead or discharged may in like manner be inserted in the Margent of the licence.

29<sup>th</sup> That all Licences be entered in the Secretarys Office or other proper Office of Record in each Colony where they are taken out; for which entry no more shall be demanded or taken than six pence for each licence and all persons to have free liberty to inspect such entry paying a fee of six pence for the same.

31<sup>st</sup> That persons Trading with the Indians without a licence and without giving the Security above required or trading at any other Posts or Places than those expressed in their licences do forfeit all the goods they shall be found then trading with and also pay a fine of            to His Majesty His Heirs and Successors, and suffer            Months imprisonment.

32<sup>nd</sup> That all Traders immediately upon their arrival at the Posts or Truckhouses in the northern District or in the Tribes in the southern District for which licences have been taken out, and before any goods are sold to or bartered with the Indians do produce such licences to the Commissaries appointed for the Direction and Inspection of the Trade at such Posts or Truckhouses or in such Tribes.

33<sup>rd</sup> That all Trade with the Indians shall be carried on all Tariffs to be settled and established from time to time by the Commissaries at the several Posts or Truckhouses or in Countries belonging to the several Tribes in concert with the Traders and Indians.

34<sup>th</sup> That the Commissaries appointed to direct and inspect the Trade at each Truckhouse in the northern district shall be empowered to fix and prescribe certain limits round each Post or Truckhouse within which limits all Trade with the Indians may be commodiously carried on in the most public manner.

35<sup>th</sup> That all Traders have free liberty to erect Huts and Warehouses within such limits in such order and manner as the Commissary shall with the concurrence of the officer commanding at such Post direct and appoint.

36<sup>th</sup> That no Trader shall traffic or have any dealings with the Indians without the limits prescribed by the Commissary or other chief Officer appointed for the inspection and direction of the Trade.

37<sup>th</sup> That each Truckhouse or Post of Trade in the northern District be fortified and garrisoned and that all Traders have free liberty to retire into such Garrison with their effects when ever any disturbance shall arise, or the Commissary at such Post shall represent it to be necessary

38<sup>th</sup> That no Trader shall sell or otherwise supply the Indians with Rum, or other spirituous liquors, swan shot or rifled barralled Guns.

39<sup>th</sup> That in Trade with the Indians no credit shall be given them for goods in value beyond the sum of fifty shillings and no debt beyond that sum shall be recoverable by law or equity.

40<sup>th</sup> That all disputes concerning weights or measures in the buying or selling goods shall be decided by standard weights and measures to be kept in each Post or Truckhouse in the Northern District and in each Town in the Southern District.

41<sup>st</sup> That no private person, Society Corporation or Colony be capable of acquiring any property in lands belonging to the Indians either by purchase of or grant or conveyance from the said Indians excepting only where the lands lye within the limits of any Colony the soil of

which has been vested in proprietors or corporations by grants from the Crown in which cases such proprietaries or corporations only shall be capable of acquiring such property by purchase or grant from the Indians.

42<sup>d</sup> That proper measures be taken with the consent and concurrence of the Indians to ascertain and define the precise and exact boundary and limits of the lands which it may be proper to reserve to them and where no settlement whatever shall be allowed.

43<sup>d</sup> That no purchases of lands belonging to the Indians whether in the name and for the use of the Crown or in the name and for the use of proprietaries of Colonies be made but at some general meeting at which the principal Chiefs of each Tribe claiming a property in such lands are present and all Tracts so purchased shall be regularly surveyed by a sworn surveyor in the presence and with the assistance of a person deputed by the Indians to attend such survey and the said surveyor shall make an accurate map of such Tract which map shall be entered upon record with the Deed of conveyance from the Indians.

It is estimated that the annual expence of supporting the establishments proposed in the foregoing plan providing presents for the Indians and other contingent expences may amount to about twenty thousand pounds and it is proposed to defray this expence by a duty upon the Indian Trade, either collected upon the exportation of skins and furs (Beaver excepted) from the Colonies or payable by the Traders at the Posts and Places of Trade as shall upon further examination and the fullest information be found most practicable and least burthensome to the Trade.

## A

## List of Indian Tribes in the Northern District of North America.

Mohocks	Algonkins	Foxes
Oneidas	Abenakis	Twightwees
Tuscaroras	Skaghquanoghrones	Kickapous
Onondagas	Hurons	Mascoutens
Cayougas	Shawanese	Plankashaws
Senecas	Delawares	Wawinghtoncs
Oswegachys	Wiandots	Keskeskias
Nanticokes	Powtewatamies	Illinois
Canoyes	Ottawas	Sioux
Tuteeves	Chipeweighs or Missisagis	Micmacs
Saponeys	Meynomcnys	Norwidgewalks
Coghawagas	Falsav[o]ins	Arseguntecokes
Canassadagas	Puans	Penobscots
Arundacks	Sakis	S <sup>t</sup> Johns

## B.

## List of Indian Tribes in the Southern District of North America.

Cherokees	Belaxis	Tunicas
Creeks	Humas	Peluches
Chickasaws	Attucapas	Ofagulas
Chaetaws	Bayuglas	Querphas.
Catawbas		



## \*

( 2 Dec. 1761 ).

May it please your Majesty

We have also in obedience to the said Order prepared the Draught of an Instruction for the Governors of your Majesty's American Islands, and for the Governors of those Colonies on the Continent of America, which are under your Majesty's immediate Government containing directions with respect to the tenure of the Commissions to be by them Granted to the Chief Judges and Justices of the Courts of Judicature of the said Colonies both which Draughts, We humbly beg leave to lay before your Majesty for your Royal approbation

SANDYS  
ED: BACON  
GEORGE RICE  
SOAME JENYNS

Dec: 2, 1761.

Draft of an Instruction for the Governors of Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina, and Georgia forbidding them to Grant Lands or make Settlements which may interfere with the Indians bordering on those Colonies.

WHEREAS the peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the Amity and Alliance of the several Nations or Tribes of Indians bordering upon the said Colonies and upon a just and faithful Observance of those Treaties and Compacts which have been heretofore solemnly entered into with the said Indians by Our Royall Predecessors Kings & Queens of this Realm, And whereas notwithstanding the repeated Instructions which have been from time to time given by Our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of Lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretence of deeds of Sale and Conveyance illegally fraudulently and surreptitiously obtained of the said Indians; And Whereas it has likewise been represented unto Us that some of Our Governors or other Chief Officers of Our said Colonies regardless of the Duty they owe to Us and of the Welfare and Security of our Colonies have countenanced such unjust claims and pretensions by passing Grants of the Lands so pretended to have been purchased of the Indians We therefor taking this matter into Our Royal Consideration, as also the fatal Effects which would attend a discontent amongst the Indians in the present situation of affairs, and being determined upon all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them, Do hereby strictly enjoyn & command that neither yourself nor any Lieutenant Governor, President of the Council or Commander in Chief of Our said Colony of  
do upon any pretence whatever upon pain of Our highest Displeasure and of being forth-

with removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them. And it is Our further Will and Pleasure that you do publish a proclamation in Our Name strictly enjoining and requiring all persons whatever who may either wilfully or inadvertently have seated themselves on any Lands so reserved to or claimed by the said Indians without any lawfull Authority for so doing forthwith to remove therefrom And in case you shall find upon strict enquiry to be made for that purpose that any person or persons do claim to hold or possess any lands within our said Province upon pretence of purchases made of the said Indians without a proper Colony

licence first had and obtained either from Us or any of Our Royal Predecessors or any person acting under Our or their Authority you are forthwith to casue a prosecution to be carried on against such person or persons who shall have made such fraudulent purchases to the end that the land may be recovered by due Course of Law And whereas the wholesome Laws that have at different times been passed in several of Our said Colonies and the instructions which have been given by Our Royal Predecessors for restraining persons from purchasing lands of the Indians without a Licence for that purpose and for regulating the proceedings upon such purchases have not been duly observed, It is therefore Our express Will and Pleasure that when any application shall be made to you for licence to purchase lands of the Indians you do forebear to grant such Licence untill you shall have first transmitted to Us by Our Commissioners for Trade and Plantations the particulars of such applications as well as in respect to the situation as the extent of the lands so proposed to be purchased and shall have received Our further directions therein; And it is Our further Will and Pleasure that you do forthwith cause this Our Instruction to you to be made Publick not only within all parts of your said Province inhabited by Our Subjects, but also amongst Colony

the several Tribes of Indians living within the same to the end that Our Royal Will and Pleasure in the Premises may be known and that the Indians may be apprized of Our determin'd Resolution to support them in their just Rights, and inviolably to observe Our Engagements with them.

\* From: Documents relative to the Colonial History of New York State. Vol. 7; p. 477.



\*

Appendix C

Belchers Proclamation, 1762

His Majesty by His Royal Instruction, Given at the Court of St. James the 9th day of December, 1761, having been pleased to Signify,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and Possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands, under Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.

AND THAT His Majesty had taken this Matter into His Royal Consideration, as also the fatal Effects which would attend a Discontent among the Indians in the present Situation of Affairs.

AND BEING determined upon all Occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the treaties and Compacts which have been entered into with them, was pleased to declare His Majesty's further Royal Will and Pleasure, that His Governor or Commander in Chief in this Province should publish a Proclamation in His Majesty's Name, for this special purpose;

WHEREFORE in dutiful Obedience to His Majesty's Royal Orders I do accordingly publish this proclamation in His Majesty's Royal Name, strictly injoining and requiring all Persons what ever, who may either willfully or inadvertently have seated themselves upon any Lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and from thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Emchih, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin, from thence to Miramichy, and from thence to Bay Des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

AND if any person or persons have possessed themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the law.

Given under my Hand and Seal at Halifax this Fourth Day of May, 1762, and in the Second Year of His Majesty's Reign.



Appendix D

POST 1763 INDIAN BOUNDARY LINE ADJUSTMENTS

14 October 1768

Treaty of Hard Labor

- settled the back boundary of Virginia.
- at the treaty negotiations Indian agent John Stuart refused to cede a 12 square mile tract of "Indian Hunting Grounds" to Alexander Cameron, Stewart's deputy among the Cherokees.

5 November 1768

Treaty of Ft. Stanwix

- Sir William Johnson extended Indian boundary line from the confluence of the Ohio and Great Kanawha Rivers to the mouth of the Tennessee River.

18 October 1770

Treaty of Lochaber (renegotiation of Treaty of Hard Labor)

- the Indian boundary line was extended from the Virginia - North Carolina border to a point six miles east of Long Island on the Holston River. It then ran 6 miles above the island, and in a straight course, to the confluence of the Ohio and Great Kanawha Rivers.

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## PART II

### THE APPLICATION IN BRITISH NORTH AMERICA OF THE ROYAL PROCLAMATION, 1763 - 1774

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