

Treaty of Niagara 1764



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Justice Murray Sinclair on the Royal Proclamation (1763) and the Treaty of Niagara (1764)

Royal Proclamation

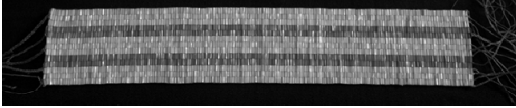
25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:

- a. any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- b. any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

— Constitution Act, 1982



Two Row Wampum



"The belt consists of two rows of purple wampum beads on a white background. Three rows of white beads symbolizing peace, friendship, and respect separate the two purple rows. The two purple rows symbolize two paths or two vessels travelling down the same river. One row symbolizes the Haudenosaunee people with their law and customs, while the other row symbolizes European laws and customs. As nations move together side-by-side on the River of Life, they are to avoid overlapping or interfering with one another."

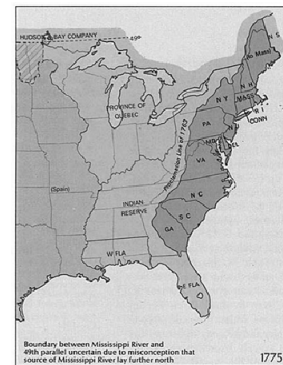
Royal Proclamation

- And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved without our especial leave and Licence for that Purpose first obtained. ...

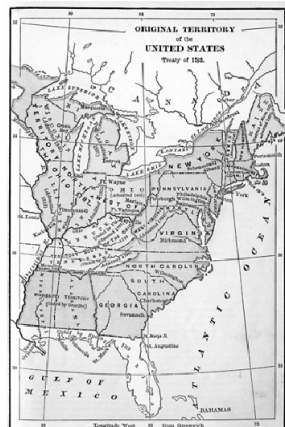
Royal Proclamation

- And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do with the Advice of our Privy Council strictly enjoin and require that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie.

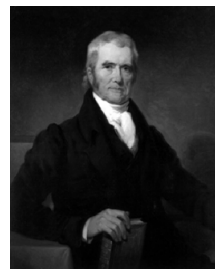
North America in 1775 from the perspective of European powers



The United States in 1783



The Marshall Decisions



Johnson
v
M'Intosh
1823

Johnson v M'Intosh 1823

Johnson

- Piankeshaw Indians held title to the land
- *RP* may have expressed the will of the King, but Indians not British citizens
- Colonies had govts, therefore Brit law did not affect him
- Virginia law passed after the purchase

M'Intosh

- Indians still living in a "state of nature"
- Law of Nations denies Indian right to sovereignty
- "Discovery" is the source of title; only one sovereign
- Piankeshaw Indians may once have been sovereign, but no longer; "perpetual inhabitants" with "diminished rights"

Johnson v M'Intosh 1823

- "Is it within the power of the Indians to give, and of private individuals to receive, a title which can be sustained in the Courts of this country?"
- "Doctrine of discovery" does not in itself bestow sovereignty; it was a mutual agreement among nations
- Indians had title as "occupants," but right to sovereignty is a diminished right; can't "own" land; only use/occupy

Johnson v M'Intosh 1823

- Discovery gave discoverer right to negotiate and to extinguish because to leave the land to the Indians was to leave it a wilderness.
- There can only one sovereign authority, and if it's the United States, then it can't be the Piankeshaw
- Title by conquest is acquired and maintained by force (i.e., must have ability to protect)