WHOSE LAND IS IT ANYWAY?

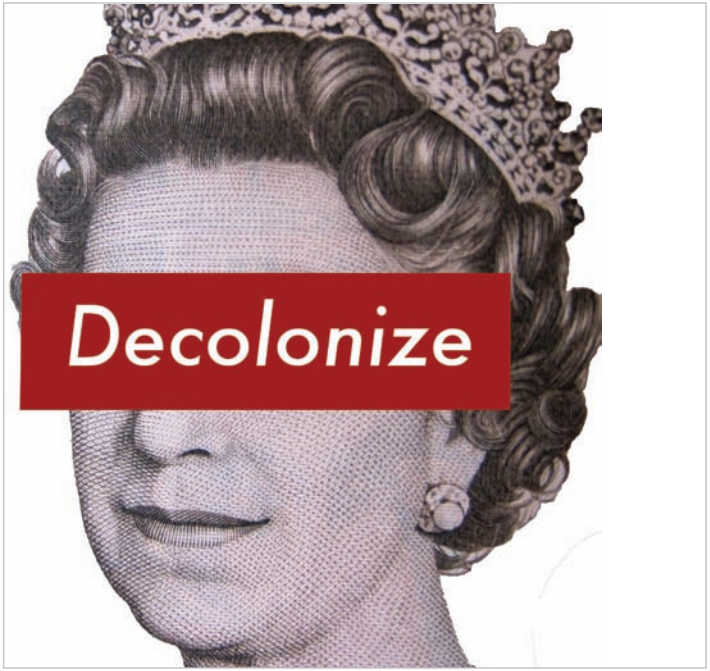
A Manual for Decolonization

Peter McFarlane & Nicole Schabus

"I wish you a wonderful experience decolonizing yourself"
– Arthur Manuel –

Crown title : A legal lie

Sharon Venne



Red Rising Magazine

Most Canadians assume that somehow Canada acquired formal title to this land 150 years ago in the *British North America Act*, the country's founding document. That this is not the case is clearly reflected in the fact that Canada is still desperately negotiating with hundreds of First Nations to have them surrender, once and for all, their title to the lands given to us by the Creator.

So, it is clear even today that Canada and the provinces that were created by an Act of the British Parliament in 1867 do not have any inherent authority in our territories. In the creation of the state, the lie of underlying title was passed along without much thought to the implications. Or, if the British House of Commons or Lords thought of the implications, there was a decision made at some point to try to simply disinherit the rights of our nations.

We see the continuation of these same legal lies today in the so-called British Columbia treaty process, which is clearly a sham process. It is not a treaty process. It is not dealing with the real issues of underlying title. The land claims policy of Canada works from the assumption that the title vests in the Crown and that the Indians are making a "claim" for our own lands and territories.

The British used the Doctrine of Discovery to assert authority and jurisdiction over our territories throughout Turtle Island. It was to prevent other colonizers from asserting their jurisdiction. The British Crown sent representatives across the oceans to the shore of our island. What they saw, they wanted. There was only one problem. The lands and resources were being used by our nations. In order to gain access to our territories, the British Crown enacted the *Royal Proclamation of 1763* to govern the subjects. This Proclamation was for the subjects of the Crown to follow when trying to access our territories. There are three important aspects of the Royal Proclamation: 1) In order to access the lands and territories of "Indian Nations or Tribes," there needed to be an agreement or a treaty. 2) If the Crown's subjects were within the territories of the Indian Nations or Tribes, the Crown was obligated to remove them (they would be considered squatters). 3) Agreements or treaties would be made only if the Indians "so desired." This makes treaties a prerequisite to the Crown's subjects legitimately moving into the territories of Indigenous Nations.

There was a start to the treaty-making process that moved from the east going west and north; when the colonizers reached the Rocky Mountains, they stopped making treaties with our nations.

Except for the treaties made on Vancouver Island and a small section of the northeastern part of what is now called British Columbia, the rest of the present province remains without the treaties that were demanded by the directives of the British Crown.

In 1972, the International Court of Justice (ICJ) – which some people refer to as the World Court – issued an advisory opinion in relation to the rights of Indigenous peoples in the Western Sahara case. The Court struck down the concepts of discovery, conquest and terra nullius – lands without any people. Our nations were never discovered; we were not lost. We were not conquered. Our territories were not terra nullius – the ICJ directed that there needed to be a treaty prior to entering into their territory. British Columbia and large areas of Canada did not have treaties with the colonizers. Instead, Canada tries to manipulate the treaty process. The policies leave our nations in debt as our small underfunded communities need to borrow money to have the resources to negotiate with Canada. The irony of the whole process is not lost on our old people – "Why are we borrowing money to talk about our lands?" Then, there are the non-ending unilateral decisions by Canada while it changes the non-ending policies and directives. Canada makes no attempt to have a true treaty relationship based on trust and good faith. It is one-sided. It is also contrary to the United Nations' directives.

This was clear in Canada's creation of the federal *Comprehensive Land Claims Policy* in 1986. This is a policy. It is not a law. It is not based on the elements of the Royal Proclamation of 1763. Canada continues to seek certainty largely through a de facto extinguishment of Aboriginal title. Most of the recent settlements contain a clause: "This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of X First Nation." If our nations did not have title, why does the state spend so much money and time to get the nations to sign off on the extinguishment clauses of a claims settlement?

There is no attempt by Canada to seek co-existence as set out in the Royal Proclamation, which recognized our nations and tribes as having ownership to our lands and the need for a treaty to access them. What is so hard to understand? Ownership would eliminate poverty. It would raise up our nations to their rightful place in the family of nations. Clearly, the state of Canada has a vested interest in maintaining the lie.

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